

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

Agreement between the City and County of San Francisco and

Hatch Associates Consultants, Inc.

**For As-Needed Specialized Vehicle Engineering and Other Related
Consulting Services**

**Contract No.
SFMTA-2026-19-FTA**

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

**Agreement between the City and County of San Francisco and
Hatch Associates Consultants, Inc.
Contract No. SFMTA-2026-19-FTA**

This Agreement is made as of _____, in the City and County of San Francisco (City), State of California, by and between Hatch Associates Consultants, Inc. (Contractor), and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA seeks to procure As-Needed Specialized Vehicle Engineering and Other Related Consulting Services from Contractor.

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

C. Contractor was competitively selected pursuant to a Request for Proposals (RFP) entitled As-Needed Specialized Vehicle Engineering and Other Related Consulting Services issued through Sourcing Event ID 0000011122.

D. The Small Business Enterprise (SBE) participation goal established for this Agreement is 20%. Contractor has committed to 20% SBE participation under this Agreement.

E. Approval for the Agreement was obtained on July 7, 2025 from the Civil Service Commission under PSC number DHRPSC0005161 which authorizes the award of multiple agreements, the total value of which cannot exceed \$15,000,000 and the individual duration of which cannot exceed five years.

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 “Annual Rate Change” means the one change to the direct hourly labor rates and overhead rates permitted during each calendar year under the procedure described in Section

3.3.1 below. The Annual Rate Change will occur on July 10 of each year during contract performance.

1.3 “**Appendices**” means the appendices listed in Article 14 (Appendices) herein.

1.4 “**Artificial Intelligence**” or “**Artificial Intelligence Model**” means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

1.5 “**Artificial Intelligence System**” means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

1.6 “**Award**” means notification from the SFMTA to Contractor of acceptance of Contractor’s Proposal, subject to the execution and approval of a satisfactory Contract and bond to secure the performance of the Contract, and to such other conditions as may be specified or otherwise required by law

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

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

1.9 “**City Data**” means all data collected, used, maintained, processed, stored, and/or generated by or on behalf of City in connection with this Agreement. City Data includes, without limitation, Confidential Information and Deliverable Data.

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

1.11 “**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. Confidential Information includes, without limitation, City Data.

1.12 “**Contractor**” means Hatch Associates Consultants, Inc., 1999 Harrison Street, Suite 620, Oakland, CA 94612.

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

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

1.15 “**Deliverable Data**” means any data that is required to be delivered to City as a Deliverable, or as a part of a Deliverable, under this Agreement.

1.16 “Deliverables” means Contractor’s or its subcontractors’ 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.

1.17 “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.

1.18 “Effective Date” means the date the Director of Transportation executes the Contract.

1.19 “FTA” means the Federal Transit Administration.

1.20 “Generative Artificial Intelligence” means artificial intelligence that can generate derived synthetic content, such as text, images, video, and audio, that emulates the structure and characteristics of the artificial intelligence’s training data.

1.21 “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.

1.22 “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.

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

1.24 “Personal Identifiable Information (PII)” means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household. Personal information includes, but is not limited to, the following if it identifies, relates to, describes, is reasonably capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular individual or household as further defined in the California Consumer Privacy Act.

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

1.26 “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.

1.27 “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, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.28 “Small Business Enterprise” or “SBE” means a for-profit, small business concern with a three-year average gross revenue that do not exceed the thresholds set forth in 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 2) has received written confirmation from CCO that it meets the SFMTA’s program eligibility requirements.

1.29 “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 in 5 (five) years, unless earlier terminated as otherwise provided herein.

2.2 Option to Extend. The SFMTA has the option to renew the Agreement for a period of four additional years. The SFMTA may exercise this option at the Director of Transportation’s sole and absolute discretion by modifying this Agreement as provided in Section 11.5 (Modification of this Agreement). Extensions may be for the whole or partial period provided for above.

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 the 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. The 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 the 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 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 services.

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 \$5,000,000.00 (Five Million Dollars) for the initial contract term. This amount is based on City's estimated spend over the initial contract term. Should City's actual spend exceed its estimated spend for the initial term, City may in its sole discretion increase the contract NTE for the initial term. Should City exercise its option to extend the contract beyond the initial term, City may also elect to increase the NTE proportionally. 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 (Calculation of Charges) plus a fixed profit and, if applicable, subcontractor markup negotiated in accordance with Appendix B). 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. The rates shall not change except when approved in writing by the SFMTA as part of an Annual Rate Change. Any Annual Rate Change will occur on July 10 in each year of contract performance. To request an Annual Rate Change, Contractor must submit a written request no less than 30 days before the Annual Rate Change date. Requests submitted less than 30 days before the Annual Rate Change date will be denied, and no rate increases will be approved until the next year's Annual Rate Change date. The SFMTA will approve only requests for rate increases that are: (1) based on increases in the actual amount to be paid to Contractor's employees; and (2) less than or equal to the annual percentage change in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-Hayward area (CPI-U), using the most recent month published before the Annual Rate Change date. Any requests for escalation of direct hourly labor rates must include: (1) documentation of actual payroll increases; (2) evidence of the change in the CPI-U; and (3) an updated Appendix

B for the SFMTA's approval. The SFMTA will review all requests for an Annual Rate Change within 30 Days of receipt and notify Contractor of either an approval or denial. If approved, a new contract modification will be executed and the new rates will be effective as of the Annual Rate Change date, and in no event will the new rates be applied before the Annual Rate Change date.

(b) Overhead Rates

(i) The overhead rates in Appendix B shall be billed at that level until new overhead rates are requested and approved in writing as part of an Annual Rate Change. Any request to adjust the overhead billing rates will be supported by a copy of the most recent independent audit of overhead rates for the Contractor and for any Subcontractor for which the Contractor seeks to adjust the overhead billing rate. The new overhead billing rates will be effective as of the Annual Rate Change date. The Contractor's and subcontractors' overhead rates are subject to audit in compliance with Federal requirements.

(ii) The overhead rates in Appendix B, including any adjustment to such rates as provided for above, are subject to readjustment 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 Contractor that exceeds Contractor's or any subcontractor's actual rate, 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, and shall be no greater than 7% of the total cost of the 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). 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, including travel 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 in the form of a Task Order modification. 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 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 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 by the City 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 to 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 the 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) A copy of the receipts for all expenses invoiced
- (e) Description of the Services performed and/or goods delivered
- (f) PeopleSoft Supplier Name and ID
- (g) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced 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
- (h) Other direct costs
- (i) Subcontractor costs supported by invoice itemization in the same format as described here
- (j) Profit for current invoice period. 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 7% of the total Task Order value
- (k) Total mark-up for current invoice period for all subcontractor's work effort for that invoice period as an amount not to exceed 3% of subcontractor's total labor charges
- (l) Contract payment terms
- (m) Sales/use tax (if applicable)
- (n) Total costs

- (o) SFMTA Progress Payment Form (SFMTA Form No. 6): The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of the SFMTA Progress Payment Form. If the SFMTA Progress Payment 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 SFMTA Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until the Progress Payment Form is provided.

3.3.5 SBE Payment and Utilization Tracking System. SBE Participation Requirement applies to this Agreement. Contractor shall: (a) within three business days of the SFMTA's payment of any invoice to Contractor, pay SBE subcontractors; and (b) within 10 business days of the SFMTA's payment of any invoice to Contractor, confirm its payment to subcontractors using the B2GNow System (<https://sfmta.diversitycompliance.com/>) unless instructed otherwise by CMD or CCO. Failure to submit all required payment information to the B2GNow System with each payment request may result in the withholding of 20% of subsequent payments due.

3.3.6 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. The incorporated terms may be found in Appendix D (Grant Terms). 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) **Subgrantees.** Contractor shall insert each Grant Term into each lower-tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor, or service provider.

3.3.7 Payment Terms

(a) **Payment Due Date.** Unless the SFMTA notifies Contractor that a dispute exists, Payment shall 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 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 Reserved. (Payment of Prevailing Wages)

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. 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 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 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) Task Order Scope of Work. The Task Order 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 forms, and Contractor Task Order proposal must be incorporated into the overhead rate (as approved in Appendix B). Separately 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). Contractor time spent managing or overseeing work performed by subcontractors will not be compensable.

(b) Presentations. In the performance of assigned tasks, Contractor, if requested by the 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. 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. 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, 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, 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. 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 Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the SFMTA relieve 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, Contractor shall within five business days of discovering the perceived extra work provide the SFMTA with either: (1) a written Contractor Request for Information under subsection 4.3.3 below; or (2) a Contractor Proposal to perform additional work under the Task Order, which contains all of the information required by subsection 4.3.4 below for a Contractor Task Order Proposal.

4.3.2 Task Order Request. The SFMTA will provide Contractor a Task Order request, using the form in Appendix C, 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 Form, 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 Task Order 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 fully burdened 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, labor to fill out required SBE forms, and administrative labor to manage subcontractors.

- (ii) Estimated reasonable out-of-pocket expenses;
- (iii) Proposed profit and mark-up, as follows:
 1. Proposed profit of Contractor's work effort as a fixed fee amount not to exceed 7% of Contractor's estimated direct hourly labor rates and overhead costs; and
 2. For work performed by all subcontractors, proposed total mark -up for Contractor on subcontractor's work effort as a fixed fee not to exceed 3% of subcontractor's total labor charges (does not include Other Direct Costs (ODCs)).

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 actual direct costs plus the applicable fixed overhead rates in Appendix B and negotiated profit subject not to exceed amounts indicated in Section 4.3.4(d)(iii).

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 Participation Goal. Upon completion of negotiations, Contractor shall provide Project Manager a memo describing the proposed SBE participation goal 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 an SBE, (3) the dollar value and percentage of work attributed with each firm, and (4) the overall calculated SBE participation goal for the Task Order. CCO will review the final negotiated Task Order scope and Contractor's SBE goal memo, approve or deny the goal, and issue a memo to file. SBE participation goal assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in the Agreement. Contractor must in good faith comply with the following:

- The individual SBE participation percentage set for each Task Order.
- The overall SBE participation requirement established for the entire Agreement (which includes the commitments Contractor made to each of its listed SBE subcontractors at time of proposal). See Section 10.6 (**Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program**) for the overall SBE subcontracting participation requirement established for this Agreement.

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.

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 work, in which case a new Task Order proposal, pricing negotiation, record of negotiations, and notice to proceed shall be required before SFMTA approves the modification to the Task Order.

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 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 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 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 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 Contractor to reassign any individual on 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 its 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. The SFMTA's execution of this Agreement constitutes its approval of the subcontractors listed below and/or in Appendices.

Virginkar & Associates, Inc.
Ramos Consulting Services, Inc.
Cinquini & Passarino, Inc.

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, including its agents and employees will not represent or hold itself/themselves out to be employees of the City at any time. Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that 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 City and Contractor, or any of its agents or employees. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with Section 4.6. Should City determine that Contractor is not performing in accordance with the requirements of Section 4.6, 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 City believes that an action of Contractor warrants immediate remedial action by Contractor, 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 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 Section 4.6 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 City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless 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 Section 4.6.

4.7 Assignment. 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 accordance with City law and SFMTA policies, including but not limited to the Contract Approval and Delegation Policy. Any purported assignment made in violation of this provision shall be null and void.

4.8 Reserved. (Liquidated Damages)

4.9 Reserved. (Performance Bond)

4.10 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 and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. Policy must include Abuse and Molestation coverage.

(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) Technology Errors and Omissions Liability Insurance, with limits of \$1,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of Services defined in the Agreement and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

(f) Cyber and Privacy Liability Insurance with limits of not less than \$1,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(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, and its Officers, Agents, and Employees.

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

(c) The Commercial Automobile Liability Insurance policy include (i) Auto Pollution Additional Insured including as Additional Insured the City and County of San Francisco, and its Officers, Agents, and Employees; and (ii) Form MCS-90 for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980.

5.1.3 Waiver of Subrogation. The Workers' Compensation Insurance policy(ies) shall include a waiver of subrogation in favor of the City for all work performed by Contractor, and 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 Liability Insurance Primary Insurance 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 the 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, be maintained 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, and 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, consultants, 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, defend, 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, defend, or hold harmless Contractor.

Article 6 Liability of the Parties

6.1 Liability of City. CITY’S TOTAL LIABILITY UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ITS PAYMENT OBLIGATIONS UNDER THIS

AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1 (CALCULATION OF TASK ORDER COMPENSATION 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 the 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 the 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 timely 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 cancelled 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 City 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 Payment Obligation. City's payment obligation under Section 8.1 (Termination for Convenience) 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
- 10.3.7 Working with Minors
- 10.3.8 Alcohol and Drug-Free Workplace
- 11.10 Compliance with Laws
- Article 13 Data and Security

(b) Contractor fails or refuses to perform the Services or 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 or from when Contractor otherwise becomes aware of the Event of Default. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, in addition to all other remedies available to the SFMTA, 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 arising from the Event of Default and/or in effecting such

cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall also 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 Section 8.4 (Rights and Duties upon Termination or Expiration), 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
3.3.6(b)	Grant Funded Contracts - Disallowance
3.4	Audit and Inspection of Records
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. Promptly upon expiration of this Agreement, or promptly upon receipt by Contractor of notice of termination of this Agreement, Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any Deliverables, 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 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 this 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/%20.

10.2 Governmental Conduct Related Contractual Obligations

10.2.1 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.

10.2.2 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.

10.2.3 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 12 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.

10.3 Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program

10.3.1 General. The SFMTA is committed to a Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise Program (DBE Program) for the participation of SBEs in federally funded contracting opportunities. In addition, Contractor must comply with all applicable federal regulations regarding SBE participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to SBEs performing work under this Agreement. More information on federal requirements can be found on the internet at: <http://www.fta.dot.gov/civilrights/12326.html>.

10.3.2 Compliance with SBE Program under SFMTA’s DBE Program.

Contractor shall comply with the SBE provisions contained in Appendix E attached to this Agreement and incorporated by reference as though fully set forth, including, but not limited to, achieving and maintaining the SBE goal 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.

10.3.3 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.

10.3.4 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 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.

10.3.5 Health Care Accountability Ordinance.

Labor and Employment Code Article 121 applies to this contract. Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Article 121, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.3.6 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.

10.3.7 Reserved. (Working with Minors)

10.3.8 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).

10.3.9 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 Sections 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.

10.3.10 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 Article 131.2.

10.4 Environmental Related Contractual Obligations

10.4.1 Reserved. (Packaged Water Prohibition)

10.4.2 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.

10.4.3 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.

10.4.4 Reserved. (Sugar-Sweetened Beverage Prohibition)

10.5 Reserved. (Slavery Era Disclosure)

10.6 Nonprofit Contractor Requirements

10.6.1 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.

10.6.2 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 \$1,000,000 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.

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: Emily Williams
Chief Transit Administration Officer
San Francisco Municipal Transportation Agency
1 South Van Ness, 7th Floor
San Francisco, CA 94103
Emily.Williams@sfmta.com

To Contractor: Pallavi Lal, P.E.
Hatch, Global Director, Vehicles and Operations
1999 Harrison Street, Suite 620
Oakland, CA 94612
pallavi.lal@hatch.com

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by email, 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 provide technical assistance to City when responding to reasonable accommodation requests from City employees respecting their use of the information content and technology (ICT) and/or Services provided under this Agreement.

11.2.3 Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 1201 et seq.), including the Web Content Accessibility Guidelines (WCAG) 2.1, Level AA, as specified in the Department of Justice's Title II Rule on the accessibility of web content and mobile applications. Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and the applicable Revised Section 508 Standards published by the U.S. Access Board (<https://www.access-board.gov/ict/>), as amended from time to time. Contractor shall ensure that all website and mobile application content provided under this Agreement fully conforms to the Department of Justice's Title II rules and the applicable Revised 508 Standard, 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 c 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 Contract Modification Form (CMD Form 8) along with the required supporting documentation to the CCO and obtain prior CCO approval when processing amendments,

modifications or change orders that cumulatively increase the original contract amount by more than 20%, and then for all subsequent amendments, modifications or change orders that cumulatively increase the last CCO approved value by 20%.

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 arbitration. 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 the 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 all data given to Contractor by City in the performance of this Agreement (City Data or Data), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it 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.

11.15 No Third-Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons.

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/largevehicletrainingstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of 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 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 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

13.4.1 Use of City Data. Contractor agrees to hold City Data received from, or created or collected on behalf of, the 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 the 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 City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use, provided, however, that no City Data may be used by Contractor to train, modify or improve any Artificial Intelligence Systems or Models without City's prior written consent, which may be withheld or withdrawn at City's sole discretion. Nothing herein shall be construed to confer any license or right to 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 Use of Generative Artificial Intelligence in Deliverables. Contractor is prohibited from using Generative Artificial Intelligence in the development of Deliverables without City's prior written consent. Contractor represents and warrants to City that Deliverables will not be developed in a manner that conflicts with the City's rights in and to the Deliverables under Article 9, "Rights in Deliverables," or the City Data confidentiality and security requirements under Article 13, "Data and Security," of this Agreement.

13.4.3 Disposition of City Data. Except as otherwise provided for in this Agreement, upon City's request, termination or expiration of this Agreement, or the expiration of any required document retention period or litigation hold, 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 Days, securely dispose, clear, purge, and/or physically destroy, all copies of all City Data from its servers, files, hosted environments used in performance of this Agreement (including subcontractors' environments), work stations used to process or produce the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such secure disposal occurred within 5 Days of the disposal. 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 City Data and any derivative works of 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 twenty-four (24) hours of the discovery of such, but within twelve (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. 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.

13.7 Cybersecurity Risk Assessment. If a Cybersecurity Risk Assessment (“CRA”) was required before entering the Agreement, Contractor must complete an annual CRA to demonstrate that it has maintained the data privacy and information security program required for City contractors. If Contractor does not satisfactorily complete an annual CRA, the City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement or exercise any of its other remedies hereunder. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.

Article 14 Appendices

14.1 Appendices. The following Appendices (“Appendices” in the plural and each an “Appendix” in the singular) are hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Request Form
- D: FTA Requirements
- E: SBE Requirements

Article 15 MacBride and Signature

15.1 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.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Julie Kirschbaum Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary, to the Board</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ David F. Innes Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Hatch Associates Consultants, Inc.</p> <p><i>Pallavi Lal</i></p> <hr/> <p>Pallavi Lal, P.E. Global Director, Vehicles and Operations 1999 Harrison Street, Suite 620 Oakland, CA 94612</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: 0000028892</p>
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Appendix A Scope of Work

A. General

The Consultant will provide as-needed specialized consulting services for various projects including the implementation and completion of the various transit vehicle and transit-related equipment procurements, maintenance of way projects, operational scenario model projects, asset management projects, service planning projects, various transit system projects, and rehabilitation and replacement projects. Services may include, design analysis, structural finite element analysis, engineering calculations, quality control inspection, feasibility study, administrative support, vehicle acceptance and testing, warranty administration, and cost analysis. The Consultant may be asked to perform other tasks related to the maintenance and operation of the transit vehicles and facilities, including assisting with fare collection, advanced train control system (ATCS), data communications, passenger information system, vehicle telematics systems, charging infrastructure software systems, and associated equipment.

The SFMTA will decide, in its sole discretion, which tasks to assign to the Consultant. The SFMTA may use qualified City staff to the extent possible to provide the technical engineering and quality control services. The services to be provided by the Consultant at the direction and to the satisfaction of the SFMTA may include the following:

B. Specific Work Tasks/Phases

1. Task 1: Project Management

The Consultant will support the SFMTA in the day-to-day execution of projects related to its transit vehicles, systems and services. Deliverables may include the following:

- a. Project Management Plan (PMP)**
Develop, implement, and maintain the PMP for transit-related projects, including all related and supporting management documents.
- b. Progress Reports**
Provide a series of reports that will summarize the progress of activities. The reports should also track any issues that may have occurred during the past reporting period, their status and resolution. Reports may include, but not be limited to: bi-weekly reports, monthly reports, QA reports, trip reports, Federal Transit Administration (FTA) Quarterly Reports, and other reports required by funding agencies.
- c. Meetings**
Schedule, attend, and document meetings, conference calls, or other review sessions.
- d. Documentation**
Prepare documentation (letters, reports, presentations).

e. Tracking Systems

Set up and maintain systems to track all project information to allow a project to be effectively managed. Items to be tracked include correspondence, actions, and change orders.

f. Stakeholder Outreach

Prepare presentations, reports, and responses to requests from stakeholders, such as the FTA.

2. Task 2: Contract Management

The Consultant will support the SFMTA Project Manager in managing the projects related to its transit vehicles, systems and services, including performing tasks such as:

a. Contract Management

Support oversight and enforcement of bus and rail vehicle procurement and rehabilitation contracts, including verification of requirements, change orders, deliverables, claims, and payments.

b. Schedule Management

Support development and maintenance of the overall project schedules for a variety of fleet-related projects, including oversight of the bus and rail vehicle procurement and rehabilitation schedule, and other transit-related technology projects such as advanced train control systems. In addition, support integration of the fleet-related project schedules into other agency-wide projects, such as the Train Control System upgrade.

c. FTA Compliance

Conduct reviews, as needed, to verify that the bus and rail vehicles and equipment conform to their respective contract requirements and technical specifications, as well as all federal, state and local requirements. Activities and deliverables may include:

- i. Pre-award and post-delivery Buy America audits, in compliance with 49 CFR Part 663.
- ii. Other audits and reviews, as required, to verify that the bus and rail vehicle procurement and rehabilitation contracts are being performed in accordance with all applicable federal, state and local requirements.

d. Cost Estimates

Prepare independent cost estimates and cost-analyses for any proposed contracts or contract changes (in accordance with FTA requirements, as applicable); identify responsibilities for the changes, and advise on any resulting impacts in scope, schedule and budget.

3. Task 3: Design Reviews and Evaluation of CDRLs and Submittals

Consultant shall support the SFMTA in the review, outreach and response to submittals from rolling stock and other contractor(s), including letters, drawings, design review packages and other Contract Deliverable Requirements List (CDRL) items.

a. Specialized Experts

Provide specialized experts, as-needed, to cover all vehicle systems, as well as risk assessments, hazard analyses, reliability analyses and systems integration, among others.

b. Submittal Review and Response

Review and comment on CDRL Items. Review the submittals for compliance with the specifications and meet the project objectives for quality, reliability and maintainability; recommend disposition to the SFMTA. Work with the project team to drive consensus among internal stakeholders to develop an agreed SFMTA position on issues as they arise.

c. System Integration

Support the SFMTA during planned systems integration reviews to ensure that the vehicle and subsystems perform according to the SFMTA's requirements and expectations, including addressing interface issues with concurrent projects, such as end-of-life technology refresh projects, and the Train Control Upgrade project.

d. First Article Inspection

Coordinate, attend and oversee First Article Inspections (FAI) for the entire vehicle, including subsystems, establishing a baseline upon which the production units will be based, and changes in configuration will be assessed.

e. Issue Resolution

Conduct research into peer agencies, best practices, required standards, and federal, state and local requirements to provide advice and counsel with regards to issues that may arise. Reports or presentations shall be provided as requested by the SFMTA.

4. Task 4: Quality Assurance (QA) Oversight

The Consultant will provide QA oversight services to ensure that quality material is used, good workmanship is performed, and work is conducted in accordance with all plans and contract documents, as well as federal, state and local requirements. Activities and deliverables may include:

a. QA Program Oversight

Review the applicable QA programs to assure that the contractor's QA organization follows contractually required processes for controlling the quality of the design, tooling calibration, receiving inspection, corrective actions, and the manufacturing process.

b. QA Production Oversight

Conduct checks, as necessary, to assure that quality records are maintained throughout the manufacturing process at both supplier and subcontractor facilities. Assess quality trends and review with SFMTA staff and the contractor to determine any corrective actions.

c. QA Representative

Provide a Quality Assurance Representative (QAR) to provide daily (or weekly) written inspection reports as required by the SFMTA. The QAR will use SFMTA-approved procedures to note any deficiencies and corrective actions required.

d. QA Change Management Oversight

Review the contractor's change control, configuration management, and document management systems to verify that they are capable of complying with the contract provisions and are able to monitor changes from the baseline specification.

e. Receiving Inspection

Provide incoming or receiving inspection at the SFMTA delivery location to determine whether vehicles or equipment have been damaged in transport or at any other time.

5. Task 5: Test Program Oversight

The Consultant shall provide "test program oversight" services to ensure that the prototype bus and rail vehicles, production vehicles, and rehabilitated bus and rail vehicles perform according to the vehicle contract requirements and technical specifications, including all federal, state and local requirements. Activities and deliverables may include:

a. Test Documentation Review

Review and recommend for acceptance the test and evaluation plans and procedures for all materials, components, subsystems, and completed work requiring testing under the Specifications.

b. Test Witnessing

Witness design, qualification, acceptance and burn-in tests, as required, including tests at contractor's or its subcontractors' facilities, the SFMTA site, or third party location.

c. Vehicle Acceptance

Support the SFMTA in acceptance inspection and testing efforts. Once a vehicle or equipment has been delivered to SFMTA but before it is accepted, Consultant shall perform a final audit to verify that the necessary documentation (e.g., weight certificates, Car History Book) is provided with the vehicles.

d. Operational Testing

Support operational testing to confirm compatibility with the SFMTA's existing system, facilities, and equipment; assist with operator orientation.

6. Task 6: Commissioning and Start-up Activities

The Consultant shall support commissioning and start-up activities prior to the start of revenue service for the new vehicle or equipment. Activities and deliverables may include:

- a.** Review and comment on all support services submittals, including maintenance manuals, parts and operations manuals, training programs, and safety program plans.
- b.** Verify delivery and configuration of as-built drawings and associated documentation.
- c.** Support training program, including testing and acceptance of the training simulator.
- d.** Support safety certification of the advanced train control systems, the new rail fleet, and other rail systems in accordance with CPUC General Order 164-D, develop checklists, conduct necessary verifications, obtain sign-off of responsible parties, and prepare mitigation plans, if necessary.
- e.** Support revenue readiness activities, including maintenance shop readiness, and verification that the vehicle design will meet its operational requirements for SFMTA routes, including range, gradeability and environmental issues.
- f.** Support coordination activities with interrelated projects, such as the Train Control Upgrade project.

7. Task 7: Post-Delivery Support

Consultant shall assist the SFMTA in effectively developing and administering a technical support program as required. This program will cover all post-delivery support requirements including warranty administration, manual updates and field modification management. Activities and deliverables may include:

- a.** Ensuring that all training, spare parts, special tools, special test equipment, maintenance and operation manuals, and other deliverables are properly provided in accordance with the requirements of the applicable procurement contract.
- b.** Support the oversight and tracking of all field modification work, including review of documentation, verification of configuration management, QA oversight of re-work, re-testing, and spare parts reconfiguration.
- c.** Monitor the reliability program and work with the SFMTA and the contractor to assure compliance of the fleet with reliability requirements.
- d.** Assist in the set-up, execution, administration, and monitoring of the warranty program, including identification and resolution of fleet defects.

- e. Ensure that the preventive maintenance process and operations and maintenance activities are clearly defined and complete.

8. Task 8: Transit Management Support

Consultant shall provide other services as-needed by the SFMTA's Transit Division to support the fleet engineering maintenance and operation of the transit vehicles. Activities may include:

- a. Review plans, checklists and procedures related to vehicle preventive maintenance.
- b. Perform preventive maintenance and inspection audits and reporting.
- c. Evaluate and assist with the implementation of modern and cost-effective maintenance methods for vehicles.
- d. Provide data analysis to identify spikes and shortfalls in vehicle performance.
- e. Review and update operating procedures as necessary.
- f. Assist in the development or updating of operating practices and procedures.
- g. Perform technical evaluations and assist with the implementation of emerging technologies to improve operations and service delivery.
- h. Perform strategic long-term planning of key operations issues.
- i. Provide Transit Operations support, including scheduling analyses and service improvement analyses.
- j. Support Overhaul Programs.
- k. Support alternate equals.
- l. Support parts identification and negotiations.
- m. Support specific failure investigations.
- n. Support writing bulletins.
- o. Support customer experience improvement.
- p. Support training.
- q. Support Budget Planning and Cost Estimating.
- r. Support regulatory compliance.
- s. Support Vehicle Engineering.
- t. Support historic fleet.
- u. Provide Warranty supports for vehicles after acceptance.

