

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.5**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Streets

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to execute Contract No. CS-187 with SITELAB urban studio for as-needed joint development program services for a term of five years and a not-to-exceed amount of \$2,500,000.

**SUMMARY:**

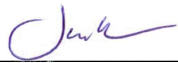
- Joint Development involves a developer using SFMTA property for non-SFMTA uses. Uses include housing and commercial development. The SFMTA, the community and the developer benefit. The developer typically owns and finances the improvements for non-SFMTA uses.
- On February 4, 2025, the SFMTA Board of Directors unanimously adopted the SFMTA Joint Development Program Goals and Policy. On March 4, 2025, the San Francisco Board of Supervisors unanimously adopted a resolution in support of the Goals and Policy.
- On December 2, 2024, the Director of Transportation notified the SFMTA Board of Directors that he had authorized staff to issue a Request for Proposals (RFP) for as-needed joint development program services contract, SFMTA Contract No. CS-187, for a term of five years and a not-to-exceed amount of \$2,500,000.
- On January 29, 2025, the SFMTA received written proposals from three firms. A selection committee evaluated the proposals and ranked SITELAB urban studio as the highest ranked proposer.
- Staff recommends authorizing the Director of Transportation to execute the Contract with SITELAB urban studio to support the SFMTA in joint development program services on an as-needed basis.

**ENCLOSURES:**

1. SFMTAB Resolution
2. SFMTA Contract No. CS-187 with SITELAB urban studio

**APPROVALS:**

DIRECTOR



SECRETARY



**DATE**

June 12, 2025

June 12, 2025

**ASSIGNED SFMTAB CALENDAR DATE:** June 17, 2025

## **PAGE 2**

### **PURPOSE**

Authorizing the Director of Transportation to execute Contract No. CS-187 with SITELAB urban studio for as-needed joint development program services for a term of five years and a not-to-exceed amount of \$2,500,000.

### **STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

This item aligns with the following SFMTA Strategic Plan Goals:

- Goal 1: Identify and reduce disproportionate outcomes and resolve past harm towards marginalized communities.
- Goal 4: Make streets safer for everyone.
- Goal 6: Eliminate pollution and greenhouse gas emissions by increasing use of transit, walking and bicycling.
- Goal 7: Build stronger relationships with stakeholders.
- Goal 8: Deliver quality projects on-time and on-budget.
- Goal 9: Fix things before they break, and modernize systems and infrastructure.
- Goal 10: Position the agency for financial success.

This item supports the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicyclists, and public transit, and shall strive to reduce traffic and improve public health and safety.
5. Pedestrian areas shall be enhanced wherever possible to improve the safety and comfort of pedestrians and to encourage travel by foot.
6. Bicycling shall be promoted by encouraging safe streets for riding, convenient access to transit, bicycle lanes, and secure bicycle parking.
7. Parking policies for areas well served by public transit shall be designed to encourage travel by public transit and alternative transportation.
8. New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments.
10. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

**DESCRIPTION**

Joint Development involves a developer using SFMTA property for non-SFMTA uses. Uses include housing and commercial development. The SFMTA, the community and the developer benefit. The developer typically owns and finances the improvements for non-SFMTA uses.

On February 4, 2025, the SFMTA Board of Directors unanimously adopted the SFMTA Joint Development Program Goals and Policy. On March 4, 2025, the San Francisco Board of Supervisors unanimously adopted a resolution in support of the Goals and Policy (Resolution #250128). Details are available on the [SFMTA Joint Development Program webpage](#).

The SFMTA has identified a work program to implement the Policy. This includes:

- Assessment of existing conditions and development of conceptual proposals for several SFMTA properties. This includes the development potential and projections of job creation and revenue to the SFMTA (aka Portfolio Evaluation).
- Preparation of the Joint Development Program Guidelines. These Guidelines will provide detailed advice on aspects of the Joint Development Program and its projects.
- Preparation of a Joint Development Program Strategic Plan. The plan will identify the priority Properties for Joint Development over a period (e.g., five years) and identify ways for the SFMTA to accelerate Joint Development.
- Legislative efforts.
- Advancing individual Joint Development projects including at Potrero Yard and Presidio Yard.
- Outreach and engagement on the above, as needed.

The SFMTA has sought resources for this work program. This includes grants and leveraging City and external professional experience. The SFMTA issued this RFP to obtain proposals from qualified consultants to provide external professional joint-development program services on an as-needed basis to advance some work program items. The selected consultant must be able to provide a broad range of joint-development program services, either by direct assignment of its own personnel or through subconsultants, including, but not limited to, architecture, development, planning, public outreach and engagement, cost estimating, and real estate finance.

**Procurement**

On December 2, 2024, the Director of Transportation notified the SFMTA Board of Directors that he authorized staff to issue a RFP for SFMTA Contract No. CS-187, in an amount not to exceed \$2,500,000 and for a term of five years. The Director issued this notice in accordance with SFMTA Board of Directors' Resolution No. 240604-061, which delegates, among other things, the authority to issue RFPs to the Director of Transportation.

On December 3, 2024, the SFMTA issued an RFP to obtain proposals from qualified consultants to provide professional joint-development program services on an as-needed basis. The SFMTA received written proposals on January 29, 2025 from three proposers: Century Urban, LLC (Century Urban), Gensler, and SITELAB urban studio (SITELAB).

## **PAGE 4**

A selection committee consisting of staff from the SFMTA, San Francisco Office of Economic and Workforce Development, the San Francisco Planning Department and Bay Area Rapid Transit evaluated these proposals.

The selection committee scored SITELAB significantly higher on their written proposal than Century Urban and Gensler. Several strengths from SITELAB's written proposal included a good understanding and approach to the work, and relevant past examples and experiences.

The SFMTA successfully negotiated a contract with SITELAB, Contract No. CS-187, which will have a term of five years and a not-to-exceed amount of \$2,500,000.

The Small Business Enterprise (SBE) goal listed in the RFP was 20 percent, and the Women-Owned Disadvantaged Business Enterprise (WDBE) goal listed in the RFP was five percent. In its proposal in response to the RFP, SITELAB committed 53 percent to SBE(s) and five percent to WDBE(s).

### **Process for Awarding Task Orders Under the Contract**

After the Contract is awarded, the SFMTA project manager will prepare detailed scopes of work for as-needed task orders. The project manager will review the resulting task order proposals from the Contractor and negotiate pricing for each task order, which shall be either a lump-sum price or a negotiated number of hours per task order subject to a total not to exceed amount, based on rates established in the Contract, plus a fixed profit.

## **STAKEHOLDER ENGAGEMENT**

The project manager developed the RFP based on market research, experience, discussions with other transit agencies and internal consultation with other staff who have worked on such services for other joint development projects.

## **ALTERNATIVES CONSIDERED**

The SFMTA considered alternatives of 1) managing the joint development program services without contract support, 2) issuing a contract for each site or, 3) issuing a one-time contract with available funds instead of an as-needed contract. These approaches would likely result in delays, and associated increased costs, due to the lack of staff resources and delays associated with contracting.

**No contract**

The need to advance innovative financing models has never been greater given the SFMTA's fiscal crisis. The crisis precludes the hiring of staff across disciplines, such as architecture, real estate finance specialists, and planners that would enable the SFMTA to enhance its joint development program. The services in the Contract will allow the SFMTA to enhance its capacity through a Contractor to significantly advance programmatic efforts and provide technical services on joint development that it is unable to advance. The SFMTA's own staff are currently fully engaged in the advancement of two joint development projects that are outside the scope of this Contract: Potrero Yard Modernization Project and Presidio Yard Modernization Project. SFMTA staff will be able to continue to move forward with those projects and, with this Contract, oversee a Contractor to advance the development of a strategic program related to SFMTA's other properties and advance innovative financing models. Without these services, the SFMTA would not be able to take advantage of future economic recovery that would be more favorable for joint development.

**Contracts for Each Site**

Under this alternative, the SFMTA would solicit contractors for joint development program services for each site in the Joint Development Program. This approach would likely result in delays and increased staff costs to the projects due to the time it takes to solicit, review proposals, negotiate and procure a contractor or contractors for each project. This alternative is a less efficient use of resources than the recommended alternative.

**One-Time Contract**

The SFMTA may require as-needed services to advance the outcomes from the initial funded work. As funds become available, this will allow the SFMTA to leverage the experience of working the same contractor without going through a separate procurement process and associated delays and increased staff costs mentioned in the Contracts for Each Site alternative.

**FUNDING IMPACT**

The SFMTA would fund the as-needed task orders as services are needed, and funds are available. This includes using federal funds and local funds.

In the near-term, this includes funding from a signed Cooperative Agreement with the U.S. Department of Transportation, Build America Bureau for an award of \$1 million from their [Innovative Finance and Asset Concession grant program](#).

The U.S. Department of Housing and Urban Development recently announced an award to San Francisco for its Pathways to Removing Obstacles to Housing ([PRO Housing](#)) grant. The SFMTA included Joint Development Program activities as part of the grant application. The San Francisco Planning Department is the lead for the grant and coordinating with the federal government on its status.

**PAGE 6**

## **ENVIRONMENTAL REVIEW**

On May 20, 2025, the SFMTA, under authority delegated by the Planning Department, determined that the approval of Contract No. CS-187 with SITELAB urban studio is not a “project” under CEQA pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

## **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The SFMTA Contract Compliance Office has approved this procurement.

The City’s Civil Service Commission approved Contract number PSC # DHRPSC0004435 for this contract on January 6, 2025.

The City Attorney has reviewed this calendar item.

## **RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute Contract No. CS-187 with SITELAB urban studio for as-needed joint development program services for a term of five years and a not-to-exceed amount of \$2,500,000.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The SFMTA Board of Directors has adopted Joint Development Program Goals, which are to use private investment to maximize public good, create inclusive and well-connected communities, and build sustainable and resilient projects, and an associated Policy; and,

WHEREAS, The SFMTA has a work program to implement its adopted Joint Development Program and Policy, and SFMTA staff require external professional expertise and resources to support the advancement of its work program; and,

WHEREAS, On December 3, 2024, the SFMTA issued a Request for Proposal to obtain proposals from qualified consultants to provide professional joint-development program services on an as-needed basis; and,

WHEREAS, On January 29, 2025, the SFMTA received written proposals from three firms: Century Urban, LLC, Gensler, and SITELAB urban studio; and,

WHEREAS, A selection committee evaluated the three proposals and ranked SITELAB urban studio as the highest ranked proposer; and,

WHEREAS, The SFMTA reached agreement to contractual terms with SITELAB urban studio; and,

WHEREAS, On May 20, 2025, the SFMTA, under authority delegated by the Planning Department, determined that the approval of the contracts is not a “project” under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract No. CS-187 with SITELAB urban studio for as-needed joint development program services for a term of five years and a not-to-exceed amount of \$2,500,000.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 17, 2025.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave., 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and**

**SITELAB urban studio**

**Contract No. CS-187**



## Table of Contents

<b>Article 1: Definitions</b>	1
<b>Article 2: Term of the Agreement</b>	3
2.1 Term	3
<b>Article 3: Financial Matters</b>	3
3.1 Certification of Funds; Budget and Fiscal Provisions	3
3.1.1 Termination in the Event of Non-Appropriation	3
3.1.2 Maximum Costs	4
3.2 Authorization to Commence Work	4
3.3 Compensation	4
3.3.1 Calculation of Task Order Compensation and Contract Not to Exceed Amount	4
3.3.2 Payment Limited to Satisfactory Services	8
3.3.3 Withhold Payments	8
3.3.4 Invoice Format	8
3.3.5 Prompt Payment of Subcontractors	9
3.3.6 Getting Paid by the City for Services	10
3.3.7 Grant-Funded Contracts	10
3.3.8 Payment Terms	10
3.4 Audit and Inspection of Records	10
3.5 Submitting False Claims	11
3.6 Payment of Prevailing Wages	11
3.6.1 Covered Services	11
3.6.2 Wage Rates	11
3.6.3 Subcontract Requirements	11
3.6.4 Posted Notices	11
3.6.5 Payroll Records	11
3.6.6 Certified Payrolls	12
3.6.7 Compliance Monitoring	12
3.6.8 Remedies	12
3.7 Apprentices	13
<b>Article 4: Services and Resources</b>	13
4.1 Services Contractor Agrees to Perform	13
4.2 Changes	13
4.3 Task Order Procedures	14

