

THIS PRINT COVERS CALENDAR ITEM NO. : 10.6

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets

BRIEF DESCRIPTION:

Authorize the Director of Transportation to execute Contract #SFMTA-2017-17 for As-Needed Communications, Education and Public Outreach services with MIG, Inc., to provide communications, public outreach, and education support, for a total contract amount not to exceed \$4,000,000 and for an initial term of four years, with an option to extend the contract for up two additional years.

SUMMARY:

- The SFMTA requires as-needed communications consulting services to deliver communications, education and public outreach in support of Vision Zero and SFMTA projects that are critical to achieve the agency's strategic plan goals and that support the city's Transit-First and Vision Zero policies.
- As-needed consulting services will directly support the city's Vision Zero two-year action strategy and SFMTA's strategic plan.
- The consultant services being procured under the proposed contract include planning and implementation of communications, paid-media, public outreach and engagement support services, and the design and development of communications materials.
- Four firms submitted proposals; MIG was the top-ranked proposer.
- The work under the contract will be paid from local funds.

ENCLOSURES:

1. SFMTAB Resolution
2. Contract with MIG

APPROVALS:

DIRECTOR



DATE

7/11/2017

SECRETARY



7/11/2017

ASSIGNED SFMTAB CALENDAR DATE: July 18, 2017

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PURPOSE

Authorize the Director of Transportation to execute Contract #SFMTA-2017-17 for As-Needed Communications, Education and Public Outreach services with MIG, Inc., to provide communications, public outreach, and education support, for a total contract amount not to exceed \$4,000,000 and for an initial term of four years, with an option to extend the contract for up two additional years.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This action supports the following SFMTA Strategic Plan Goal and Objectives:

- Goal 1: Create a safer transportation experience for everyone.
- Goal 2: Make transit, walking, bicycling, taxi, ridesharing and carsharing the preferred means of travel.
- Goal 3: Improve the environment and quality of life in San Francisco.
- Goal 4: Create a workplace that delivers outstanding service.

This action supports the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicyclists, and public transit, and shall strive to reduce traffic and improve public health and safety.
4. Transit priority improvements, such as designated transit lanes and streets and improved signalization, shall be made to expedite the movement of public transit vehicles (including taxis and vanpools) and to improve pedestrian safety.
5. Pedestrian areas shall be enhanced wherever possible to improve the safety and comfort of pedestrians and to encourage travel by foot.
6. Bicycling shall be promoted by encouraging safe streets for riding, convenient access to transit, bicycle lanes, and secure bicycle parking.

DESCRIPTION

The purpose of the contract is to provide communications, public outreach, and education support that are critical to achieving the city's Vision Zero goals of eliminating traffic fatalities.

In 2014, the SFMTA Board of Directors adopted Vision Zero as a priority policy for the Agency, which the Mayor Ed Lee and the Board of Supervisors also adopted as a City-wide policy. Over the past three years, the City has engaged in multi-agency planning and implementation to develop and enact measures to eliminate traffic fatalities. One key component of this effort has been communications and education to inform the community of the issues and impacts of street safety in San Francisco, and provide educational opportunities to ensure that the people who use of our roadways have a clear understanding of how to do so.

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The services to be provided by this contract include a number of specialized disciplines, including research, focus groups, message development, creative design, public outreach and media purchasing. This work is highly specialized with large, intermittent peaks in need and SFMTA does not have the appropriate staff resources or expertise to provide such work in-house.

Through as-needed contracts with qualified consultants and subconsultants, the SFMTA can utilize unique skill sets as needed to plan and deliver communications, education and public outreach services that incorporate best practices and are culturally competent with respect to agency stakeholder communities and the public at-large.

In the spring of 2017, the SFMTA advertised a Request for Proposals (RFP) soliciting proposals from firms with expertise in communications, education and public outreach services. The scope of service for each RFP included:

1. Research and Evaluation
2. Media Strategy and Buying
3. Campaign Media Buys
4. Social Media Implementation
5. Additional Campaign Creative
6. Multicultural Outreach and Assets

The RFP was issued on March 24, 2017 and provided for the award of a contract to a single firm for an initial term of four years. The SFMTA will have the option to extend each contract's term for up to two additional one-year periods.