- v. Conduct vehicle performance matrices.
- w. Support Non-Revenue Vehicle fleet plan and procurement.

9. Task 9: Maintenance of Way

This task is intended to support a broad range of specialized services related to planning and programming, specialized analytical studies, construction support and management, and start-up and operations planning. Examples of efforts that would be provided under this task include performing field surveys, assisting in the preparation of procurement contracts, preparing QA oversight, performing audits, performing ultrasonic rail testing, and administering training. Additionally, technical services related to the delivery of technology system projects led by the Maintenance of Way Division would be included in this task.

The Consultant shall provide a broad range of specialized services and staff to complete Task Orders issued by the SFMTA, either by direct assignment of its own personnel or through Subconsultants, including, but not limited to, initial planning and programming, specialized analytical studies, and start-up and operations planning. Task Orders may include:

- a. Provide support to SFMTA's Maintenance-of-Way Engineering Unit, which includes planning, design review, and field investigation support of transit system improvements, including the traction power system, transit signaling system, and communication system to improve safety and service reliability. The scope of work may also include:
 - i. Prepare design criteria to include and meet all applicable codes and standards.
 - ii. Prepare alternate analyses and recommend overall design approaches.
 - iii. Perform site investigations and functional analyses.
 - iv. Review design packages (plans and specifications)
 - v. Provide technical administrative support (e.g., file drawings, meeting minutes, document control).
 - vi. Incorporate SFMTA's Quality Assurance (QA) program requirements into the design and construction packages.
 - vii. Identify and develop special testing requirements, system cut-over plans, and start-up plans.
- b. Assist in the preparation of procurement contracts for transit infrastructure components and systems; operating equipment; and long-lead items. The task shall include product research, specifying products, and performing alternative analyses.
- c. Perform field surveys using licensed surveyors.
- d. Prepare project management plans in accordance with FTA requirements.

- e. Prepare QA oversight, audits, plans, training and assistance in accordance with FTA requirements.
- f. Predict, analyze, prevent and mitigate noise and vibration from transit operations, and equipment, and design and monitor mitigation measures.
- g. Perform testing as required by the City, including metallurgical, annual ultrasonic rail testing, and other testing requested by SFMTA.
- h. Perform preliminary and system hazard analyses, failure modes and effects analyses, single-point-of-failure analyses, hazard level classification, and safety certification of systems.
- i. Perform systems analyses, including communications systems analyses, systems integration, safety processes, configuration management, and related work.
- j. Perform start-up and commissioning of systems, including integration and pre-revenue “dry-run” testing, developing test procedures, instrumenting vehicles and equipment, conducting tests, and providing test reports and analyses.
- k. Provide safety certification oversight and required documentation to obtain System Safety and Security Program per CPUC General Order (GO) 164-D. (General Order 164-D requires transit agencies who are building and operating rail fixed guideway systems to establish a System Safety and Security Program.) The scope of work may include:
 - i. Provide safety standards
 - ii. Review the system safety program
 - iii. Review the contractor’s hazard analyses
 - iv. Develop Safety and Security Certification Plans
 - v. Lead Safety & Security Certification Review Committee SSCRC (ongoing)
 - vi. Maintain the Audit Conformance Checklist (ongoing)
 - vii. Review the safety requirements
 - viii. Audit implementation of safety requirements
 - ix. Audit resolution of hazards (ongoing)

10.Task 10: Transit Systems

Under the Task, the Consultant will assist with the procurement of technical services related to the operation of transit-supportive technology systems and system modifications at the application level or higher (e.g., ATCS, fare collection, communications). Examples of efforts that would fall within this task include writing documentation, drafting SOPs, user interface

configuration, and defining requirements for new feature requests from system vendors. Tasks may include:

a. Concept of Operations / Lifecycle Planning

The Consultant shall advise the SFMTA on key issues relating to the most effective means to employ technology systems to assist in operations. This may include developing a procurement and lifecycle strategy.

b. Procurement Support

The Consultant shall conduct industry outreach and advise the SFMTA on the available firms and products for individual procurement efforts. This shall include supporting the RFI, RFQ, and RFP processes, in such ways as:

- i. Maintaining industry contacts and communicating with potential vendors on the SFMTA's behalf.
- ii. Facilitating, organizing and staffing RFI or RFP pre-submission meetings.
- iii. Facilitating and organizing vendor presentations.
- iv. Advising the SFMTA on the nature of each vendor's offering.
- v. Drafting language for inclusion in the RFI, RFQ, RFP and sample contract documents.

c. Design Support

In the design phase of a technology procurement project, the Consultant shall review system vendor's design documents and advise the SFMTA and the vendor on potential integration issues, discontinuity between the system design and the concept of operations, or potential design deficiencies. The Consultant shall suggest design solutions for these issues in the design phase so they may correct designs at a minimum of delay and expense to a project.

d. Quality Control

During the production/delivery phase of a technology procurement project, the Consultant shall support the SFMTA's quality control efforts to ensure the equipment being delivered is free from manufacturing or design defects.

e. Hardware Integration

During the design and engineering phases, the Consultant shall support the integration of the new system with the other systems present on the SFMTA's vehicles or in the SFMTA's facilities. The Consultant shall be ultimately responsible to the SFMTA for ensuring that the new system is fully integrated with existing systems to the specifications detailed in the Task Order.

During the production/delivery phase, the Consultant shall support the integration of the new system to the vendor's specifications and any additional specifications that other SFMTA consultants have developed. This support may include activities such as:

- i. Developing an installation/deployment plan compatible with daily SFMTA operations and maintenance.
- ii. Overseeing the execution of the installation plan in coordination with the SFMTA Project Manager and operations managers
- iii. Training any SFMTA staff as needed to support the installation

f. Innovative Solutions

Throughout the system lifecycle, the Consultant shall support SFMTA operations by designing innovative solutions that require integration between one or more existing systems on board vehicles, on the wayside, in the street environment, or in the control center. This support would not necessarily be connected to a new system procurement; rather, the SFMTA would be seeking advice on how to accomplish the SFMTA's stated goals with existing equipment. The Consultant shall suggest modifications to that equipment, or additional purchases to support the SFMTA's goals.

g. List of Systems

Potential systems requiring the support of as-needed services include:

- i. Farebox Collection System
- ii. Train Control Systems
- iii. Surface Rail Signaling Systems
- iv. Traffic Signals and Transit Signal Priority (TSP) systems
- v. Customer Information System
- vi. On-Board Vehicle Signs and Announcement Systems
- vii. Platform Signs and Announcement Systems
- viii. Vehicle Telematics
- ix. Charging Infrastructure Software Solution
- x. Automatic Passenger Counter system
- xi. Video Surveillance systems
- xii. Transit-Only Lane Enforcement (TOLE) System

- xiii. Collision Avoidance System
- xiv. DriveCam and SmartDrive systems (used for safety incident detection)
- xv. Autonomous Vehicle Technology

11.Task 11: Other Services

Consultant shall provide other services as-needed by Transit Division for the implementation and completion of the Project. Tasks may include, but are not limited to:

- a. Advise the SFMTA on key issues regarding vehicle and equipment procurement, including compliance, systems integration and deviation from Contract requirements.
- b. Support project integration into existing systems and emerging programs; these may include maintenance management systems, project management systems, asset management tracking, or other agency-wide systems.
- c. Develop integration plans to ensure that the new vehicles or equipment operate as intended with the existing infrastructure, including track and overhead, substations, wheel rail interface, charging infrastructure and maintenance facilities.
- d. Support tasks for long-term fleet planning and replacement, including options, timing and procurement strategies required to maintain the fleet.
- e. Support with data collection efforts, such as ridership counts, traffic counts, and pedestrian counts.
- f. Support the Agency's Communications & Marketing Division with graphics for maps, posters, reports, one-pagers, marketing material, and other documents.
- g. Support data analyses pertaining to service planning activities, including before/after comparisons and trend analysis.
- h. Support the Agency's Communications & Marketing Division with outreach efforts, including facilitating meetings and providing logistical help and ambassador resources.
- i. Produce or assist with peer reviews and best practice reviews for activities such as off-wire operation, fallback scheduling, and emergency planning.
- j. Assist with asset management of transit equipment.
- k. Prepare fleet retirement plan to determine the best methodology, cost and schedule to retire vehicles as they are replaced and taken out of service.
- l. Conduct data analyses to identify spikes and shortfalls in vehicle performance.

- m.** Produce or assist with the production of operational scenario models. Models may take into account available ridership, grade, or route data.
- n.** Provide Maintenance Equipment Support with new or existing equipment.

**Appendix B
Calculation of Charges**

Table 1: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
Hatch Associates Consultants, Inc.	Principal in Charge	Pallavi Lal	\$114.57	\$310.16	
Hatch Associates Consultants, Inc.	Engineering Lead	Daniel Lang	\$90.87	\$245.99	
Hatch Associates Consultants, Inc.	Project Manager	Troy Alvarez	\$79.47	\$215.14	
Hatch Associates Consultants, Inc.	Task Manager	Rachelle Sarmiento	\$69.23	\$187.42	
Hatch Associates Consultants, Inc.	Task Manager	Joshua Torchia	\$57.69	\$156.18	
Hatch Associates Consultants, Inc.	Task Manager	Eddie Lopez	\$48.12	\$130.28	
Hatch Associates Consultants, Inc.	Vehicle Engineer	Stephen Hicks	\$96.15	\$260.31	
Hatch Associates Consultants, Inc.	Vehicle Engineer	Gary Sereico	\$64.66	\$175.06	
Hatch Associates Consultants, Inc.	Vehicle Engineer	Ray Merritt	\$105.48	\$285.56	
Hatch Associates Consultants, Inc.	Vehicle Engineer	Jess Iacobucci	\$69.47	\$188.07	
Hatch Associates Consultants, Inc.	Vehicle Engineer	Steve Roberts	\$90.19	\$244.17	
Hatch Associates Consultants, Inc.	Vehicle Engineer	Greg Cameron	\$102.55	\$277.62	
Hatch Associates Consultants, Inc.	Vehicle Engineer	Stephen Williams	\$62.26	\$168.55	
Hatch Associates Consultants, Inc.	Vehicle Engineer	Ryan Taylor	\$58.89	\$159.44	
Hatch Associates Consultants, Inc.	Vehicle Engineer	Jim Matthews	\$101.34	\$274.36	
Hatch Associates Consultants, Inc.	Integration Engineer	Shyam Sam Bista	\$146.52	\$396.66	
Hatch Associates Consultants, Inc.	Integration Engineer	Mihir Bodarya	\$58.65	\$158.79	
Hatch Associates Consultants, Inc.	Integration Engineer	Mackenzie deCarle	\$62.50	\$169.20	

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
Hatch Associates Consultants, Inc.	Integration Engineer	Pat Marron	\$117.93	\$319.27	
Hatch Associates Consultants, Inc.	Integration Engineer	Todd Ellis	\$93.80	\$253.93	
Hatch Associates Consultants, Inc.	Integration Engineer	Edwin Velez Perfecto	\$69.18	\$187.29	
Hatch Associates Consultants, Inc.	Integration Engineer	Markus Lorenz	\$103.17	\$279.31	
Hatch Associates Consultants, Inc.	Integration Engineer	Kevin Koncak	\$107.64	\$291.41	
Hatch Associates Consultants, Inc.	Integration Engineer	Luke Li	\$47.73	\$129.22	
Hatch Associates Consultants, Inc.	Quality Manager	Mike O'Hara	\$81.59	\$220.87	
Hatch Associates Consultants, Inc.	Quality Manager	Alice Fang	\$69.13	\$187.16	
Hatch Associates Consultants, Inc.	Quality Manager	John Hatter	\$92.89	\$251.46	
Hatch Associates Consultants, Inc.	Planner	Greg Huang	\$44.23	\$119.74	
Hatch Associates Consultants, Inc.	Planner	Pat Marron	\$117.93	\$319.27	
Hatch Associates Consultants, Inc.	Planner	Donna Bowers	\$86.06	\$232.98	
Hatch Associates Consultants, Inc.	Planner	Mark Perelmuter	\$54.81	\$148.38	
Hatch Associates Consultants, Inc.	Planner	Matt Post	\$67.26	\$182.09	
Virginkar & Associates, Inc.	Task Manager	Christopher Dyer	\$66.95	\$153.13	
Virginkar & Associates, Inc.	Task Manager	Patrick Tully	\$108.15	\$247.37	
Virginkar & Associates, Inc.	Vehicle Engineer	Benjamin Holland	\$97.85	\$223.81	
Virginkar & Associates, Inc.	Vehicle Engineer	Pranesh Ramachandran	\$86.66	\$198.22	
Virginkar & Associates, Inc.	Integration Engineer	Ajay Nayyar	\$97.85	\$223.81	
Virginkar & Associates, Inc.	Integration Engineer	Jim Zehm	\$88.49	\$202.40	
Virginkar & Associates, Inc.	Quality Manager	Eric Welch	\$74.16	\$169.63	

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
Virginkar & Associates, Inc.	Planner	Joey Liu	\$76.99	\$176.10	
Virginkar & Associates, Inc.	Planner	Raymundo Contreras	\$53.56	\$122.51	
Virginkar & Associates, Inc.	Field Inspector	Gary Guevin	\$68.14		\$155.86
Virginkar & Associates, Inc.	Field Inspector	Bryan Reese	\$61.92		\$141.63
Ramos Consulting Services, Inc.	Planner	Bert Langer	\$121.10	\$287.66	
Ramos Consulting Services, Inc.	Planner	Marques Hernandez	\$87.36	\$207.51	
Cinquini & Passarino, Inc.	Field Inspector	James Dickey	\$106.00		\$290.75
Cinquini & Passarino, Inc.	Field Inspector	Mathew Dudley	\$75.84		\$208.02

*Office Billing Rate = Direct Hourly Rate x Office Multiplier listed in Table 2

**Field Billing Rate = Direct Hourly Rate x Field Multiplier listed in Table 2

Table 2: Schedule of Overhead Rates for Contractor and all Subcontractors

Company	Office	Field	MULTIPLIERS	
			OFFICE	FIELD
Hatch Associates Consultants, Inc.	170.72%	135.88%	2.7072	2.3588
Virginkar & Associates, Inc.	128.73%	128.73%	2.2873	2.2873
Ramos Consulting Services, Inc.	137.54%	137.54%	2.3754	2.3754
Cinquini & Passarino, Inc.	174.29%	174.29%	2.7429	2.7429

Appendix C

As-Needed Specialized Engineering and Other Related Consulting Services
Contract No. SFMTA-2026-19-FTA
SBE/DBE Goal: 20%

SFMTA Transit Division

TASK ORDER REQUEST FORM

Task Title: _____ Date Initiated: _____	
Type of Request:	
<input type="checkbox"/> New Task Order- No. <u>XX</u>	
<input type="checkbox"/> Modification No. _____ (attach approved original and all modifications to date)	
Total Amount Being Requested:	<u>\$ x,xxx.xx</u>
Total approved task to date (including all mods.):	<u>\$ x,xxx.xx</u>
Total task amount including this request:	<u>\$ x,xxx.xx</u>
Estimated Task Start Date: _____ Estimated Modification Start Date: _____	
Estimated Completion Date: _____	
Funding Source: _____	Proposed Task SBE/DBE Goal: <u>xxx.xx</u> %
Account: _____	Fund: _____
Dept: _____	Authority: _____
Project: _____	Activity: _____
Work to be Performed:	
[Detailed description of work to be performed. Can refer to attachments to provide additional detail and information]	

[C&P Analyst Initials]

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Task Order No. [X]

Appendix C

As-Needed Specialized Engineering and Other Related Consulting Services
 Contract No. SFMTA-2026-19-FTA
 SBE/DBE Goal: 20%

SFMTA Transit Division

NAME	HOURS	LOADED RATE	TOTALS
SubTotal Labor/Services			
Profit [Enter NTE% from Contract] [Enter as a lump sum]			
Subcontractor Mark Up [Enter NTE% from Contract] [Enter as a lump sum, remove line if not applicable]			
Other Direct Costs (ODCs) <i>See Contractor Proposal for a detailed description of all out-of-pocket expenses</i>			
Grand Total This Task:			\$000,000
Notes:			
Concurred by Contractor: [Enter Contractor PM Name]			
Signature:		Date:	
APPROVALS [This Approvals Section should be modified to meet the Division's administrative requirements]			
Requested by:	_____		Date _____
	Name, Title		
Approved by:	_____		Date _____
	Name, Contract/ Project Manager		
Reviewed by:	_____ <i>(N/A – See attached CCO approval memo)</i>		Date _____
	Alaric Degrafinried, Director of Compliance		
Reviewed by:	<div style="display: inline-block; border: 1px solid black; padding: 2px; margin: 2px;">C&P Manager Initial</div> <div style="display: inline-block; border: 1px solid black; padding: 2px; margin: 2px; margin-left: 20px;">C&P Analyst Initial</div>	Date _____	
	Julia M.C. Friedlander, Director of Contracts & Procurement		
Approved by:	_____		Date _____
	Division Director, Title		

[C&P Analyst Initials]

Appendix D

FTA REQUIREMENTS FOR PERSONAL/PROFESSIONAL SERVICES CONTRACTS

I. DEFINITIONS

- A. Approved Project Budget** means the most recent statement, approved by the 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 FTA.
- C. Cooperative Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which 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 FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which 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 FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each 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 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 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 FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and 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 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 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 an 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 Request for Proposal Appendix D, Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

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. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

A. Contractor certifies that it:

1. Does not have any 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; and
2. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

B. Flow-Down. Contractor is required to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

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 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 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 the FTA Chief Counsel and 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 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 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 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. CIVIL RIGHTS

- A. Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:
- 1. Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants

are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 3. **Disabilities** – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

IX. NONDISCRIMINATION ON THE BASIS OF DISABILITY

The Contractor agrees to comply with the following federal prohibitions against discrimination based on disability:

- A. Federal laws, including:
1. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
 2. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq., Titles I, II, and III, which requires that accessible facilities and services be made available to individuals with disabilities;
 3. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151, et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 4. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 5. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- B. Federal regulations and guidance, including:
1. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
 2. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;

3. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 49 CFR Part 38;
4. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 CFR Part 39;
5. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
6. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;
7. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
8. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR Part 64, subpart F;
9. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194;
10. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609;
11. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
12. Other applicable federal civil rights and nondiscrimination regulations and guidance.

X. 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.

XI. PATENT RIGHTS (*applicable to contracts for experimental, research, or development projects financed by FTA*)

A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

- B. 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), the City and Contractor agree to take the necessary actions to provide, through 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.
- C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

- 3. FTA Intention.** When FTA awards Federal assistance for an experimental, research or developmental work, it is 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 FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either 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 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 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 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 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.

XIII. CONTRACT WORK HOURS AND SAFETY STANDARDS *(applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work)*

- A. Overtime requirements** – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar Day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- C. Withholding for unpaid wages and liquidated damages** – The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- D. Subcontracts** – The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

XIV. 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.

XV. SEISMIC SAFETY REQUIREMENTS

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and Contractor will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract, including work performed by a Subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

XVI. 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 to 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 FTA.

XVII. 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 to 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 FTA.

XVIII. 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 FTA.

XIX. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 CFR Part 655.

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

See Section 8.1 of Agreement Terms and Conditions.

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

See Section 8.2 of Agreement Terms and Conditions.

XXII. 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 FTA-funded projects are produced in the United States, unless a waiver has been granted by 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.

XXIII. DOMESTIC PREFERENCES FOR PROCUREMENTS

- A. Contractor should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- B. For purposes of this section
 - 1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

XXIV. 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.

XXV. 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 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.

XXVI. 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.

XXVII. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS *(applies to contracts for rolling stock)*

To the extent applicable, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(l) and FTA implementing regulations at 49 CFR Part 663, and to submit the following certifications:

- A. Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.
- B. Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.
- C. Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XXVIII. 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 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 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 FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XXIX. 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.

XXX. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS *(applicable to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator)*

- A. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:
 - 1. **General Transit Employee Protective Requirements** – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient’s Project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. §

5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities –

If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has **determined** or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL’s letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas –

If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

B. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

XXXI. NATIONAL ITS ARCHITECTURE POLICY (*Applicable to contracts for ITS projects*)

If providing Intelligent Transportation Systems (ITS) property or services, Contactor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

XXXII. TEXTING WHILE DRIVING; DISTRACTED DRIVING

Consistent with Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the Project.

XXXIII. 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.

XXXIV. DISPUTE RESOLUTION PROCEDURE

- A. 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. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Contract Administrator a written request for administrative review and documentation of the Contractor’s claim(s). Upon such request, the Contract Administrator shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. 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.
- B. 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.**

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

Certification Regarding Lobbying is required and was submitted by the Contractor with its Proposal. (See Appendix E of RFP).

XXXVI. PROMPT PAYMENT

- A.** In accordance with SFMTA’s SBE 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 Director 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 provide City with a declaration under penalty of

perjury that it has promptly paid such subcontractors for the work they have performed. Failure to provide such evidence shall be cause for City to suspend 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.

XXXVII. 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.

XXXVIII. INCORPORATION OF 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, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all 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 FTA terms and conditions.

APPENDIX E

Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program for Professional and Technical Services

Requirements for Architects, Engineers, Planners, Environmental Scientists and Other Professional Services Contracts

Please refer to Appendix A of the RFP

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

Agreement between the City and County of San Francisco and

Jacobs Engineering Group Inc.

**For As-Needed Specialized Vehicle Engineering and Other Related
Consulting Services**

**Contract No.
SFMTA-2026-20-FTA**

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

**Agreement between the City and County of San Francisco and
Jacobs Engineering Group Inc.
Contract No. SFMTA-2026-20-FTA**

This Agreement is made as of _____, in the City and County of San Francisco (City), State of California, by and between Jacobs Engineering Group Inc. (Contractor), and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA seeks to procure As-Needed Specialized Vehicle Engineering and Other Related Consulting Services from Contractor.

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

C. Contractor was competitively selected pursuant to a Request for Proposals (RFP) entitled As-Needed Specialized Vehicle Engineering and Other Related Consulting Services issued through Sourcing Event ID 0000011122.

D. The Small Business Enterprise (SBE) participation goal established for this Agreement is 20%. Contractor has committed to 20% SBE participation under this Agreement.

E. Approval for the Agreement was obtained on July 7, 2025 from the Civil Service Commission under PSC number DHRPSC0005161 which authorizes the award of multiple agreements, the total value of which cannot exceed \$15,000,000 and the individual duration of which cannot exceed five years.

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 “**Annual Rate Change**” means the one change to the direct hourly labor rates and overhead rates permitted during each calendar year under the procedure described in Section

3.3.1 below. The Annual Rate Change will occur on May 1 of each year during contract performance.

1.3 “**Appendices**” means the appendices listed in Article 14 (Appendices) herein.

1.4 “**Artificial Intelligence**” or “**Artificial Intelligence Model**” means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

1.5 “**Artificial Intelligence System**” means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

1.6 “**Award**” means notification from the SFMTA to Contractor of acceptance of Contractor’s Proposal, subject to the execution and approval of a satisfactory Contract and bond to secure the performance of the Contract, and to such other conditions as may be specified or otherwise required by law

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

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

1.9 “**City Data**” means all data collected, used, maintained, processed, stored, and/or generated by or on behalf of City in connection with this Agreement. City Data includes, without limitation, Confidential Information and Deliverable Data.

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

1.11 “**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. Confidential Information includes, without limitation, City Data.

1.12 “**Contractor**” means Jacobs Engineering Group Inc. 4 Embarcadero Center, Suites 3800 & 3700, San Francisco, CA 94111.

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

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

1.15 “**Deliverable Data**” means any data that is required to be delivered to City as a Deliverable, or as a part of a Deliverable, under this Agreement.

1.16 “Deliverables” means Contractor’s or its subcontractors’ 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.

1.17 “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.

1.18 “Effective Date” means the date the Director of Transportation executes the Contract.

1.19 “FTA” means the Federal Transit Administration.

1.20 “Generative Artificial Intelligence” means artificial intelligence that can generate derived synthetic content, such as text, images, video, and audio, that emulates the structure and characteristics of the artificial intelligence’s training data.

1.21 “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.

1.22 “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.

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

1.24 “Personal Identifiable Information (PII)” means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household. Personal information includes, but is not limited to, the following if it identifies, relates to, describes, is reasonably capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular individual or household as further defined in the California Consumer Privacy Act.

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

1.26 “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.

1.27 “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, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.28 “Small Business Enterprise” or “SBE” means a for-profit, small business concern with a three-year average gross revenue that do not exceed the thresholds set forth in 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 2) has received written confirmation from CCO that it meets the SFMTA’s program eligibility requirements.

1.29 “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 in 5 (five) years, unless earlier terminated as otherwise provided herein.

2.2 Option to Extend. The SFMTA has the option to renew the Agreement for a period of four additional years. The SFMTA may exercise this option at the Director of Transportation’s sole and absolute discretion by modifying this Agreement as provided in Section 11.5 (Modification of this Agreement). Extensions may be for the whole or partial period provided for above.

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 the 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. The 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 the 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 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 services.

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 \$5,000,000.00 (Five Million Dollars) for the initial contract term. This amount is based on City's estimated spend over the initial contract term. Should City's actual spend exceed its estimated spend for the initial term, City may in its sole discretion increase the contract NTE for the initial term. Should City exercise its option to extend the contract beyond the initial term, City may also elect to increase the NTE proportionally. 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 (Calculation of Charges) plus a fixed profit and, if applicable, subcontractor markup negotiated in accordance with Appendix B). 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. The rates shall not change except when approved in writing by the SFMTA as part of an Annual Rate Change. Any Annual Rate Change will occur on May 1 in each year of contract performance. To request an Annual Rate Change, Contractor must submit a written request no less than 30 days before the Annual Rate Change date. Requests submitted less than 30 days before the Annual Rate Change date will be denied, and no rate increases will be approved until the next year's Annual Rate Change date. The SFMTA will approve only requests for rate increases that are: (1) based on increases in the actual amount to be paid to Contractor's employees; and (2) less than or equal to the annual percentage change in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-Hayward area (CPI-U), using the most recent month published before the Annual Rate Change date. Any requests for escalation of direct hourly labor rates must include: (1) documentation of actual payroll increases; (2) evidence of the change in the CPI-U; and (3) an updated Appendix

B for the SFMTA's approval. The SFMTA will review all requests for an Annual Rate Change within 30 Days of receipt and notify Contractor of either an approval or denial. If approved, a new contract modification will be executed and the new rates will be effective as of the Annual Rate Change date, and in no event will the new rates be applied before the Annual Rate Change date.

(b) Overhead Rates

(i) The overhead rates in Appendix B shall be billed at that level until new overhead rates are requested and approved in writing as part of an Annual Rate Change. Any request to adjust the overhead billing rates will be supported by a copy of the most recent independent audit of overhead rates for the Contractor and for any Subcontractor for which the Contractor seeks to adjust the overhead billing rate. The new overhead billing rates will be effective as of the Annual Rate Change date. The Contractor's and subcontractors' overhead rates are subject to audit in compliance with Federal requirements.