4.3.1 Task Order Requirements .....	14
4.3.2 Task Order Request .....	15
4.3.3 Contractor Request for Information.....	15
4.3.4 Contractor Proposal .....	15
4.3.5 Negotiation of Cost and Profit.....	16
4.3.6 Record of Negotiations .....	16
4.3.7 SBE/DBE Goals.....	16
4.3.8 Notice to Proceed.....	16
4.3.9 Changes to Task Order Pricing.....	17
4.3.10 Failure to Agree on Terms of Task Order .....	17
4.4. Qualified Personnel.....	17
4.5 Subcontracting .....	17
4.6 Independent Contractor; Payment of Employment Taxes and Other Expenses .....	18
4.6.1 Independent Contractor .....	18
4.6.2 Payment of Employment Taxes and Other Expenses.....	18
4.7 Assignment .....	19
4.8 Service Warranties .....	19
4.9 Liquidated Damages .....	19
4.10 Reserved. (Performance Bond).....	19
4.11 Emergency Priority 1 Service .....	19
<b>Article 5: Insurance and Indemnity .....</b>	<b>19</b>
5.1 Insurance .....	19
5.1.1 Required Coverages.....	19
5.1.2 Additional Insured .....	20
5.1.3 Waiver of Subrogation.....	20
5.1.4 Primary Insurance.....	20
5.1.5 Other Insurance Requirements .....	20
5.2 Indemnification .....	21
5.3 Indemnification and Defense Obligations For Design Professionals .....	22
5.3.1 Defense Obligations.....	22
5.3.2 Indemnity Obligations .....	22
5.3.3 Copyright Infringement .....	22
5.3.4 Severability Clause Specific to Indemnification and/or Defense Obligations .....	23
<b>Article 6: Liability of the Parties .....</b>	<b>23</b>

6.1 Liability of City.....	23
6.2 Liability for Use of Equipment.....	23
6.3 Liability for Incidental and Consequential Damages.....	23
<b>Article 7: Payment of Taxes</b> .....	23
7.1 Contractor to Pay All Taxes.....	23
7.2 Possessory Interest Taxes .....	23
7.3 Withholding.....	24
<b>Article 8: Termination and Default</b> .....	24
8.1 Termination for Convenience .....	24
8.2 Termination for Default; Remedies .....	26
8.3 Non-Waiver of Rights.....	27
8.4 Rights and Duties upon Termination or Expiration.....	27
<b>Article 9: Rights in Deliverables</b> .....	28
9.1 Ownership of Results.....	28
9.2 Works for Hire .....	28
<b>Article 10: Additional Requirements Incorporated by Reference</b> .....	28
10.1 Laws Incorporated by Reference .....	28
10.2 Conflict of Interest .....	29
10.3 Prohibition on Use of Public Funds for Political Activity.....	29
10.4 Consideration of Salary History.....	29
10.5 Nondiscrimination Requirements .....	29
10.5.1 Nondiscrimination in Contracts.....	29
10.5.2 Nondiscrimination in the Provision of Employee Benefits .....	29
10.6 Small Business Enterprise/Disadvantaged Business Enterprise Program .....	30
10.6.1 General.....	30
10.6.2 Compliance with SBE/DBE Program.....	30
10.6.3 Termination of SBEs and/or DBEs.....	30
10.6.4 Nondiscrimination in Hiring.....	30
10.7 Minimum Compensation Ordinance.....	30
10.8 Reserved. (Health Care Accountability Ordinance) .....	31
10.9 First Source Hiring Program.....	31
10.10 Alcohol and Drug-Free Workplace.....	31
10.11 Limitations on Contributions .....	31
10.12 Slavery Era Disclosure.....	32

10.13 Reserved. (Working with Minors) .....	32
10.14 Consideration of Criminal History in Hiring and Employment Decisions.....	32
10.15 Nonprofit Contractor Requirements .....	32
10.15.1 Good Standing .....	32
10.15.2 Public Access to Nonprofit Records and Meetings .....	33
10.16 Food Service Waste Reduction Requirements.....	33
10.17 Distribution of Beverages and Water.....	33
10.17.1 Reserved. (Sugar-Sweetened Beverage Prohibition).....	33
10.17.2 Reserved. (Packaged Water Prohibition).....	33
10.18 Tropical Hardwood and Virgin Redwood Ban .....	33
<b>Article 11: General Provisions</b> .....	33
11.1 Notices to the Parties .....	33
11.2 Compliance with Laws Requiring Access for People with Disabilities .....	34
11.3 Incorporation of Recitals.....	34
11.4 Sunshine Ordinance .....	34
11.5 Modification of this Agreement.....	34
11.6 Dispute Resolution Procedure.....	35
11.6.1 Negotiation; Alternative Dispute Resolution.....	34
11.6.2 Government Code Claim Requirement .....	34
11.7 Agreement Made in California; Venue.....	35
11.8 Construction.....	35
11.9 Entire Agreement.....	35
11.10 Compliance with Laws .....	35
11.11 Severability .....	35
11.12 Cooperative Drafting .....	36
11.13 Order of Precedence.....	36
11.14 Notification of Legal Requests .....	36
<b>Article 12: SFMTA Specific Terms</b> .....	36
12.1 Large Vehicle Driver Safety Training Requirements .....	36
<b>Article 13: Data and Security</b> .....	37
13.1 Nondisclosure of Private, Proprietary or Confidential Information .....	37
13.1.1 Protection of Private Information .....	37
13.1.2 City Data; Confidential Information.....	37
13.2 Reserved. (Payment Card Industry (PCI) Requirements).....	37

13.3 Reserved. (Business Associate Agreement) .....	37
13.4 Management of City Data and Confidential Information .....	37
13.4.1 Use of City Data .....	37
13.4.2 Disposition of City Data .....	38
13.5 Ownership of City Data .....	38
13.6 Loss or Unauthorized Access to City’s Data; Security Breach Notification .....	38
<b>Article 14: MacBride and Signature</b> .....	38
14.1 MacBride Principles - Northern Ireland .....	38

**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave., 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
SITELAB urban studio  
Contract No. CS-187**

This Agreement is made as of \_\_\_\_\_, in the City and County of San Francisco (City), State of California, by and between SITELAB urban studio (Contractor), and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

**A.** The SFMTA wishes to retain the services of Contractor for As-Needed Joint Development Program Services.

**B.** Contractor was competitively selected as the highest-qualified scorer pursuant to a Request for Proposals (RFP) issued on December 3, 2024 under San Francisco Administrative Code Section 6.43.

**C.** Contractor has committed to 53% of Small Business Enterprise (“SBE”) participation and 5% of Woman-Owned Disadvantaged Business Enterprise (“Woman-Owned DBE”) participation for this Agreement.

**D.** Contractor represents and warrants that it is qualified to perform the Services required by the SFMTA as set forth under this Agreement.

**E.** The City’s Civil Service Commission approved Contract number DHRPSC0004435 for this Agreement on January 6, 2025.

Now, THEREFORE, the parties agree as follows:

**Article 1      Definitions**

The following definitions apply to this Agreement. Where any word or phrase defined below, or a pronoun in place of the word or phrase, is used in any part of this Agreement, it shall have the meaning set forth below:

**1.1      “Agreement”** means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

**1.2      “CCO”** means the SFMTA Contract Compliance Office.

**1.3** “City” or “the City” means the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency.

**1.4** “CMD” means the Contract Monitoring Division of the City.

**1.5** “Confidential Information” means confidential City information including, but not limited to, personal identifiable information (PII), protected health information (PHI), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M). Confidential Information includes, without limitation, City Data.

**1.6** “Contractor” means SITELAB urban studio, 660 Mission Street, Suite 200, San Francisco, CA 94105.

**1.7** “Controller” means the Controller of the City.

**1.8** “Day” (whether or not capitalized) means a calendar day, unless otherwise designated.

**1.9** “Deliverables” means Contractor’s work product, including any partially completed work product and related materials, resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

**1.10** “DOT” means the United States Department of Transportation.

**1.11** “Director” means the Director of Transportation of the SFMTA or his or her designee.

**1.12** “Disadvantaged Business Enterprise” or “DBE” means a for-profit, small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in 49 Code of Federal Regulations (CFR) Section 26.5.

**1.13** “Effective Date” means the date the SFMTA notifies Contractor through a Purchase Order that the Controller has certified the availability of funds for this Agreement as provided in Section 3.1. In the case of a task order contract, the “Effective Date” means the date the Director of Transportation executes the Contract.

**1.14** “FTA” means the Federal Transit Administration.

**1.15 “Mandatory City Requirements”** means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

**1.16 “Notice to Proceed”** means written notice to the Contractor of the date on which it shall begin prosecution of the Work to be done under the Contract.

**1.17 “Party” and “Parties”** mean the City and Contractor either collectively or individually.

**1.18 “Project Manager”** means the project manager assigned to the Contract for the SFMTA, or his or her designated agent.

**1.19 “San Francisco Municipal Transportation Agency” or “SFMTA”** means the agency of City with jurisdiction over all surface transportation in San Francisco, as provided under Article VIIIA of the City’s Charter.

**1.20 “Services”** means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendix A, including all services, Deliverables, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

**1.21 “Small Business Enterprise” or “SBE”** means a for-profit, small business concern with a three-year average gross revenue that does not exceed the thresholds set forth in Appendix F, Section III.B and either: 1) is certified under any of the following programs: the State of California's Small Business Program with the Department of General Services (State Program), the City and County of San Francisco's LBE Program (City Program), or the California Unified Certification Program (Federal DBE program), or 2) has received written confirmation from CCO that it meets the SFMTA’s program eligibility requirements.

**1.22 “Task Order”** means a written directive from the SFMTA to the Contractor to perform specified work, issued under the procedures described in Section 4.3 below.

## **Article 2 Term of the Agreement**

**2.1 Term.** The term of this Agreement shall commence on the Effective Date and expire on the date five years (1,825 calendar days) after the Effective Date, unless earlier terminated as otherwise provided herein.

**2.2** The City only may extend this Agreement beyond the expiration date in accordance with Administrative Code Section 6.43 at the City’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

## **Article 3 Financial Matters**

### **3.1 Certification of Funds; Budget and Fiscal Provisions**

**3.1.1 Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of Section 3.105 of the City’s Charter. Charges will



accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to the City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. The City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**3.1.2 Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5 (Modification of this Agreement).

**3.2 Authorization to Commence Work.** Contractor shall not commence any work under this Agreement until the City has issued formal written authorization to proceed, such as a purchase order, Task Order or notice to proceed. Such authorization may be for a partial or full scope of work.

### **3.3 Compensation.**

**3.3.1 Calculation of Task Order Compensation and Contract Not to Exceed Amount.** The SFMTA will pay Contractor on a task-order basis for Services it performs under this Agreement. The total amount of the Task Orders awarded under this Agreement shall not exceed Two Million Five Hundred Thousand Dollars (\$2,500,000). City shall not be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement. Contractor's compensation for the Services it performs under Task Orders shall be based on either: (a) a negotiated lump-sum price (that includes all direct hourly labor rates, overhead, profit, and all other costs) for the Task Order; or (b) a negotiated number of hours per Task Order subject to a total not to exceed amount (using the hourly labor rates set forth in Appendix B and Appendix C plus a fixed profit). The City may withhold a portion of payment as a reasonable retention until the conclusion of the Task Order. Contractor's compensation for Task Orders shall be based on the following:

**(a) Direct Hourly Labor Rates.** The direct hourly labor rates in Appendix B are fixed negotiated rates and shall not change for the first 12 months after the Effective Date of this Agreement. Thereafter, during the term of this Agreement, Contractor may request annual escalation based on the annual percentage change in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-Hayward area (CPI-U). No direct hourly rate may be increased without prior written approval of the SFMTA. Contractor must request any escalation of these direct hourly labor rates no later than 30 Days before the anniversary of the Effective Date of this Agreement, and failure to timely do so may result in a denial of the request. Any requests for escalation of direct hourly labor rates must include evidence of the change in the CPI-U, evidence of payroll documentation, and an updated Appendix B for the SFMTA's approval. The SFMTA will review all requests for escalation of direct hourly labor rates within 30 Days of receipt and notify Contractor of either an approval or denial. If approved, the new rates will become effective as of the date that a contract modification is executed, but no earlier than the anniversary of the Effective Date of this Agreement. In no event will the start of the new rates be backdated. Subsequent rate escalations will be effective no less than one year after the most recent prior rate escalation.