To encourage consultants to subcontract with smaller, local vendors, the contract has an overall target participation goal for Local Business Enterprises (LBE) of 30 percent of the total value of Task Orders that the SFMTA issues. The SFMTA Contract Compliance Office monitors the value of Task Orders issued, and approves an individual participation goal for each Task Order. The participation goal or value set for each Task Order is then measured against the overall goal set for the contract.

Four firms responded to the RFP: Circlepoint, First Generation, Jungle Communications, and MIG. A panel comprised of staff from the SFMTA, the San Francisco Department of Public Health, and the San Francisco Department of the Environment evaluated and scored all responsive proposals. The panel conducted evaluations in two-stages – a detailed review of the written proposals followed by oral interviews, at which proposers responded to a standard set of questions. After the initial scoring round, the top two proposals were invited to participate in oral interviews, these were Circlepoint and MIG, Inc.

The proposal from MIG, Inc was ranked first, and staff negotiated the proposed contract with that firm. MIG, Inc. will use the following subconsultants:

- a) Civic Edge (LBE)
- b) Interethnica Inc. (LBE)
- c) Berkeley Media Studies Group

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- d) EMC Research
- e) Craft and Commerce
- f) Zeba Media

Depending on the SFMTA division that manages the specific services, either the Director of Sustainable Streets (or designee) or the Director of Communications and Marketing (or designee), at their discretion, will issue task orders to the consultant to perform the services.

STAKEHOLDER ENGAGEMENT

Stakeholder engagement was not done for the award of this contract. During the development of each task order, the Communications and Marketing and Sustainable Streets divisions will conduct stakeholder outreach and engagement to ensure that each task order issued under the contract has provided an opportunity for appropriate input and consideration before implementation begins.

FUNDING IMPACT

The contract will be funding for this contract will be from a combination of \$1 million in operating funds from board approved appropriated fund balance and \$3 million from the capital budget. The total not-to-exceed amount is up to \$4,000,000 over the course of the four years; however, the consultant is not guaranteed task orders under their contracts.

ENVIRONMENTAL REVIEW

On June 20, 2017, the SFMTA, under authority delegated by the Planning Department, determined that the contracts for as-needed public outreach and engagement services are not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

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

OTHER APPROVALS RECEIVED OR STILL REQUIRED

At its April 3, 2017 meeting, the Civil Services Commission approved Personnel Services Contract request No. 45799-15/16 for \$4,000,000 in connection with these contracts. The City Attorney’s Office has reviewed the contracts, and there are no other approvals required.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute Contract #SFMTA-2017-17 for As-Needed Communications, Education and Public Outreach services with MIG, Inc., to provide communications, public outreach, and education support, for a total contract amount not to exceed \$4,000,000 and for an initial term of four years, with an option to extend the contract for up two additional years.

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS**

RESOLUTION No. _____

WHEREAS, The SFMTA's Sustainable Streets and Communications and Marketing Divisions share responsibility for aspects of the agency's Vision Zero communications, including community outreach, education, public relations, social media, marketing, creative services, and the VisionZeroSF.org public website; and

WHEREAS, The SFMTA requires the assistance of consulting resources to support the development and implementation of the Agency's public communications, education and outreach programs; and

WHEREAS, On March 24, 2017, the SFMTA advertised Request For Proposals (RFP) #SFMTA 2017-17 soliciting proposals from firms with expertise in communications, education and public outreach to provide as-needed services in the areas of 1) Research and Evaluation, 2) Media Strategy and Buying, 3) Campaign Media Buys, 4) Social Media Implementation, 5) Additional Campaign Creative, and 6) Multicultural Outreach and Assets; and

WHEREAS, The SFMTA received three responsive proposals, and an evaluation panel comprised of staff from the SFMTA, the San Francisco Department of Public Health, and the San Francisco Department of the Environment reviewed the proposals for the RFP, interviewed the proposers, and ranked MIG highest; and