(ii) The overhead rates in Appendix B, including any adjustment to such rates as provided for above, are subject to readjustment 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 Contractor that exceeds Contractor's or any subcontractor's actual rate, 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, and shall be no greater than 7% of the total cost of the 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). 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, including travel 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 in the form of a Task Order modification. 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 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 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 by the City 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 to 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 the 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) A copy of the receipts for all expenses invoiced
- (e) Description of the Services performed and/or goods delivered
- (f) PeopleSoft Supplier Name and ID
- (g) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced 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
- (h) Other direct costs
- (i) Subcontractor costs supported by invoice itemization in the same format as described here
- (j) Profit for current invoice period. 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 7% of the total Task Order value
- (k) Total mark-up for current invoice period for all subcontractor's work effort for that invoice period as an amount not to exceed 3% of subcontractor's total labor charges
- (l) Contract payment terms
- (m) Sales/use tax (if applicable)
- (n) Total costs

- (o) SFMTA Progress Payment Form (SFMTA Form No. 6): The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of the SFMTA Progress Payment Form. If the SFMTA Progress Payment 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 SFMTA Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until the Progress Payment Form is provided.

3.3.5 SBE Payment and Utilization Tracking System. SBE Participation Requirement applies to this Agreement. Contractor shall: (a) within three business days of the SFMTA's payment of any invoice to Contractor, pay SBE subcontractors; and (b) within 10 business days of the SFMTA's payment of any invoice to Contractor, confirm its payment to subcontractors using the B2GNow System (<https://sfmta.diversitycompliance.com/>) unless instructed otherwise by CMD or CCO. Failure to submit all required payment information to the B2GNow System with each payment request may result in the withholding of 20% of subsequent payments due.

3.3.6 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. The incorporated terms may be found in Appendix D (Grant Terms). 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) **Subgrantees.** Contractor shall insert each Grant Term into each lower-tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor, or service provider.

3.3.7 Payment Terms

(a) **Payment Due Date.** Unless the SFMTA notifies Contractor that a dispute exists, Payment shall 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 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 Reserved. (Payment of Prevailing Wages)

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. 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 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 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) Task Order Scope of Work. The Task Order 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 forms, and Contractor Task Order proposal must be incorporated into the overhead rate (as approved in Appendix B). Separately 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). Contractor time spent managing or overseeing work performed by subcontractors will not be compensable.

(b) Presentations. In the performance of assigned tasks, Contractor, if requested by the 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. 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. 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, 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, 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. 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 Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the SFMTA relieve 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, Contractor shall within five business days of discovering the perceived extra work provide the SFMTA with either: (1) a written Contractor Request for Information under subsection 4.3.3 below; or (2) a Contractor Proposal to perform additional work under the Task Order, which contains all of the information required by subsection 4.3.4 below for a Contractor Task Order Proposal.

4.3.2 Task Order Request. The SFMTA will provide Contractor a Task Order request, using the form in Appendix C, 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 Form, 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 Task Order 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 fully burdened 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, labor to fill out required SBE forms, and administrative labor to manage subcontractors.

- (ii) Estimated reasonable out-of-pocket expenses;
- (iii) Proposed profit and mark-up, as follows:
 1. Proposed profit of Contractor's work effort as a fixed fee amount not to exceed 7% of Contractor's estimated direct hourly labor rates and overhead costs; and
 2. For work performed by all subcontractors, proposed total mark -up for Contractor on subcontractor's work effort as a fixed fee not to exceed 3% of subcontractor's total labor charges (does not include Other Direct Costs (ODCs)).

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 actual direct costs plus the applicable fixed overhead rates in Appendix B and negotiated profit subject not to exceed amounts indicated in Section 4.3.4(d)(iii).

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 Participation Goal. Upon completion of negotiations, Contractor shall provide Project Manager a memo describing the proposed SBE participation goal 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 an SBE, (3) the dollar value and percentage of work attributed with each firm, and (4) the overall calculated SBE participation goal for the Task Order. CCO will review the final negotiated Task Order scope and Contractor's SBE goal memo, approve or deny the goal, and issue a memo to file. SBE participation goal assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in the Agreement. Contractor must in good faith comply with the following:

- The individual SBE participation percentage set for each Task Order.
- The overall SBE participation requirement established for the entire Agreement (which includes the commitments Contractor made to each of its listed SBE subcontractors at time of proposal). See Section 10.6 (**Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program**) for the overall SBE subcontracting participation requirement established for this Agreement.

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.

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 work, in which case a new Task Order proposal, pricing negotiation, record of negotiations, and notice to proceed shall be required before SFMTA approves the modification to the Task Order.

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 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 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 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 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 Contractor to reassign any individual on 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 its 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. The SFMTA's execution of this Agreement constitutes its approval of the subcontractors listed below and/or in Appendices.

Omni Strategy, LLC
Praedico Technologies USA, Inc.
Raul V. Bravo + Associates, Inc.
Wilson Ihrig – acquired by RWDI USA LLC
The Wathen Group LLC
Virginkar & Associates, Inc.
3Vi, Inc.

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, including its agents and employees will not represent or hold itself/themselves out to be employees of the City at any time. Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that 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 City and Contractor, or any of its agents or employees. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with Section 4.6. Should City determine that Contractor is not performing in accordance with the requirements of Section 4.6, 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 City believes that an action of Contractor warrants immediate remedial action by Contractor, 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 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 Section 4.6 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 City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless 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 Section 4.6.

4.7 Assignment. 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 accordance with City law and SFMTA policies, including but not limited to the Contract Approval and Delegation Policy. Any purported assignment made in violation of this provision shall be null and void.

4.8 Reserved. (Liquidated Damages)

4.9 Reserved. (Performance Bond)

4.10 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 and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. Policy must include Abuse and Molestation coverage.

(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) Technology Errors and Omissions Liability Insurance, with limits of \$1,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of Services defined in the Agreement and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

(f) Cyber and Privacy Liability Insurance with limits of not less than \$1,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(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, and its Officers, Agents, and Employees.

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

(c) The Commercial Automobile Liability Insurance policy include (i) Auto Pollution Additional Insured including as Additional Insured the City and County of San Francisco, and its Officers, Agents, and Employees; and (ii) Form MCS-90 for Motor Carrier Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980.

5.1.3 Waiver of Subrogation. The Workers' Compensation Insurance policy(ies) shall include a waiver of subrogation in favor of the City for all work performed by Contractor, and 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 Liability Insurance Primary Insurance 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 the 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, be maintained 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, and 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, consultants, 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, defend, 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, defend, or hold harmless Contractor.

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S TOTAL LIABILITY UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ITS PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1 (CALCULATION OF TASK ORDER COMPENSATION 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 the 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 the 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 timely 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 cancelled 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 City 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 Payment Obligation. City's payment obligation under Section 8.1 (Termination for Convenience) 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
10.3.7	Working with Minors
10.3.8	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws
Article 13	Data and Security

(b) Contractor fails or refuses to perform the Services or 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 or from when Contractor otherwise becomes aware of the Event of Default. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, in addition to all other remedies available to the SFMTA, 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 arising from the Event of Default and/or in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall also 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 Section 8.4 (Rights and Duties upon Termination or Expiration), 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
3.3.6(b)	Grant Funded Contracts - Disallowance
3.4	Audit and Inspection of Records
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. Promptly upon expiration of this Agreement, or promptly upon receipt by Contractor of notice of termination of this Agreement, Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any Deliverables, 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 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 this 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/%20.

10.2 Governmental Conduct Related Contractual Obligations

10.2.1 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.

10.2.2 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.

10.2.3 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 12 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.

10.3 Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program

10.3.1 General. The SFMTA is committed to a Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise Program (DBE Program) for the participation of SBEs in federally funded contracting opportunities. In addition, Contractor must comply with all applicable federal regulations regarding SBE participation, as set out in Title 49,

Part 26 of the Code of Federal Regulations, with respect to SBEs performing work under this Agreement. More information on federal requirements can be found on the internet at: <http://www.fta.dot.gov/civilrights/12326.html>.

10.3.2 Compliance with SBE Program under SFMTA’s DBE Program.

Contractor shall comply with the SBE provisions contained in Appendix E attached to this Agreement and incorporated by reference as though fully set forth, including, but not limited to, achieving and maintaining the SBE goal 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.

10.3.3 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.

10.3.4 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 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.

10.3.5 Health Care Accountability Ordinance. Labor and Employment Code Article 121 applies to this contract. Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Article 121, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.3.6 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.

10.3.7 Reserved. (Working with Minors)

10.3.8 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).

10.3.9 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 Sections 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.

10.3.10 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 Article 131.2.

10.4 Environmental Related Contractual Obligations

10.4.1 Reserved. (Packaged Water Prohibition)

10.4.2 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.

10.4.3 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.

10.4.4 Reserved. (Sugar-Sweetened Beverage Prohibition)

10.5 Reserved. (Slavery Era Disclosure)

10.6 Nonprofit Contractor Requirements

10.6.1 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.

10.6.2 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 \$1,000,000 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.

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: Emily Williams
Chief Transit Administration Officer
San Francisco Municipal Transportation Agency
1 South Van Ness, 7th Floor
San Francisco, CA 94103
Emily.Williams@sfmta.com

To Contractor: Takayoshi (Taka) Ohki
Project Manager
4 Embarcadero Center, Suites 3800 & 3700
San Francisco, CA 94111
Takayoshi.ohki@jacobs.com

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by email, 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 provide technical assistance to City when responding to reasonable accommodation requests from City employees respecting their use of the information content and technology (ICT) and/or Services provided under this Agreement.

11.2.3 Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 1201 et seq.), including the Web Content Accessibility Guidelines (WCAG) 2.1, Level AA, as specified in the Department of Justice's Title II Rule on the accessibility of web content and mobile applications. Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and the applicable Revised Section 508 Standards published by the U.S. Access Board (<https://www.access-board.gov/ict/>), as amended from time to time. Contractor shall ensure that all website and mobile application content provided under this Agreement fully conforms to the Department of Justice's Title II rules and the applicable Revised 508 Standard, 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 c 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 Contract Modification Form (CMD Form 8) along with the required supporting documentation to the CCO and obtain prior CCO approval when processing amendments, modifications or change orders that cumulatively increase the original contract amount by more than 20%, and then for all subsequent amendments, modifications or change orders that cumulatively increase the last CCO approved value by 20%.

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 arbitration. 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 the 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 all data given to Contractor by City in the performance of this Agreement (City Data or Data), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it 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.

11.15 No Third-Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons.

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/largevehicletestingstandards.

This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of 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 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 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

13.4.1 Use of City Data. Contractor agrees to hold City Data received from, or created or collected on behalf of, the 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 the 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 City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use, provided, however, that no City Data may be used by Contractor to train, modify or improve any Artificial Intelligence Systems or Models without City's prior written consent, which may be withheld or withdrawn at City's sole discretion. Nothing herein shall be construed to confer any license or right to 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 Use of Generative Artificial Intelligence in Deliverables. Contractor is prohibited from using Generative Artificial Intelligence in the development of Deliverables without City's prior written consent. Contractor represents and warrants to City that Deliverables will not be developed in a manner that conflicts with the City's rights in and to the Deliverables under Article 9, "Rights in Deliverables," or the City Data confidentiality and security requirements under Article 13, "Data and Security," of this Agreement.

13.4.3 Disposition of City Data. Except as otherwise provided for in this Agreement, upon City's request, termination or expiration of this Agreement, or the expiration of any required document retention period or litigation hold, 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 Days, securely dispose, clear, purge, and/or physically destroy, all copies of all City Data from its servers, files, hosted environments used in performance of this Agreement (including subcontractors' environments), work stations used to process or produce the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such secure disposal occurred within 5 Days of the disposal. 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 City Data and any derivative works of 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 twenty-four (24) hours of the discovery of such, but within twelve (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. 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.

13.7 Cybersecurity Risk Assessment. If a Cybersecurity Risk Assessment (“CRA”) was required before entering the Agreement, Contractor must complete an annual CRA to demonstrate that it has maintained the data privacy and information security program required for City contractors. If Contractor does not satisfactorily complete an annual CRA, the City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement or exercise any of its other remedies hereunder. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.

Article 14 Appendices


14.1 Appendices. The following Appendices (“Appendices” in the plural and each an “Appendix” in the singular) are hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Request Form
- D: FTA Requirements
- E: SBE Requirements

Article 15 MacBride and Signature

15.1 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.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Julie Kirschbaum Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary, to the Board</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ David F. Innes Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Jacobs Engineering Group Inc.</p> <hr/>  <p>Andrew Gensch Designated Project Executive</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: 0000017961</p>
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Appendix A Scope of Work

A. General

The Consultant will provide as-needed specialized consulting services for various projects including the implementation and completion of the various transit vehicle and transit-related equipment procurements, maintenance of way projects, operational scenario model projects, asset management projects, service planning projects, various transit system projects, and rehabilitation and replacement projects. Services may include, design analysis, structural finite element analysis, engineering calculations, quality control inspection, feasibility study, administrative support, vehicle acceptance and testing, warranty administration, and cost analysis. The Consultant may be asked to perform other tasks related to the maintenance and operation of the transit vehicles and facilities, including assisting with fare collection, advanced train control system (ATCS), data communications, passenger information system, vehicle telematics systems, charging infrastructure software systems, and associated equipment.

The SFMTA will decide, in its sole discretion, which tasks to assign to the Consultant. The SFMTA may use qualified City staff to the extent possible to provide the technical engineering and quality control services. The services to be provided by the Consultant at the direction and to the satisfaction of the SFMTA may include the following:

B. Specific Work Tasks/Phases

1. Task 1: Project Management

The Consultant will support the SFMTA in the day-to-day execution of projects related to its transit vehicles, systems and services. Deliverables may include the following:

- a. Project Management Plan (PMP)**
Develop, implement, and maintain the PMP for transit-related projects, including all related and supporting management documents.
- b. Progress Reports**
Provide a series of reports that will summarize the progress of activities. The reports should also track any issues that may have occurred during the past reporting period, their status and resolution. Reports may include, but not be limited to: bi-weekly reports, monthly reports, QA reports, trip reports, Federal Transit Administration (FTA) Quarterly Reports, and other reports required by funding agencies.
- c. Meetings**
Schedule, attend, and document meetings, conference calls, or other review sessions.
- d. Documentation**
Prepare documentation (letters, reports, presentations).

e. Tracking Systems

Set up and maintain systems to track all project information to allow a project to be effectively managed. Items to be tracked include correspondence, actions, and change orders.

f. Stakeholder Outreach

Prepare presentations, reports, and responses to requests from stakeholders, such as the FTA.

2. Task 2: Contract Management

The Consultant will support the SFMTA Project Manager in managing the projects related to its transit vehicles, systems and services, including performing tasks such as:

a. Contract Management

Support oversight and enforcement of bus and rail vehicle procurement and rehabilitation contracts, including verification of requirements, change orders, deliverables, claims, and payments.

b. Schedule Management

Support development and maintenance of the overall project schedules for a variety of fleet-related projects, including oversight of the bus and rail vehicle procurement and rehabilitation schedule, and other transit-related technology projects such as advanced train control systems. In addition, support integration of the fleet-related project schedules into other agency-wide projects, such as the Train Control System upgrade.

c. FTA Compliance

Conduct reviews, as needed, to verify that the bus and rail vehicles and equipment conform to their respective contract requirements and technical specifications, as well as all federal, state and local requirements. Activities and deliverables may include:

- i. Pre-award and post-delivery Buy America audits, in compliance with 49 CFR Part 663.
- ii. Other audits and reviews, as required, to verify that the bus and rail vehicle procurement and rehabilitation contracts are being performed in accordance with all applicable federal, state and local requirements.

d. Cost Estimates

Prepare independent cost estimates and cost-analyses for any proposed contracts or contract changes (in accordance with FTA requirements, as applicable); identify responsibilities for the changes, and advise on any resulting impacts in scope, schedule and budget.

3. Task 3: Design Reviews and Evaluation of CDRLs and Submittals

Consultant shall support the SFMTA in the review, outreach and response to submittals from rolling stock and other contractor(s), including letters, drawings, design review packages and other Contract Deliverable Requirements List (CDRL) items.

a. Specialized Experts

Provide specialized experts, as-needed, to cover all vehicle systems, as well as risk assessments, hazard analyses, reliability analyses and systems integration, among others.

b. Submittal Review and Response

Review and comment on CDRL Items. Review the submittals for compliance with the specifications and meet the project objectives for quality, reliability and maintainability; recommend disposition to the SFMTA. Work with the project team to drive consensus among internal stakeholders to develop an agreed SFMTA position on issues as they arise.

c. System Integration

Support the SFMTA during planned systems integration reviews to ensure that the vehicle and subsystems perform according to the SFMTA's requirements and expectations, including addressing interface issues with concurrent projects, such as end-of-life technology refresh projects, and the Train Control Upgrade project.

d. First Article Inspection

Coordinate, attend and oversee First Article Inspections (FAI) for the entire vehicle, including subsystems, establishing a baseline upon which the production units will be based, and changes in configuration will be assessed.

e. Issue Resolution

Conduct research into peer agencies, best practices, required standards, and federal, state and local requirements to provide advice and counsel with regards to issues that may arise. Reports or presentations shall be provided as requested by the SFMTA.

4. Task 4: Quality Assurance (QA) Oversight

The Consultant will provide QA oversight services to ensure that quality material is used, good workmanship is performed, and work is conducted in accordance with all plans and contract documents, as well as federal, state and local requirements. Activities and deliverables may include:

a. QA Program Oversight

Review the applicable QA programs to assure that the contractor's QA organization follows contractually required processes for controlling the quality of the design, tooling calibration, receiving inspection, corrective actions, and the manufacturing process.

b. QA Production Oversight

Conduct checks, as necessary, to assure that quality records are maintained throughout the manufacturing process at both supplier and subcontractor facilities. Assess quality trends and review with SFMTA staff and the contractor to determine any corrective actions.

c. QA Representative

Provide a Quality Assurance Representative (QAR) to provide daily (or weekly) written inspection reports as required by the SFMTA. The QAR will use SFMTA-approved procedures to note any deficiencies and corrective actions required.

d. QA Change Management Oversight

Review the contractor's change control, configuration management, and document management systems to verify that they are capable of complying with the contract provisions and are able to monitor changes from the baseline specification.

e. Receiving Inspection

Provide incoming or receiving inspection at the SFMTA delivery location to determine whether vehicles or equipment have been damaged in transport or at any other time.

5. Task 5: Test Program Oversight

The Consultant shall provide "test program oversight" services to ensure that the prototype bus and rail vehicles, production vehicles, and rehabilitated bus and rail vehicles perform according to the vehicle contract requirements and technical specifications, including all federal, state and local requirements. Activities and deliverables may include:

a. Test Documentation Review

Review and recommend for acceptance the test and evaluation plans and procedures for all materials, components, subsystems, and completed work requiring testing under the Specifications.

b. Test Witnessing

Witness design, qualification, acceptance and burn-in tests, as required, including tests at contractor's or its subcontractors' facilities, the SFMTA site, or third party location.

c. Vehicle Acceptance

Support the SFMTA in acceptance inspection and testing efforts. Once a vehicle or equipment has been delivered to SFMTA but before it is accepted, Consultant shall perform a final audit to verify that the necessary documentation (e.g., weight certificates, Car History Book) is provided with the vehicles.

d. Operational Testing

Support operational testing to confirm compatibility with the SFMTA's existing system, facilities, and equipment; assist with operator orientation.

6. Task 6: Commissioning and Start-up Activities

The Consultant shall support commissioning and start-up activities prior to the start of revenue service for the new vehicle or equipment. Activities and deliverables may include:

- a.** Review and comment on all support services submittals, including maintenance manuals, parts and operations manuals, training programs, and safety program plans.
- b.** Verify delivery and configuration of as-built drawings and associated documentation.
- c.** Support training program, including testing and acceptance of the training simulator.
- d.** Support safety certification of the advanced train control systems, the new rail fleet, and other rail systems in accordance with CPUC General Order 164-D, develop checklists, conduct necessary verifications, obtain sign-off of responsible parties, and prepare mitigation plans, if necessary.
- e.** Support revenue readiness activities, including maintenance shop readiness, and verification that the vehicle design will meet its operational requirements for SFMTA routes, including range, gradeability and environmental issues.
- f.** Support coordination activities with interrelated projects, such as the Train Control Upgrade project.

7. Task 7: Post-Delivery Support

Consultant shall assist the SFMTA in effectively developing and administering a technical support program as required. This program will cover all post-delivery support requirements including warranty administration, manual updates and field modification management. Activities and deliverables may include:

- a.** Ensuring that all training, spare parts, special tools, special test equipment, maintenance and operation manuals, and other deliverables are properly provided in accordance with the requirements of the applicable procurement contract.
- b.** Support the oversight and tracking of all field modification work, including review of documentation, verification of configuration management, QA oversight of re-work, re-testing, and spare parts reconfiguration.
- c.** Monitor the reliability program and work with the SFMTA and the contractor to assure compliance of the fleet with reliability requirements.
- d.** Assist in the set-up, execution, administration, and monitoring of the warranty program, including identification and resolution of fleet defects.

- e. Ensure that the preventive maintenance process and operations and maintenance activities are clearly defined and complete.

8. Task 8: Transit Management Support

Consultant shall provide other services as-needed by the SFMTA's Transit Division to support the fleet engineering maintenance and operation of the transit vehicles. Activities may include:

- a. Review plans, checklists and procedures related to vehicle preventive maintenance.
- b. Perform preventive maintenance and inspection audits and reporting.
- c. Evaluate and assist with the implementation of modern and cost-effective maintenance methods for vehicles.
- d. Provide data analysis to identify spikes and shortfalls in vehicle performance.
- e. Review and update operating procedures as necessary.
- f. Assist in the development or updating of operating practices and procedures.
- g. Perform technical evaluations and assist with the implementation of emerging technologies to improve operations and service delivery.
- h. Perform strategic long-term planning of key operations issues.
- i. Provide Transit Operations support, including scheduling analyses and service improvement analyses.
- j. Support Overhaul Programs.
- k. Support alternate equals.
- l. Support parts identification and negotiations.
- m. Support specific failure investigations.
- n. Support writing bulletins.
- o. Support customer experience improvement.
- p. Support training.
- q. Support Budget Planning and Cost Estimating.
- r. Support regulatory compliance.
- s. Support Vehicle Engineering.
- t. Support historic fleet.
- u. Provide Warranty supports for vehicles after acceptance.

- v. Conduct vehicle performance matrices.
- w. Support Non-Revenue Vehicle fleet plan and procurement.

9. Task 9: Maintenance of Way

This task is intended to support a broad range of specialized services related to planning and programming, specialized analytical studies, construction support and management, and start-up and operations planning. Examples of efforts that would be provided under this task include performing field surveys, assisting in the preparation of procurement contracts, preparing QA oversight, performing audits, performing ultrasonic rail testing, and administering training. Additionally, technical services related to the delivery of technology system projects led by the Maintenance of Way Division would be included in this task.

The Consultant shall provide a broad range of specialized services and staff to complete Task Orders issued by the SFMTA, either by direct assignment of its own personnel or through Subconsultants, including, but not limited to, initial planning and programming, specialized analytical studies, and start-up and operations planning. Task Orders may include:

- a. Provide support to SFMTA's Maintenance-of-Way Engineering Unit, which includes planning, design review, and field investigation support of transit system improvements, including the traction power system, transit signaling system, and communication system to improve safety and service reliability. The scope of work may also include:
 - i. Prepare design criteria to include and meet all applicable codes and standards.
 - ii. Prepare alternate analyses and recommend overall design approaches.
 - iii. Perform site investigations and functional analyses.
 - iv. Review design packages (plans and specifications)
 - v. Provide technical administrative support (e.g., file drawings, meeting minutes, document control).
 - vi. Incorporate SFMTA's Quality Assurance (QA) program requirements into the design and construction packages.
 - vii. Identify and develop special testing requirements, system cut-over plans, and start-up plans.
- b. Assist in the preparation of procurement contracts for transit infrastructure components and systems; operating equipment; and long-lead items. The task shall include product research, specifying products, and performing alternative analyses.
- c. Perform field surveys using licensed surveyors.
- d. Prepare project management plans in accordance with FTA requirements.

- e. Prepare QA oversight, audits, plans, training and assistance in accordance with FTA requirements.
- f. Predict, analyze, prevent and mitigate noise and vibration from transit operations, and equipment, and design and monitor mitigation measures.
- g. Perform testing as required by the City, including metallurgical, annual ultrasonic rail testing, and other testing requested by SFMTA.
- h. Perform preliminary and system hazard analyses, failure modes and effects analyses, single-point-of-failure analyses, hazard level classification, and safety certification of systems.
- i. Perform systems analyses, including communications systems analyses, systems integration, safety processes, configuration management, and related work.
- j. Perform start-up and commissioning of systems, including integration and pre-revenue “dry-run” testing, developing test procedures, instrumenting vehicles and equipment, conducting tests, and providing test reports and analyses.
- k. Provide safety certification oversight and required documentation to obtain System Safety and Security Program per CPUC General Order (GO) 164-D. (General Order 164-D requires transit agencies who are building and operating rail fixed guideway systems to establish a System Safety and Security Program.) The scope of work may include:
 - i. Provide safety standards
 - ii. Review the system safety program
 - iii. Review the contractor’s hazard analyses
 - iv. Develop Safety and Security Certification Plans
 - v. Lead Safety & Security Certification Review Committee SSCRC (ongoing)
 - vi. Maintain the Audit Conformance Checklist (ongoing)
 - vii. Review the safety requirements
 - viii. Audit implementation of safety requirements
 - ix. Audit resolution of hazards (ongoing)

10.Task 10: Transit Systems

Under the Task, the Consultant will assist with the procurement of technical services related to the operation of transit-supportive technology systems and system modifications at the application level or higher (e.g., ATCS, fare collection, communications). Examples of efforts that would fall within this task include writing documentation, drafting SOPs, user interface

configuration, and defining requirements for new feature requests from system vendors. Tasks may include:

a. Concept of Operations / Lifecycle Planning

The Consultant shall advise the SFMTA on key issues relating to the most effective means to employ technology systems to assist in operations. This may include developing a procurement and lifecycle strategy.

b. Procurement Support

The Consultant shall conduct industry outreach and advise the SFMTA on the available firms and products for individual procurement efforts. This shall include supporting the RFI, RFQ, and RFP processes, in such ways as:

- i. Maintaining industry contacts and communicating with potential vendors on the SFMTA's behalf.
- ii. Facilitating, organizing and staffing RFI or RFP pre-submission meetings.
- iii. Facilitating and organizing vendor presentations.
- iv. Advising the SFMTA on the nature of each vendor's offering.
- v. Drafting language for inclusion in the RFI, RFQ, RFP and sample contract documents.

c. Design Support

In the design phase of a technology procurement project, the Consultant shall review system vendor's design documents and advise the SFMTA and the vendor on potential integration issues, discontinuity between the system design and the concept of operations, or potential design deficiencies. The Consultant shall suggest design solutions for these issues in the design phase so they may correct designs at a minimum of delay and expense to a project.

d. Quality Control

During the production/delivery phase of a technology procurement project, the Consultant shall support the SFMTA's quality control efforts to ensure the equipment being delivered is free from manufacturing or design defects.

e. Hardware Integration

During the design and engineering phases, the Consultant shall support the integration of the new system with the other systems present on the SFMTA's vehicles or in the SFMTA's facilities. The Consultant shall be ultimately responsible to the SFMTA for ensuring that the new system is fully integrated with existing systems to the specifications detailed in the Task Order.