**(b) Overhead Rates**

**(i)** The overhead rates in Appendix C shall be billed at that fixed level until 12 months after the Effective Date of this Agreement. Thereafter, during the term of this Agreement, the overhead rates in Appendix C may be adjusted annually with prior written approval from the SFMTA and will be effective as of the date that a contract modification is executed. The Contractor's and subcontractors' overhead rates are subject to audit in compliance with Federal requirements.

**(ii)** The overhead billing rates in Appendix C, including any adjustment to such rates as provided for above, are subject to readjustment to reflect actual rates as described in this paragraph. Within 180 Days of the end of Contractor's fiscal year that immediately follows the expiration or any earlier termination of this Agreement, Contractor shall submit Contractor's and all subcontractors' actual rates during the term of this Agreement to the Project Manager. For each rate paid to the Contractor that exceeds the Contractor's or any subcontractor's actual rate, the Contractor shall reimburse to the City the total difference between the rate paid and Contractor's or subcontractor's actual rate during the term of this Agreement. Contractor shall reimburse City within 30 Days of written notice from City seeking reimbursement. For each actual overhead rate of Contractor or subcontractor that exceeds the rate paid to Contractor, City shall pay to Contractor the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Contractor within 60 Days of City's receipt of all of Contractor's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Contractor's rates as provided above.

**(c) Profit.**

**(i)** The Parties shall negotiate a profit as a lump sum amount for each Task Order. It is understood and agreed that the profit is a fixed amount that cannot be exceeded because of any differences between the estimated number of hours required to perform the Services in a Task Order and the actual number of hours required to perform the work. In no event shall payments to the Contractor exceed the total amount of the Task Order. The SFMTA may approve an increase in the profit only if such increase is required due to an increase in the Services or to additional work that increases the Services. The profit shall not be increased for Contractor's additional level of effort to complete the Services. It is further understood and agreed that the profit is only due and payable for Task Order work for which the SFMTA has given notice to proceed and for which the Contractor has satisfactorily completed.

**(ii)** The profit will be prorated and paid monthly in proportion to the Services satisfactorily completed. A payment for an individual month shall include that approved portion of the profit allocable to the Task Order work satisfactorily completed during said month and not previously paid. Any portion of the profit not previously paid in the monthly payments shall be included in the final payment. The method of proration may be adjusted by the SFMTA to reflect deletions or amendments in the project work that are approved as herein described.

**(iii)** If the Services are reduced, that reduction shall be memorialized in an amendment to the Task Order, and the profit for that work shall be reduced, as negotiated by the Parties, but such reduction shall not be less than the proportional value of the reduced Services.

**(d) Reimbursable Costs.** This Agreement is subject to federal regulations concerning the reimbursement and audit of expenses, costs and overhead as set forth in the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 CFR Part 200 (Federal Cost Requirements). The Contractor acknowledges that it is familiar with the Federal Cost Requirements. Contractor shall not seek reimbursement and the City shall not pay reimbursement to Contractor for costs (including but not limited to direct costs, indirect costs, and overhead) that are not compensable under the Federal Cost Requirements. Contractor understands and acknowledges that the City shall not reimburse Contractor for Contractor's costs under this Agreement that are not reimbursable to City from its funding agencies in accordance with the Federal Cost Requirements. All payments to Contractor under this Agreement are subject to audit and adjustment in accordance with the requirements and standards set out in the Federal Cost Requirements.

**(e) Out-of-Pocket Expenses.** The SFMTA will reimburse Contractor for the actual cost of approved out-of-pocket expenses for the prime Contractor and subcontractors. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All expenses required to perform a task must be described in detail in the Task Order scope of work and identified as a line item in the Task Order budget. If unforeseen expenses are

required to perform the Task Order scope of work after the Task Order has been issued, such costs must be documented in detail and pre-approved in writing by the SFMTA. All travel expenses are to be pre-approved by the SFMTA and Contractor must obtain the best air fare available in a timely fashion. Receipts for all expenses must accompany the invoice.

**(f) Use of Public Transportation.** San Francisco is a transit-first city, and the SFMTA encourages Contractor and subcontractors to use public transit in performance of its services to the maximum extent possible. Travel from and to airports must be by public transit to the maximum extent possible. Hired cars are not considered public transit. The SFMTA will closely review the Contractor's requests for reimbursement of travel expenses and reserves the right to refuse to reimburse travel expenses that are not in accord with these policies.

**(g) Non-Reimbursable Expenses.** The SFMTA will not reimburse the Contractor for any of the following expenses:

- i. Contractor's and subcontractors' personnel relocation costs.
- ii. Purchases of office and field supplies or equipment, unless the supplies or equipment are: (1) not ordinary or typical supplies and equipment; and (2) uniquely required of this Project; and (3) serving only this Project. If all three requirements are met, the costs shall be separately identified in the Task Order. These supplies or equipment will then need to be turned over to the SFMTA at the end of the Contract.
- iii. Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis. Vehicle expenses calculated on a cost-per-mile basis for travel within a 100-mile radius of the City will not be reimbursable unless otherwise approved by the SFMTA in advance as being necessary (e.g., no viable public transit options available).
- iv. Any travel expenses, including transportation, meals, and lodging costs, that are not approved by the SFMTA.
- v. Any overnight courier services extending outside of the Bay Area between Contractor offices except as approved by the SFMTA.
- vi. Any personal or entertainment expenses.
- vii. Computer usage.
- viii. Facsimile and telecommunications expenses.

**3.3.2 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments until the SFMTA approves the Services delivered. Payments to Contractor shall not excuse Contractor from its obligation to replace the unsatisfactory Services even if the unsatisfactory character was apparent or could have been detected at the time such payment was made. Non-conforming Services may be rejected by the SFMTA and in such case must be replaced by Contractor without delay at no cost to the SFMTA.

**3.3.3 Withhold Payments.** If Contractor fails to provide the Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

**3.3.4 Invoice Format.** Invoices submitted by Contractor under this Agreement must be in a form acceptable to the Controller and the SFMTA, and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. Contractor shall submit invoices for all allowable charges incurred in the performance of each Task Order. No more than one invoice shall be submitted per Task Order in a month. For Task Orders based on a negotiated number of hours, Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in the Task Order. For Task Orders based on a lump-sum price, Contractor shall provide an invoice to the SFMTA as a one-time lump sum amount upon completion of the Task Order, or a percentage or dollar amount per milestone each month, in either case as defined in the Task Order. Each Contractor invoice shall contain the following information, and invoices that do not include all required information or contain inaccurate information will not be processed for payment:

- (a) Contract Number
- (b) Task Order Number
- (c) Purchase Order Number for the Task Order
- (d) PeopleSoft Supplier Name and ID
- (e) Description of the work performed or services rendered
- (f) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced, including timesheets except where Contractor invoices for a Deliverable that is priced in the Task Order as a lump sum, or as estimated milestone payments described in the Task Order budget
- (g) Overhead costs
- (h) Other direct costs
- (i) A copy of the receipts for all expenses invoiced
- (j) Subcontractor costs supported by invoice itemization in the same format as described here

- (k) Profit for current invoice period and amount of profit as of date of invoice. Profit will be calculated as a prorated portion of the total profit for the task for which Contractor seeks payment. Profit will be for an amount not to exceed seven percent of the total Task Order amount
- (l) Contract payment terms
- (m) Sales/use tax (if applicable)
- (n) Total costs
- (o) SFMTA Certificate of Progress Payment Form
- (p) SFMTA Application for Progress Payment Form
- (q) SFMTA Progress Payment Report (SFMTA SBE/DBE Form No. 6): The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of the Progress Payment Report Form. If the Progress Payment Report Form is not submitted with Contractor's invoice, the Controller will notify the SFMTA and Contractor of the omission. If Contractor's failure to provide the Progress Payment Report Form is not explained to the Controller's satisfaction, the Controller will withhold 20 percent of the payment due pursuant to that invoice until the Progress Payment Report Form is provided.
- (r) Monthly Progress Report

### 3.3.5 Prompt Payment of Subcontractors

#### (a) SBE/DBE Payment and Utilization Tracking System.

SBE/DBE participation applies to this Agreement. Contractor shall: (a) within three (3) business days of City's payment of any invoice to Contractor, pay SBE/DBE subcontractors; and (b) within five (5) business days of the City's payment of any invoice to Contractor, confirm its payment to subcontractors using the SFMTA's B2GNow System (<https://sfmta.diversitycompliance.com/>) unless instructed otherwise by CCO. Failure to submit all required payment information into the B2GNow System may result in the suspension of future progress payments to Contractors.

(b) **Subcontractor Prompt Payment.** In accordance with SFMTA's SBE/DBE Program, no later than three working days from the date of Consultant's receipt of a progress payment by the City the Consultant shall pay any subconsultants for work that has been satisfactorily performed by said subconsultants, unless the prime consultant notifies CCO in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the prime consultant and the subconsultant. If Contractor does not pay its subcontractors within seven calendar days after receipt of the progress payment, in accordance with San Francisco Administrative Code Section 6.42(f), Contractor shall pay to the subcontractor directly a penalty of 2% of the amount due per month for every month or portion thereof that payment is not made. This provision does not create a private right of action against the City.

### **3.3.6 Getting Paid by the City for Services**

(a) The City utilizes a commercial product through its banking partner to pay City contractors electronically. Contractor shall sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [SF City Partner at sfgov.org](https://sfgov.org).

(b) At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information.

### **3.3.7 Grant-Funded Contracts**

(a) **Grant Terms.** The funding for this Agreement is provided in full or in part by a Federal or State grant to the SFMTA. As part of the terms of receiving the funds, the SFMTA is required to incorporate some of the terms into this Agreement (Grant Terms). The incorporated Grant Terms may be found in Appendix E (U.S. Department of Transportation and FTA Requirements for Personal/Professional Services Contracts). To the extent that any Grant Term is inconsistent with any other provisions of this Agreement such that Contractor is unable to comply with both the Grant Terms and the other provision(s), the Grant Term shall apply.

(b) **Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed due to Contractor's non-compliance with the Grant Terms, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement between Contractor and City.

(c) **Subcontractors.** As required by the Grant Terms, Contractor shall insert applicable provisions into each lower-tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor, or service provider.

### **3.3.8 Payment Terms**

(a) **Payment Due Date:** Unless the SFMTA notifies the Contractor that a dispute exists, Payment will be made within 30 Days, measured from (1) the rendering of the Services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date City issued a check to Contractor or, if Contractor agreed to electronic payment, the date City has posted the electronic payment to Contractor.

(b) **Reserved. (Payment Discount Terms)**

**3.4 Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make copies of such books and records, and to make audits of all invoices, materials, payrolls, records or personnel

and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**3.5 Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section.

### **3.6 Payment of Prevailing Wages**

**3.6.1 Covered Services.** Services to be performed by Contractor under this Agreement may involve the performance of trade work covered by the California Labor Code Sections 1720 and 1782, as incorporated within Section 6.22(e) of the San Francisco Administrative Code, (collectively, “Covered Services”), which is incorporated into this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors.

**3.6.2 Wage Rates .** The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations (DIR), as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Copies of the applicable prevailing wage rates are available from the City’s Office of Labor Standards and Enforcement (OLSE). See also <http://sfgov.org/olse/prevailing-wage>. Contractor agrees that it shall pay not less than the prevailing wage rates, as determined by the Board of Supervisors and DIR, to all workers employed by Contractor who perform Covered Services under this Agreement.

**3.6.3 Subcontract Requirements.** Contractor shall insert in every subcontract for the performance of Covered Services under this Agreement a provision requiring subcontractor to pay all persons performing labor in connection with Covered Services under the subcontract not less than the highest general prevailing rate of wages as determined by the Board of Supervisors for such labor or services.