WHEREAS, SFMTA staff negotiated the proposed contract with MIG, Inc.; and

WHEREAS, The SFMTA's Equal Employment Opportunity office has confirmed the scoring and the proposers' commitment for meeting the respective 30 percent LBE, for this contract; and

WHEREAS, On April 3, 2017, the Civil Service Commission approved these contracts pursuant to Personal Services Contract request No. 45799-15/16; and

WHEREAS, On June 20, 2017, the SFMTA, under authority delegated by the Planning Department, determined that the contracts for As-Needed Public Outreach and Engagement Services are not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and

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

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RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract #SFMTA-2017-17 for As-Needed Communications, Education and Public Outreach Services with MIG, Inc., to provide communications, public outreach, and education support, for a total contract amount not to exceed \$4,000,000 and for an initial term of four years, with an option to extend the contract for up two additional years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of July 18, 2017.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

**Contract between the City and County of San Francisco and
Moore Iacofano Goltsman, Inc.**

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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
Moore Iacofano Goltsman, Inc.
Contract No. SFMTA-2017-17
Vision Zero Education and Communication (As-Needed)**

This Agreement is made this _____ day of June, 2017, in the City and County of San Francisco, State of California, by and between Moore Iacofano Goltsman, Inc., 800 Hearst Avenue, Berkeley, CA 94710 (Contractor) and the City and County of San Francisco (City), acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

- A.** The SFMTA wishes to contract with a firm experienced in communications, marketing and public outreach to raise awareness of and support for SFMTA’s Vision Zero Policy and other SFMTA related programs on an as-needed basis.
- B.** This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on March 24, 2017, pursuant to which City selected Contractor as the highest-qualified scorer.
- C.** The Local Business Entity (LBE) subcontracting participation requirement for this Agreement is 30%.
- D.** Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.
- E.** Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 45799-15/16 on April 3, 2017.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

- 1.1** **“Agreement”** means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference as provided herein.
- 1.2** **“CCO”** means SFMTA Contract Compliance Office.
- 1.3** **“City”** or **“the City”** means the City and County of San Francisco, a municipal corporation.
- 1.4** **“CMD”** means the Contract Monitoring Division of the City.

1.5 “**Contract Administrator**” means the contract administrator assigned to the Contract by the SFMTA, or his or her designated agent.

1.6 “**Contractor**” or “**Consultant**” means Moore Iacofano Goltsman, Inc., 800 Hearst Avenue, Berkeley, CA 94710.

1.7 “**C&P**” means SFMTA Contracts and Procurement.

1.8 “**Deliverables**” means Contractor’s work product resulting from the Services that are 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.

1.9 “**Effective Date**” means the date upon which the City’s Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.10 “**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.

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

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

1.13 “**Purchase Order**” means the written order issued by the City to the Contractor, authorizing the Effective Date as provided in Section 2.1.

1.14 “**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.

1.15 “**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.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the later of: (i) July 1, 2017 or (ii) the Effective Date, and expire on June 30, 2021, unless earlier terminated as otherwise provided herein.

2.2 The City has two options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5 (Modification of this Agreement).

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller in the form of a Purchase Order, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to 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. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

3.3 Compensation.

3.3.1 Payment. 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 Appendix B (Calculation of Charges), attached hereto and incorporated by reference as though fully set forth herein. Compensation shall be made for Services identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed Four Million Dollars (\$4,000,000). The breakdown of charges associated with this Agreement appears in Appendix B. The City may withhold a portion of payment as retention until conclusion of the Agreement, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until the SFMTA approves Services, including any furnished

Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

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

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City to Contractor at the electronic address specified in Section 3.3.6, or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.5 LBE Payment. Contractor must submit all required CMD payment forms to enable CCO to monitor Contractor's compliance with the LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from SFMTA, except as otherwise authorized by the LBE Ordinance. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required CMD payment forms. Failure to submit all required CMD payment forms with each payment request may result in the Controller withholding 20% of the payment due pursuant to that invoice until the required CMD payment forms are provided. Following SFMTA's payment of an invoice, Contractor has 10 calendar days to submit a CMD Form 9 Payment Affidavit verifying its payments to LBE subcontractors.