During the production/delivery phase, the Consultant shall support the integration of the new system to the vendor's specifications and any additional specifications that other SFMTA consultants have developed. This support may include activities such as:

- i. Developing an installation/deployment plan compatible with daily SFMTA operations and maintenance.
- ii. Overseeing the execution of the installation plan in coordination with the SFMTA Project Manager and operations managers
- iii. Training any SFMTA staff as needed to support the installation

f. Innovative Solutions

Throughout the system lifecycle, the Consultant shall support SFMTA operations by designing innovative solutions that require integration between one or more existing systems on board vehicles, on the wayside, in the street environment, or in the control center. This support would not necessarily be connected to a new system procurement; rather, the SFMTA would be seeking advice on how to accomplish the SFMTA's stated goals with existing equipment. The Consultant shall suggest modifications to that equipment, or additional purchases to support the SFMTA's goals.

g. List of Systems

Potential systems requiring the support of as-needed services include:

- i. Farebox Collection System
- ii. Train Control Systems
- iii. Surface Rail Signaling Systems
- iv. Traffic Signals and Transit Signal Priority (TSP) systems
- v. Customer Information System
- vi. On-Board Vehicle Signs and Announcement Systems
- vii. Platform Signs and Announcement Systems
- viii. Vehicle Telematics
- ix. Charging Infrastructure Software Solution
- x. Automatic Passenger Counter system
- xi. Video Surveillance systems
- xii. Transit-Only Lane Enforcement (TOLE) System

- xiii. Collision Avoidance System
- xiv. DriveCam and SmartDrive systems (used for safety incident detection)
- xv. Autonomous Vehicle Technology

11.Task 11: Other Services

Consultant shall provide other services as-needed by Transit Division for the implementation and completion of the Project. Tasks may include, but are not limited to:

- a. Advise the SFMTA on key issues regarding vehicle and equipment procurement, including compliance, systems integration and deviation from Contract requirements.
- b. Support project integration into existing systems and emerging programs; these may include maintenance management systems, project management systems, asset management tracking, or other agency-wide systems.
- c. Develop integration plans to ensure that the new vehicles or equipment operate as intended with the existing infrastructure, including track and overhead, substations, wheel rail interface, charging infrastructure and maintenance facilities.
- d. Support tasks for long-term fleet planning and replacement, including options, timing and procurement strategies required to maintain the fleet.
- e. Support with data collection efforts, such as ridership counts, traffic counts, and pedestrian counts.
- f. Support the Agency's Communications & Marketing Division with graphics for maps, posters, reports, one-pagers, marketing material, and other documents.
- g. Support data analyses pertaining to service planning activities, including before/after comparisons and trend analysis.
- h. Support the Agency's Communications & Marketing Division with outreach efforts, including facilitating meetings and providing logistical help and ambassador resources.
- i. Produce or assist with peer reviews and best practice reviews for activities such as off-wire operation, fallback scheduling, and emergency planning.
- j. Assist with asset management of transit equipment.
- k. Prepare fleet retirement plan to determine the best methodology, cost and schedule to retire vehicles as they are replaced and taken out of service.
- l. Conduct data analyses to identify spikes and shortfalls in vehicle performance.

- m.** Produce or assist with the production of operational scenario models. Models may take into account available ridership, grade, or route data.
- n.** Provide Maintenance Equipment Support with new or existing equipment.

**Appendix B
Calculation of Charges**

Table 1: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
Jacobs Engineering Group Inc.	Project Manager	Takayoshi Ohki	\$107.53	\$244.00	\$236.58
Jacobs Engineering Group Inc.	Task Manager / Systems Safety	Sahith Moturu	\$81.54	\$185.03	\$179.40
Jacobs Engineering Group Inc.	Task Manager	Jane Huang	\$84.87	\$192.58	\$186.73
Jacobs Engineering Group Inc.	Vehicle Engineer	John Lim	\$83.28	\$188.98	\$183.23
Jacobs Engineering Group Inc.	Vehicle Engineer	Mehrdad Samani	\$92.23	\$209.29	\$202.92
Jacobs Engineering Group Inc.	Vehicle Engineer	John Gregory	\$114.30	\$259.37	\$251.48
Jacobs Engineering Group Inc.	Deputy PM / Task Manager / Integration Engineer	Jin Jiang	\$117.90	\$267.54	\$259.40
Jacobs Engineering Group Inc.	Integration Engineer	Michael Barragan	\$94.55	\$214.55	\$208.03
Jacobs Engineering Group Inc.	Integration Engineer	Derrick Allen	\$81.91	\$185.87	\$180.22
Jacobs Engineering Group Inc.	Quality Manager / Commissioning & Start-up	Lee Khumalo	\$124.09	\$281.58	\$273.02
Jacobs Engineering Group Inc.	Quality Manager	Ching Luong	\$84.40	\$191.52	\$185.69
Jacobs Engineering Group Inc.	Quality Manager	Bert Potthoff	\$70.87	\$160.82	\$155.93
Jacobs Engineering Group Inc.	Quality Manager	Carrie Cosby	\$70.28	\$159.48	\$154.63
Jacobs Engineering Group Inc.	Planner	Sibtay Haider	\$78.38	\$177.86	\$172.45
Jacobs Engineering Group Inc.	Planner	Rick Newton	\$68.24	\$154.85	\$150.14
Jacobs Engineering Group Inc.	Planner	Ryan Zatlin	\$72.23	\$163.90	\$158.92
Jacobs Engineering Group Inc.	Test Witnessing / Field Inspector **	Steve Swanson	\$69.94	\$158.71	\$153.88
Jacobs Engineering Group Inc.	Principal In Charge	Andrew Gensch	\$127.43	\$289.16	\$280.37
Jacobs Engineering Group Inc.	Systems Safety	Abhishek Gumaj	\$72.40	\$164.29	\$159.29
Jacobs Engineering Group Inc.	Battery Electric Bus & Charging Infrastructure	Ahmed Mumeni	\$61.50	\$139.55	\$135.31
Jacobs Engineering Group Inc.	Post Delivery Support	Ajay Shirolkar	\$58.34	\$132.38	\$128.36
Jacobs Engineering Group Inc.	Asset Management	Amy Kaufman	\$103.99	\$235.97	\$228.80
Jacobs Engineering Group Inc.	Lighting	Andreas Loesing	\$93.63	\$212.46	\$206.00
Jacobs Engineering Group Inc.	Train Control/ Signaling System	Anip Parikh	\$134.42	\$305.02	\$295.75

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
Jacobs Engineering Group Inc.	Overhead Catenary System	Anthony Zeloyle	\$152.08	\$345.10	\$334.60
Jacobs Engineering Group Inc.	Test Witnessing	Aviv Dimand	\$52.50	\$119.13	\$115.51
Jacobs Engineering Group Inc.	Engineering Lead	Ben Titus	\$99.38	\$225.51	\$218.65
Jacobs Engineering Group Inc.	Fare Collection / Cost Estimation	Blythe Nishi	\$54.99	\$124.78	\$120.99
Jacobs Engineering Group Inc.	Communications	Bob Rosa	\$136.61	\$309.99	\$300.57
Jacobs Engineering Group Inc.	Intelligent Traffic System	Brian Burkhard	\$150.94	\$342.51	\$332.09
Jacobs Engineering Group Inc.	Fare Collection	Brin Owen	\$128.44	\$291.45	\$282.59
Jacobs Engineering Group Inc.	Project Coordination Manager / Buy America	Camren Cordell	\$69.09	\$156.78	\$152.01
Jacobs Engineering Group Inc.	Document Management System Admin	Cara Baker	\$97.88	\$222.11	\$215.35
Jacobs Engineering Group Inc.	Scheduler / Buy America	Casey Skinner	\$89.57	\$203.25	\$197.07
Jacobs Engineering Group Inc.	Communications	Chris Costello	\$137.27	\$311.49	\$302.02
Jacobs Engineering Group Inc.	Bus Specialist	Dan Sheridan	\$92.63	\$210.19	\$203.80
Jacobs Engineering Group Inc.	Passenger Information System	Daniel Meng	\$88.70	\$201.28	\$195.16
Jacobs Engineering Group Inc.	Transit Technology, Wayside and Planning Manager	David Dick	\$124.24	\$281.92	\$273.35
Jacobs Engineering Group Inc.	Bus Specialist	David Nguyen	\$47.36	\$107.47	\$104.20
Jacobs Engineering Group Inc.	Fleet Planning / Fleet Retirement	David Solow	\$148.70	\$337.43	\$327.17
Jacobs Engineering Group Inc.	Track	Doug Capuder	\$84.40	\$191.52	\$185.69
Jacobs Engineering Group Inc.	Heating, Ventilation, and Air Condition	Douglas Eaton	\$96.91	\$219.91	\$213.22
Jacobs Engineering Group Inc.	Track	Emily Surdek	\$35.03	\$79.49	\$77.07
Jacobs Engineering Group Inc.	Senior Advisor	Gavin Fraser	\$170.58	\$387.08	\$375.31
Jacobs Engineering Group Inc.	Reliability, Maintainability, Safety and Human Factors	Gerald Hendley	\$76.19	\$172.89	\$167.63
Jacobs Engineering Group Inc.	Battery Electric Bus & Charging Infrastructure	Gideon Weisman	\$70.47	\$159.91	\$155.05
Jacobs Engineering Group Inc.	Contract Management	Glenn Fothergill	\$115.00	\$260.96	\$253.02
Jacobs Engineering Group Inc.	Senior Advisor	Guido Vogel	\$118.85	\$269.69	\$261.49
Jacobs Engineering Group Inc.	Rail Signaling	Hao Zhang	\$108.70	\$246.66	\$239.16

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
Jacobs Engineering Group Inc.	Battery Electric Bus & Charging Infrastructure	Jason House	\$103.67	\$235.25	\$228.09
Jacobs Engineering Group Inc.	Traction Power	John Barricella	\$105.57	\$239.56	\$232.27
Jacobs Engineering Group Inc.	Transit Signal Priority	John Kerenyi	\$117.65	\$266.97	\$258.85
Jacobs Engineering Group Inc.	Reliability, Maintainability, Safety and Human Factors	John Simon	\$115.51	\$262.11	\$254.14
Jacobs Engineering Group Inc.	National Transit Database Efforts	Kathleen Donodeo	\$103.99	\$235.97	\$228.80
Jacobs Engineering Group Inc.	Battery Electric Bus & Charging Infrastructure	Krista Robinson	\$114.44	\$259.68	\$251.79
Jacobs Engineering Group Inc.	Automatic Passenger Counter / Train Network Maintenance Diagnostic System	Ky Fu	\$108.56	\$246.34	\$238.85
Jacobs Engineering Group Inc.	Coupler, Doors & Steps	Lew Scott	\$114.06	\$258.82	\$250.95
Jacobs Engineering Group Inc.	Senior Advisor	Marc De Schamp	\$127.14	\$288.50	\$279.73
Jacobs Engineering Group Inc.	Trucks	Marcel Silva	\$75.62	\$171.59	\$166.38
Jacobs Engineering Group Inc.	Battery Electric Bus & Charging Infrastructure	Michael Grant	\$52.68	\$119.54	\$115.91
Jacobs Engineering Group Inc.	Track	Michael Loehr	\$162.57	\$368.90	\$357.68
Jacobs Engineering Group Inc.	Traction Power	Michael McGrath	\$143.61	\$325.88	\$315.97
Jacobs Engineering Group Inc.	Automatic Train Control System / Communication Based Train Control	Neil Glennie	\$96.29	\$218.50	\$211.85
Jacobs Engineering Group Inc.	Propulsion & Electrical	Nigel Jones	\$106.33	\$241.28	\$233.94
Jacobs Engineering Group Inc.	Traction Power	Paul Furman	\$57.42	\$130.30	\$126.33
Jacobs Engineering Group Inc.	Integration Engineer	Reece Anderson	\$67.01	\$152.06	\$147.43
Jacobs Engineering Group Inc.	Bus Specialist	Ryan Saunders	\$70.54	\$160.07	\$155.20
Jacobs Engineering Group Inc.	Commissioning & Start-Up	Ryan Stewart	\$69.28	\$157.21	\$152.43
Jacobs Engineering Group Inc.	Reliability, Maintainability, Safety and Human Factors	Ryo Nagai	\$58.17	\$132.00	\$127.98
Jacobs Engineering Group Inc.	Train Control	Stephane Bois	\$127.35	\$288.98	\$280.19
Jacobs Engineering Group Inc.	Battery Electric Bus & Charging Infrastructure	Susan Bartlett	\$128.75	\$292.16	\$283.27
Jacobs Engineering Group Inc.	Customer Information Systems	Teja Sukthankar	\$91.71	\$208.11	\$201.78

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
Jacobs Engineering Group Inc.	Transit Signal Priority	Terry Klim	\$128.13	\$290.75	\$281.91
Jacobs Engineering Group Inc.	Communications	Thomas Trudel	\$111.29	\$252.54	\$244.86
Jacobs Engineering Group Inc.	National Transit Database Efforts	Victor Rivas	\$100.00	\$226.92	\$220.02
Jacobs Engineering Group Inc.	Battery Electric Bus & Charging Infrastructure	Zoe O'Malley	\$59.54	\$135.11	\$131.00
Omni Strategy	Vehicle Engineer - Propulsion & Electrical	Jon Mullin	\$116.04	\$176.74	\$176.74
Omni Strategy	Vehicle Engineer - Brakes	Andy Long	\$128.79	\$196.16	\$196.16
Omni Strategy	Vehicle Engineer - Brakes	Andrew Bowie	\$76.81	\$116.99	\$116.99
Praedico	Asset Management	Lewis Hillman	\$95.00	\$199.50	\$199.50
Praedico	Asset Management	Marc De Wolf	\$85.00	\$178.50	\$178.50
Raul V. Bravo + Associates, Inc.	Signal Systems	Peter Falce	\$86.91	\$218.20	\$218.20
RWDI USA LLC	Vibration & Acoustics / Technical Director	Darek L. Watry	\$88.40	\$259.11	\$259.11
The Wathen Group	Reliability, Maintainability, Safety and Human Factors	James Gallagher	\$250.00	\$430.00	\$437.50
The Wathen Group	Reliability, Maintainability, Safety and Human Factors	James Brown	\$220.00	\$378.40	\$385.00
Virginkar & Associates, Inc.	Buy America Auditor	Christopher Dyer	\$66.95	\$153.13	\$153.13
Virginkar & Associates, Inc.	Cost Estimation	Patrick Tully	\$108.15	\$247.37	\$247.37
Virginkar & Associates, Inc.	Vehicle Engineer	Ajay Nayyar	\$97.85	\$223.81	\$223.81
Virginkar & Associates, Inc.	Post Delivery Support	Jim Zehm	\$88.49	\$202.40	\$202.40
Virginkar & Associates, Inc.	Field Inspector	Gary Guevin	\$68.14	\$155.86	\$155.86
Virginkar & Associates, Inc.	Field Inspector	Bryan Reese	\$61.92	\$141.63	\$141.63
3Vi, Inc.	Battery Electric Bus & Charging Infrastructure	Zara Younossi	\$119.92	\$288.02	\$288.02
3Vi, Inc.	Battery Electric Bus & Charging Infrastructure	John Palacios	\$94.25	\$226.37	\$226.37

*Office billing Rate = Direct Hourly Rate x Office Multiplier Listed in Table 2

**Field billing Rate = Direct Hourly Rate x Field Multiplier Listed in Table 2

Table 2: Schedule of Overhead Rates for Contractor and all Subcontractors

Company	Office	Field	MULTIPLIERS	
			OFFICE	FIELD
Jacobs Engineering Group Inc.	126.92%	120.02%	2.2692	2.2002
Omni Strategy	52.31%	52.31%	1.5231	1.5231
Praedico	110.00%	110.00%	2.1	2.1
Raul V. Bravo + Associates, Inc.	151.06%	151.06%	2.5106	2.5106
RWDI USA LLC	193.11%	193.11%	2.9311	2.9311
The Wathen Group	72.00%	75.00%	1.72	1.75
Virginkar & Associates, Inc.	128.73%	128.73%	2.2873	2.2873
3Vi, Inc.	140.18%	140.18%	2.4018	2.4018

Appendix C

As-Needed Specialized Engineering and Other Related Consulting Services
Contract No. SFMTA-2026-20-FTA
SBE/DBE Goal: 20%

SFMTA Transit Division

TASK ORDER REQUEST FORM

Task Title: _____ Date Initiated: _____	
Type of Request:	
<input type="checkbox"/> New Task Order- No. <u>XX</u>	
<input type="checkbox"/> Modification No. ____ (attach approved original and all modifications to date)	
Total Amount Being Requested:	<u>\$ x,xxx.xx</u>
Total approved task to date (including all mods.):	<u>\$ x,xxx.xx</u>
Total task amount including this request:	<u>\$ x,xxx.xx</u>
Estimated Task Start Date: _____	Estimated Modification Start Date: _____
Estimated Completion Date: _____	
Funding Source: _____	Proposed Task SBE/DBE Goal: <u>xxx.xx</u> %
Account: _____	Fund: _____
Dept: _____	Authority: _____
Project: _____	Activity: _____
Work to be Performed:	
[Detailed description of work to be performed. Can refer to attachments to provide additional detail and information]	

[C&P Analyst Initials]

Page 1 of 1

Task Order No. [X]

Appendix C

As-Needed Specialized Engineering and Other Related Consulting Services
 Contract No. SFMTA-2026-20-FTA
 SBE/DBE Goal: 20%

SFMTA Transit Division

NAME	HOURS	LOADED RATE	TOTALS
SubTotal Labor/Services			
Profit [Enter NTE% from Contract] [Enter as a lump sum]			
Subcontractor Mark Up [Enter NTE% from Contract] [Enter as a lump sum, remove line if not applicable]			
Other Direct Costs (ODCs) See Contractor Proposal for a detailed description of all out-of-pocket expenses			
Grand Total This Task:			\$000,000
Notes:			
Concurred by Contractor: [Enter Contractor PM Name]			
Signature:		Date:	
APPROVALS [This Approvals Section should be modified to meet the Division's administrative requirements]			
Requested by:	_____	Date _____	
	Name, Title		
Approved by:	_____	Date _____	
	Name, Contract/ Project Manager		
Reviewed by:	_____ (N/A – See attached CCO approval memo)	Date _____	
	Alaric Degrafinried, Director of Compliance		
Reviewed by:	_____	Date _____	
	Julia M.C. Friedlander, Director of Contracts & Procurement		
Approved by:	_____	Date _____	
	Division Director, Title		

[C&P Analyst Initials]

Appendix D

FTA REQUIREMENTS FOR PERSONAL/PROFESSIONAL SERVICES CONTRACTS

I. DEFINITIONS

- A. Approved Project Budget** means the most recent statement, approved by the 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 FTA.
- C. Cooperative Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which 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 FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which 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 FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each 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 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 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 FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and 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 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 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 an 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 Request for Proposal Appendix D, Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

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. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

A. Contractor certifies that it:

1. Does not have any 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; and
2. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

B. Flow-Down. Contractor is required to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

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 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 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 the FTA Chief Counsel and 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 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 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 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. CIVIL RIGHTS

- A. Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:
- 1. Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants

are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 3. **Disabilities** – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

IX. NONDISCRIMINATION ON THE BASIS OF DISABILITY

The Contractor agrees to comply with the following federal prohibitions against discrimination based on disability:

- A. Federal laws, including:
1. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
 2. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq., Titles I, II, and III, which requires that accessible facilities and services be made available to individuals with disabilities;
 3. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151, et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 4. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 5. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- B. Federal regulations and guidance, including:
1. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
 2. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;

3. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 49 CFR Part 38;
4. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 CFR Part 39;
5. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
6. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;
7. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
8. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR Part 64, subpart F;
9. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194;
10. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609;
11. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
12. Other applicable federal civil rights and nondiscrimination regulations and guidance.

X. 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.

XI. PATENT RIGHTS (*applicable to contracts for experimental, research, or development projects financed by FTA*)

A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

- B. 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), the City and Contractor agree to take the necessary actions to provide, through 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.
- C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

- 3. FTA Intention.** When FTA awards Federal assistance for an experimental, research or developmental work, it is 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 FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either 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 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 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 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 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.

XIII. CONTRACT WORK HOURS AND SAFETY STANDARDS *(applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work)*

- A. Overtime requirements** – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar Day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- C. Withholding for unpaid wages and liquidated damages** – The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- D. Subcontracts** – The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

XIV. 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.

XV. SEISMIC SAFETY REQUIREMENTS

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and Contractor will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract, including work performed by a Subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

XVI. 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 to 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 FTA.

XVII. 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 to 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 FTA.

XVIII. 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 FTA.

XIX. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 CFR Part 655.

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

See Section 8.1 of Agreement Terms and Conditions.

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

See Section 8.2 of Agreement Terms and Conditions.

XXII. 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 FTA-funded projects are produced in the United States, unless a waiver has been granted by 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.

XXIII. DOMESTIC PREFERENCES FOR PROCUREMENTS

- A. Contractor should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- B. For purposes of this section
 - 1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

XXIV. 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.

XXV. 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 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.

XXVI. 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.

XXVII. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS *(applies to contracts for rolling stock)*

To the extent applicable, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(l) and FTA implementing regulations at 49 CFR Part 663, and to submit the following certifications:

- A. Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.
- B. Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.
- C. Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XXVIII. 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 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 FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 49 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 FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XXIX. 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.

XXX. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS *(applicable to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator)*

- A. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:
 - 1. **General Transit Employee Protective Requirements** – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient’s Project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. §

5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities –

If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has **determined** or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL’s letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas –

If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

B. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

XXXI. NATIONAL ITS ARCHITECTURE POLICY (*Applicable to contracts for ITS projects*)

If providing Intelligent Transportation Systems (ITS) property or services, Contactor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

XXXII. TEXTING WHILE DRIVING; DISTRACTED DRIVING

Consistent with Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the Project.

XXXIII. 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.

XXXIV. DISPUTE RESOLUTION PROCEDURE

- A. 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. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Contract Administrator a written request for administrative review and documentation of the Contractor’s claim(s). Upon such request, the Contract Administrator shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. 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.
- B. 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.**

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

Certification Regarding Lobbying is required and was submitted by the Contractor with its Proposal. (See Appendix E of RFP).

XXXVI. PROMPT PAYMENT

- A.** In accordance with SFMTA’s SBE 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 Director 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 provide City with a declaration under penalty of

perjury that it has promptly paid such subcontractors for the work they have performed. Failure to provide such evidence shall be cause for City to suspend 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.

XXXVII. 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.

XXXVIII. INCORPORATION OF 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, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all 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 FTA terms and conditions.

APPENDIX E

Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program for Professional and Technical Services

Requirements for Architects, Engineers, Planners, Environmental Scientists and Other Professional Services Contracts

Please refer to Appendix A of the RFP

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

Agreement between the City and County of San Francisco and

STV Incorporated

**For As-Needed Specialized Vehicle Engineering and Other Related
Consulting Services**

**Contract No.
SFMTA-2026-21-FTA**

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

**Agreement between the City and County of San Francisco and
STV Incorporated
Contract No. SFMTA-2026-21-FTA**

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

Recitals

A. The SFMTA seeks to procure As-Needed Specialized Vehicle Engineering and Other Related Consulting Services from Contractor.

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

C. Contractor was competitively selected pursuant to a Request for Proposals (RFP) entitled As-Needed Specialized Vehicle Engineering and Other Related Consulting Services issued through Sourcing Event ID 0000011122.

D. The Small Business Enterprise (SBE) participation goal established for this Agreement is 20%. Contractor has committed to 20% SBE participation under this Agreement.

E. Approval for the Agreement was obtained on July 7, 2025 from the Civil Service Commission under PSC number DHRPSC0005161 which authorizes the award of multiple agreements, the total value of which cannot exceed \$15,000,000 and the individual duration of which cannot exceed five years.

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 “Annual Rate Change” means the one change to the direct hourly labor rates and overhead rates permitted during each calendar year under the procedure described in Section

3.3.1 below. The Annual Rate Change will occur on March 1 of each year during contract performance.

1.3 “**Appendices**” means the appendices listed in Article 14 (Appendices) herein.

1.4 “**Artificial Intelligence**” or “**Artificial Intelligence Model**” means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

1.5 “**Artificial Intelligence System**” means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

1.6 “**Award**” means notification from the SFMTA to Contractor of acceptance of Contractor’s Proposal, subject to the execution and approval of a satisfactory Contract and bond to secure the performance of the Contract, and to such other conditions as may be specified or otherwise required by law

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

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

1.9 “**City Data**” means all data collected, used, maintained, processed, stored, and/or generated by or on behalf of City in connection with this Agreement. City Data includes, without limitation, Confidential Information and Deliverable Data.

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

1.11 “**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. Confidential Information includes, without limitation, City Data.

1.12 “**Contractor**” means STV Incorporated, 44 Montgomery Street, 21-108, San Francisco, CA 94104.

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

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

1.15 “**Deliverable Data**” means any data that is required to be delivered to City as a Deliverable, or as a part of a Deliverable, under this Agreement.

1.16 “Deliverables” means Contractor’s or its subcontractors’ 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.

1.17 “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.

1.18 “Effective Date” means the date the Director of Transportation executes the Contract.

1.19 “FTA” means the Federal Transit Administration.

1.20 “Generative Artificial Intelligence” means artificial intelligence that can generate derived synthetic content, such as text, images, video, and audio, that emulates the structure and characteristics of the artificial intelligence’s training data.

1.21 “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.

1.22 “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.

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

1.24 “Personal Identifiable Information (PII)” means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household. Personal information includes, but is not limited to, the following if it identifies, relates to, describes, is reasonably capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular individual or household as further defined in the California Consumer Privacy Act.

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

1.26 “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.

1.27 “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, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.28 “Small Business Enterprise” or “SBE” means a for-profit, small business concern with a three-year average gross revenue that do not exceed the thresholds set forth in 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 2) has received written confirmation from CCO that it meets the SFMTA’s program eligibility requirements.

1.29 “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 in 5 (five) years, unless earlier terminated as otherwise provided herein.

2.2 Option to Extend. The SFMTA has the option to renew the Agreement for a period of four additional years. The SFMTA may exercise this option at the Director of Transportation’s sole and absolute discretion by modifying this Agreement as provided in Section 11.5 (Modification of this Agreement). Extensions may be for the whole or partial period provided for above.

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 the 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. The 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 the 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 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 services.

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 \$5,000,000.00 (Five Million Dollars) for the initial contract term. This amount is based on City's estimated spend over the initial contract term. Should City's actual spend exceed its estimated spend for the initial term, City may in its sole discretion increase the contract NTE for the initial term. Should City exercise its option to extend the contract beyond the initial term, City may also elect to increase the NTE proportionally. 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 (Calculation of Charges) plus a fixed profit and, if applicable, subcontractor markup negotiated in accordance with Appendix B). 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. The rates shall not change except when approved in writing by the SFMTA as part of an Annual Rate Change. Any Annual Rate Change will occur on March 1 in each year of contract performance. To request an Annual Rate Change, Contractor must submit a written request no less than 30 days before the Annual Rate Change date. Requests submitted less than 30 days before the Annual Rate Change date will be denied, and no rate increases will be approved until the next year's Annual Rate Change date. The SFMTA will approve only requests for rate increases that are: (1) based on increases in the actual amount to be paid to Contractor's employees; and (2) less than or equal to the annual percentage change in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-Hayward area (CPI-U), using the most recent month published before the Annual Rate Change date. Any requests for escalation of direct hourly labor rates must include: (1) documentation of actual payroll increases; (2) evidence of the change in the CPI-U; and (3)

an updated Appendix B for the SFMTA's approval. The SFMTA will review all requests for an Annual Rate Change within 30 Days of receipt and notify Contractor of either an approval or denial. If approved, a new contract modification will be executed and the new rates will be effective as of the Annual Rate Change date, and in no event will the new rates be applied before the Annual Rate Change date.

(b) Overhead Rates

(i) The overhead rates in Appendix B shall be billed at that level until new overhead rates are requested and approved in writing as part of an Annual Rate Change. Any request to adjust the overhead billing rates will be supported by a copy of the most recent independent audit of overhead rates for the Contractor and for any Subcontractor for which the Contractor seeks to adjust the overhead billing rate. The new overhead billing rates will be effective as of the Annual Rate Change date. The Contractor's and subcontractors' overhead rates are subject to audit in compliance with Federal requirements.