**3.6.4 Posted Notices.** Contractor shall post job site notices prescribed by DIR at all job sites where covered services are to be performed.

**3.6.5 Payroll Records.** Contractor shall keep or cause to be kept complete and accurate payroll records for all workers performing Covered Services. Such records shall include the name, address and social security number of each worker who provided Covered Services, including apprentices, their classification, a general description of the Services each



worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall perform of any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives and/or DIR.

**3.6.6 Certified Payrolls.** Contractor shall prepare certified payrolls for the period involved for all employees, including those of subcontractors, who performed Covered Services. Contractor and each subcontractor performing Covered Services shall electronically submit certified payrolls to the City and to the DIR as specified by the City and DIR. Contractor and all subcontractors that will perform Covered Services must attend a training session on the preparation and electronic submission of certified payroll records provided by the City. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

**3.6.7 Compliance Monitoring.** Covered Services to be performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by the DIR and /or OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with the DIR and/or OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements. Contractor agrees that (i) OLSE shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (ii) Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iii) Contractor shall prominently post at each job-site a sign informing employees that the project is subject to City's prevailing wage requirements and that these requirements are enforced by OLSE; and (iv) OLSE may audit such records of the Contractor as it reasonably deems necessary. Failure to comply with these requirements may result in penalties and forfeitures pursuant to the California Labor Code, including Section 1776(g), as amended from time to time, San Francisco Administrative Code Section 6.22(e), and San Francisco Labor and Employment Code Article 102, as applicable.

**3.6.8 Remedies.** Should Contractor, or any subcontractor performing Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Agreement or subcontract for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in Administrative Code Section 6.22 (e) and/or California Labor Code Section 1775. The City, when certifying any payment which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

### **3.7 Apprentices.**

**3.7.1** Contractor and its subcontractors of every tier that provide Covered Services under this Agreement (as defined in Section 1.1 above) shall, as a material term of the Agreement, comply with the requirements of the State Apprenticeship Program (as set forth in the California Labor Code, Division 3, Chapter 4 [commencing at Section 3070], and Section 1777.5 of the Labor Code) and Administrative Code Section 6.22(n). Contractor shall be solely responsible for securing compliance with Labor Code Section 1777.5 for all apprenticeable occupations.

**3.7.2** Contractor shall include in all of its subcontracts the obligation for subcontractors to comply with the requirements of the State Apprenticeship Program.

**3.7.3** Should Contractor fail to comply with the apprenticeship requirements of Labor Code Section 1777.5, Contractor shall be subject to the penalties prescribed in Labor Code Section 1777.7. The interpretation and enforcement of Labor Code Section 1777.5 shall be in accordance with rules and procedures prescribed by the California Apprenticeship Council.

**3.7.4** Contractor, if not signatory to a recognized apprenticeship training program under Labor Code, Chapter 4, shall provide to the City with all progress payment requests, starting with the second such request, satisfactory evidence that it has contributed to the appropriate apprenticeship fund(s). Contractor shall require its subcontractors who are not signatories to provide such evidence to the City as a condition precedent for qualifying for payment from the City.

Contractor shall comply with all requests by the City to provide proof that Contractor and all of its subcontractors at every tier providing Covered Services are in compliance with the State Apprenticeship Program, including proof that Contractor and all of its subcontractors at any tier providing Covered Services contributed to the appropriate apprenticeship fund(s).

## **Article 4 Services and Resources**

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in Appendix A (Scope of Services). Officers and employees of the City are not authorized to request and the City is not required to compensate for Services beyond those stated.

**4.2 Changes.** The SFMTA may at any time, by a written order, make changes within the general scope of this Agreement. Such change shall serve to modify this Agreement to the extent necessary to execute the change as directed. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the Services under this Agreement, whether changed or not changed by the order, the SFMTA shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the Agreement accordingly. The Contractor must assert its right to an adjustment under this article within three business days from the date of receipt of the written order. Failure by Contractor to give timely notice of the change could constitute waiver of a claim for an equitable adjustment.

However, if the SFMTA decides that the facts justify it, the SFMTA may receive and act upon a proposal submitted at any time before final payment of the Agreement. If the Contractor's proposal includes the cost of equipment or materials made obsolete or excess by the change, the SFMTA shall have the right to prescribe the manner of the disposition of such equipment or materials. Failure to agree to any adjustment shall be a dispute under Section 11.6, Dispute Resolution Procedure. However, nothing in this provision shall excuse the Contractor from proceeding with the Agreement as changed.

**4.3 Task Order Procedures.** Contractor shall perform the Services under Task Orders the SFMTA issues in accordance with the process described below.

**4.3.1 Task Order Requirements.** The SFMTA will define requirements for Task Orders.

(a) **Scope of Work.** The scope of work, cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below. The cost of preparing invoices, including required SBE/DBE forms, and the Contractor Task Order proposal must be incorporated into the overhead rate (as approved in Appendix C). Separate from overhead, Project management time required by a particular Task Order may incorporate, but not be limited to, preparation of meeting materials, summary of meeting notes, a task monitoring system (e.g., bi-weekly project reports or monthly status updates).

(b) **Presentations.** In the performance of assigned tasks, the Contractor, if requested by City, shall prepare graphic and written presentations, and participate in presentations of said material to various City departments, commissions, and interested community groups.

(c) **Current Workload and Available Resources.** The Contractor covenants that its current workload and the workload of its subcontractors will not affect the commencement and the progress of the work under a Task Order. The Contractor shall have all the necessary professional, technical and support personnel, including those of the subcontractors, available, ready and mobilized to perform actual work within two weeks of the receipt of NTP on a particular Task Order. In addition, the Contractor shall make good faith efforts to have all contracts signed with subcontractors within three weeks of NTP for the overall Contract. Contractor shall provide copies of said subcontracts to the SFMTA upon request.

(d) **Transmittal of Work Product.** When requested by the SFMTA's Project Manager, and after completion of each task and subtask, the Contractor shall transmit to the SFMTA all Work Product (duplicates and originals) produced or accumulated in the course of its and its subcontractors' work on this Agreement. The Contractor's Project Manager shall have thoroughly reviewed and approved all Work Product and signed off as such prior to transmitting them to the SFMTA.

**(e) The SFMTA's Responsibilities Regarding Submittals.** The SFMTA will review and comment on Contractor's submittals generally within two calendar weeks of submittal. The SFMTA and Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the approved Task Order. The SFMTA's review and comments of Contractor submittals shall in no way relieve the Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the SFMTA relieve the Contractor of its independent responsibility to provide submittals and deliverables in full compliance with local, state and federal codes, regulations and standards. If Contractor considers certain SFMTA review comments or directives, either written or oral, to require work efforts not included in the Task Order, the Contractor shall within five business days of discovering the perceived extra work provide the SFMTA with either a written Contractor Request for Information under subsection 4.3.3 below, or a Contractor Proposal to proceed with additional work under subsection 4.3.4 below.

**4.3.2 Task Order Request.** The SFMTA will provide Contractor a Task Order request that includes the following: (a) the scope of Services, including any Deliverables; (b) the deadline to respond to the Task Order request (i.e., deadline to prepare and submit Task Order proposal); and (c) the expected timeline (including any milestones) to complete the task.

**4.3.3 Contractor Request for Information.** Upon receiving a Task Order request, Contractor shall request in writing any information or data it requires to complete the proposal and perform the Services under the Task Order. The Parties will reach agreement as to the availability and delivery time for this data and information during initial task negotiations.

**4.3.4 Contractor Proposal.** By no later than the deadline set forth in the Task Order request, Contractor shall prepare and submit to the SFMTA a Task Order proposal that includes, at minimum, the following items:

**(a)** A work plan that includes the following: (i) a detailed description, by task, and, if applicable, subtask of the scope of Services to be performed under the Task Order; (ii) Contractor's approach to perform the Services and complete the Task Order; and (iii) any information or data Contractor requires to perform the Task Order.

**(b)** A schedule to complete the Task Order, including key milestone dates to complete each task, subtask, and Deliverable, as applicable.

**(c)** A list of personnel and subcontractors Contractor proposes to work on each Task Order; and, for each personnel and subcontractor, a description of the task(s) or subtask(s) they will perform, and a resume indicating the personnel or subcontractor is qualified to perform that work. Resumes shall describe experience performing similar work.

**(d)** A detailed cost estimate for each task, subtask or Deliverable showing:

(i) Estimated number of hours and direct hourly labor rates (as listed in Appendix B) for each personnel and subcontractor proposed to work on the Task Order. The following labor costs are not allowed, and shall not be included in Contractor's cost estimates: labor to prepare monthly invoices and labor to fill out required SBE/DBE forms. Overtime labor hours will not be allowed without prior written approval. If overtime is approved, it will be billed at the billing rates listed and not at one and one-half times the billing rate;

(ii) Overhead, including salary burden costs (% rates as listed in Appendix C) for both Contractor and Subcontractors; to arrive at this cost, the overhead rate is multiplied by the cost in (i) above;

(iii) Estimated reasonable out-of-pocket expenses;

(iv) Proposed profit as follows: Total profit of each Task Order as a fixed fee amount not to exceed seven percent of total amount of the Task Order (excluding Other Direct Costs), regardless whether Task Order is being performed by prime Contractor, Subcontractor(s) or combination thereof.

**4.3.5 Negotiation of Cost and Profit.** The SFMTA Project Manager will review the Task Order proposal and negotiate with Contractor pricing for the Task Order, which shall be either a lump-sum price or a fixed profit to perform the work of each subtask and task and a total not-to-exceed price for the Task Order.

**4.3.6 Record of Negotiations.** The SFMTA Project Manager will document the negotiations and any agreement in a Record of Negotiations.

**4.3.7 SBE/DBE Goals.** Upon completion of negotiations, Contractor shall provide Project Manager a memo describing the proposed SBE/DBE goal(s) associated with the Task Order. The memo shall include a table that lists (1) all firms performing work on the Task Order, (2) if the firm is a SBE or DBE, (3) the dollar value and percentage of work attributed with each firm, and (4) the overall calculated SBE/DBE goal(s) for the Task Order. CCO will review the final negotiated Task Order scope and Contractor's SBE/DBE goal memo, approve or deny the goal(s), and issue a memo to file by CCO. SBE/DBE goals assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in the Agreement. The Contractor must in good faith comply with the following:

- The individual SBE/DBE goals set for each Task Order.
- The overall SBE/DBE participation goals established for the entire Agreement (which includes the commitments the Contractor made to each of its listed SBE/DBE subcontractors at time of proposal). See Section 10.6 (Small Business Enterprise/Disadvantaged Business Enterprise Program) for more information on the SBE/DBE Program.

**4.3.8 Notice to Proceed.** The SFMTA will issue and send to Contractor a written notice to proceed (NTP), Task Order number, and purchase order after verifying that

sufficient funds are available to pay for the Task Order. Contractor shall not commence work under any Task Order until it receives a corresponding NTP and purchase order from the SFMTA. Contractor shall use this Task Order number when submitting invoices to the SFMTA's Project Manager for payment under the Task Order.

**4.3.9 Changes to Task Order Pricing.** Task Order pricing shall not be modified unless there is a material change in the Task Order's scope of Services, in which case a new Task Order proposal, pricing negotiation, record of negotiations, and notice to proceed shall be required before SFMTA approves the change in pricing.

**4.3.10 Failure to Agree on Terms of Task Order.** In the event that the SFMTA and Contractor cannot reach agreement on the terms of the Task Order, the SFMTA may either cancel the Task Order and have the work accomplished through other available sources, or may direct the Contractor to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances may the Contractor refuse to undertake a City-ordered task.

**4.4 Qualified Personnel.** Contractor represents and warrants that it is qualified to perform the Services required by the City, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. All personnel, including those assigned at the City's request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule of a Task Order. The SFMTA reserves the right to require the Contractor to reassign any individual on the Contractor's project team if the SFMTA is unsatisfied with that person's performance or that person fails to demonstrate the required qualifications or expertise. The SFMTA reserves the right to review and approve any replacement of team members, and the right to reject invoices submitted related to work performed by replacement team members that the SFMTA did not approve. Contractor shall advise SFMTA immediately any time one of the individuals designated as Key Personnel in Appendix B deviates from their committed role or time on a Task Order (e.g., is assigned to another project). The SFMTA may in turn require Contractor to provide a remedy and/or corrective actions for such deviations.