3.3.6 Getting Paid for Goods and/or Services from the City.

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

3.3.7 Reserved (Grant-Funded Contracts).

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 excerpts and transcripts from 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 fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

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 provided for in Appendix A (Scope of Services). Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond those Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5 (Modification of this Agreement).

4.2 Qualified Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 Subcontracting.

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

4.3.2 City's execution of this Agreement constitutes its approval of the subcontractors listed below.

Civic Edge Consulting (previously Barbary Coast Consulting)
Berkeley Media Studies Group
Craft & Commerce
EMC Research
InterEthnica
Zeba Media

4.4 Task Requirements. The SFMTA will define task requirements. The 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.

4.4.1 Scope of Work. The SFMTA will prepare the scope of work and expected time of completion, using the Task Order form (Appendix C) and transmit the Task Order Form to the Consultant with a request for proposal for the performance of the task.

4.4.2 Consultant Proposal. The Consultant shall prepare and submit a proposal for the task showing:

- (a) A work plan that includes a detailed description by subtask of the work to be performed and the means and methods that will be used to perform it;
- (b) Milestones for completion for each subtask and deliverables at each milestone;
- (c) Personnel and Subconsultants assigned assigned to each part of the work along with a resume or curriculum vitae that indicates why such personnel are qualified to perform the work; and prior experience in performing work of this nature;
- (d) A detailed cost estimate for each task or subtask showing:
 - (i) Estimated hours and direct salaries by position (fully burdened hourly rates by position as listed in Appendix B for both Consultant and Subconsultant personnel). Labor hours for preparing monthly invoices or filling our required SBE forms will not be allowed. Consultant will manage Subconsultants so additional Subconsultant program

management labor hours will not be allowed. Overtime labor hours will not be allowed without prior written approval. If overtime is approved, it will be billed at the billing rates listed and not at one and one half times the billing rate;

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

(iii) Proposed profit as follows: Total profit/mark up of each Task Order as fixed fee amount not to exceed seven percent of total amount of the Task Order (excluding other direct costs), regardless whether Task Order is being performed by prime Consultant, Subconsultant(s) or combination thereof.

4.4.3 Negotiation of Cost and Profit. The Project Manager will review the proposal and negotiate either a lump sum price or fixed profit to perform the work of each subtask and task and either a total price or a total cost not to exceed for the task.

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

4.4.5 Controller Certification. The Project Manager will request certification from the Controller that adequate funds are available to proceed with the task as agreed.

4.4.6 Notice to Proceed. After certification, the Project Manager will send to the Consultant a written NTP and task number. The Consultant shall use the task number when submitting invoices to the Project Manager for payment. The Consultant shall not commence work on any task until it receives a written NTP for the task.

4.4.7 Changes. Agreed lump sum prices and fixed profits for subtasks and tasks cannot be modified unless there is a material change in the scope of work of the task. If there is a material change in the scope of work of a task, then a proposal, negotiations, and Record of Negotiations shall be required before changes to agreed lump sum prices and fixed profits can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.

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

4.5 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.5.1 Independent Contractor. For the purposes of this Article 4, "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 or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible

for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of 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 or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. 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 agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. 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 this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, 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, or any agent or employee 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.

4.5.2 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 the preceding two paragraphs shall be solely for 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 save 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 this section.

4.6 Assignment. The Services to be performed by Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

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

4.8 Reserved (Liquidated Damages).

4.9 Reserved (Bonding Requirements).

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

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

(c) 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.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) 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 insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.3 All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

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

5.1.5 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.

5.1.6 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.

5.1.7 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements 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.

5.1.8 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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

5.2 Indemnification. 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 claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with 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

personally 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; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is 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 and experts and related costs and City's costs of investigating any claims against the City.

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.

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

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1 (PAYMENT) 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 Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by 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 Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 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.

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. The notice shall specify the date on which termination shall become effective.

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 date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by the SFMTA.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At the SFMTA's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. 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 termination of such orders and subcontracts.

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

(e) Completing performance of any Services that the SFMTA designates to be completed prior to the date of termination specified by the SFMTA.