(ii) The overhead rates in Appendix B, including any adjustment to such rates as provided for above, are subject to readjustment 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 Contractor that exceeds Contractor's or any subcontractor's actual rate, 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, and shall be no greater than 7% of the total cost of the 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). 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, including travel 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 in the form of a Task Order modification. 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 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 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 by the City 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 to 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 the 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) A copy of the receipts for all expenses invoiced
- (e) Description of the Services performed and/or goods delivered
- (f) PeopleSoft Supplier Name and ID
- (g) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced 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
- (h) Other direct costs
- (i) Subcontractor costs supported by invoice itemization in the same format as described here
- (j) Profit for current invoice period. 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 7% of the total Task Order value
- (k) Total mark-up for current invoice period for all subcontractor's work effort for that invoice period as an amount not to exceed 3% of subcontractor's total labor charges
- (l) Contract payment terms
- (m) Sales/use tax (if applicable)
- (n) Total costs

- (o) SFMTA Progress Payment Form (SFMTA Form No. 6): The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of the SFMTA Progress Payment Form. If the SFMTA Progress Payment 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 SFMTA Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until the Progress Payment Form is provided.

3.3.5 SBE Payment and Utilization Tracking System. SBE Participation Requirement applies to this Agreement. Contractor shall: (a) within three business days of the SFMTA's payment of any invoice to Contractor, pay SBE subcontractors; and (b) within 10 business days of the SFMTA's payment of any invoice to Contractor, confirm its payment to subcontractors using the B2GNow System (<https://sfmta.diversitycompliance.com/>) unless instructed otherwise by CMD or CCO. Failure to submit all required payment information to the B2GNow System with each payment request may result in the withholding of 20% of subsequent payments due.

3.3.6 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. The incorporated terms may be found in Appendix D (Grant Terms). 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) **Subgrantees.** Contractor shall insert each Grant Term into each lower-tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor, or service provider.

3.3.7 Payment Terms

(a) **Payment Due Date.** Unless the SFMTA notifies Contractor that a dispute exists, Payment shall 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 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 Reserved. (Payment of Prevailing Wages)

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. 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 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 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) Task Order Scope of Work. The Task Order 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 forms, and Contractor Task Order proposal must be incorporated into the overhead rate (as approved in Appendix B). Separately 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). Contractor time spent managing or overseeing work performed by subcontractors will not be compensable.

(b) Presentations. In the performance of assigned tasks, Contractor, if requested by the 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. 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. 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, 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, 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. 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 Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the SFMTA relieve 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, Contractor shall within five business days of discovering the perceived extra work provide the SFMTA with either: (1) a written Contractor Request for Information under subsection 4.3.3 below; or (2) a Contractor Proposal to perform additional work under the Task Order, which contains all of the information required by subsection 4.3.4 below for a Contractor Task Order Proposal.

4.3.2 Task Order Request. The SFMTA will provide Contractor a Task Order request, using the form in Appendix C, 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 Form, 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 Task Order 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 fully burdened 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, labor to fill out required SBE forms, and administrative labor to manage subcontractors.

- (ii) Estimated reasonable out-of-pocket expenses;
- (iii) Proposed profit and mark-up, as follows:
 1. Proposed profit of Contractor's work effort as a fixed fee amount not to exceed 7% of Contractor's estimated direct hourly labor rates and overhead costs; and
 2. For work performed by all subcontractors, proposed total mark -up for Contractor on subcontractor's work effort as a fixed fee not to exceed 3% of subcontractor's total labor charges (does not include Other Direct Costs (ODCs)).

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 actual direct costs plus the applicable fixed overhead rates in Appendix B and negotiated profit subject not to exceed amounts indicated in Section 4.3.4(d)(iii).

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 Participation Goal. Upon completion of negotiations, Contractor shall provide Project Manager a memo describing the proposed SBE participation goal 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 an SBE, (3) the dollar value and percentage of work attributed with each firm, and (4) the overall calculated SBE participation goal for the Task Order. CCO will review the final negotiated Task Order scope and Contractor's SBE goal memo, approve or deny the goal, and issue a memo to file. SBE participation goal assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in the Agreement. Contractor must in good faith comply with the following:

- The individual SBE participation percentage set for each Task Order.
- The overall SBE participation requirement established for the entire Agreement (which includes the commitments Contractor made to each of its listed SBE subcontractors at time of proposal). See Section 10.6 (**Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program**) for the overall SBE subcontracting participation requirement established for this Agreement.

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.

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 work, in which case a new Task Order proposal, pricing negotiation, record of negotiations, and notice to proceed shall be required before SFMTA approves the modification to the Task Order.

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 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 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 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 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 Contractor to reassign any individual on 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 its 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. The SFMTA's execution of this Agreement constitutes its approval of the subcontractors listed below and/or in Appendices.

Capitol Government Contract Specialists
Countervail Engineering
Global Innovations
Lunora Consulting
Transit System Engineering, Inc.
Turner Engineering Corporation (Tenco)
Virginkar & Associates, Inc.
Wilson Ihrig Associates - RWDI

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, including its agents and employees will not represent or hold itself/themselves out to be employees of the City at any time. Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that 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 City and Contractor, or any of its agents or employees. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with Section 4.6. Should City determine that Contractor is not performing in accordance with the requirements of Section 4.6, 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 City believes that an action of Contractor warrants immediate remedial action by Contractor, 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 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 Section 4.6 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 City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless 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 Section 4.6.

4.7 Assignment. 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 accordance with City law and SFMTA policies, including but not limited to the Contract Approval and Delegation Policy. Any purported assignment made in violation of this provision shall be null and void.

4.8 Reserved. (Liquidated Damages)

4.9 Reserved. (Performance Bond)

4.10 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 and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. Policy must include Abuse and Molestation coverage.

(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) Technology Errors and Omissions Liability Insurance, with limits of \$1,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of Services defined in the Agreement and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City’s or third person’s computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

(f) Cyber and Privacy Liability Insurance with limits of not less than \$1,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(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, and its Officers, Agents, and Employees.

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

(c) The Commercial Automobile Liability Insurance policy include (i) Auto Pollution Additional Insured including as Additional Insured the City and County of San Francisco, and its Officers, Agents, and Employees; and (ii) Form MCS-90 for Motor Carrier

Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980.

5.1.3 Waiver of Subrogation. The Workers' Compensation Insurance policy(ies) shall include a waiver of subrogation in favor of the City for all work performed by Contractor, and 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 Liability Insurance Primary Insurance 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 the 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, be maintained 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, and 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, consultants, 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, defend, 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, defend, or hold harmless Contractor.

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S TOTAL LIABILITY UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ITS PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1 (CALCULATION OF TASK ORDER COMPENSATION 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 the 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 the 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 timely 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 cancelled 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 City 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 Payment Obligation. City's payment obligation under Section 8.1 (Termination for Convenience) 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
10.3.7	Working with Minors
10.3.8	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws
Article 13	Data and Security

(b) Contractor fails or refuses to perform the Services or 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 or from when Contractor otherwise becomes aware of the Event of Default. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, in addition to all other remedies available to the SFMTA, 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 arising from the Event of Default and/or in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall also 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 Section 8.4 (Rights and Duties upon Termination or Expiration), 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
3.3.6(b)	Grant Funded Contracts - Disallowance
3.4	Audit and Inspection of Records
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. Promptly upon expiration of this Agreement, or promptly upon receipt by Contractor of notice of termination of this Agreement, Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any Deliverables, 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 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 this 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/%20.

10.2 Governmental Conduct Related Contractual Obligations

10.2.1 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.

10.2.2 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.

10.2.3 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 12 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.

10.3 Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program

10.3.1 General. The SFMTA is committed to a Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise Program (DBE Program) for the participation of SBEs in federally funded contracting opportunities. In addition, Contractor must comply with all applicable federal regulations regarding SBE participation, as set out in Title 49,

Part 26 of the Code of Federal Regulations, with respect to SBEs performing work under this Agreement. More information on federal requirements can be found on the internet at: <http://www.fta.dot.gov/civilrights/12326.html>.

10.3.2 Compliance with SBE Program under SFMTA's DBE Program.

Contractor shall comply with the SBE provisions contained in Appendix E attached to this Agreement and incorporated by reference as though fully set forth, including, but not limited to, achieving and maintaining the SBE goal 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.

10.3.3 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.

10.3.4 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 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.

10.3.5 Health Care Accountability Ordinance. Labor and Employment Code Article 121 applies to this contract. Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Article 121, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.3.6 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.

10.3.7 Reserved. (Working with Minors)

10.3.8 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).

10.3.9 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 Sections 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.

10.3.10 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 Article 131.2.

10.4 Environmental Related Contractual Obligations

10.4.1 Reserved. (Packaged Water Prohibition)

10.4.2 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.

10.4.3 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.

10.4.4 Reserved. (Sugar-Sweetened Beverage Prohibition)

10.5 Reserved. (Slavery Era Disclosure)

10.6 Nonprofit Contractor Requirements

10.6.1 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.

10.6.2 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 \$1,000,000 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.

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: Emily Williams
Chief Transit Administration Officer
San Francisco Municipal Transportation Agency
1 South Van Ness, 7th Floor
San Francisco, CA 94103
Emily.Williams@sfmta.com

To Contractor: Ryan Harris
STV Incorporated
44 Montgomery Street, 21-108
San Francisco, CA 94104
Ryan.Harris@stvinc.com

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by email, 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 provide technical assistance to City when responding to reasonable accommodation requests from City employees respecting their use of the information content and technology (ICT) and/or Services provided under this Agreement.

11.2.3 Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 1201 et seq.), including the Web Content Accessibility Guidelines (WCAG) 2.1, Level AA, as specified in the Department of Justice's Title II Rule on the accessibility of web content and mobile applications. Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and the applicable Revised Section 508 Standards published by the U.S. Access Board (<https://www.access-board.gov/ict/>), as amended from time to time. Contractor shall ensure that all website and mobile application content provided under this Agreement fully conforms to the Department of Justice's Title II rules and the applicable Revised 508 Standard, 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 c 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 Contract Modification Form (CMD Form 8) along with the required supporting documentation to the CCO and obtain prior CCO approval when processing amendments, modifications or change orders that cumulatively increase the original contract amount by more than 20%, and then for all subsequent amendments, modifications or change orders that cumulatively increase the last CCO approved value by 20%.

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 arbitration. 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 the 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 all data given to Contractor by City in the performance of this Agreement (City Data or Data), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it 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.

11.15 No Third-Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons.

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/largevehicletestingstandards.

This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of 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 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 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

13.4.1 Use of City Data. Contractor agrees to hold City Data received from, or created or collected on behalf of, the 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 the 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 City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use, provided, however, that no City Data may be used by Contractor to train, modify or improve any Artificial Intelligence Systems or Models without City's prior written consent, which may be withheld or withdrawn at City's sole discretion. Nothing herein shall be construed to confer any license or right to 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 Use of Generative Artificial Intelligence in Deliverables. Contractor is prohibited from using Generative Artificial Intelligence in the development of Deliverables without City's prior written consent. Contractor represents and warrants to City that Deliverables will not be developed in a manner that conflicts with the City's rights in and to the Deliverables under Article 9, "Rights in Deliverables," or the City Data confidentiality and security requirements under Article 13, "Data and Security," of this Agreement.

13.4.3 Disposition of City Data. Except as otherwise provided for in this Agreement, upon City's request, termination or expiration of this Agreement, or the expiration of any required document retention period or litigation hold, 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 Days, securely dispose, clear, purge, and/or physically destroy, all copies of all City Data from its servers, files, hosted environments used in performance of this Agreement (including subcontractors' environments), work stations used to process or produce the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such secure disposal occurred within 5 Days of the disposal. 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 City Data and any derivative works of 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 twenty-four (24) hours of the discovery of such, but within twelve (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. 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.

13.7 Cybersecurity Risk Assessment. If a Cybersecurity Risk Assessment (“CRA”) was required before entering the Agreement, Contractor must complete an annual CRA to demonstrate that it has maintained the data privacy and information security program required for City contractors. If Contractor does not satisfactorily complete an annual CRA, the City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement or exercise any of its other remedies hereunder. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.

Article 14 Appendices

14.1 Appendices. The following Appendices (“Appendices” in the plural and each an “Appendix” in the singular) are hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Request Form
- D: FTA Requirements
- E: SBE Requirements

Article 15 MacBride and Signature

15.1 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.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Julie Kirschbaum Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary, to the Board</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ David F. Innes Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>STV Incorporated</p> <p><i>Liz Justison</i></p> <hr/> <p>Elizabeth Justison, PE, PMP President, Transportation West</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: 0000006319</p>
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Appendix A Scope of Work

A. General

The Consultant will provide as-needed specialized consulting services for various projects including the implementation and completion of the various transit vehicle and transit-related equipment procurements, maintenance of way projects, operational scenario model projects, asset management projects, service planning projects, various transit system projects, and rehabilitation and replacement projects. Services may include, design analysis, structural finite element analysis, engineering calculations, quality control inspection, feasibility study, administrative support, vehicle acceptance and testing, warranty administration, and cost analysis. The Consultant may be asked to perform other tasks related to the maintenance and operation of the transit vehicles and facilities, including assisting with fare collection, advanced train control system (ATCS), data communications, passenger information system, vehicle telematics systems, charging infrastructure software systems, and associated equipment.

The SFMTA will decide, in its sole discretion, which tasks to assign to the Consultant. The SFMTA may use qualified City staff to the extent possible to provide the technical engineering and quality control services. The services to be provided by the Consultant at the direction and to the satisfaction of the SFMTA may include the following:

B. Specific Work Tasks/Phases

1. Task 1: Project Management

The Consultant will support the SFMTA in the day-to-day execution of projects related to its transit vehicles, systems and services. Deliverables may include the following:

- a. Project Management Plan (PMP)**
Develop, implement, and maintain the PMP for transit-related projects, including all related and supporting management documents.
- b. Progress Reports**
Provide a series of reports that will summarize the progress of activities. The reports should also track any issues that may have occurred during the past reporting period, their status and resolution. Reports may include, but not be limited to: bi-weekly reports, monthly reports, QA reports, trip reports, Federal Transit Administration (FTA) Quarterly Reports, and other reports required by funding agencies.
- c. Meetings**
Schedule, attend, and document meetings, conference calls, or other review sessions.
- d. Documentation**
Prepare documentation (letters, reports, presentations).

e. Tracking Systems

Set up and maintain systems to track all project information to allow a project to be effectively managed. Items to be tracked include correspondence, actions, and change orders.

f. Stakeholder Outreach

Prepare presentations, reports, and responses to requests from stakeholders, such as the FTA.

2. Task 2: Contract Management

The Consultant will support the SFMTA Project Manager in managing the projects related to its transit vehicles, systems and services, including performing tasks such as:

a. Contract Management

Support oversight and enforcement of bus and rail vehicle procurement and rehabilitation contracts, including verification of requirements, change orders, deliverables, claims, and payments.

b. Schedule Management

Support development and maintenance of the overall project schedules for a variety of fleet-related projects, including oversight of the bus and rail vehicle procurement and rehabilitation schedule, and other transit-related technology projects such as advanced train control systems. In addition, support integration of the fleet-related project schedules into other agency-wide projects, such as the Train Control System upgrade.

c. FTA Compliance

Conduct reviews, as needed, to verify that the bus and rail vehicles and equipment conform to their respective contract requirements and technical specifications, as well as all federal, state and local requirements. Activities and deliverables may include:

- i. Pre-award and post-delivery Buy America audits, in compliance with 49 CFR Part 663.
- ii. Other audits and reviews, as required, to verify that the bus and rail vehicle procurement and rehabilitation contracts are being performed in accordance with all applicable federal, state and local requirements.

d. Cost Estimates

Prepare independent cost estimates and cost-analyses for any proposed contracts or contract changes (in accordance with FTA requirements, as applicable); identify responsibilities for the changes, and advise on any resulting impacts in scope, schedule and budget.

3. Task 3: Design Reviews and Evaluation of CDRLs and Submittals

Consultant shall support the SFMTA in the review, outreach and response to submittals from rolling stock and other contractor(s), including letters, drawings, design review packages and other Contract Deliverable Requirements List (CDRL) items.

a. Specialized Experts

Provide specialized experts, as-needed, to cover all vehicle systems, as well as risk assessments, hazard analyses, reliability analyses and systems integration, among others.

b. Submittal Review and Response

Review and comment on CDRL Items. Review the submittals for compliance with the specifications and meet the project objectives for quality, reliability and maintainability; recommend disposition to the SFMTA. Work with the project team to drive consensus among internal stakeholders to develop an agreed SFMTA position on issues as they arise.

c. System Integration

Support the SFMTA during planned systems integration reviews to ensure that the vehicle and subsystems perform according to the SFMTA's requirements and expectations, including addressing interface issues with concurrent projects, such as end-of-life technology refresh projects, and the Train Control Upgrade project.

d. First Article Inspection

Coordinate, attend and oversee First Article Inspections (FAI) for the entire vehicle, including subsystems, establishing a baseline upon which the production units will be based, and changes in configuration will be assessed.

e. Issue Resolution

Conduct research into peer agencies, best practices, required standards, and federal, state and local requirements to provide advice and counsel with regards to issues that may arise. Reports or presentations shall be provided as requested by the SFMTA.

4. Task 4: Quality Assurance (QA) Oversight

The Consultant will provide QA oversight services to ensure that quality material is used, good workmanship is performed, and work is conducted in accordance with all plans and contract documents, as well as federal, state and local requirements. Activities and deliverables may include:

a. QA Program Oversight

Review the applicable QA programs to assure that the contractor's QA organization follows contractually required processes for controlling the quality of the design, tooling calibration, receiving inspection, corrective actions, and the manufacturing process.

b. QA Production Oversight

Conduct checks, as necessary, to assure that quality records are maintained throughout the manufacturing process at both supplier and subcontractor facilities. Assess quality trends and review with SFMTA staff and the contractor to determine any corrective actions.

c. QA Representative

Provide a Quality Assurance Representative (QAR) to provide daily (or weekly) written inspection reports as required by the SFMTA. The QAR will use SFMTA-approved procedures to note any deficiencies and corrective actions required.

d. QA Change Management Oversight

Review the contractor's change control, configuration management, and document management systems to verify that they are capable of complying with the contract provisions and are able to monitor changes from the baseline specification.

e. Receiving Inspection

Provide incoming or receiving inspection at the SFMTA delivery location to determine whether vehicles or equipment have been damaged in transport or at any other time.

5. Task 5: Test Program Oversight

The Consultant shall provide "test program oversight" services to ensure that the prototype bus and rail vehicles, production vehicles, and rehabilitated bus and rail vehicles perform according to the vehicle contract requirements and technical specifications, including all federal, state and local requirements. Activities and deliverables may include:

a. Test Documentation Review

Review and recommend for acceptance the test and evaluation plans and procedures for all materials, components, subsystems, and completed work requiring testing under the Specifications.

b. Test Witnessing

Witness design, qualification, acceptance and burn-in tests, as required, including tests at contractor's or its subcontractors' facilities, the SFMTA site, or third party location.

c. Vehicle Acceptance

Support the SFMTA in acceptance inspection and testing efforts. Once a vehicle or equipment has been delivered to SFMTA but before it is accepted, Consultant shall perform a final audit to verify that the necessary documentation (e.g., weight certificates, Car History Book) is provided with the vehicles.

d. Operational Testing

Support operational testing to confirm compatibility with the SFMTA's existing system, facilities, and equipment; assist with operator orientation.

6. Task 6: Commissioning and Start-up Activities

The Consultant shall support commissioning and start-up activities prior to the start of revenue service for the new vehicle or equipment. Activities and deliverables may include:

- a.** Review and comment on all support services submittals, including maintenance manuals, parts and operations manuals, training programs, and safety program plans.
- b.** Verify delivery and configuration of as-built drawings and associated documentation.
- c.** Support training program, including testing and acceptance of the training simulator.
- d.** Support safety certification of the advanced train control systems, the new rail fleet, and other rail systems in accordance with CPUC General Order 164-D, develop checklists, conduct necessary verifications, obtain sign-off of responsible parties, and prepare mitigation plans, if necessary.
- e.** Support revenue readiness activities, including maintenance shop readiness, and verification that the vehicle design will meet its operational requirements for SFMTA routes, including range, gradeability and environmental issues.
- f.** Support coordination activities with interrelated projects, such as the Train Control Upgrade project.

7. Task 7: Post-Delivery Support

Consultant shall assist the SFMTA in effectively developing and administering a technical support program as required. This program will cover all post-delivery support requirements, including warranty administration, manual updates and field modification management. Activities and deliverables may include:

- a.** Ensuring that all training, spare parts, special tools, special test equipment, maintenance and operation manuals, and other deliverables are properly provided in accordance with the requirements of the applicable procurement contract.
- b.** Support the oversight and tracking of all field modification work, including review of documentation, verification of configuration management, QA oversight of re-work, re-testing, and spare parts reconfiguration.
- c.** Monitor the reliability program and work with the SFMTA and the contractor to assure compliance of the fleet with reliability requirements.
- d.** Assist in the set-up, execution, administration, and monitoring of the warranty program, including identification and resolution of fleet defects.

- e. Ensure that the preventive maintenance process and operations and maintenance activities are clearly defined and complete.

8. Task 8: Transit Management Support

Consultant shall provide other services as-needed by the SFMTA's Transit Division to support the fleet engineering maintenance and operation of the transit vehicles. Activities may include:

- a. Review plans, checklists and procedures related to vehicle preventive maintenance.
- b. Perform preventive maintenance and inspection audits and reporting.
- c. Evaluate and assist with the implementation of modern and cost-effective maintenance methods for vehicles.
- d. Provide data analysis to identify spikes and shortfalls in vehicle performance.
- e. Review and update operating procedures as necessary.
- f. Assist in the development or updating of operating practices and procedures.
- g. Perform technical evaluations and assist with the implementation of emerging technologies to improve operations and service delivery.
- h. Perform strategic long-term planning of key operations issues.
- i. Provide Transit Operations support, including scheduling analyses and service improvement analyses.
- j. Support Overhaul Programs.
- k. Support alternate equals.
- l. Support parts identification and negotiations.
- m. Support specific failure investigations.
- n. Support writing bulletins.
- o. Support customer experience improvement.
- p. Support training.
- q. Support Budget Planning and Cost Estimating.
- r. Support regulatory compliance.
- s. Support Vehicle Engineering.
- t. Support historic fleet.
- u. Provide Warranty supports for vehicles after acceptance.

- v. Conduct vehicle performance matrices.
- w. Support Non-Revenue Vehicle fleet plan and procurement.

9. Task 9: Maintenance of Way

This task is intended to support a broad range of specialized services related to planning and programming, specialized analytical studies, construction support and management, and start-up and operations planning. Examples of efforts that would be provided under this task include performing field surveys, assisting in the preparation of procurement contracts, preparing QA oversight, performing audits, performing ultrasonic rail testing, and administering training. Additionally, technical services related to the delivery of technology system projects led by the Maintenance of Way Division would be included in this task.

The Consultant shall provide a broad range of specialized services and staff to complete Task Orders issued by the SFMTA, either by direct assignment of its own personnel or through Subconsultants, including, but not limited to, initial planning and programming, specialized analytical studies, and start-up and operations planning. Task Orders may include:

- a. Provide support to SFMTA's Maintenance-of-Way Engineering Unit, which includes planning, design review, and field investigation support of transit system improvements, including the traction power system, transit signaling system, and communication system to improve safety and service reliability. The scope of work may also include:
 - i. Prepare design criteria to include and meet all applicable codes and standards.
 - ii. Prepare alternate analyses and recommend overall design approaches.
 - iii. Perform site investigations and functional analyses.
 - iv. Review design packages (plans and specifications)
 - v. Provide technical administrative support (e.g., file drawings, meeting minutes, document control).
 - vi. Incorporate SFMTA's Quality Assurance (QA) program requirements into the design and construction packages.
 - vii. Identify and develop special testing requirements, system cut-over plans, and start-up plans.
- b. Assist in the preparation of procurement contracts for transit infrastructure components and systems; operating equipment; and long-lead items. The task shall include product research, specifying products, and performing alternative analyses.
- c. Perform field surveys using licensed surveyors.
- d. Prepare project management plans in accordance with FTA requirements.

- e. Prepare QA oversight, audits, plans, training and assistance in accordance with FTA requirements.
- f. Predict, analyze, prevent and mitigate noise and vibration from transit operations, and equipment, and design and monitor mitigation measures.
- g. Perform testing as required by the City, including metallurgical, annual ultrasonic rail testing, and other testing requested by SFMTA.
- h. Perform preliminary and system hazard analyses, failure modes and effects analyses, single-point-of-failure analyses, hazard level classification, and safety certification of systems.
- i. Perform systems analyses, including communications systems analyses, systems integration, safety processes, configuration management, and related work.
- j. Perform start-up and commissioning of systems, including integration and pre-revenue “dry-run” testing, developing test procedures, instrumenting vehicles and equipment, conducting tests, and providing test reports and analyses.
- k. Provide safety certification oversight and required documentation to obtain System Safety and Security Program per CPUC General Order (GO) 164-D. (General Order 164-D requires transit agencies who are building and operating rail fixed guideway systems to establish a System Safety and Security Program.) The scope of work may include:
 - i. Provide safety standards
 - ii. Review the system safety program
 - iii. Review the contractor’s hazard analyses
 - iv. Develop Safety and Security Certification Plans
 - v. Lead Safety & Security Certification Review Committee SSCRC (ongoing)
 - vi. Maintain the Audit Conformance Checklist (ongoing)
 - vii. Review the safety requirements
 - viii. Audit implementation of safety requirements
 - ix. Audit resolution of hazards (ongoing)

10.Task 10: Transit Systems

Under the Task, the Consultant will assist with the procurement of technical services related to the operation of transit-supportive technology systems and system modifications at the application level or higher (e.g., ATCS, fare collection, communications). Examples of efforts that would fall within this task include writing documentation, drafting SOPs, user interface

configuration, and defining requirements for new feature requests from system vendors. Tasks may include:

a. Concept of Operations / Lifecycle Planning

The Consultant shall advise the SFMTA on key issues relating to the most effective means to employ technology systems to assist in operations. This may include developing a procurement and lifecycle strategy.

b. Procurement Support

The Consultant shall conduct industry outreach and advise the SFMTA on the available firms and products for individual procurement efforts. This shall include supporting the RFI, RFQ, and RFP processes, in such ways as:

- i. Maintaining industry contacts and communicating with potential vendors on the SFMTA's behalf.
- ii. Facilitating, organizing and staffing RFI or RFP pre-submission meetings.
- iii. Facilitating and organizing vendor presentations.
- iv. Advising the SFMTA on the nature of each vendor's offering.
- v. Drafting language for inclusion in the RFI, RFQ, RFP and sample contract documents.

c. Design Support

In the design phase of a technology procurement project, the Consultant shall review system vendor's design documents and advise the SFMTA and the vendor on potential integration issues, discontinuity between the system design and the concept of operations, or potential design deficiencies. The Consultant shall suggest design solutions for these issues in the design phase so they may correct designs at a minimum of delay and expense to a project.

d. Quality Control

During the production/delivery phase of a technology procurement project, the Consultant shall support the SFMTA's quality control efforts to ensure the equipment being delivered is free from manufacturing or design defects.

e. Hardware Integration

During the design and engineering phases, the Consultant shall support the integration of the new system with the other systems present on the SFMTA's vehicles or in the SFMTA's facilities. The Consultant shall be ultimately responsible to the SFMTA for ensuring that the new system is fully integrated with existing systems to the specifications detailed in the Task Order.