#### **4.5 Subcontracting**

**4.5.1** Contractor may subcontract portions of the Services only upon prior written approval of the SFMTA. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All subcontracts must incorporate the terms of Article 10 (Additional Requirements Incorporated by Reference) of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

**4.5.2** The SFMTA's execution of this Agreement constitutes its approval of the subcontractors listed in Appendix G.

## **4.6 Independent Contractor; Payment of Employment Taxes and Other Expenses**

**4.6.1 Independent Contractor.** For the purposes of this Section 4.6, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required under this Agreement. Contractor, its agents and employees will not represent or hold themselves out to be employees of the City at any time. Contractor shall not have employee status with the City, nor be entitled to participate in any plans, arrangements, or distributions by the City pertaining to or in connection with any retirement, health or other benefits that the City may offer its employees. Contractor is liable for its acts and omissions. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing Services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the City and Contractor, or any of its agents or employees. Contractor agrees to maintain and make available to the City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this Section. Should the City determine that Contractor is not performing in accordance with the requirements of this Section, the City shall provide Contractor with written notice of such failure. Within five business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if the City believes that an action of Contractor warrants immediate remedial action by Contractor, the City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.6.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past Services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with the City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.8 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of the City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless the City and

its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this Section.

**4.7 Assignment.** The Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by the SFMTA by written instrument executed and approved in the same manner as this Agreement. Any purported Assignment made in violation of this provision shall be null and void.

**4.8 Service Warranties.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

**4.9 Liquidated Damages.** Liquidated damages may be included in individual Task Orders.

**4.10 Reserved. (Performance Bond)**

**4.11 Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded Agreement.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance**

**5.1.1 Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers' Compensation Liability Insurance, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.



(d) Professional Liability Insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Reserved. (Technology Errors and Omissions Liability Coverage)

(f) Reserved. (Cyber and Privacy Coverage)

(g) Reserved. (Pollution Liability Insurance)

#### **5.1.2 Additional Insured.**

(a) The Commercial General Liability Insurance policy must include as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must include as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) Reserved. (Pollution Auto Liability Insurance Additional Insured Endorsement)

**5.1.3 Waiver of Subrogation.** The Workers' Compensation Liability Insurance policy(ies) shall include a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

#### **5.1.4 Primary Insurance**

(a) The Commercial General Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Reserved. (Pollution Auto Liability Insurance Additional Insured Endorsement)

#### **5.1.5 Other Insurance Requirements**

(a) Thirty Days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than 10 Days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties).

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(d) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance including additional insured and waiver of subrogation status, as required, with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees, and the Contractor as additional insureds and waive subrogation in favor of the City, where required.

## **5.2 Indemnification.**

**5.2.1** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personal identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active

negligence or willful misconduct of City and are not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, Contractors and experts, and related costs, and City's costs of investigating any claims against the City.

**5.2.2** In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

**5.2.3** Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

**5.2.4** Under no circumstances will City indemnify or hold harmless Contractor.

### **5.3 Indemnification and Defense Obligations For Design Professionals.**

**5.3.1 Defense Obligations.** To the fullest extent permitted by law, Contractor shall, following a tender of defense from City, assume the immediate defense of (with legal counsel subject to approval of the City), the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, losses, costs, damages, expenses and liabilities of every kind, nature, and description including, without limitation, injury to or death of any person(s) and incidental and consequential damages (collectively "Damages"), court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation (collectively "Litigation Expenses"), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the alleged negligence, recklessness, or willful misconduct of Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"). City will reimburse Contractor for the proportionate percentage of defense costs exceeding Contractor's proportionate percentage of fault as determined by a Court of competent jurisdiction.

**5.3.2 Indemnity Obligations.** To the fullest extent permitted by law, Contractor shall indemnify and hold harmless Indemnitees from and against any and all Liabilities, including but not limited to those for Damages or Litigation Expenses specified in Section 5.2.1.

**5.3.3 Copyright Infringement.** Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of Services. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this

Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

#### **5.3.4 Severability Clause Specific to Indemnification and/or Defense**

**Obligations.** To the extent any Court of competent jurisdiction or law invalidates any word, clause, phrase, or sentence herein that word, clause, phrase, or sentence, and no other portion, shall be deemed removed from this Section. All other words, clauses, phrases and/or sentences remain enforceable to the fullest extent permitted by law.

**5.3.5** Under no circumstances will City indemnify or hold harmless Contractor.

### **Article 6 Liability of the Parties**

**6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1 (CALCULATION OF CHARGES AND CONTRACT NOT TO EXCEED AMOUNT) OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

**6.2 Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

**6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

### **Article 7 Payment of Taxes**

**7.1 Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by the City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

**7.2 Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as

amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

**7.3 Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

**8.1.1** City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination (Notice of Termination). The Notice of Termination shall specify the date on which termination of the Agreement shall become effective (Termination Date).

**8.1.2** Upon receipt of the Notice of Termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the Termination Date and to minimize the liability of Contractor and City to third parties as a result of the termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

(a) Completing performance of any Services that the SFMTA requires Contractor to complete prior to the Termination Date

(b) Halting the performance of all Services on and after the Termination Date.

(c) Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(d) At the SFMTA's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts cancelled. Upon such assignment, the SFMTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the cancellation of such orders and subcontracts.

(e) Subject to the SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(f) Taking such action as may be necessary, or as the SFMTA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which the SFMTA has or may acquire an interest.

**8.1.3** Within 30 Days after the specified Termination Date, Contractor shall submit to the SFMTA an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services provided prior to the Termination Date, for which the SFMTA has not already made payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of the SFMTA, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling and returning material or equipment, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of such materials and not otherwise recovered by or credited to the SFMTA, and any other appropriate credits to the SFMTA against the cost of the Services or other work.

**8.1.4** In no event shall the SFMTA be liable for costs incurred by Contractor or any of its subcontractors after the Termination Date, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

**8.1.5** In arriving at the amount due to Contractor under this Section, the SFMTA may deduct: (i) all payments previously made by the SFMTA for Services covered by Contractor's final invoice; (ii) any claim which the SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the

invoiced amount and the SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

**8.1.6** City's payment obligation under this Section shall survive termination of this Agreement.

## **8.2 Termination for Default; Remedies**

**8.2.1** Each of the following shall constitute an immediate event of default (Event of Default) under this Agreement:

**(a)** Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims
4.7	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws
Article 13	Data and Security

**(b)** Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within 10 Days after written notice thereof from the SFMTA to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, the SFMTA may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five Days for Contractor to cure the default.

**(c)** Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor, or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

**(d)** A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor, or with respect to any substantial part of Contractor's property; (ii) constituting an order for relief or approving a petition for relief, reorganization or arrangement, any other petition in bankruptcy or for liquidation, or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

**8.2.2 Default Remedies.** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default. Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

**8.2.3** All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

**8.2.4** Any notice of default must be sent in accordance with Article 11.

**8.3 Non-Waiver of Rights.** The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

#### **8.4 Rights and Duties upon Termination or Expiration**

**8.4.1** This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services and Delivery of Goods
3.3.7(b)	Grant Funded Contracts - Disallowance
3.5	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
8.2.2	Default Remedies
9.1	Ownership of Results
9.2	Works for Hire



11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability
Article 13	Data and Security

**8.4.2** Subject to the survival of the Sections identified in Section 8.4.1 above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

## **Article 9 Rights In Deliverables**

**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, any partially-completed Deliverables and related materials shall become the property of and will be transmitted to the City. Unless expressly authorized in writing by the SFMTA, Contractor may not retain and use copies for reference and as documentation of its experience and capabilities.

**9.2 Works for Hire.** All copyrights in Deliverables that are considered works for hire under Title 17 of the United States Code, shall be the property of the City. If any such Deliverables are ever determined not to be works for hire under federal law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon its subcontractors. With City's prior written approval, Contractor and its subcontractors may retain and use copies of such works for reference and as documentation of their respective experience and capabilities provided that any such use is in conformance with the confidentiality provisions of the Agreement.

## **Article 10 Additional Requirements Incorporated by Reference**

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (Mandatory City Requirements) are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca](http://www.amlegal.com/codes/client/san-francisco_ca).

**10.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the SFMTA if it becomes aware of any such fact during the term of this Agreement.

**10.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

**10.4 Consideration of Salary History.** Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Article 141. Information about and the text of Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of Article 141, irrespective of the listing of obligations in this Section.

## **10.5 Nondiscrimination Requirements**

**10.5.1 Nondiscrimination in Contracts.** Contractor shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall incorporate by reference in all subcontracts the provisions of Articles 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between

the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Article 131.2.

## **10.6 Small Business Enterprise/Disadvantaged Business Enterprise Program**

**10.6.1 General.** The SFMTA is committed to a Small Business Enterprise/Disadvantaged Business Enterprise Program (SBE/DBE Program) for the participation of SBEs and DBEs in federally funded contracting opportunities. In addition, the Contractor must comply with all applicable federal regulations regarding SBE/DBE participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to SBEs and DBEs performing work under this Agreement.

**10.6.2 Compliance with SBE/DBE Program.** Contractor shall comply with the SBE/DBE provisions contained in Appendix F attached to this Agreement incorporated by reference as though fully set forth, including, but not limited to, achieving and maintaining the SBE/DBE goals set for the total dollar amount awarded for the services to be performed under this Agreement. Failure of Contractor to comply with any of these requirements shall be deemed a material breach of this Agreement.

**10.6.3 Termination of SBEs and/or DBEs.** The prime contractor may not terminate the work designated to be performed by an SBE and/or DBE in the memo required by Section 4.3.7, SBE/DBE Goals (or an approved substitute SBE and/or DBE), or any portion of that work, without prior written consent by the SFMTA CCO. A termination includes any reduction or underrun in work listed for a SBE and/or DBE not caused by a material change to the prime contract by the SFMTA. This requirement applies to instances that include, but are not limited to, when a prime contractor seeks to perform work originally designated for a SBE and/or DBE subcontractor with its own forces or those of an affiliate, a non-SBE, a non-DBE firm, or with another SBE and/or DBE firm.

(a) The Contractor must utilize the designated SBEs and/or DBEs to perform the work and supply the materials described in the Section 4.3.7 memo, unless the contractor obtains the SFMTA written consent under this section; and

(b) Unless the SFMTA consent is provided under this section, the Contractor is not entitled to any payment for work or material unless it is performed or supplied by the designated SBE and/or DBE.

**10.6.4 Nondiscrimination in Hiring.** Pursuant to City and SFMTA policy, Contractor is encouraged to recruit actively minorities and women for its workforce and take other steps within the law, such as on-the-job training and education, to ensure non-discrimination in Contractor's employment practices.

**10.7 Minimum Compensation Ordinance.** Labor and Employment Code Article 111 applies to this contract. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a

minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of the Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

**10.8 Reserved. (Health Care Accountability Ordinance)**

**10.9 First Source Hiring Program.** Contractor must comply with all of the applicable provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement; and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**10.10 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701).

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves; (ii) a candidate for that City elective office; or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party

to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**10.12 Slavery Era Disclosure.** Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor's affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company's Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

**10.13 Reserved. (Working with Minors)**

**10.14 Consideration of Criminal History in Hiring and Employment Decisions**

**10.14.1** Contractor agrees to comply fully with and be bound by all of the provisions of Article 142 (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Labor and Employment Code (Article 142), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Article 142.