(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 prior to the specified termination date, for which Services the SFMTA has not already tendered 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 material or equipment returned to the vendor, 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 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 specified by the SFMTA, except for those costs specifically enumerated and described 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 The City's payment obligation under this Section shall survive termination of this Agreement.

8.2 Termination for Default; Remedies.

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

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

- 3.5 Submitting False Claims.
- 4.6 Assignment
- Article 5 Insurance and Indemnity
- Article 7 Payment of Taxes
- 10.10 Alcohol and Drug-Free Workplace
- 10.13 Working with Minors
- 11.10 Compliance with Laws

13.1 Nondisclosure of Private, Proprietary or Confidential Information

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from the SFMTA to Contractor.

(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 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 or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

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

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

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

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

8.4 Rights and Duties upon Termination or Expiration.

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

3.3.2	Payment Limited to Satisfactory Services
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
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
13.1	Nondisclosure of Private, Proprietary or Confidential Information

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

Article 9 Rights In Deliverables

9.1 Ownership of Results. Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by

Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 Works for Hire. If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. 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 subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

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.

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

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

10.4 Reserved.

10.5 Nondiscrimination Requirements

10.5.1 Non Discrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. 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 the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (LBE Ordinance). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 30% of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

10.7 Minimum Compensation Ordinance. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

10.8 Health Care Accountability Ordinance. Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

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

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

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with 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, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. 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 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.12 Reserved (Slavery Era Disclosure).

10.13 Reserved (Working with Minors).

10.14 Consideration of Criminal History in Hiring and Employment Decisions

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this

Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Reserved (Public Access to Nonprofit Records and Meetings).

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

10.17 Reserved (Sugar-Sweetened Beverage Prohibition).

10.18 Reserved (Tropical Hardwood and Virgin Redwood Ban).

10.19 Reserved (Preservative Treated Wood Products).

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: John Knox-White
Transportation Planner
Sustainable Streets
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Email: John.KnoxWhite@sfmta.com

To Contractor: Carie DeRuiter
Or Deanna Chow-Trotter
MIG, Inc.
800 Hearst Avenue,
Berkeley, CA 94710
Email: caried@migcom.com
dchowtrotter@migcom.com

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Americans with Disabilities Act. Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 Reserved.

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 §6250 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 as noted in Section 11.1 (Notices to Parties) regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

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. 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.

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 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 (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated April 21, 2017. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

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 the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

12.1.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 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 In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, 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).

Article 14 MacBride Principles And Signature

14.1 MacBride Principles -Northern Ireland. The provisions of San Francisco Administrative Code §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>Edward D. Reiskin 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: _____ Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ John I. Kennedy Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Moore Iacofano Goltsman, Inc.</p> <hr/> <p>Carie DeRuiter Principal 800 Hearst Avenue, Berkeley, CA 94710</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 vendor number: 12774</p>
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Appendices:

- A: Scope of Services
- B: Calculation of Charges
- C: Task Order Request Form

Appendix A Scope of Services

SFMTA will issue task orders for all services described below in accordance to Article 4.4

1. Description of Services

Contractor agrees to perform the following Services:

1. Research and Evaluation

Provide audience and behavior change research and program evaluation to achieve Vision Zero SF and transportation-related culture change and develop messaging, branding and/or materials in support of the overall communications goals for Vision Zero SF and the SFMTA as directed by the SFMTA.

- a. Conduct market research/surveys/focus groups in order to prepare programs, evaluate the effectiveness of programs, assess attitudes and perceptions regarding education and media, and develop ways to improve the effectiveness of future programs and communication efforts.
- b. Conduct research assessing the audiences and barriers to behavior change to build upon initial culture change successes and refine existing efforts, strategies and goals.
- c. Develop and execute evaluation plans for SFMTA and Vision Zero communication and education campaigns. Provide written reports, plans, memos and schedules as part of each phase of a requested task. Summary reports shall include a detailed breakdown of anticipated staff and required resources/costs necessary for each phase of a campaign. The SFMTA shall approve, in advance and in writing, all work and expenditures. Post-campaign evaluations should include data on campaign media impressions and performance.