During the production/delivery phase, the Consultant shall support the integration of the new system to the vendor's specifications and any additional specifications that other SFMTA consultants have developed. This support may include activities such as:

- i. Developing an installation/deployment plan compatible with daily SFMTA operations and maintenance.
- ii. Overseeing the execution of the installation plan in coordination with the SFMTA Project Manager and operations managers
- iii. Training any SFMTA staff as needed to support the installation

f. Innovative Solutions

Throughout the system lifecycle, the Consultant shall support SFMTA operations by designing innovative solutions that require integration between one or more existing systems on board vehicles, on the wayside, in the street environment, or in the control center. This support would not necessarily be connected to a new system procurement; rather, the SFMTA would be seeking advice on how to accomplish the SFMTA's stated goals with existing equipment. The Consultant shall suggest modifications to that equipment, or additional purchases to support the SFMTA's goals.

g. List of Systems

Potential systems requiring the support of as-needed services include:

- i. Farebox Collection System
- ii. Train Control Systems
- iii. Surface Rail Signaling Systems
- iv. Traffic Signals and Transit Signal Priority (TSP) systems
- v. Customer Information System
- vi. On-Board Vehicle Signs and Announcement Systems
- vii. Platform Signs and Announcement Systems
- viii. Vehicle Telematics
- ix. Charging Infrastructure Software Solution
- x. Automatic Passenger Counter system
- xi. Video Surveillance systems
- xii. Transit-Only Lane Enforcement (TOLE) System

- xiii. Collision Avoidance System
- xiv. DriveCam and SmartDrive systems (used for safety incident detection)
- xv. Autonomous Vehicle Technology

11.Task 11: Other Services

Consultant shall provide other services as-needed by Transit Division for the implementation and completion of the Project. Tasks may include, but are not limited to:

- a. Advise the SFMTA on key issues regarding vehicle and equipment procurement, including compliance, systems integration and deviation from Contract requirements.
- b. Support project integration into existing systems and emerging programs; these may include maintenance management systems, project management systems, asset management tracking, or other agency-wide systems.
- c. Develop integration plans to ensure that the new vehicles or equipment operate as intended with the existing infrastructure, including track and overhead, substations, wheel rail interface, charging infrastructure and maintenance facilities.
- d. Support tasks for long-term fleet planning and replacement, including options, timing and procurement strategies required to maintain the fleet.
- e. Support with data collection efforts, such as ridership counts, traffic counts, and pedestrian counts.
- f. Support the Agency's Communications & Marketing Division with graphics for maps, posters, reports, one-pagers, marketing material, and other documents.
- g. Support data analyses pertaining to service planning activities, including before/after comparisons and trend analysis.
- h. Support the Agency's Communications & Marketing Division with outreach efforts, including facilitating meetings and providing logistical help and ambassador resources.
- i. Produce or assist with peer reviews and best practice reviews for activities such as off-wire operation, fallback scheduling, and emergency planning.
- j. Assist with asset management of transit equipment.
- k. Prepare fleet retirement plan to determine the best methodology, cost and schedule to retire vehicles as they are replaced and taken out of service.
- l. Conduct data analyses to identify spikes and shortfalls in vehicle performance.

- m.** Produce or assist with the production of operational scenario models. Models may take into account available ridership, grade, or route data.
- n.** Provide Maintenance Equipment Support with new or existing equipment.

**Appendix B
Calculation of Charges**

Table 1: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
STV Incorporated	Systems Engineer	Erick Aburto	\$109.78	\$265.65	
STV Incorporated	Commissioning Engineer	Michael Baril	\$102.89	\$248.97	
STV Incorporated	Systems Engineer	Richard Barrett	\$158.78	\$384.22	
STV Incorporated	Engineering Lead	John Batey	\$130.67	\$316.20	
STV Incorporated	Vehicle Engineer	Matt Bertrand	\$113.68	\$275.08	
STV Incorporated	Planner	Tyler Bonstead	\$148.28	\$358.81	
STV Incorporated	Quality Manager	Serge Bouchard	\$97.95	\$237.02	
STV Incorporated	Reliability / Maintainability / Safety Engineer (RMSH)	Michael Broe	\$123.69	\$299.31	
STV Incorporated	Technical Writer / Documentation Specialist	Vanessa Butler	\$32.63	\$78.96	
STV Incorporated	Commissioning Engineer	Dennis Cabigting	\$90.14	\$218.12	
STV Incorporated	Maintenance Engineer	Stephen Capone	\$70.43	\$170.43	
STV Incorporated	Operations Analyst	David Casper	\$95.53	\$231.16	
STV Incorporated	Reliability / Maintainability / Safety Engineer (RMSH)	Brenda Christner	\$93.87	\$227.15	
STV Incorporated	Systems Engineer	Ronald Creswell	\$126.88	\$307.02	
STV Incorporated	Communications/ITS Specialist / ATCS Engineer	Niv Dauber	\$135.16	\$327.06	
STV Incorporated	Track Engineer	Araceli De Anda	\$70.50	\$170.60	
STV Incorporated	Systems Engineer	William Delgiorno	\$65.29	\$157.99	
STV Incorporated	Tunnel & Geotech Engineer	Paul Dutton	\$95.05	\$230.00	
STV Incorporated	Project Controls Specialist	Sara Eleuteri	\$63.39	\$153.39	
STV Incorporated	Integration Engineer	James Entenmann	\$101.79	\$246.31	
STV Incorporated	Integration Engineer	Gareth Evans	\$128.19	\$310.19	
STV Incorporated	Fueling Systems Engineer	Faye Farahmand	\$117.27	\$283.77	
STV Incorporated	Communications/ITS Specialist / ATCS Engineer	Lynn Feng	\$106.99	\$258.89	
STV Incorporated	Field Inspector	Kevin Flaitz	\$69.85		\$157.39
STV Incorporated	Quality Manager	Andrew Frohn	\$124.91	\$302.26	
STV Incorporated	Systems Engineer	Navid Golbon	\$114.76	\$277.70	
STV Incorporated	Track Engineer	Jose Gonzalez	\$116.43	\$281.74	

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
STV Incorporated	Task Manager	Jason Grohs	\$111.07	\$268.77	
STV Incorporated	Integration Engineer	Fernado Guevara	\$98.19	\$237.60	
STV Incorporated	Commissioning Engineer	Renat Guibadouline	\$133.29	\$322.54	
STV Incorporated	Project Manager	Ryan Harris	\$97.40	\$235.69	
STV Incorporated	Quality Manager	Greg Haycox	\$102.65	\$248.39	
STV Incorporated	Commissioning Engineer	Casey Herrera	\$68.16	\$164.92	
STV Incorporated	Fleet Operations Specialist	Ron Hopkins	\$128.36	\$310.61	
STV Incorporated	Vehicle Engineer	Sam Hrvacic	\$117.76	\$284.95	
STV Incorporated	Integration Engineer	Sam Iadicicco	\$136.26	\$329.72	
STV Incorporated	Zero Emissions Systems Engineer	Danny Ilioiu	\$128.26	\$310.36	
STV Incorporated	Operations Analyst	Darryl Irick	\$154.50	\$373.86	
STV Incorporated	Systems Engineer	Mike Izbicki	\$144.24	\$349.03	
STV Incorporated	Traction Power Engineer	Jarold Jakubowski	\$96.75	\$234.12	
STV Incorporated	Vehicle Engineer	Thomas Jansen	\$127.93	\$309.57	
STV Incorporated	Maintenance Facility Design Specialist	Jon Johnson	\$92.08	\$222.82	
STV Incorporated	Principal in Charge	Liz Justison *	N/A	N/A	
STV Incorporated	Traction Power Engineer	Jan Kaspar	\$86.10	\$208.34	
STV Incorporated	Maintenance Facility Design Specialist	Fred King	\$89.88	\$217.49	
STV Incorporated	Data Analyst	Kaleb Knowles	\$46.31	\$112.06	
STV Incorporated	Task Manager	Joseph Kruczynski	\$91.87	\$222.31	
STV Incorporated	Traction Power Engineer	Kee Kwong	\$115.70	\$279.97	
STV Incorporated	Traction Power Engineer	Barry Langer	\$64.25	\$155.47	
STV Incorporated	Maintenance Facility Design Specialist	May Lau	\$98.93	\$239.39	
STV Incorporated	Systems Engineer	Richard Lentz	\$119.04	\$288.05	
STV Incorporated	Reliability / Maintainability / Safety Engineer (RMSH)	Tom Ley	\$61.10	\$147.85	
STV Incorporated	Traction Power Engineer	Raymond Li	\$100.01	\$242.00	
STV Incorporated	Commissioning Engineer	Zheng Liu	\$97.76	\$236.56	
STV Incorporated	Fleet Planning Specialist	Rex Lloyd	\$112.09	\$271.24	
STV Incorporated	Task Manager	Ja-Mie Luey	\$149.43	\$361.59	
STV Incorporated	Grants & Funding Specialist	Patricia Macchi	\$127.40	\$308.28	
STV Incorporated	Project Controls Specialist	David Marcus	\$81.46	\$197.12	
STV Incorporated	Traction Power Engineer	Kosi Mbah	\$52.51	\$127.06	
STV Incorporated	Project Controls Specialist	Shirley Moore	\$41.20	\$99.70	

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
STV Incorporated	Integration Engineer	Wes Moyer	\$103.37	\$250.13	
STV Incorporated	Track Engineer	Zafer Mudar	\$142.92	\$345.84	
STV Incorporated	Field Inspector	Richard Navarro	\$79.30		\$178.68
STV Incorporated	Traction Power Engineer	Tsz Man Ng	\$70.78	\$171.28	
STV Incorporated	Communications/ITS Specialist / ATCS Engineer	Eric Nolan	\$111.48	\$269.76	
STV Incorporated	Fleet Operations Specialist	James Pachan	\$110.00	\$266.18	
STV Incorporated	Safety Certification Specialist	Vivian Papen	\$86.92	\$210.33	
STV Incorporated	Commissioning Engineer	Oscar Pardinias	\$95.17	\$230.29	
STV Incorporated	Communications/ITS Specialist / ATCS Engineer	Adrian Pearmine	\$151.45	\$366.48	
STV Incorporated	Training Specialist	Elizabeth Pedro	\$94.64	\$229.01	
STV Incorporated	Maintenance Facility Design Specialist	Mark Peterson	\$129.66	\$313.75	
STV Incorporated	Traction Power Engineer	Alex Pintado	\$78.38	\$189.66	
STV Incorporated	Planner	Tim Potens	\$86.85	\$210.16	
STV Incorporated	Grants & Funding Specialist	Thomas Redstone	\$75.61	\$182.96	
STV Incorporated	Integration Engineer	Jason Rogers	\$72.11	\$174.49	
STV Incorporated	Zero Emissions Systems Engineer	Ashley Rose	\$94.50	\$228.68	
STV Incorporated	Systems Engineer	Ryan Scalley	\$67.93	\$164.38	
STV Incorporated	Test Engineer	Andrew Scheppe	\$82.11	\$198.69	
STV Incorporated	Field Inspector	Evan Scott	\$78.38		\$176.62
STV Incorporated	Reliability / Maintainability / Safety Engineer (RMSH)	TJ Sebastian	\$61.37	\$148.50	
STV Incorporated	Traction Power Engineer	Brandon Swartley	\$164.80	\$398.78	
STV Incorporated	Systems Integration Engineer	Brandon Swartout	\$63.02	\$152.50	
STV Incorporated	Fueling Systems Engineer	Krishani TeeLuck	\$48.53	\$117.43	
STV Incorporated	Systems Engineer	Brett Tharp	\$109.04	\$263.85	
STV Incorporated	Data Analyst	Branden Tolle	\$71.05	\$171.93	
STV Incorporated	Systems Engineer	Edgar Torres	\$48.56	\$117.51	
STV Incorporated	Fleet Operations Specialist	William Turner	\$59.63	\$144.29	
STV Incorporated	Project Controls Specialist	Edie Voit	\$67.37	\$163.02	
STV Incorporated	Systems Engineer	Tiara Williams	\$80.48	\$194.75	
STV Incorporated	Commissioning Engineer	Jithendra Yogarasa	\$120.81	\$292.34	
CAPGCS	Field Inspector	Clay Barrio	\$63.00		\$132.30

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
CAPGCS	Fleet Planning Specialist	Kevin Faulkner	\$100.00	\$210.00	
CAPGCS	Scheduler	John Guerrero	\$77.27	\$162.27	
CAPGCS	Vehicle Engineer	Elson Hao	\$114.44		\$240.32
CAPGCS	Contract Manager	Maria Lechuga	\$55.71	\$116.99	
CAPGCS	Technical Writer / Documentation Specialist	Laura Lee	\$50.49	\$106.03	
CounterVail Engineering	Systems Integration Engineer	Bradley Banks	\$99.02	\$207.94	
CounterVail Engineering	Communications/ITS Specialist / ATCS Engineer	Angela Daloia	\$100.00	\$210.00	
CounterVail Engineering	Systems Integration Engineer	Jeremy Orchuk	\$83.70	\$175.77	
CounterVail Engineering	Systems Engineer	Justin Sin	\$48.80	\$102.48	
Global Innovations	FTA Compliance Auditor	Janette Hunter	\$156.16	\$220.19	
Lunora Consulting	Vehicle Engineer	Louis Lim	\$100.00	\$220.00	
RWDI (Wilson Ihrig)	Test Engineer	Gary Glickman	\$91.05	\$266.88	
RWDI (Wilson Ihrig)	Vehicle Engineer	Derek Watry	\$88.40	\$259.11	
TENCO	Reliability / Maintainability / Safety Engineer (RMSH)	Steve Lawrence	\$105.00	\$257.69	
TSE	Charging Infrastructure / Software Systems Specialist	Carl Buck	\$115.58	\$293.23	
TSE	Systems Engineer	Abhinav Durgapathi	\$73.61	\$186.75	
TSE	Systems Integration Engineer	Fereda Evans	\$98.05	\$248.75	
TSE	Systems Engineer	Tri Le	\$81.56	\$206.92	
TSE	Systems Integration Engineer	Dorian Rufus	\$77.15	\$195.73	
TSE	Systems Engineer	Brian Seamount	\$102.26	\$259.43	
Virginkar & Associates, Inc.	Planner	Raymondo Contreras	\$53.56	\$122.51	
Virginkar & Associates, Inc.	Operations Analyst	Christopher Dyer	\$66.95	\$153.13	
Virginkar & Associates, Inc.	Field Inspector	Gary Guevin	\$68.14		\$155.86
Virginkar & Associates, Inc.	Vehicle Engineer	Benjamin Holland	\$97.85	\$223.81	
Virginkar & Associates, Inc.	Planner	Joey Liu	\$76.99	\$176.10	
Virginkar & Associates, Inc.	Integration Engineer	Ajay Nayyar	\$97.85	\$223.81	
Virginkar & Associates, Inc.	Vehicle Engineer	Pranesh Ramachandran	\$86.66	\$198.22	

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
Virginkar & Associates, Inc.	Field Inspector	Bryan Reese	\$61.92		\$141.63
Virginkar & Associates, Inc.	Quality Manager	Patrick Tully	\$108.15	\$247.37	
Virginkar & Associates, Inc.	Quality Manager	Eric Welch	\$74.16	\$169.63	
Virginkar & Associates, Inc.	Integration Engineer	Jim Zehm	\$88.49	\$202.40	

*Office billing Rate = Direct Hourly Rate x Office Multiplier Listed in Table 2

**Field billing Rate = Direct Hourly Rate x Field Multiplier Listed in Table 2

Table 2: Schedule of Overhead Rates for Contractor and all Subcontractors

Company	Office	Field	MULTIPLIERS	
			OFFICE	FIELD
STV Incorporated	141.98%	125.32%	2.4198	2.2532
CAPGCS	110.00%	110.00%	2.1000	2.1000
Countervail Engineering	110.00%	N/A	2.1000	N/A
Global Innovations	41.00%	N/A	1.4100	N/A
Lunora Consulting	120.00%	N/A	2.2000	N/A
RWDI (Wilson Ihring)	193.11%	N/A	2.9311	N/A
TENCO	145.42%	N/A	2.4542	N/A
TSE	153.70%	N/A	2.5370	N/A
Virginkar & Associates, Inc.	128.73%	128.73%	2.2873	2.2873

Appendix C

As-Needed Specialized Engineering and Other Related Consulting Services
Contract No. SFMTA-2026-21-FTA
SBE/DBE Goal: 20%

SFMTA Transit Division

TASK ORDER REQUEST FORM

Task Title: _____ Date Initiated: _____	
Type of Request:	
<input type="checkbox"/> New Task Order- No. <u>XX</u>	
<input type="checkbox"/> Modification No. ____ (attach approved original and all modifications to date)	
Total Amount Being Requested:	<u>\$ x,xxx.xx</u>
Total approved task to date (including all mods.):	<u>\$ x,xxx.xx</u>
Total task amount including this request:	<u>\$ x,xxx.xx</u>
Estimated Task Start Date: _____ Estimated Modification Start Date: _____	
Estimated Completion Date: _____	
Funding Source: _____	Proposed Task SBE/DBE Goal: <u>xxx.xx</u> %
Account: _____ Fund: _____ Dept: _____ Authority: _____	
Project: _____ Activity: _____	
Work to be Performed:	
[Detailed description of work to be performed. Can refer to attachments to provide additional detail and information]	

[C&P Analyst Initials]

Page 1 of 2

Task Order No. [X]

Appendix C

As-Needed Specialized Engineering and Other Related Consulting Services
 Contract No. SFMTA-2026-21-FTA
 SBE/DBE Goal: 20%

SFMTA Transit Division

NAME	HOURS	LOADED RATE	TOTALS
SubTotal Labor/Services			
Profit [Enter NTE% from Contract] [Enter as a lump sum]			
Subcontractor Mark Up [Enter NTE% from Contract] [Enter as a lump sum, remove line if not applicable]			
Other Direct Costs (ODCs) See Contractor Proposal for a detailed description of all out-of-pocket expenses			
Grand Total This Task:			\$000,000
Notes:			
Concurred by Contractor: [Enter Contractor PM Name]			
Signature:		Date:	
APPROVALS [This Approvals Section should be modified to meet the Division's administrative requirements]			
Requested by:	_____		Date _____
	Name, Title		
Approved by:	_____		Date _____
	Name, Contract/ Project Manager		
Reviewed by:	_____ (N/A – See attached CCO approval memo)		Date _____
	Alaric Degrafinried, Director of Compliance		
Reviewed by:	<div style="display: inline-block; border: 1px solid black; padding: 2px; margin-right: 10px;">C&P Manager initial</div> <div style="display: inline-block; border: 1px solid black; padding: 2px;">C&P Analyst Initial</div>	Date _____	
	Julia M.C. Friedlander, Director of Contracts & Procurement		
Approved by:	_____		Date _____
	Division Director, Title		

[C&P Analyst Initials]

Appendix D

FTA REQUIREMENTS FOR PERSONAL/PROFESSIONAL SERVICES CONTRACTS

I. DEFINITIONS

- A. Approved Project Budget** means the most recent statement, approved by the 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 FTA.
- C. Cooperative Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which 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 FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which 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 FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each 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 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 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 FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and 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 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 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 an 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 Request for Proposal Appendix D, Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

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. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

A. Contractor certifies that it:

1. Does not have any 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; and
2. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

B. Flow-Down. Contractor is required to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

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 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 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 the FTA Chief Counsel and 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 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 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 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. CIVIL RIGHTS

- A. Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:
- 1. Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants

are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 3. **Disabilities** – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

IX. NONDISCRIMINATION ON THE BASIS OF DISABILITY

The Contractor agrees to comply with the following federal prohibitions against discrimination based on disability:

- A. Federal laws, including:
1. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
 2. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq., Titles I, II, and III, which requires that accessible facilities and services be made available to individuals with disabilities;
 3. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151, et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 4. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 5. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- B. Federal regulations and guidance, including:
1. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
 2. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;

3. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 49 CFR Part 38;
4. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 CFR Part 39;
5. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
6. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;
7. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
8. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR Part 64, subpart F;
9. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194;
10. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609;
11. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
12. Other applicable federal civil rights and nondiscrimination regulations and guidance.

X. 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.

XI. PATENT RIGHTS (*applicable to contracts for experimental, research, or development projects financed by FTA*)

A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

- B. 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), the City and Contractor agree to take the necessary actions to provide, through 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.
- C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

- 3. FTA Intention.** When FTA awards Federal assistance for an experimental, research or developmental work, it is 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 FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either 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 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 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 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 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.

XIII. CONTRACT WORK HOURS AND SAFETY STANDARDS *(applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work)*

- A. Overtime requirements** – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar Day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- C. Withholding for unpaid wages and liquidated damages** – The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- D. Subcontracts** – The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

XIV. 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.

XV. SEISMIC SAFETY REQUIREMENTS

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and Contractor will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract, including work performed by a Subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

XVI. 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 to 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 FTA.

XVII. 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 to 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 FTA.

XVIII. 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 FTA.

XIX. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 CFR Part 655.

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

See Section 8.1 of Agreement Terms and Conditions.

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

See Section 8.2 of Agreement Terms and Conditions.

XXII. 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 FTA-funded projects are produced in the United States, unless a waiver has been granted by 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.

XXIII. DOMESTIC PREFERENCES FOR PROCUREMENTS

- A. Contractor should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- B. For purposes of this section
 - 1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

XXIV. 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.

XXV. 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 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.

XXVI. 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.

XXVII. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS *(applies to contracts for rolling stock)*

To the extent applicable, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(l) and FTA implementing regulations at 49 CFR Part 663, and to submit the following certifications:

- A. Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.
- B. Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.
- C. Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XXVIII. 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 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 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 FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XXIX. 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.

XXX. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS (*applicable to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator*)

- A. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:
 - 1. **General Transit Employee Protective Requirements** – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient’s Project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. §

5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities –

If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has **determined** or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL’s letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas –

If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

B. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

XXXI. NATIONAL ITS ARCHITECTURE POLICY (*Applicable to contracts for ITS projects*)

If providing Intelligent Transportation Systems (ITS) property or services, Contactor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

XXXII. TEXTING WHILE DRIVING; DISTRACTED DRIVING

Consistent with Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the Project.

XXXIII. 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.

XXXIV. DISPUTE RESOLUTION PROCEDURE

- A. 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. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Contract Administrator a written request for administrative review and documentation of the Contractor’s claim(s). Upon such request, the Contract Administrator shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. 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.
- B. 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.**

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

Certification Regarding Lobbying is required and was submitted by the Contractor with its Proposal. (See Appendix E of RFP).

XXXVI. PROMPT PAYMENT

- A.** In accordance with SFMTA’s SBE 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 Director 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 provide City with a declaration under penalty of

perjury that it has promptly paid such subcontractors for the work they have performed. Failure to provide such evidence shall be cause for City to suspend 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.

XXXVII. 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.

XXXVIII. INCORPORATION OF 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, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all 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 FTA terms and conditions.

APPENDIX E

Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program for Professional and Technical Services

Requirements for Architects, Engineers, Planners, Environmental Scientists and Other Professional Services Contracts

Please refer to Appendix A of the RFP

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

Agreement between the City and County of San Francisco and

WSP USA Inc.

**For As-Needed Specialized Vehicle Engineering and Other Related
Consulting Services**

**Contract No.
SFMTA-2026-52-FTA**

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

**Agreement between the City and County of San Francisco and
WSP USA Inc.
Contract No. SFMTA-2026-52-FTA**

This Agreement is made as of _____, in the City and County of San Francisco (City), State of California, by and between WSP USA Inc. (Contractor), and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA seeks to procure As-Needed Specialized Vehicle Engineering and Other Related Consulting Services from Contractor.

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

C. Contractor was competitively selected pursuant to a Request for Proposals (RFP) entitled As-Needed Specialized Vehicle Engineering and Other Related Consulting Services issued through Sourcing Event ID 0000011122.

D. The Small Business Enterprise (SBE) participation goal established for this Agreement is 20%. Contractor has committed to 25% SBE participation under this Agreement.

E. Approval for the Agreement was obtained on August 16, 2023 from the Civil Service Commission under PSC number 44741 – 19/20 which authorizes the award of multiple agreements, the total value of which cannot exceed \$22,400,000 and the individual duration of which cannot exceed 7 years 21 weeks.

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 “Annual Rate Change” means the one change to the direct hourly labor rates and overhead rates permitted during each calendar year under the procedure described in Section

3.3.1 below. The Annual Rate Change will occur on March 1 of each year during contract performance.

1.3 “**Appendices**” means the appendices listed in Article 14 (Appendices) herein.

1.4 “**Artificial Intelligence**” or “**Artificial Intelligence Model**” means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

1.5 “**Artificial Intelligence System**” means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

1.6 “**Award**” means notification from the SFMTA to Contractor of acceptance of Contractor’s Proposal, subject to the execution and approval of a satisfactory Contract and bond to secure the performance of the Contract, and to such other conditions as may be specified or otherwise required by law.

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

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

1.9 “**City Data**” means all data collected, used, maintained, processed, stored, and/or generated by or on behalf of City in connection with this Agreement. City Data includes, without limitation, Confidential Information and Deliverable Data.

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

1.11 “**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. Confidential Information includes, without limitation, City Data.

1.12 “**Contractor**” means WSP USA Inc., 71 Stevenson Street, Ste 1000, San Francisco, CA 94105.

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

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

1.15 “**Deliverable Data**” means any data that is required to be delivered to City as a Deliverable, or as a part of a Deliverable, under this Agreement.

1.16 “Deliverables” means Contractor’s or its subcontractors’ 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.

1.17 “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.

1.18 “Effective Date” means the date the Director of Transportation executes the Contract.

1.19 “FTA” means the Federal Transit Administration.

1.20 “Generative Artificial Intelligence” means artificial intelligence that can generate derived synthetic content, such as text, images, video, and audio, that emulates the structure and characteristics of the artificial intelligence’s training data.

1.21 “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.

1.22 “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.

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

1.24 “Personal Identifiable Information (PII)” means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household. Personal information includes, but is not limited to, the following if it identifies, relates to, describes, is reasonably capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular individual or household as further defined in the California Consumer Privacy Act.

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

1.26 “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.

1.27 “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, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.28 “Small Business Enterprise” or “SBE” means a for-profit, small business concern with a three-year average gross revenue that do not exceed the thresholds set forth in 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 2) has received written confirmation from CCO that it meets the SFMTA’s program eligibility requirements.

1.29 “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 May 31, 2027, unless earlier terminated as otherwise provided herein.

2.2 Option to Extend. The SFMTA has the option to renew the Agreement for a period of four additional years. The SFMTA may exercise this option at the Director of Transportation’s sole and absolute discretion by modifying this Agreement as provided in Section 11.5 (Modification of this Agreement). Extensions may be for the whole or partial period provided for above.

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 the 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. The 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 the 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 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 services.

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 \$3,800,000.00 (Three Million Eight Hundred Thousand Dollars) for the initial contract term. This amount is based on City's estimated spend over the initial contract term. Should City's actual spend exceed its estimated spend for the initial term, City may in its sole discretion increase the contract NTE for the initial term. Should City exercise its option to extend the contract beyond the initial term, City may also elect to increase the NTE proportionally. 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 (Calculation of Charges) plus a fixed profit and, if applicable, subcontractor markup negotiated in accordance with Appendix B). 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. The rates shall not change except when approved in writing by the SFMTA as part of an Annual Rate Change. Any Annual Rate Change will occur on March 1 in each year of contract performance. To request an Annual Rate Change, Contractor must submit a written request no less than 30 days before the Annual Rate Change date. Requests submitted less than 30 days before the Annual Rate Change date will be denied, and no rate increases will be approved until the next year's Annual Rate Change date. The SFMTA will approve only requests for rate increases that are: (1) based on increases in the actual amount to be paid to Contractor's employees; and (2) less than or equal to the annual percentage change in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-Hayward area (CPI-U), using the most recent month published before the Annual Rate Change date. Any requests for escalation of direct hourly labor rates must include: (1) documentation of actual payroll increases; (2) evidence of the change in the CPI-U; and (3) an updated Appendix B for

the SFMTA's approval. The SFMTA will review all requests for an Annual Rate Change within 30 Days of receipt and notify Contractor of either an approval or denial. If approved, a new contract modification will be executed and the new rates will be effective as of the Annual Rate Change date, and in no event will the new rates be applied before the Annual Rate Change date.