**10.14.2** The requirements of Article 142 shall only apply to a Contractor's or subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Article 142 shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

**10.15 Nonprofit Contractor Requirements**

**10.15.1 Good Standing.** If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General's Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the

Agreement. Upon City's request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General's Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

**10.15.2 Public Access to Nonprofit Records and Meetings.** If Contractor is a nonprofit organization, provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries), and receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

**10.16 Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

#### **10.17 Distribution of Beverages and Water**

##### **10.17.1 Reserved (Sugar-Sweetened Beverage Prohibition)**

##### **10.17.2 Reserved. (Packaged Water Prohibition)**

**10.18 Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

### **Article 11 General Provisions**

**11.1 Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: San Francisco Municipal Transportation Agency  
Streets Division  
1 South Van Ness Avenue, 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
Attn: Wade Wietgreffe  
Email: [Wade.Wietgreffe@sfmta.com](mailto:Wade.Wietgreffe@sfmta.com)

To Contractor: SITELAB urban studio  
660 Mission Street, Suite 200  
San Francisco, CA 94105  
Attn: Laura Cresimano

Email: [LCrescimano@sitelaburbanstudio.com](mailto:LCrescimano@sitelaburbanstudio.com)

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by e-mail, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least 10 Days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

## **11.2 Compliance with Laws Requiring Access for People with Disabilities .**

**11.2.1** Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

**11.2.2** Contractor shall adhere to the requirements of (i) the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 1201 et seq.), (ii) Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), (iii) Section 255 of the Communications Act Guidelines, (iv) the applicable Revised Section 508 Standards published by the U.S. Access Board (<https://www.access-board.gov/ict/>), and (v) the Web Content Accessibility Guidelines (WCAG) 2.1, Level AA, as amended from time to time. Contractor shall ensure that all information content and technology provided under this Agreement fully conforms to the applicable Revised 508 Standard, as amended from time to time, prior to delivery and before the City's final acceptance of the Services and/or Deliverables.

**11.3 Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §7920 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor must submit the SFMTA SBE/DBE Form 8 Declaration - Modification of Professional Services



Contract and obtain prior CCO approval for any amendment, modification, supplement or change order.

## **11.6 Dispute Resolution Procedure**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. Disputes will not be subject to binding arbitrator. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**11.8 Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**11.9 Entire Agreement.** This Contract including the appendices sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5 (Modification of this Agreement).

**11.10 Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**11.11 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.



**11.12 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.13 Order of Precedence.** The Parties agree that this Agreement, including all appendices, sets forth the Parties' complete agreement. If the Appendices to this Agreement include any standard printed terms from Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms in this Agreement shall take precedence, followed by the procurement issued by the department (if any), Contractor's proposal, and Contractor's printed terms, respectively. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

**11.14 Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests, and other legal requests (Legal Requests) related to any City Data under this Agreement, and in no event later than 24 hours after Contractor receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

## **Article 12 SFMTA Specific Terms**

### **12.1 Large Vehicle Driver Safety Training Requirements**

**12.1.1** Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at [www.SFMTA.com/largevehicletainingstandards](http://www.SFMTA.com/largevehicletainingstandards). This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

**12.1.2** By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or

subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

## **Article 13      Data and Security**

### **13.1      Nondisclosure of Private, Proprietary or Confidential Information**

**13.1.1      Protection of Private Information .** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

**13.1.2      City Data; Confidential Information .** In the performance of Services, Contractor may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City's behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

### **13.2      Reserved. (Payment Card Industry (PCI) Requirements)**

### **13.3      Reserved. (Business Associate Agreement)**

### **13.4      Management of City Data and Confidential Information**

**13.4.1      Use of City Data .** Contractor agrees to hold City Data received from, or created or collected on behalf of, City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by the City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data

by Contractor, subcontractors, or other third parties is prohibited. For purpose of this requirement, the phrase “unauthorized use” means the data mining or processing of data, and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

**13.4.2 Disposition of City Data.** Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than 30 Days, return all City Data given to or collected or created by Contractor on City’s behalf, which includes all original media. Once Contractor has received written confirmation from City that the City Data has been successfully transferred to City, Contractor shall within 10 business days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors’ environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five business days of the purge. Secure disposal shall be accomplished by “clearing,” “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

**13.5 Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

**13.6 Loss or Unauthorized Access to City’s Data; Security Breach Notification.** Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any “Leak”) within 24 hours of the discovery of such, but within 12 hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. Contractor shall pay for the provision to the affected individuals of twenty-four (24) months of free credit monitoring services, if the Leak involved information of a nature reasonably necessitating such credit monitoring. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

## **Article 14 MacBride and Signature**

**14.1 MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code Chapter 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and

understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY	CONTRACTOR
<b>San Francisco Municipal Transportation Agency</b>	<b>SITELAB urban studio</b>
<hr/> Julie Kirschbaum Director of Transportation	<hr/> Laura Crescimano Founding Principal
Authorized By:	
Municipal Transportation Agency Board of Directors	<u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u>
Resolution No: _____	By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.
Adopted: _____	
Attest: _____ Secretary, to the Board	
Approved as to Form:	
David Chiu City Attorney	City Supplier Number: 0000003093
By: _____ David F. Innis Deputy City Attorney	

n:\ptc\as2025\2500052\01843743.docx

## Appendices

- A: Scope of Services
- B: Direct Hourly Labor Rates
- C: Overhead Rates
- D: Task Order Request Form
- E: U.S. Department of Transportation and FTA Requirements
- F: SFMTA Small Business Enterprise/Disadvantaged Business Enterprise Program for Professional and Technical Services Requirements for Architects, Engineers, Planners, Environmental Scientists and Other Professional Services Contracts
- G: Directory of Subconsultants

## **Appendix A Scope of Services**

### **1. Description of Services**

Consultant agrees to perform the services described below.

The Consultant must be able to provide a broad range of joint-development program services, either by direct assignment of its own personnel or through Subconsultants, including, but not limited to, architecture, development, planning, public outreach and engagement, cost estimating, and real estate finance.

The Scope of Services is to be used as a general guide and is not intended to be a complete list of all work necessary to complete the multiple projects. Task Orders may include one or more of the following tasks:

#### **A. Existing Conditions Assessments**

The Consultant may be required to prepare existing conditions assessments of properties that account for, among other things, neighborhood context, usage and condition of the site, site constraints, site opportunities, zoning, cost of the site, and any revenue generated from the site.

The assessments may be required to rely on SFMTA-provided background materials, which may include non-public information, consultation with government agencies and property owners, and other resources. As part of a specific task order, the SFMTA may require the Consultant to enter into non-disclosure agreements before receiving non-public information.

#### **B. Conceptual Development Proposals**

The Consultant may prepare conceptual development proposals for properties. The conceptual development proposals may include:

- a. narratives and conceptual plans (site plans, floor plans, massing elevations, renderings, streetscape and transportation demand management plans),
- b. anticipated land use entitlement processes,
- c. environmental justice analysis,
- d. cost estimating,
- e. pro-formas (including revenues to the SFMTA), and
- f. options for project delivery (e.g., various delivery methods and financing options, including federal ones).

The conceptual development proposals are anticipated to consist of transit-oriented development projects that include, among other things, public infrastructure, joint-development commercial and residential projects, or public transportation projects that are eligible for assistance under 49 United States Code Chapter 53 (Public Transportation) or are a part of any of the project types described above.

The conceptual development proposals may consist of maintaining some or all of an existing SFMTA use at a site and segregating the SFMTA uses from non-SFMTA uses if feasible, and removing an existing SFMTA use at a site, which may include assumptions about relocating the existing SFMTA uses to an alternative site.

### **C. Strategic Planning**

The Consultant may support the SFMTA in Joint-Development Program strategic planning. This may include preparing a strategic plan that includes priorities for joint-development over a period of time, and identifying strategies for the SFMTA to accelerate joint-development such as ways to partner with other City agencies, ways to attract private investment and minimize implementation risk, and ways to engage communities.

### **D. Policy Development and Program Guidance**

The Consultant may support the SFMTA in preparing, monitoring, and developing Joint-Development Program Policy and Guidelines. This may include preparing guidelines to inform prospective developers on working with the SFMTA to advance joint development projects, such as solicitation processes (e.g., requests for qualifications, proposals, etc.), standard form agreements, roles of government agencies and officials, and templates for processes.

### **E. Outreach and Engagement**

The Consultant may provide outreach and engagement services that provide channels for potentially impacted communities to express their concerns and meaningfully influence decision making through stakeholder and expert workshops and other innovative activities.

The Consultant shall use the [SFMTA's Public Outreach and Engagement Team Strategy \(POETS\)](#) for guidance in preparing strategies, engagements, and deliverables. Consultant work and deliverables shall be designed to meet the needs of community stakeholders while supporting the SFMTA's key policies and standards, including but not limited to [SFMTA's Strategic Plan](#) (and subsequent

updates), [SFMTA's Racial Equity Action Plan](#) (and subsequent updates), and SFMTA's Brand Standards (to be provided to the Consultant after award).

The Consultant may generally support the SFMTA project team with planning, crafting, and delivering best-practice, culturally competent outreach and engagement with stakeholder communities, including government agencies and the public at-large. Outreach and engagement would generally be in support of the other scopes herein.

Tasks may include but will not be limited to the following activities:

- a. preparing public engagement, outreach, and communication plans, including objectives of the plans;
- b. customizing culturally-relevant and specific materials for different audiences for outreach and engagement activities or notifications (including using different mediums and channels), including project messaging;
- c. coaching and training City staff in preparing for outreach and engagement activities;
- d. advertising activities; identifying and recruiting people to participate in activities;
- e. leading outreach and engagement activities;
- f. reporting on outreach and engagement activities and projects;
- g. evaluating effectiveness of activities in relation to objectives of the plans; and
- h. maintaining and following up with stakeholders and participants.

The Consultant may be required to collaborate closely and/or partner with community-based organizations on these activities.

## **F. Other Consultant Services**

The SFMTA may request additional consultant services related to joint-development professional services. These services may include, but are not limited to:

- a. advancing a conceptual development proposal further (e.g., schematic designs, helping prepare developer team requests for proposals, etc.); and
- b. geographic information systems (e.g., creation of maps using geospatial data); and



- c. real estate independent appraisals; and
- d. preparing documents to support tax increment financing districts (e.g., fiscal impact analysis, infrastructure financing plan).

## **G. Project Management and Administration**

During the life of the contract, the Consultant should expect to:

- a. Administer appropriate meetings by, among other things, identifying attendees, preparing agendas of purpose and key outcomes sought, and preparing meeting minutes (e.g., summary of major items, action items, etc.), including but not limited to kick-off meetings; check-in meetings to discuss progress, preview administrative documents, and discuss city comments on administrative documents; and public scoping meetings and public hearings.
- b. Provide status reports describing work completed by Task Order.
- c. Determine appropriate format of deliverables with SFMTA or Planning (e.g., geodatabase, pdf, word, track changes, etc.) and if electronic and physical, if necessary, of all draft and final deliverables, including but not limited to work plans, meeting minutes, technical studies, and publicly distributed documents.

For all Task Orders under the contract, all materials intended to be posted on the SFMTA website or provided to the SFMTA Board of Directors must also be Federal Section 508 compliant (accessible for all users), including, but not limited to, descriptions of all graphics in text format and all information usable with common screen reading software. The City and County of San Francisco recognizes its obligation under the Americans with Disabilities Act (ADA) and other disability civil rights laws to provide equal access to all City and County programs and activities.

Notices published for public use for this project shall follow the enhanced Web Accessibility Standards & Guidelines.

## **2. Reports**

Contractor shall submit written reports as requested by the SFMTA. Format for the content of such reports shall be determined by the SFMTA. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

**3. Department Liaison**

In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be Wade Wietgreffe.