(b) Overhead Rates

(i) The overhead rates in Appendix B shall be billed at that level until new overhead rates are requested and approved in writing as part of an Annual Rate Change. Any request to adjust the overhead billing rates will be supported by a copy of the most recent independent audit of overhead rates for the Contractor and for any Subcontractor for which the Contractor seeks to adjust the overhead billing rate. The new overhead billing rates will be effective as of the Annual Rate Change date. The Contractor's and subcontractors' overhead rates are subject to audit in compliance with Federal requirements.

(ii) The overhead rates in Appendix B, including any adjustment to such rates as provided for above, are subject to readjustment 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 Contractor that exceeds Contractor's or any subcontractor's actual rate, 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, and shall be no greater than 7% of the total cost of the 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). 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, including travel 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 in the form of a Task Order modification. 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 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 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 by the City 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 to 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 the 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) A copy of the receipts for all expenses invoiced
- (e) Description of the Services performed and/or goods delivered
- (f) PeopleSoft Supplier Name and ID
- (g) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced 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
- (h) Other direct costs
- (i) Subcontractor costs supported by invoice itemization in the same format as described here
- (j) Profit for current invoice period. 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 7% of the total Task Order value
- (k) Total mark-up for current invoice period for all subcontractor's work effort for that invoice period as an amount not to exceed 3% of subcontractor's total labor charges
- (l) Contract payment terms
- (m) Sales/use tax (if applicable)
- (n) Total costs

- (o) SFMTA Progress Payment Form (SFMTA Form No. 6): The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of the SFMTA Progress Payment Form. If the SFMTA Progress Payment 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 SFMTA Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until the Progress Payment Form is provided.

3.3.5 SBE Payment and Utilization Tracking System. SBE Participation Requirement applies to this Agreement. Contractor shall: (a) within three business days of the SFMTA's payment of any invoice to Contractor, pay SBE subcontractors; and (b) within 10 business days of the SFMTA's payment of any invoice to Contractor, confirm its payment to subcontractors using the B2GNow System (<https://sfmta.diversitycompliance.com/>) unless instructed otherwise by CMD or CCO. Failure to submit all required payment information to the B2GNow System with each payment request may result in the withholding of 20% of subsequent payments due.

3.3.6 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. The incorporated terms may be found in Appendix D (Grant Terms). 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) **Subgrantees.** Contractor shall insert each Grant Term into each lower-tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor, or service provider.

3.3.7 Payment Terms

(a) **Payment Due Date.** Unless the SFMTA notifies Contractor that a dispute exists, Payment shall 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 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 Reserved. (Payment of Prevailing Wages)

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. 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 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 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) Task Order Scope of Work. The Task Order 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 forms, and Contractor Task Order proposal must be incorporated into the overhead rate (as approved in Appendix B). Separately 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). Contractor time spent managing or overseeing work performed by subcontractors will not be compensable.

(b) Presentations. In the performance of assigned tasks, Contractor, if requested by the 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. 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. 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, 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, 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. 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 Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the SFMTA relieve 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, Contractor shall within five business days of discovering the perceived extra work provide the SFMTA with either: (1) a written Contractor Request for Information under subsection 4.3.3 below; or (2) a Contractor Proposal to perform additional work under the Task Order, which contains all of the information required by subsection 4.3.4 below for a Contractor Task Order Proposal.

4.3.2 Task Order Request. The SFMTA will provide Contractor a Task Order request, using the form in Appendix C, 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 Form, 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 Task Order 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 fully burdened 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, labor to fill out required SBE forms, and administrative labor to manage subcontractors.

- (ii) Estimated reasonable out-of-pocket expenses;
- (iii) Proposed profit and mark-up, as follows:
 1. Proposed profit of Contractor's work effort as a fixed fee amount not to exceed 7% of Contractor's estimated direct hourly labor rates and overhead costs; and
 2. For work performed by all subcontractors, proposed total mark -up for Contractor on subcontractor's work effort as a fixed fee not to exceed 3% of subcontractor's total labor charges (does not include Other Direct Costs (ODCs)).

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 actual direct costs plus the applicable fixed overhead rates in Appendix B and negotiated profit subject not to exceed amounts indicated in Section 4.3.4(d)(iii).

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 Participation Goal. Upon completion of negotiations, Contractor shall provide Project Manager a memo describing the proposed SBE participation goal 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 an SBE, (3) the dollar value and percentage of work attributed with each firm, and (4) the overall calculated SBE participation goal for the Task Order. CCO will review the final negotiated Task Order scope and Contractor's SBE goal memo, approve or deny the goal, and issue a memo to file. SBE participation goal assigned to each Task Order shall be tracked by the CCO as part of the overall goal set forth in the Agreement. Contractor must in good faith comply with the following:

- The individual SBE participation percentage set for each Task Order.
- The overall SBE participation requirement established for the entire Agreement (which includes the commitments Contractor made to each of its listed SBE subcontractors at time of proposal). See Section 10.6 (**Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program**) for the overall SBE subcontracting participation requirement established for this Agreement.

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.

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 work, in which case a new Task Order proposal, pricing negotiation, record of negotiations, and notice to proceed shall be required before SFMTA approves the modification to the Task Order.

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 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 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 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 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 Contractor to reassign any individual on 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 its 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. The SFMTA's execution of this Agreement constitutes its approval of the subcontractors listed below and/or in Appendices.

SYSTRA Consulting, Inc.
Raul V. Bravo + Associates Inc.
Virinkar & Associates, Inc.
The Allen Group, LLC
Capitol Government Contract Specialists
TransSIGHT LLC
Transit CX, LLC
Civic Edge Consulting, LLC

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, including its agents and employees will not represent or hold itself/themselves out to be employees of the City at any time. Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that 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 City and Contractor, or any of its agents or employees. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with Section 4.6. Should City determine that Contractor is not performing in accordance with the requirements of Section 4.6, 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 City believes that an action of Contractor warrants immediate remedial action by Contractor, 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 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 Section 4.6 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 City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless 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 Section 4.6.

4.7 Assignment. 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 accordance with City law and SFMTA policies, including but not limited to the Contract Approval and Delegation Policy. Any purported assignment made in violation of this provision shall be null and void.

4.8 Reserved. (Liquidated Damages)

4.9 Reserved. (Performance Bond)

4.10 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 and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. Policy must include Abuse and Molestation coverage.

(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) Technology Errors and Omissions Liability Insurance, with limits of \$1,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of Services defined in the Agreement and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City’s or third person’s computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

(f) Cyber and Privacy Liability Insurance with limits of not less than \$1,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(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, and its Officers, Agents, and Employees.

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

(c) The Commercial Automobile Liability Insurance policy include (i) Auto Pollution Additional Insured including as Additional Insured the City and County of San Francisco, and its Officers, Agents, and Employees; and (ii) Form MCS-90 for Motor Carrier

Policies of Insurance for Public Liability under Sections 29 and 30 of the Motor Carrier Act of 1980.

5.1.3 Waiver of Subrogation. The Workers' Compensation Insurance policy(ies) shall include a waiver of subrogation in favor of the City for all work performed by Contractor, and 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 Liability Insurance Primary Insurance 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 the 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, be maintained 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, and 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, consultants, 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, defend, 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, defend, or hold harmless Contractor.

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S TOTAL LIABILITY UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ITS PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1 (CALCULATION OF TASK ORDER COMPENSATION 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 the 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 the 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 timely 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 cancelled 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 City 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 Payment Obligation. City's payment obligation under Section 8.1 (Termination for Convenience) 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
10.3.7	Working with Minors
10.3.8	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws
Article 13	Data and Security

(b) Contractor fails or refuses to perform the Services or 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 or from when Contractor otherwise becomes aware of the Event of Default. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, in addition to all other remedies available to the SFMTA, 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 arising from the Event of Default and/or in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall also 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 Section 8.4 (Rights and Duties upon Termination or Expiration), 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
3.3.6(b)	Grant Funded Contracts - Disallowance
3.4	Audit and Inspection of Records
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. Promptly upon expiration of this Agreement, or promptly upon receipt by Contractor of notice of termination of this Agreement, Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any Deliverables, 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 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 this 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/0%20.

10.2 Governmental Conduct Related Contractual Obligations

10.2.1 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.

10.2.2 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.

10.2.3 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 12 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.

10.3 Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program

10.3.1 General. The SFMTA is committed to a Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise Program (DBE Program) for the participation of SBEs in federally funded contracting opportunities. In addition, Contractor must comply with all applicable federal regulations regarding SBE participation, as set out in Title 49,

Part 26 of the Code of Federal Regulations, with respect to SBEs performing work under this Agreement. More information on federal requirements can be found on the internet at: <http://www.fta.dot.gov/civilrights/12326.html>.

10.3.2 Compliance with SBE Program under SFMTA's DBE Program.

Contractor shall comply with the SBE provisions contained in Appendix E attached to this Agreement and incorporated by reference as though fully set forth, including, but not limited to, achieving and maintaining the SBE goal 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.

10.3.3 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.

10.3.4 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 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.

10.3.5 Health Care Accountability Ordinance. Labor and Employment Code Article 121 applies to this contract. Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Article 121, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.3.6 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.

10.3.7 Reserved. (Working with Minors)

10.3.8 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).

10.3.9 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 Sections 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.

10.3.10 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 Article 131.2.

10.4 Environmental Related Contractual Obligations

10.4.1 Reserved. (Packaged Water Prohibition)

10.4.2 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.

10.4.3 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.

10.4.4 Reserved. (Sugar-Sweetened Beverage Prohibition)

10.5 Reserved. (Slavery Era Disclosure)

10.6 Nonprofit Contractor Requirements

10.6.1 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.

10.6.2 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 \$1,000,000 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.

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: Emily Williams
Chief Transit Administration Officer
San Francisco Municipal Transportation Agency
1 South Van Ness, 7th Floor
San Francisco, CA 94103
Emily.Williams@sfmta.com

To Contractor: Raul Laborin, PE
Project Manager
71 Stevenson Street, Ste 1000
San Francisco, CA 94103
Raul.Laborin@wsp.com

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by email, 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 provide technical assistance to City when responding to reasonable accommodation requests from City employees respecting their use of the information content and technology (ICT) and/or Services provided under this Agreement.

11.2.3 Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 1201 et seq.), including the Web Content Accessibility Guidelines (WCAG) 2.1, Level AA, as specified in the Department of Justice's Title II Rule on the accessibility of web content and mobile applications. Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and the applicable Revised Section 508 Standards published by the U.S. Access Board (<https://www.access-board.gov/ict/>), as amended from time to time. Contractor shall ensure that all website and mobile application content provided under this Agreement fully conforms to the Department of Justice's Title II rules and the applicable Revised 508 Standard, 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 c 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 Contract Modification Form (CMD Form 8) along with the required supporting documentation to the CCO and obtain prior CCO approval when processing amendments, modifications or change orders that cumulatively increase the original contract amount by more than 20%, and then for all subsequent amendments, modifications or change orders that cumulatively increase the last CCO approved value by 20%.

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 arbitration. 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 the 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 all data given to Contractor by City in the performance of this Agreement (City Data or Data), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it 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.

11.15 No Third-Party Beneficiaries. The representations, warranties and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons.

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.

This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of 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 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 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

13.4.1 Use of City Data. Contractor agrees to hold City Data received from, or created or collected on behalf of, the 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 the 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 City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use, provided, however, that no City Data may be used by Contractor to train, modify or improve any Artificial Intelligence Systems or Models without City's prior written consent, which may be withheld or withdrawn at City's sole discretion. Nothing herein shall be construed to confer any license or right to 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 Use of Generative Artificial Intelligence in Deliverables. Contractor is prohibited from using Generative Artificial Intelligence in the development of Deliverables without City's prior written consent. Contractor represents and warrants to City that Deliverables will not be developed in a manner that conflicts with the City's rights in and to the Deliverables under Article 9, "Rights in Deliverables," or the City Data confidentiality and security requirements under Article 13, "Data and Security," of this Agreement.

13.4.3 Disposition of City Data. Except as otherwise provided for in this Agreement, upon City's request, termination or expiration of this Agreement, or the expiration of any required document retention period or litigation hold, 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 Days, securely dispose, clear, purge, and/or physically destroy, all copies of all City Data from its servers, files, hosted environments used in performance of this Agreement (including subcontractors' environments), work stations used to process or produce the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such secure disposal occurred within 5 Days of the disposal. 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 City Data and any derivative works of 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 twenty-four (24) hours of the discovery of such, but within twelve (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. 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.

13.7 Cybersecurity Risk Assessment. If a Cybersecurity Risk Assessment (“CRA”) was required before entering the Agreement, Contractor must complete an annual CRA to demonstrate that it has maintained the data privacy and information security program required for City contractors. If Contractor does not satisfactorily complete an annual CRA, the City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement or exercise any of its other remedies hereunder. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.

Article 14 Appendices

14.1 Appendices. The following Appendices (“Appendices” in the plural and each an “Appendix” in the singular) are hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Request Form
- D: FTA Requirements
- E: SBE Requirements

Article 15 MacBride and Signature

15.1 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.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Julie Kirschbaum Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary, to the Board</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ David F. Innes Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>WSP USA Inc.</p> <p><i>Shalonda Baldwin</i></p> <hr/> <p>Shalonda Baldwin California Regional Business Leader Transportation Infrastructure</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: 0000008028</p>
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4915-6093-4062

Appendix A Scope of Work

A. General

The Consultant will provide as-needed specialized consulting services for various projects including the implementation and completion of the various transit vehicle and transit-related equipment procurements, maintenance of way projects, operational scenario model projects, asset management projects, service planning projects, various transit system projects, and rehabilitation and replacement projects. Services may include, design analysis, structural finite element analysis, engineering calculations, quality control inspection, feasibility study, administrative support, vehicle acceptance and testing, warranty administration, and cost analysis. The Consultant may be asked to perform other tasks related to the maintenance and operation of the transit vehicles and facilities, including assisting with fare collection, advanced train control system (ATCS), data communications, passenger information system, vehicle telematics systems, charging infrastructure software systems, and associated equipment.

The SFMTA will decide, in its sole discretion, which tasks to assign to the Consultant. The SFMTA may use qualified City staff to the extent possible to provide the technical engineering and quality control services. The services to be provided by the Consultant at the direction and to the satisfaction of the SFMTA may include the following:

B. Specific Work Tasks/Phases

1. Task 1: Project Management

The Consultant will support the SFMTA in the day-to-day execution of projects related to its transit vehicles, systems and services. Deliverables may include the following:

- a. Project Management Plan (PMP)**
Develop, implement, and maintain the PMP for transit-related projects, including all related and supporting management documents.
- b. Progress Reports**
Provide a series of reports that will summarize the progress of activities. The reports should also track any issues that may have occurred during the past reporting period, their status and resolution. Reports may include, but not be limited to: bi-weekly reports, monthly reports, QA reports, trip reports, Federal Transit Administration (FTA) Quarterly Reports, and other reports required by funding agencies.
- c. Meetings**
Schedule, attend, and document meetings, conference calls, or other review sessions.
- d. Documentation**
Prepare documentation (letters, reports, presentations).

e. Tracking Systems

Set up and maintain systems to track all project information to allow a project to be effectively managed. Items to be tracked include correspondence, actions, and change orders.

f. Stakeholder Outreach

Prepare presentations, reports, and responses to requests from stakeholders, such as the FTA.

2. Task 2: Contract Management

The Consultant will support the SFMTA Project Manager in managing the projects related to its transit vehicles, systems and services, including performing tasks such as:

a. Contract Management

Support oversight and enforcement of bus and rail vehicle procurement and rehabilitation contracts, including verification of requirements, change orders, deliverables, claims, and payments.

b. Schedule Management

Support development and maintenance of the overall project schedules for a variety of fleet-related projects, including oversight of the bus and rail vehicle procurement and rehabilitation schedule, and other transit-related technology projects such as advanced train control systems. In addition, support integration of the fleet-related project schedules into other agency-wide projects, such as the Train Control System upgrade.

c. FTA Compliance

Conduct reviews, as needed, to verify that the bus and rail vehicles and equipment conform to their respective contract requirements and technical specifications, as well as all federal, state and local requirements. Activities and deliverables may include:

- i. Pre-award and post-delivery Buy America audits, in compliance with 49 CFR Part 663.
- ii. Other audits and reviews, as required, to verify that the bus and rail vehicle procurement and rehabilitation contracts are being performed in accordance with all applicable federal, state and local requirements.

d. Cost Estimates

Prepare independent cost estimates and cost-analyses for any proposed contracts or contract changes (in accordance with FTA requirements, as applicable); identify responsibilities for the changes, and advise on any resulting impacts in scope, schedule and budget.

3. Task 3: Design Reviews and Evaluation of CDRLs and Submittals

Consultant shall support the SFMTA in the review, outreach and response to submittals from rolling stock and other contractor(s), including letters, drawings, design review packages and other Contract Deliverable Requirements List (CDRL) items.

a. Specialized Experts

Provide specialized experts, as-needed, to cover all vehicle systems, as well as risk assessments, hazard analyses, reliability analyses and systems integration, among others.

b. Submittal Review and Response

Review and comment on CDRL Items. Review the submittals for compliance with the specifications and meet the project objectives for quality, reliability and maintainability; recommend disposition to the SFMTA. Work with the project team to drive consensus among internal stakeholders to develop an agreed SFMTA position on issues as they arise.

c. System Integration

Support the SFMTA during planned systems integration reviews to ensure that the vehicle and subsystems perform according to the SFMTA's requirements and expectations, including addressing interface issues with concurrent projects, such as end-of-life technology refresh projects, and the Train Control Upgrade project.

d. First Article Inspection

Coordinate, attend and oversee First Article Inspections (FAI) for the entire vehicle, including subsystems, establishing a baseline upon which the production units will be based, and changes in configuration will be assessed.

e. Issue Resolution

Conduct research into peer agencies, best practices, required standards, and federal, state and local requirements to provide advice and counsel with regards to issues that may arise. Reports or presentations shall be provided as requested by the SFMTA.

4. Task 4: Quality Assurance (QA) Oversight

The Consultant will provide QA oversight services to ensure that quality material is used, good workmanship is performed, and work is conducted in accordance with all plans and contract documents, as well as federal, state and local requirements. Activities and deliverables may include:

a. QA Program Oversight

Review the applicable QA programs to assure that the contractor's QA organization follows contractually required processes for controlling the quality of the design, tooling calibration, receiving inspection, corrective actions, and the manufacturing process.

b. QA Production Oversight

Conduct checks, as necessary, to assure that quality records are maintained throughout the manufacturing process at both supplier and subcontractor facilities. Assess quality trends and review with SFMTA staff and the contractor to determine any corrective actions.

c. QA Representative

Provide a Quality Assurance Representative (QAR) to provide daily (or weekly) written inspection reports as required by the SFMTA. The QAR will use SFMTA-approved procedures to note any deficiencies and corrective actions required.

d. QA Change Management Oversight

Review the contractor's change control, configuration management, and document management systems to verify that they are capable of complying with the contract provisions and are able to monitor changes from the baseline specification.

e. Receiving Inspection

Provide incoming or receiving inspection at the SFMTA delivery location to determine whether vehicles or equipment have been damaged in transport or at any other time.

5. Task 5: Test Program Oversight

The Consultant shall provide "test program oversight" services to ensure that the prototype bus and rail vehicles, production vehicles, and rehabilitated bus and rail vehicles perform according to the vehicle contract requirements and technical specifications, including all federal, state and local requirements. Activities and deliverables may include:

a. Test Documentation Review

Review and recommend for acceptance the test and evaluation plans and procedures for all materials, components, subsystems, and completed work requiring testing under the Specifications.

b. Test Witnessing

Witness design, qualification, acceptance and burn-in tests, as required, including tests at contractor's or its subcontractors' facilities, the SFMTA site, or third party location.

c. Vehicle Acceptance

Support the SFMTA in acceptance inspection and testing efforts. Once a vehicle or equipment has been delivered to SFMTA but before it is accepted, Consultant shall perform a final audit to verify that the necessary documentation (e.g., weight certificates, Car History Book) is provided with the vehicles.

d. Operational Testing

Support operational testing to confirm compatibility with the SFMTA's existing system, facilities, and equipment; assist with operator orientation.

6. Task 6: Commissioning and Start-up Activities

The Consultant shall support commissioning and start-up activities prior to the start of revenue service for the new vehicle or equipment. Activities and deliverables may include:

- a.** Review and comment on all support services submittals, including maintenance manuals, parts and operations manuals, training programs, and safety program plans.
- b.** Verify delivery and configuration of as-built drawings and associated documentation.
- c.** Support training program, including testing and acceptance of the training simulator.
- d.** Support safety certification of the advanced train control systems, the new rail fleet, and other rail systems in accordance with CPUC General Order 164-D, develop checklists, conduct necessary verifications, obtain sign-off of responsible parties, and prepare mitigation plans, if necessary.
- e.** Support revenue readiness activities, including maintenance shop readiness, and verification that the vehicle design will meet its operational requirements for SFMTA routes, including range, gradeability and environmental issues.
- f.** Support coordination activities with interrelated projects, such as the Train Control Upgrade project.

7. Task 7: Post-Delivery Support

Consultant shall assist the SFMTA in effectively developing and administering a technical support program as required. This program will cover all post-delivery support requirements, including warranty administration, manual updates and field modification management. Activities and deliverables may include:

- a.** Ensuring that all training, spare parts, special tools, special test equipment, maintenance and operation manuals, and other deliverables are properly provided in accordance with the requirements of the applicable procurement contract.
- b.** Support the oversight and tracking of all field modification work, including review of documentation, verification of configuration management, QA oversight of re-work, re-testing, and spare parts reconfiguration.
- c.** Monitor the reliability program and work with the SFMTA and the contractor to assure compliance of the fleet with reliability requirements.
- d.** Assist in the set-up, execution, administration, and monitoring of the warranty program, including identification and resolution of fleet defects.

- e. Ensure that the preventive maintenance process and operations and maintenance activities are clearly defined and complete.

8. Task 8: Transit Management Support

Consultant shall provide other services as-needed by the SFMTA's Transit Division to support the fleet engineering maintenance and operation of the transit vehicles. Activities may include:

- a. Review plans, checklists and procedures related to vehicle preventive maintenance.
- b. Perform preventive maintenance and inspection audits and reporting.
- c. Evaluate and assist with the implementation of modern and cost-effective maintenance methods for vehicles.
- d. Provide data analysis to identify spikes and shortfalls in vehicle performance.
- e. Review and update operating procedures as necessary.
- f. Assist in the development or updating of operating practices and procedures.
- g. Perform technical evaluations and assist with the implementation of emerging technologies to improve operations and service delivery.
- h. Perform strategic long-term planning of key operations issues.
- i. Provide Transit Operations support, including scheduling analyses and service improvement analyses.
- j. Support Overhaul Programs.
- k. Support alternate equals.
- l. Support parts identification and negotiations.
- m. Support specific failure investigations.
- n. Support writing bulletins.
- o. Support customer experience improvement.
- p. Support training.
- q. Support Budget Planning and Cost Estimating.
- r. Support regulatory compliance.
- s. Support Vehicle Engineering.
- t. Support historic fleet.
- u. Provide Warranty supports for vehicles after acceptance.

- v. Conduct vehicle performance matrices.
- w. Support Non-Revenue Vehicle fleet plan and procurement.

9. Task 9: Maintenance of Way

This task is intended to support a broad range of specialized services related to planning and programming, specialized analytical studies, construction support and management, and start-up and operations planning. Examples of efforts that would be provided under this task include performing field surveys, assisting in the preparation of procurement contracts, preparing QA oversight, performing audits, performing ultrasonic rail testing, and administering training. Additionally, technical services related to the delivery of technology system projects led by the Maintenance of Way Division would be included in this task.

The Consultant shall provide a broad range of specialized services and staff to complete Task Orders issued by the SFMTA, either by direct assignment of its own personnel or through Subconsultants, including, but not limited to, initial planning and programming, specialized analytical studies, and start-up and operations planning. Task Orders may include:

- a. Provide support to SFMTA's Maintenance-of-Way Engineering Unit, which includes planning, design review, and field investigation support of transit system improvements, including the traction power system, transit signaling system, and communication system to improve safety and service reliability. The scope of work may also include:
 - i. Prepare design criteria to include and meet all applicable codes and standards.
 - ii. Prepare alternate analyses and recommend overall design approaches.
 - iii. Perform site investigations and functional analyses.
 - iv. Review design packages (plans and specifications)
 - v. Provide technical administrative support (e.g., file drawings, meeting minutes, document control).
 - vi. Incorporate SFMTA's Quality Assurance (QA) program requirements into the design and construction packages.
 - vii. Identify and develop special testing requirements, system cut-over plans, and start-up plans.
- b. Assist in the preparation of procurement contracts for transit infrastructure components and systems; operating equipment; and long-lead items. The task shall include product research, specifying products, and performing alternative analyses.
- c. Perform field surveys using licensed surveyors.
- d. Prepare project management plans in accordance with FTA requirements.

- e. Prepare QA oversight, audits, plans, training and assistance in accordance with FTA requirements.
- f. Predict, analyze, prevent and mitigate noise and vibration from transit operations, and equipment, and design and monitor mitigation measures.
- g. Perform testing as required by the City, including metallurgical, annual ultrasonic rail testing, and other testing requested by SFMTA.
- h. Perform preliminary and system hazard analyses, failure modes and effects analyses, single-point-of-failure analyses, hazard level classification, and safety certification of systems.
- i. Perform systems analyses, including communications systems analyses, systems integration, safety processes, configuration management, and related work.
- j. Perform start-up and commissioning of systems, including integration and pre-revenue “dry-run” testing, developing test procedures, instrumenting vehicles and equipment, conducting tests, and providing test reports and analyses.
- k. Provide safety certification oversight and required documentation to obtain System Safety and Security Program per CPUC General Order (GO) 164-D. (General Order 164-D requires transit agencies who are building and operating rail fixed guideway systems to establish a System Safety and Security Program.) The scope of work may include:
 - i. Provide safety standards
 - ii. Review the system safety program
 - iii. Review the contractor’s hazard analyses
 - iv. Develop Safety and Security Certification Plans
 - v. Lead Safety & Security Certification Review Committee SSCRC (ongoing)
 - vi. Maintain the Audit Conformance Checklist (ongoing)
 - vii. Review the safety requirements
 - viii. Audit implementation of safety requirements
 - ix. Audit resolution of hazards (ongoing)

10.Task 10: Transit Systems

Under the Task, the Consultant will assist with the procurement of technical services related to the operation of transit-supportive technology systems and system modifications at the application level or higher (e.g., ATCS, fare collection, communications). Examples of efforts that would fall within this task include writing documentation, drafting SOPs, user interface

configuration, and defining requirements for new feature requests from system vendors. Tasks may include:

a. Concept of Operations / Lifecycle Planning

The Consultant shall advise the SFMTA on key issues relating to the most effective means to employ technology systems to assist in operations. This may include developing a procurement and lifecycle strategy.

b. Procurement Support

The Consultant shall conduct industry outreach and advise the SFMTA on the available firms and products for individual procurement efforts. This shall include supporting the RFI, RFQ, and RFP processes, in such ways as:

- i. Maintaining industry contacts and communicating with potential vendors on the SFMTA's behalf.
- ii. Facilitating, organizing and staffing RFI or RFP pre-submission meetings.
- iii. Facilitating and organizing vendor presentations.
- iv. Advising the SFMTA on the nature of each vendor's offering.
- v. Drafting language for inclusion in the RFI, RFQ, RFP and sample contract documents.

c. Design Support

In the design phase of a technology procurement project, the Consultant shall review system vendor's design documents and advise the SFMTA and the vendor on potential integration issues, discontinuity between the system design and the concept of operations, or potential design deficiencies. The Consultant shall suggest design solutions for these issues in the design phase so they may correct designs at a minimum of delay and expense to a project.

d. Quality Control

During the production/delivery phase of a technology procurement project, the Consultant shall support the SFMTA's quality control efforts to ensure the equipment being delivered is free from manufacturing or design defects.

e. Hardware Integration

During the design and engineering phases, the Consultant shall support the integration of the new system with the other systems present on the SFMTA's vehicles or in the SFMTA's facilities. The Consultant shall be ultimately responsible to the SFMTA for ensuring that the new system is fully integrated with existing systems to the specifications detailed in the Task Order.