**4. Services Provided by Attorneys**

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

**Appendix B**  
**Direct Hourly Labor Rates by Position or Class for Consultant and all Subconsultants**

<b>Firm</b>	<b>Employee Name<sup>1</sup></b>	<b>Position/Classification</b>	<b>Direct Hourly Rate (A)</b>	<b>Overhead Multiplier (B)</b>	<b>Fully Loaded Labor Rate (A x B)</b>
SITELAB urban studio	Laura Crescimano (KP)	Founding Principal	\$132.21	2.5280	\$334.23
SITELAB urban studio	Hugo Errazuriz (KP)	Design Director (SDV)	\$98.56	2.5280	\$249.15
SITELAB urban studio	Ben Grant (KP)	Senior Planner (SD V)	\$84.00	2.5280	\$212.35
SITELAB urban studio	Woody Hanson (KP)	Associate Principal (SD IV)	\$74.52	2.5280	\$188.38
SITELAB urban studio	Eri Suzuki (KP)	Associate Principal (SD IV)	\$74.52	2.5280	\$188.38
SITELAB urban studio	Julie Gawendo	Director of Landscape Planning (SD III)	\$67.31	2.5280	\$170.15
SITELAB urban studio	Alyssa Garcia	Senior Associate (SD III)	\$55.77	2.5280	\$140.98
SITELAB urban studio	Abby Granberry (KP)	Associate (SD II)	\$53.37	2.5280	\$134.91
SITELAB urban studio	Arthur Perez (KP)	Associate (SD II)	\$54.81	2.5280	\$138.55
SITELAB urban studio	Stella Kim	Associate (SD I)	\$50.00	2.5280	\$126.40
SITELAB urban studio	Ashutosh Singhal	Intermediate Urban Designer (IUD II)	\$49.04	2.5280	\$123.97
SITELAB urban studio	Rula Zuhour	Intermediate Urban Designer (IUD I)	\$42.79	2.5280	\$108.17
SITELAB urban studio	Pam Pan	Urban Designer (UD II)	\$39.90	2.5280	\$100.88
SITELAB urban studio	Abigail DeVore	Urban Designer (UD II)	\$39.42	2.5280	\$99.66
Civic Edge Consulting	Lisbet Sunshine	President	\$110.13	2.9580	\$325.76
Civic Edge Consulting	Alia Al-Sharif (KP)	Partner	\$110.13	2.9580	\$325.76
Civic Edge Consulting	Violetta Muselli (KP)	Senior Director	\$65.80	2.9580	\$194.64
Civic Edge Consulting	Cassis Schafer (KP)	Senior Project Manager	\$53.41	2.9580	\$157.99
Civic Edge Consulting	Cristina Ancheta	Outreach Manager	\$43.50	2.9580	\$128.67
Fehr&Peers	Matt Goyne (KP)	Principal	\$90.87	2.8139	\$255.70
Fehr&Peers	Neil Smolen (KP)	Associate	\$73.56	2.8139	\$206.99
Fougeron Architecture <sup>2</sup>	Anne Fougeron	President/Principal	\$207.10	N/A	N/A
Fougeron Architecture <sup>2</sup>	Todd Aranaz (KP)	Senior Project Manager	\$124.24	N/A	N/A

<sup>1</sup> Employees designated as (KP) is subject to the Key Personnel requirements of Section 4.4.

<b>Firm</b>	<b>Employee Name<sup>1</sup></b>	<b>Position/Classification</b>	<b>Direct Hourly Rate (A)</b>	<b>Overhead Multiplier (B)</b>	<b>Fully Loaded Labor Rate (A x B)</b>
Fougeron Architecture <sup>2</sup>	Santiago Vales	Staff	\$61.79	N/A	N/A
Hamilton, Ricci & Associates, Inc. <sup>2</sup>	Walter Ricci (KP)	President	\$500.00	N/A	N/A
Hatch Associates Consultants, Inc.	Rachelle Sarmiento (KP)	Senior Urban and Economic Planner	\$69.23	2.6920	\$186.37
Hatch Associates Consultants, Inc.	Rachel Branwell (KP)	Director - Economic Feasibility	\$88.94	2.6920	\$239.43
Hatch Associates Consultants, Inc.	Sally Rodenberger	Junior Analyst	\$49.42	2.6920	\$133.04
Hatch Associates Consultants, Inc.	Celia Dattels	Senior Analyst	\$53.16	2.6920	\$143.11
Hatch Associates Consultants, Inc.	Laura Aldrete (KP)	Principal - Planning Policy	\$122.12	2.6920	\$328.75
Hatch Associates Consultants, Inc.	JP O'Har	Director - Capital Program	\$87.54	2.6920	\$235.66
Hatch Associates Consultants, Inc.	Robert Pell	Principal - Real Estate Strategy	\$149.98	2.6920	\$403.75
Hatch Associates Consultants, Inc.	Elaine Hsieh	Junior Analyst	\$48.76	2.6920	\$131.26
Project Finance Advisory Limited (PFAL)	Victoria Taylor (KP)	Financial Advisor	\$125.00	2.8000	\$350.00
Project Finance Advisory Limited (PFAL)	Mark Amfahr	Commercial Advisor	\$125.00	2.8000	\$350.00
Project Finance Advisory Limited (PFAL)	Nikita Manayenkov	Financial Advisor	\$125.00	2.8000	\$350.00
TBD Consultants	Niall Durkin (KP)	Principal	\$120.19	2.2055	\$265.08
TBD Consultants	Brian Tolland	Principal	\$120.19	2.2055	\$265.08
TBD Consultants	David Jones	MEP Lead	\$120.19	2.2055	\$265.08

<sup>2</sup> Fully burdened rate was provided for this firm. Fully burdened rates are inclusive of Direct Labor, Overhead and Profit. Firm is ineligible for any additional compensation related to Overhead and Profit.

<b>Firm</b>	<b>Employee Name<sup>1</sup></b>	<b>Position/Classification</b>	<b>Direct Hourly Rate (A)</b>	<b>Overhead Multiplier (B)</b>	<b>Fully Loaded Labor Rate (A x B)</b>
TBD Consultants	Andy Beyer	Senior Estimator	\$108.17	2.2055	\$238.57
TBD Consultants	Amy Muhl	Senior Estimator	\$103.37	2.2055	\$227.98
TBD Consultants	Asia Kan	Estimator	\$96.15	2.2055	\$212.06
TBD Consultants	Patrick Templeton	Estimator	\$86.54	2.2055	\$190.86
TBD Consultants	Anup Sheth	MEP Estimator	\$86.54	2.2055	\$190.86
TBD Consultants	Alexsandra Shuvaeva	Junior Estimator	\$55.29	2.2055	\$121.94
TBD Consultants	Eunic Ko	Junior Estimator	\$55.29	2.2055	\$121.94

**Appendix C**  
**Schedule of Overhead Rates for Consultant and all Subconsultants**

<b>Firm</b>	<b>Overhead Rate (%)</b>	<b>Overhead Multiplier<sup>1</sup></b>
SITELAB urban studio	152.80%	2.5280
Civic Edge Consulting	195.80%	2.9580
Fehr & Peers	181.39%	2.8139
Fougeron Architecture	N/A	N/A
Hamilton, Ricci, & Associates, Inc.	N/A	N/A
Hatch Associates Consultants, Inc.	169.20%	2.692
Project Finance Advisory Limited	180.00%	2.8000
TBD Consultants	120.55%	2.2055

---

<sup>1</sup> Overhead Multiplier is the sum of the Overhead Rate percentage, converted to a decimal, plus one.

## Appendix D

### TASK ORDER FORM

#### SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

Contract Title: As-Needed Joint Development Program Services

Contract No.: CS-187

Project Title: \_\_\_\_\_

Project No.: M000.0

TASK ORDER FORM-TASK ORDER NO. ### ##

<b>Task Title:</b> _____	<b>Services</b>	<b>Date Initiated:</b> [RFP Date]
<input type="checkbox"/> <b>New Task Order</b>		<input type="checkbox"/> <b>Revised Task Order</b>
<b>Work to be Performed:</b>  Provide [type] services for the [project] as described in the attached Consultant's final proposal dated [date of final proposal].		
<b>Schedule:</b>  <b>Duration:</b> <u>(#)</u> [Months/Years] (    Days)		
<b>Total Agreed Amount:</b> \$		<b>Liquidated Damages:</b> \$
<b>Funding Information:</b>		
<b>Project ID</b>	<b>Authority ID</b>	<b>Dept ID</b>
<b>Activity ID</b>	<b>Fund ID</b>	
<b>Deliverables</b>		
<b>Description</b>	<b>Date Required</b>	
1. Refer to Consultant's final proposal dated _____	TBD	
<b>APPROVALS</b>		
Submitted _____		Date _____
Contract Manager		
Approved _____		Date _____
Section Director, Planning and Project Delivery		
Approved _____		Date _____
Division Director, Streets		
Approved _____		Date _____
Section Lead, Contract Administration		
Approved _____		Date _____
Manager, Contract Administration		
Approved _____		Date _____
Senior Manager, Contracts & Procurement		

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

**Contract Title:** As-Needed Joint Development Program Services  
**Project Title:** \_\_\_\_\_

**Contract No.:** CS-187  
**Project No.:** M000.0

**TASK ORDER FORM-TASK ORDER NO. ### ##**

**Proposed Staff and Budget:**

IF LUMP SUM, USE THIS TABLE:			
<b>Task(s)</b>			<b>Fixed Price (including Profit)</b>
Task/Sub-Task XX - [Task/Sub-Task title]			\$ -
Task/Sub-Task XX - [Task/Sub-Task title]			\$ -
<b>Total Lump Sum Cost</b>			\$ -
IF COST REIMBURSEMENT, USE BELOW TABLE:			
<b>Name</b>	<b>Hours</b>	<b>Direct Hourly Rate</b>	<b>Cost</b>
<b>Prime: [Name of Prime]</b>			
[name], [classification]			\$ -
[name], [classification]			\$ -
[name], [classification]			\$ -
<b>Total</b>			\$ -
<b>Overhead</b>	<b>%</b>		<b>#VALUE!</b>
<b>Subconsultant: [Name of Subconsultant]</b>			
[name], [classification]			\$ -
[name], [classification]			\$ -
<b>Total</b>			\$ -
<b>Overhead</b>	<b>%</b>		<b>#VALUE!</b>
<b>Total Direct Labor</b>			\$ -
<b>Total Overhead</b>			<b>#VALUE!</b>
<b>Fixed Fee/Profit</b>			
<b>Other Direct Costs (ODC)</b>			
<b>Total Amount of Task Order</b>			<b>#VALUE!</b>

[INCLUDE THIS SECTION AND REVISE LANGUAGE, AS NECESSARY, IF LUMP SUM TASK ORDER. OTHERWISE, REMOVE.]

**Payment Method:**

To be paid as lump sum after acceptance of all Deliverables for each task.



**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

**Contract Title:** As-Needed Joint Development Program Services  
**Project Title:** \_\_\_\_\_

**Contract No.:** CS-187  
**Project No.:** M000.0

**TASK ORDER FORM-TASK ORDER NO. ###-##**

<b>[INCLUDE THIS SECTION AND REVISE LANGUAGE, AS NECESSARY]</b>	
<b>Retention:    %</b>	
<b>Approved by [Name of Prime] (Consultant):</b>	
<b>Signature</b> [name] <b>Project Manager</b>	<b>Date</b>
<b>Signature</b> [name] [Title i.e. President/VP/CEO]	<b>Date</b>

## Appendix E

### U.S. DEPARTMENT OF TRANSPORTATION AND FTA REQUIREMENTS FOR PERSONAL/PROFESSIONAL SERVICES CONTRACTS

#### I. DEFINITIONS

- A. Approved Project Budget** means the most recent statement, approved by the DOT or FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- B. Contractor** means the individual or entity awarded a third-party contract financed in whole or in part with Federal assistance originally derived from DOT or FTA.
- C. Cooperative Agreement** means the instrument by which DOT or FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which DOT or FTA takes an active role or retains substantial control.
- D. Federal Transit Administration (FTA)** is an operating administration of the U.S. DOT.
- E. FTA Directive** includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.
- F. Grant Agreement** means the instrument by which DOT or FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which DOT or FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.
- G. Government** means the United States of America and any executive department or agency thereof.
- H. Project** means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.
- I. Recipient** means any entity that receives Federal assistance directly from DOT or FTA to accomplish the Project. The term "Recipient" includes each DOT or FTA "Grantee" as well as each DOT or FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.
- J. Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.

- K. Third Party Contract** means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by DOT or FTA.
- L. Third Party Subcontract** means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from DOT or FTA.
- M. U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

## **II. FEDERAL CHANGES**

Contractor shall at all times comply with all applicable DOT or FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and DOT or FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## **III. ACCESS TO RECORDS**

- A.** The Contractor agrees to provide the City and County of San Francisco, the Secretary of Transportation or FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- B.** The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C.** The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the Secretary of Transportation or FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

## **IV. DEBARMENT AND SUSPENSION**

- A.** The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by a DOT or FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this

federally funded contract and are not presently declared by any Federal department or agency to be:

- a) Debarred from participation in any federally assisted Award;
- b) Suspended from participation in any federally assisted Award;
- c) Proposed for debarment from participation in any federally assisted Award;
- d) Declared ineligible to participate in any federally assisted Award;
- e) Voluntarily excluded from participation in any federally assisted Award; or
- f) Disqualified from participation in any federally assisted Award.

See, Certification Regarding Debarment, Suspension, and Other Responsibility Matters, which is incorporated into this Agreement.

- B.** The Contractor agrees to include a provision in its lower-tier covered transactions requiring lower-tier participants to comply with the requirements of 2 CFR Part 180, Subpart C, and Part 1200, Subpart C.

**V. DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW**

- A. Definitions.** For the purposes of this exhibit, the following definitions apply:

“**Covered Transaction**” means a transaction that uses any funds under this award and that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee.

“**Felony Conviction**” means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559.

“**Participant**” means the Recipient, an entity who submits a proposal for a Covered Transaction, or an entity who enters into a Covered Transaction.

“**Tax Delinquency**” means an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

- B. Mandatory Check in the System for Award Management.** Before entering a Covered Transaction with another entity, a Participant shall check the System for Award Management (the “SAM”) at <http://www.sam.gov/> for an entry describing that entity.
- C. Mandatory Certifications.** Before entering a Covered Transaction with another entity, a Participant shall **require** that entity to:

1. Certify whether the entity has a Tax Delinquency; and
2. Certify whether the entity has a Felony Conviction.

**D. Prohibition. If**

1. the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
2. an entity provides an affirmative response to either certification in section C; or
3. an entity's certification under section C was inaccurate when made or became inaccurate after being made

then a Participant shall not enter or continue a Covered Transaction with that entity unless the USDOT has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.

**E. Mandatory Notice to the USDOT.**

1. If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify the USDOT in writing of that entry.
2. If a Participant provides an affirmative response to either certification in section A, the Recipient shall notify the USDOT in writing of that affirmative response.
3. If the Recipient knows that a Participant's certification under section A was inaccurate when made or became inaccurate after being made, the Recipient shall notify the USDOT in writing of that inaccuracy.

**F. Flow Down.** For all Covered Transactions, including all tiers of subcontracts and subawards, the Recipient shall:

1. require the SAM check in section B;
2. require the certifications in section C;
3. include the prohibition in section D; and
4. require all Participants to notify the Recipient in writing of any information that would require the Recipient to notify the USDOT under section E.

**VI. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR**

- A.** The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by DOT or FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**VII. NOTICE TO DOT OR FTA AND U.S. DOT INSPECTOR GENERAL OF INFORMATION RELATED TO FRAUD, WASTE, ABUSE, OR OTHER LEGAL MATTERS**

- A.** If a current or prospective legal matter that may affect the Federal Government emerges, the Contractor must promptly notify the City, which will promptly notify, based on the source of the Federal funding, the DOT or FTA Chief Counsel and DOT or FTA Regional Counsel for the Region in which the City is located. The Contractor must include an equivalent provision in its sub agreements at every tier, for any agreement that is a “covered transaction” according to 2 C.F.R. §§ 180.220 and 1200.220.
- B.** The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
- C.** Matters that may affect the Federal Government include, but are not limited to, the Federal Government’s interests in the Award, the accompanying Underlying Agreement between the DOT or FTA and the City, and any Amendments thereto, or the Federal Government’s administration or enforcement of federal laws, regulations, and requirements.
- D.** Additional Notice to U.S. DOT Inspector General. The Contractor must promptly notify the City, which will promptly notify the U.S. DOT Inspector General in addition to the DOT or FTA Chief Counsel or Regional Counsel for the Region in which the City is located, if the Contractor has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from DOT or FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement with the City involving a principal, officer, employee, agent, or Third Party Participant of the Contractor. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Contractor. In this paragraph, “promptly” means to refer information without delay and without change. This notification provision applies to all divisions of the Contractor, including divisions tasked with law enforcement or investigatory functions.

**VIII. TITLE VI/NON-DISCRIMINATION**

- A.** During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

  - 1. Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in

Federally-assisted programs of the U.S. Department of Transportation, the Build America Bureau), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the OST, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the OST may determine to be appropriate, including, but not limited to:
  - a. withholding payments to the contractor under the contract until the contractor complies; and/or
  - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the OST may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the

Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

- B.** During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

**Pertinent Non-Discrimination Authorities:**

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;



- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq.

## **IX. SBE/DBE ASSURANCES**

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible..

## **X. RIGHTS IN DATA AND COPYRIGHTS** *(Applicable to contracts for planning, research, or development financed by DOT or FTA)*

**A. Definition.** The term “subject data” used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term “subject data” does not include financial reports, cost analyses, and similar information incidental to contract administration.

**B. Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.

- 1. Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so,

without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

- 2. Federal License.** The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, “for Federal Government purposes,” any subject data or copyright described below. As used in the previous sentence, “for Federal Government purposes” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party:

  - a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
  - b. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by DOT or FTA.
- 3. DOT or FTA Intention.** When DOT or FTA awards Federal assistance for an experimental, research or developmental work, it is DOT or FTA’s general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless DOT or FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit DOT or FTA to make available to the public, either DOT or FTA’s license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City’s use the costs of which are financed with Federal transportation funds for capital projects.
- 4. Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.
- 5. Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or

be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

**6. Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.

**7. Application to Subcontractors.** Unless DOT or FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by DOT or FTA.

**C. Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by DOT or FTA.

**D. Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through DOT or FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

## **XI. ENERGY CONSERVATION REQUIREMENTS**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

## **XII. CLEAN WATER REQUIREMENTS** *(applicable to all contracts in excess of \$100,000)*

**A.** The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification, based on the source of the Federal funding, to DOT or FTA and the appropriate EPA regional office.

**B.** The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by DOT or FTA.

## **XIII. CLEAN AIR** *(applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.)*

- A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification, based on the source of the Federal funding, to DOT or FTA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by DOT or FTA.

#### **XIV. PRIVACY**

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by DOT.

#### **XV. TERMINATION FOR CONVENIENCE OF CITY** *(required for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

#### **XVI. TERMINATION FOR DEFAULT** *(required for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

#### **XVII. BUY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, manufactured products, and construction materials (*excluding* cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) used in DOT or FTA-funded projects are produced in the United States, unless a waiver has been granted by DOT or FTA or the product is subject to a general waiver.

“Construction materials” include an article, material, or supply that is or consists primarily of:

- Non-ferrous metals;

- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber; or
- Drywall.

General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$150,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

#### **XVIII. PROHIBITION AGAINST USE OF CONTRACT FUNDS FOR COVERED TELECOMMUNICATIONS EQUIPMENT**

Under 2 CFR Section 216, Contractors and Subcontractors are prohibited from using Contract funds to:

- A. Procure or obtain;
- B. Extend or renew a contract to procure or obtain; or
- C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Section 889 of Public Law 115-232, covered telecommunications equipment is:
  1. telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
  2. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  3. Telecommunications or video surveillance services provided by such entities or using such equipment.
  4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

#### **XIX. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS**

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers,

dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 business days following the date of loading for shipments originating within the United States or within 30 business days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the DOT or FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## **XX. RECYCLED PRODUCTS**

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## **XXI. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS**

- A.** The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the DOT or FTA-assisted Project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B.** The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a Project that is financed in whole or in part with Federal assistance originally awarded by DOT or FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C.** The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by DOT or FTA. It is further

agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **XXII. FLY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **XXIII. TEXTING WHILE DRIVING; DISTRACTED DRIVING**

- A. Definitions.** The following definitions are intended to be consistent with the definitions in DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009) and Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009). For clarification purposes, they may expand upon the definitions in the executive order.

For the purpose of Attachment 4.3, “Motor Vehicles” means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of Attachment 4.3, “Driving” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of Attachment 4.3, “Text messaging” means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this

practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

- B.** For the purpose of Attachment 4.3, the “Government” includes the United States Government and State, local, and tribal governments at all levels. Workplace Safety. In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009) and DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009), the Recipient, subrecipients, contractors, and subcontractors are encouraged to:
1. adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—
    - a. Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or
    - b. Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.
  2. Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as—
    - a. Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
    - b. Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.
- C.** Subawards and Contracts. To the extent permitted by law, the Recipient shall insert the substance of this exhibit, including this paragraph (c), in all subawards, contracts, and subcontracts under this award that exceed the micro-purchase threshold, other than contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

#### **XXIV. TRAFFICKING IN PERSONS**

- A.** Contractor, Contractor’s employees, subcontractors under this award, and subcontractors’ employees may not—
1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
  2. Procure a commercial sex act during the period of time that the award is in effect; or
  3. Use forced labor in the performance of the award or subawards under the award.
- B.** Contractor must include the requirements of paragraph A.1 of this term in any subcontract you make to a private entity.



**C. Definitions.** For purposes of this award term:

1. “Employee” means either:
  - a. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
  - b. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. “Private entity”:
  - a. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
  - b. Includes:
    - i. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
    - ii. A for-profit organization.
4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).
5. “Recipient” and “subrecipient” include for-profit entities for the purpose of Attachment 4.5 only.

**XXV. SEAT BELT USE**

In compliance with Executive Order 13043 “Increasing Seat Belt Use in the United States,” April 16, 1997, 23 U.S.C. Section 402 note, the SFMTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the Project.

**XXVI. LOBBYING** *(To be submitted with each bid or offer exceeding \$100,000)*

See Certification Regarding Lobbying which is incorporated into this Agreement.

## **XXVII. PROMPT PAYMENT**

- A.** In accordance with SFMTA's SBE/DBE Program, no later than three Days from the date of Contractor's receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors. Unless the prime Contractor notifies the CCO in writing within 10 business days prior to receiving payment from the City that there is a bona fide dispute between the prime Contractor and the subcontractor. Within five business days of such payment, Contractor shall confirm that all subs have been paid via the B2GNow System. Failure to submit all required payment information into the B2GNow System may result in the suspension of future progress payments to Contractors.
- B.** Contractor may withhold retention from subcontractors if City withholds retention from Contractor. Should retention be withheld from Contractor, within 30 Days of City's payment of retention to Contractor for satisfactory completion of all work required of a subcontractor, Contractor shall release any retention withheld to the subcontractor. Satisfactory completion shall mean when all the tasks called for in the subcontract with subcontractor have been accomplished and documented as required by City. If the Contractor does not pay its subcontractor as required under the above paragraph, it shall pay interest to the subcontractor at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

## **XXVIII. VETERANS EMPLOYMENT** *(applicable to Capital Projects)*

As provided by 49 U.S.C. § 5325(k):

- A.** To the extent practicable, Contractor agrees that it:
  - 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital Project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
  - 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and
- B.** Contractor also assures that its subcontractor will:
  - 1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital Project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
  - 2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

**XXIX. INCORPORATION OF DEPARTMENT OF TRANSPORTATION (DOT) OR  
FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, or for the FTA as required in FTA Circular 4220.1G are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all DOT or FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any SFMTA requests which would cause the SFMTA to be in violation of the DOT or FTA terms and conditions.

**Appendix F**  
**SFMTA Small Business Enterprise/Disadvantaged Business Enterprise Program for**  
**Professional and Technical Services**  
**Requirements for Architects, Engineers, Planners, Environmental Scientists and Other**  
**Professional Services Contracts**

**Appendix G**  
**Directory of Subconsultants**

<b>Firm Name</b>	<b>Contact</b>	<b>Address</b>	<b>SBE/ W-DBE</b>
SITELAB urban studio	Laura Crescimano	660 Mission Street, Suite 200 San Francisco, CA 94105	X
Civic Edge Consulting	Amber Shipley	101A Clay Street #267, Embarcadero 3, San Francisco, CA 94111	X
Fehr&Peers	Matt Goyn	345 California St, Suite 450 San Francisco, CA 94104	
Fougeron Architecture	Anne Fougeron	550 Davis Street Unit 16 San Francisco, CA 94111	X
Hatch Associates Consultants, Inc.	Rachelle Sarmiento	1999 Harrison Street, Suite 620 Oakland California 94612	
Hamilton, Ricci and Associates, Inc.	Walter Ricci	One Belvedere Place suite 200 Mill Valley, CA 94941	
Project Finance Advisory Limited (PFAL)	Victoria Taylor	203 Flamingo Road #269 Mill Valley, CA 94941	X
TBD Consultants	Niall Durkin	2063 Grant Road Los Altos, CA 94024	