During the production/delivery phase, the Consultant shall support the integration of the new system to the vendor's specifications and any additional specifications that other SFMTA consultants have developed. This support may include activities such as:

- i. Developing an installation/deployment plan compatible with daily SFMTA operations and maintenance.
- ii. Overseeing the execution of the installation plan in coordination with the SFMTA Project Manager and operations managers
- iii. Training any SFMTA staff as needed to support the installation

f. Innovative Solutions

Throughout the system lifecycle, the Consultant shall support SFMTA operations by designing innovative solutions that require integration between one or more existing systems on board vehicles, on the wayside, in the street environment, or in the control center. This support would not necessarily be connected to a new system procurement; rather, the SFMTA would be seeking advice on how to accomplish the SFMTA's stated goals with existing equipment. The Consultant shall suggest modifications to that equipment, or additional purchases to support the SFMTA's goals.

g. List of Systems

Potential systems requiring the support of as-needed services include:

- i. Farebox Collection System
- ii. Train Control Systems
- iii. Surface Rail Signaling Systems
- iv. Traffic Signals and Transit Signal Priority (TSP) systems
- v. Customer Information System
- vi. On-Board Vehicle Signs and Announcement Systems
- vii. Platform Signs and Announcement Systems
- viii. Vehicle Telematics
- ix. Charging Infrastructure Software Solution
- x. Automatic Passenger Counter system
- xi. Video Surveillance systems
- xii. Transit-Only Lane Enforcement (TOLE) System

- xiii. Collision Avoidance System
- xiv. DriveCam and SmartDrive systems (used for safety incident detection)
- xv. Autonomous Vehicle Technology

11.Task 11: Other Services

Consultant shall provide other services as-needed by Transit Division for the implementation and completion of the Project. Tasks may include, but are not limited to:

- a. Advise the SFMTA on key issues regarding vehicle and equipment procurement, including compliance, systems integration and deviation from Contract requirements.
- b. Support project integration into existing systems and emerging programs; these may include maintenance management systems, project management systems, asset management tracking, or other agency-wide systems.
- c. Develop integration plans to ensure that the new vehicles or equipment operate as intended with the existing infrastructure, including track and overhead, substations, wheel rail interface, charging infrastructure and maintenance facilities.
- d. Support tasks for long-term fleet planning and replacement, including options, timing and procurement strategies required to maintain the fleet.
- e. Support with data collection efforts, such as ridership counts, traffic counts, and pedestrian counts.
- f. Support the Agency's Communications & Marketing Division with graphics for maps, posters, reports, one-pagers, marketing material, and other documents.
- g. Support data analyses pertaining to service planning activities, including before/after comparisons and trend analysis.
- h. Support the Agency's Communications & Marketing Division with outreach efforts, including facilitating meetings and providing logistical help and ambassador resources.
- i. Produce or assist with peer reviews and best practice reviews for activities such as off-wire operation, fallback scheduling, and emergency planning.
- j. Assist with asset management of transit equipment.
- k. Prepare fleet retirement plan to determine the best methodology, cost and schedule to retire vehicles as they are replaced and taken out of service.
- l. Conduct data analyses to identify spikes and shortfalls in vehicle performance.

- m.** Produce or assist with the production of operational scenario models. Models may take into account available ridership, grade, or route data.
- n.** Provide Maintenance Equipment Support with new or existing equipment.

**Appendix B
Calculation of Charges**

Table 1: Direct and Fully Burdened Hourly Labor Rates by Positions for Contractor and all Subcontractors

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
WSP	Reliability, Maintainability, Safety (Rail)	Ahmed, Gulzar	\$ 97.59	\$ 232.54	\$ 199.45
WSP	Business Process Improvement	Akofio-Sowah, Margaret	\$ 110.21	\$ 262.61	\$ 225.25
WSP	Test Witnessing	Alshawabkeh, Ibrahim	\$ 101.17	\$ 241.07	\$ 206.77
WSP	FTA Compliance & Buy America	Aquino, Chris	\$ 65.06	\$ 155.02	\$ 132.97
WSP	Principal in Charge	Baldwin, Shalonda	\$ 171.81	\$ 409.39	\$ 351.15
WSP	Capital Delivery Planning	Baratz, Matthew	\$ 126.49	\$ 301.40	\$ 258.52
WSP	Safety & Security Certification	Bennett, Galen	\$ 87.83	\$ 209.28	\$ 179.51
WSP	Test Witnessing	Bernard, Carlton	\$ 90.95	\$ 216.72	\$ 185.88
WSP	Vehicle Maintenance & Overhaul	Bonina, Stephen	\$ 149.76	\$ 356.85	\$ 306.08
WSP	Fare Collection	Chan, Andrew	\$ 80.45	\$ 191.70	\$ 164.42
WSP	Power Systems	Cheung, Albert	\$ 102.09	\$ 243.26	\$ 208.65
WSP	Business Process Improvement	Ching, Jacinta	\$ 108.61	\$ 258.80	\$ 221.98
WSP	Systems Integration (ConOps)	Colacioppo, Tom	\$ 133.49	\$ 318.08	\$ 272.83
WSP	Capital Delivery Planning	Connelly, Craig	\$ 120.74	\$ 287.70	\$ 246.77
WSP	Cost Estimation & Analysis	Curtin, Tim	\$ 114.10	\$ 271.88	\$ 233.20
WSP	Organizational Alignment & Governance	Dinsdale, Eryca	\$ 152.50	\$ 363.38	\$ 311.68
WSP	Systems Integration	Donohue, Brian	\$ 116.41	\$ 277.38	\$ 237.92
WSP	Planner	Dreamer, Shantelle	\$ 86.12	\$ 205.21	\$ 176.01

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
WSP	Train Control Systems (CBTC)	Dwivedi, Saral	\$ 97.68	\$ 232.75	\$ 199.64
WSP	Bus TSP & Video Surveillance	Edwards, Wes	\$ 125.61	\$ 299.30	\$ 256.72
WSP	Quality Oversight (Bus)	Esser, Mike	\$ 40.80	\$ 97.22	\$ 83.39
WSP	Traffic Engineering	Fay, Kari	\$ 111.86	\$ 266.54	\$ 228.62
WSP	FTA Compliance & Buy America	Feldman, Ken	\$ 125.41	\$ 298.83	\$ 256.31
WSP	Communications & Wayside Systems	Fetouh, Mostafa	\$ 91.55	\$ 218.15	\$ 187.11
WSP	Vehicle Engineer	Finnern, Mike	\$ 131.69	\$ 313.79	\$ 269.15
WSP	Capital Delivery Planning	German, Lauren	\$ 106.01	\$ 252.60	\$ 216.66
WSP	Facilities	Geyer, Matt	\$ 118.77	\$ 283.01	\$ 242.74
WSP	Vehicle Support (Bus)	Gonneville, Jeff	\$ 167.51	\$ 399.14	\$ 342.36
WSP	Survey Support	Gustafson, John	\$ 90.01	\$ 214.48	\$ 183.96
WSP	Systems Integration (ConOps)	Hainey, Jackie	\$ 76.50	\$ 182.28	\$ 156.35
WSP	Workforce Development & Training	Hall, Nomoya	\$ 60.61	\$ 144.42	\$ 123.87
WSP	Non-Revenue Work Equipment	Hartford, Trevor	\$ 60.87	\$ 145.04	\$ 124.41
WSP	Safety Manager/CPUC Cert	Hendrickson, Chris	\$ 92.16	\$ 219.60	\$ 188.36
WSP	Grants Manager	Hernandez, Alfonso	\$ 104.98	\$ 250.15	\$ 214.56
WSP	Fare Collection	Hickey, Robert	\$ 80.45	\$ 191.70	\$ 164.42
WSP	Bus TSP & Video Surveillance	Hiles, Tom	\$ 100.99	\$ 240.64	\$ 206.40
WSP	Integration Engineer	Hoehne, Oliver	\$ 140.42	\$ 334.59	\$ 286.99
WSP	Facilities	Horler, Anthony	\$ 100.92	\$ 240.47	\$ 206.26
WSP	Power Systems	Hsiao, Michael	\$ 124.81	\$ 297.40	\$ 255.09
WSP	Communications & Wayside Systems	Hubany, Joshua	\$ 71.43	\$ 170.20	\$ 145.99
WSP	Bus Facilities	Immroth, Andrew	\$ 132.80	\$ 316.44	\$ 271.42
WSP	Workforce Development	Jackson, Aurora	\$ 134.89	\$ 321.42	\$ 275.69
WSP	Rail Vehicle Engineering Specialist	Jacobs, Stephen	\$ 88.95	\$ 211.95	\$ 181.80
WSP	Integration Engineer	Jain, Nihit	\$ 96.84	\$ 230.75	\$ 197.92
WSP	Transit Systems Lead	Jenkins, Tiffani	\$ 173.32	\$ 412.99	\$ 354.23

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
WSP	Systems Integration	Johnson, Chamara	\$ 104.22	\$ 248.34	\$ 213.00
WSP	LRVs	Johnson, Kevin	\$ 90.98	\$ 216.79	\$ 185.94
WSP	Cost Estimation & Analysis	Kaehler, Auden	\$ 121.55	\$ 289.63	\$ 248.42
WSP	Bus System Engineering	Keshmiri, Armon	\$ 74.19	\$ 176.78	\$ 151.63
WSP	Test Witnessing	King, Brian	\$ 56.40	\$ 134.39	\$ 115.27
WSP	Trolley, Cable Cars, Historic Streetcars	Kramer, David	\$ 74.58	\$ 177.71	\$ 152.43
WSP	Project Manager	Laborin, Raul	\$ 148.81	\$ 354.58	\$ 304.14
WSP	Autonomous Vehicles	Laine, Hieikki	\$ 131.51	\$ 313.36	\$ 268.78
WSP	Rail Vehicle Engineering Specialist	Lee, Jun	\$ 125.00	\$ 297.85	\$ 255.48
WSP	Communications & Wayside Systems	Leung, Davy	\$ 107.46	\$ 256.06	\$ 219.63
WSP	Communications & Wayside Systems	Lim, Kevin	\$ 134.53	\$ 320.56	\$ 274.95
WSP	Procurement Support	Little, Bryce	\$ 165.48	\$ 394.31	\$ 338.21
WSP	Task Manager	Lowell, Dana	\$ 130.99	\$ 312.12	\$ 267.72
WSP	Procurement Support	Lucila, Marguerite	\$ 108.23	\$ 257.89	\$ 221.20
WSP	Maintenance of Way (Rail Vehicles)	MacNiven, Michael	\$ 112.79	\$ 268.76	\$ 230.52
WSP	Planner	Mahadi, Tamara	\$ 52.70	\$ 125.57	\$ 107.71
WSP	Power Systems	Marchand, Michael	\$ 56.40	\$ 134.39	\$ 115.27
WSP	Quality Manager	Marcus, Richard	\$ 85.47	\$ 203.66	\$ 174.68
WSP	Bus Facilities	Martin, Mike	\$ 95.73	\$ 228.11	\$ 195.65
WSP	Risk Management	McDonnell, Devon	\$ 95.03	\$ 226.44	\$ 194.22
WSP	Traction Power Lead	Michael, Laurence	\$ 121.73	\$ 290.06	\$ 248.79
WSP	Communications & Wayside Systems	Midy, Pascal	\$ 105.51	\$ 251.41	\$ 215.64
WSP	Bus, Paratransit, Non-Revenue	Morrow, Ryan	\$ 78.00	\$ 185.86	\$ 159.42
WSP	Quality Manager	Nezaj, Skender	\$ 134.90	\$ 321.44	\$ 275.71
WSP	Power Systems	Ng, Alan	\$ 115.87	\$ 276.10	\$ 236.82
WSP	Engineering Lead	Pandit, Orijit	\$ 119.39	\$ 284.48	\$ 244.01
WSP	Safety and Security Certification	Perez, Wendy	\$ 99.89	\$ 238.02	\$ 204.16

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
WSP	Task Manager	Porter, Mike	\$ 146.41	\$ 348.87	\$ 299.23
WSP	Maintenance of Way (Track)	Poston, Brian	\$ 96.94	\$ 230.99	\$ 198.13
WSP	Vehicle Engineer	Poteat, Jason	\$ 101.58	\$ 242.04	\$ 207.61
WSP	Communications & Wayside Systems	Ramnauth, Amelia	\$ 54.08	\$ 128.86	\$ 110.53
WSP	Alternative Delivery	Renehan, Brian	\$ 138.65	\$ 330.38	\$ 283.37
WSP	Asset Management	Roberts, Nilmino	\$ 135.85	\$ 323.70	\$ 277.65
WSP	Fare Collection	Rosen, Henry	\$ 158.32	\$ 377.24	\$ 323.57
WSP	Rail Vehicle Maintenance & Overhaul	Salih, Adam	\$ 93.49	\$ 222.77	\$ 191.07
WSP	LRVs	Scioli, Austin	\$ 59.89	\$ 142.71	\$ 122.40
WSP	Quality Oversight (Rail)	Shah, Deenesh	\$ 100.49	\$ 239.45	\$ 205.38
WSP	Bus, Paratransit, Non-Revenue	Sicolo, Vito	\$ 152.76	\$ 364.00	\$ 312.21
WSP	Systems Integration	Solorzano, Felix	\$ 115.24	\$ 274.59	\$ 235.53
WSP	Organizational Alignment & Governance	Strumolo, Andrew	\$ 114.47	\$ 272.76	\$ 233.95
WSP	Quality Manager	Sumrein, Jamal	\$ 93.21	\$ 222.10	\$ 190.50
WSP	Community Outreach	Sword, Mikaela	\$ 61.48	\$ 146.49	\$ 125.65
WSP	Planner	Taylor-Gratzer, Ryan	\$ 71.93	\$ 171.39	\$ 147.01
WSP	Communications & Wayside Systems	Telewoda, Joseph	\$ 84.04	\$ 200.25	\$ 171.76
WSP	Test Witnessing	Motepalli, Tirumala	\$ 56.11	\$ 133.70	\$ 114.68
WSP	Service Planning	Tomula, Tom	\$ 107.62	\$ 256.44	\$ 219.95
WSP	Service Planning	Watry, Duncan	\$ 98.53	\$ 234.78	\$ 201.38
WSP	Technical Writing	Wheeler, Vickie	\$ 79.29	\$ 188.93	\$ 162.05
WSP	Field Inspector	Yates, Mike	\$ 80.83	\$ 192.60	\$ 165.20
Civic Edge	Marketing and Communications Lead	Strellis, Paisley	\$ 69.73	\$ 199.25	\$ 199.25
CapGCS	Field Inspector	Barrios, Tom	\$ 63.00	\$ 132.30	\$ 132.30
CapGCS	Bus, Paratransit, Non-Revenue	Beauchamp, Mark	\$ 82.80	\$ 173.88	\$ 173.88
CapGCS	Scheduling	Guerrero, John	\$ 77.27	\$ 162.27	\$ 162.27
CapGCS	Contract Administration	Lechuga, Maria	\$ 55.71	\$ 116.99	\$ 116.99
RVBA	Rail Vehicle Maintenance & Overhaul	Bhatt, Avani	\$ 241.78	\$ 607.01	\$ 607.01
RVBA	Test Witnessing	Kelley, Daniel	\$ 193.46	\$ 485.70	\$ 485.70

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
RVBA	FTA Compliance & Buy America	LaRusch, Jim	\$ 345.21	\$ 866.68	\$ 866.68
RVBA	LRVs	Taheri, Mehdi	\$ 245.38	\$ 616.05	\$ 616.05
Systra	Integration Engineer	Idrissi, Moulay	\$ 102.00	\$ 272.13	\$ 233.07
Systra	Test Witnessing	Ambikaibaka, Tharu	\$ 96.15	\$ 256.53	\$ 219.71
Systra	Train Control Systems (Security/Safety)	Arayult, Philippe	\$ 133.79	\$ 356.95	\$ 305.72
Systra	Communications & Wayside Systems	Arnold, Shane	\$ 79.50	\$ 212.11	\$ 181.66
Systra	Communications & Wayside Systems	Chembola, Angelina	\$ 50.01	\$ 133.43	\$ 114.27
Systra	Test Witnessing	Ferron, Jean-Philippe	\$ 112.85	\$ 301.08	\$ 257.87
Systra	RAMS & Human Factors	Loveluck, Timothee	\$ 99.96	\$ 266.69	\$ 228.41
Systra	Communications & Wayside Systems	Ololo, Celstin	\$ 72.00	\$ 192.10	\$ 164.52
Systra	Communications & Wayside Systems	Thu, Myat	\$ 81.36	\$ 217.07	\$ 185.91
Systra	Communications & Wayside Systems	Wong, Dennis	\$ 131.25	\$ 350.17	\$ 299.91
The Allen Group	Community Outreach	Abrams, Leamon	\$ 123.80	\$ 305.72	\$ 297.45
The Allen Group	FTA Compliance & Buy America	James, Aaron	\$ 127.21	\$ 314.15	\$ 305.65
Transit CX1	Customer Experience	Weinstein, Aaron	\$ 336.00	\$ 336.00	N/A
TransSIGHT	Digital Tools and Tracking Systems	Bhalla, Satinder	\$ 92.31	\$ 178.34	\$ 178.34
TransSIGHT	Digital Tools and Tracking Systems	Giri, Bimesh	\$ 79.81	\$ 154.19	\$ 154.19
TransSIGHT	Digital Tools and Tracking Systems	Saxena, Perna	\$ 70.67	\$ 136.53	\$ 136.53
Virginkar & Associates	Planner	Contreras, Raymundo	\$ 53.56	\$ 122.51	\$ 122.51
Virginkar & Associates	Field Inspector	Guevin, Gary	\$ 68.14	\$ 155.86	\$ 155.86
Virginkar & Associates	Vehicle Engineer	Holland, Ben	\$ 97.85	\$ 223.81	\$ 223.81
Virginkar & Associates	Field Inspector	Reese, Bryan	\$ 61.92	\$ 141.63	\$ 141.63

Firm	Position	Name	Direct Hourly Rate	Office Billing Rate*	Field Billing Rate**
Virginkar & Associates	Field Inspector	Rodda, Scott	\$ 97.00	\$ 221.87	\$ 221.87
Virginkar & Associates	Task Manager	Tully, Patrick	\$ 108.15	\$ 247.37	\$ 247.37
Virginkar & Associates	Integration Engineer / R,M,S (Bus)	Zehm, James	\$ 88.49	\$ 202.40	\$ 202.40

*Office Billing Rate = Direct Hourly Rate x Office Multiplier listed in Table 2

**Field Billing Rate = Direct Hourly Rate x Field Multiplier listed in Table 2

Table 2: Schedule of Overhead Rates for Contractor and all Subcontractors

Company	Office	Field	MULTIPLIERS	
			OFFICE	FIELD
WSP	138.28%	104.38%	2.3828	2.0438
Civic Edge	185.75%	185.75%	2.8575	2.8575
CapGCS	110.00%	110.00%	2.1000	2.1000
RVBA	151.06%	151.06%	2.5106	2.5106
Systra	166.80%	128.50%	2.6680	2.2850
The Allen Group	146.95%	140.27%	2.4695	2.4027
Transit CX ¹	N/A	N/A	N/A	N/A
TransSIGHT	93.20%	93.20%	1.9320	1.9320
Virginkar & Associates	128.73%	128.73%	2.2873	2.2873

Note:

1. Subcontractor does not charge an overhead.

Appendix C

As-Needed Specialized Engineering and Other Related Consulting Services
Contract No. SFMTA-2026-52-FTA
SBE/DBE Goal: 20%

SFMTA Transit Division

TASK ORDER REQUEST FORM

Task Title: _____ Date Initiated: _____	
Type of Request:	
<input type="checkbox"/> New Task Order- No. <u>XX</u>	
<input type="checkbox"/> Modification No. ____ (attach approved original and all modifications to date)	
Total Amount Being Requested:	<u>\$ x,xxx.xx</u>
Total approved task to date (including all mods.):	<u>\$ x,xxx.xx</u>
Total task amount including this request:	<u>\$ x,xxx.xx</u>
Estimated Task Start Date: _____ Estimated Modification Start Date: _____	
Estimated Completion Date: _____	
Funding Source: _____	Proposed Task SBE/DBE Goal: <u>xxx.xx</u> %
Account: _____ Fund: _____ Dept: _____ Authority: _____	
Project: _____ Activity: _____	
Work to be Performed:	
[Detailed description of work to be performed. Can refer to attachments to provide additional detail and information]	

[C&P Analyst Initials]

Page 1 of 1

Task Order No. [X]

Appendix C

As-Needed Specialized Engineering and Other Related Consulting Services
 Contract No. SFMTA-2026-52-FTA
 SBE/DBE Goal: 20%

SFMTA Transit Division

NAME	HOURS	LOADED RATE	TOTALS
SubTotal Labor/Services			
Profit [Enter NTE% from Contract] [Enter as a lump sum]			
Subcontractor Mark Up [Enter NTE% from Contract] [Enter as a lump sum, remove line if not applicable]			
Other Direct Costs (ODCs) See Contractor Proposal for a detailed description of all out-of-pocket expenses			
Grand Total This Task:			\$000,000
Notes:			
Concurred by Contractor: [Enter Contractor PM Name]			
Signature:		Date:	
APPROVALS [This Approvals Section should be modified to meet the Division's administrative requirements]			
Requested by:	_____		Date _____
	Name, Title		
Approved by:	_____		Date _____
	Name, Contract/ Project Manager		
Reviewed by:	_____ (N/A – See attached CCO approval memo)		Date _____
	Alaric Degrafinried, Director of Compliance		
Reviewed by:	<div style="border: 1px solid black; padding: 2px; display: inline-block; margin-right: 10px;">C&P Manager initial</div> <div style="border: 1px solid black; padding: 2px; display: inline-block;">C&P Analyst Initial</div>	Date _____	
	Julia M.C. Friedlander, Director of Contracts & Procurement		
Approved by:	_____		Date _____
	Division Director, Title		

[C&P Analyst Initials]

Appendix D

FTA REQUIREMENTS FOR PERSONAL/PROFESSIONAL SERVICES CONTRACTS

I. DEFINITIONS

- A. Approved Project Budget** means the most recent statement, approved by the 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 FTA.
- C. Cooperative Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which 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 FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which 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 FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each 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 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 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 FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and 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 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 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 an 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 Request for Proposal Appendix D, Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

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. FEDERAL TAX LIABILITY AND RECENT FELONY CONVICTIONS

A. Contractor certifies that it:

1. Does not have any 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; and
2. Was not convicted of the felony criminal violation under any Federal law within the preceding 24 months.

B. Flow-Down. Contractor is required to flow this requirement down to participants at all lower tiers, without regard to the value of any subagreement.

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 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 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 the FTA Chief Counsel and 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 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 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 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. CIVIL RIGHTS

- A. Nondiscrimination** – In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity** – The following equal employment opportunity requirements apply to the underlying contract:
- 1. Race, Color, Creed, National Origin, Sex** – In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants

are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. **Age** – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 3. **Disabilities** – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

IX. NONDISCRIMINATION ON THE BASIS OF DISABILITY

The Contractor agrees to comply with the following federal prohibitions against discrimination based on disability:

- A. Federal laws, including:
1. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination based on disability in the administration of federally assisted Programs, Projects, or activities;
 2. The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101, et seq., Titles I, II, and III, which requires that accessible facilities and services be made available to individuals with disabilities;
 3. The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151, et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 4. Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 5. Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- B. Federal regulations and guidance, including:
1. U.S. DOT regulations, “Transportation Services for Individuals with Disabilities (ADA),” 49 CFR Part 37;
 2. U.S. DOT regulations, “Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance,” 49 CFR Part 27;

3. Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, “Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles,” 49 CFR Part 38;
4. U.S. DOT regulations, “Transportation for Individuals with Disabilities: Passenger Vessels,” 49 CFR Part 39;
5. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability in State and Local Government Services,” 28 CFR Part 35;
6. U.S. DOJ regulations, “Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities,” 28 CFR Part 36;
7. U.S. EEOC, “Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 CFR Part 1630;
8. U.S. Federal Communications Commission regulations, “Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities,” 47 CFR Part 64, subpart F;
9. U.S. ATBCB regulations, “Electronic and Information Technology Accessibility Standards,” 36 CFR Part 1194;
10. FTA regulations, “Transportation for Elderly and Handicapped Persons,” 49 CFR Part 609;
11. FTA Circular 4710.1, “Americans with Disabilities Act: Guidance;” and
12. Other applicable federal civil rights and nondiscrimination regulations and guidance.

X. 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.

XI. PATENT RIGHTS (*applicable to contracts for experimental, research, or development projects financed by FTA*)

A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

- B. 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), the City and Contractor agree to take the necessary actions to provide, through 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.
- C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

- 3. FTA Intention.** When FTA awards Federal assistance for an experimental, research or developmental work, it is 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 FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either 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 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 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 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 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.

XIII. CONTRACT WORK HOURS AND SAFETY STANDARDS *(applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work)*

- A. Overtime requirements** – No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- B. Violation; liability for unpaid wages; liquidated damages** – In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar Day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- C. Withholding for unpaid wages and liquidated damages** – The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- D. Subcontracts** – The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

XIV. 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.

XV. SEISMIC SAFETY REQUIREMENTS

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and Contractor will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract, including work performed by a Subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

XVI. 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 to 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 FTA.

XVII. 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 to 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 FTA.

XVIII. 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 FTA.

XIX. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, “Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations,” 49 CFR Part 655.

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

See Section 8.1 of Agreement Terms and Conditions.

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

See Section 8.2 of Agreement Terms and Conditions.

XXII. 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 FTA-funded projects are produced in the United States, unless a waiver has been granted by 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.

XXIII. DOMESTIC PREFERENCES FOR PROCUREMENTS

- A. Contractor should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).
- B. For purposes of this section
 - 1. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

2. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

XXIV. 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.

XXV. 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 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.

XXVI. 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.

XXVII. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS *(applies to contracts for rolling stock)*

To the extent applicable, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(l) and FTA implementing regulations at 49 CFR Part 663, and to submit the following certifications:

- A. Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.
- B. Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.
- C. Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XXVIII. 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 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 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 FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XXIX. 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.

XXX. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS (*applicable to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator*)

- A. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:
 - 1. **General Transit Employee Protective Requirements** – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient’s Project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. §

5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities –

If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has **determined** or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL’s letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas –

If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

B. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

XXXI. NATIONAL ITS ARCHITECTURE POLICY (*Applicable to contracts for ITS projects*)

If providing Intelligent Transportation Systems (ITS) property or services, Contactor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, “FTA National ITS Architecture Policy on Transit Projects,” 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

XXXII. TEXTING WHILE DRIVING; DISTRACTED DRIVING

Consistent with Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the Project.

XXXIII. 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.

XXXIV. DISPUTE RESOLUTION PROCEDURE

- A.** 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. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Contract Administrator a written request for administrative review and documentation of the Contractor’s claim(s). Upon such request, the Contract Administrator shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. 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.
- B.** 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.**

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

Certification Regarding Lobbying is required and was submitted by the Contractor with its Proposal. (See Appendix E of RFP).

XXXVI. PROMPT PAYMENT

- A.** In accordance with SFMTA’s SBE 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 Director 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 provide City with a declaration under penalty of

perjury that it has promptly paid such subcontractors for the work they have performed. Failure to provide such evidence shall be cause for City to suspend 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.

XXXVII. 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.

XXXVIII. INCORPORATION OF 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, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all 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 FTA terms and conditions.

APPENDIX E

Small Business Enterprise (SBE) Program under SFMTA's Disadvantaged Business Enterprise (DBE) Program for Professional and Technical Services

Requirements for Architects, Engineers, Planners, Environmental Scientists and Other Professional Services Contracts

Please refer to Appendix A of the RFP