2. Media Strategy and Buying

Provide media strategy and media buying services for the Vision Zero SF and related-transportation communications and education programs.

- a. Recommend and develop strategies that raise awareness of Vision Zero SF and the importance of traffic safety among people who walk, bike and drive in San Francisco, as well as the goals and projects of the SFMTA.
- b. Negotiate, coordinate and purchase media from media outlets and vendors on behalf of SFMTA and Vision Zero SF.

- c. Include comprehensive post-campaign report(s) delineating the value and effectiveness of the media buys after each distinct run.

3. Campaign Media Buys

Deliver media buys for the Vision Zero SF Communications and SFMTA programs.

- a. Media buys may include, and are not limited to, billboards; transit shelter posters; radio (broadcast and/or digital); bus advertising; digital advertising, and social media-specific advertising.

4. Social Media Implementation

Provide social media content to post on VisionZeroSF or other SFMTA Facebook and Twitter accounts to raise awareness and increase advocacy for Vision Zero SF and safe streets.

- a. Research social media content focused on themes such as: Vision Zero as a local, national and global movement; safer street solutions and behaviors; City projects promoting safer streets; the urgent need for safer streets, etc.
- b. Develop and draft posts unique posts for Facebook and/or Twitter, as well as research and propose retweets with drafted comments and without.
- c. Provide content development strategy and direction for the evolution of Vision Zero SF social media.

5. Additional Campaign Creative

Develop additional creative communications, messaging and campaign materials for the Vision Zero SF and related-transportation communications and education programs, as needed.

Work may include:

- a. Develop a public awareness strategy, including a plan for implementation by SFMTA staff within targeted communities;
- b. Develop strategic messages, program themes, slogans and logos;
- c. Design copy and art for online materials including websites and e-mail programs;
- d. Produce print advertising for newspapers, magazines, transit systems (buses/subways) and billboard advertising for programs;
- e. Identify and develop integrated collateral materials and delivery methods that work with specific target audiences handling all aspects of copy and design development, language translations; printing and press checks;

- f. Develop video packages for use in presentations, with media, social media and other digital formats; and
- g. Development of materials: create and print fact sheets, outreach tool-kits for the community, presentations, and community event materials to be utilized for community outreach.
 - a. Design copy and art for printed materials, including flyers, brochures, posters, banners, decals, letterhead and envelopes for programs;
 - b. Design copy and art for promotional items such as magnets, buttons, T-shirts, caps, mugs and pencils for programs;
 - c. Provide all creative services necessary for production, including typesetting, filming, dubbing, recording, editing, and photographic services for programs;
 - d. Provide all campaign and other media in a variety of electronic formats (i.e. JPEG, GIF, TIF, QuickTime, MOV, video streams, etc.);
 - e. Complete all types/facets of campaign commercials at broadcast quality, including tapes and digital files for commercials and camera-ready art for print; and
 - f. Be responsible for all production costs as well as talent fees for commercials approved by the SFMTA as set forth in each phase of any Task Order (as described below).

6. Multicultural Outreach and Assets

Develop and implement a community outreach program to ensure culturally competent communications including research with monolingual communities, the development of multicultural campaign materials, and knowledgeable in-person outreach to a broad array of communities.

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

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

4. Department Liaison

In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be John Knox-White.

Appendix B - Calculation of Charges

	Firm	Primary or Subcontractor	Position	Hourly Rate July 2017 - June 2019	Hourly Rate July 2019 - June 2021
1	MIG, Inc.	Primary	Principal-in-Charge	\$225.00	\$232.88
2	MIG, Inc.	Primary	Project Manger	\$185.00	\$191.48
3	MIG, Inc.	Primary	Art Director	\$170.00	\$175.95
4	MIG, Inc.	Primary	Associate Art Director	\$140.00	\$144.90
5	MIG, Inc.	Primary	Senior Writer	\$210.00	\$217.35
6	MIG, Inc.	Primary	Graphic Designer	\$135.00	\$139.73
7	MIG, Inc.	Primary	Production Manager	\$140.00	\$144.90
8	MIG, Inc.	Primary	Project Associate	\$130.00	\$134.55
9	Civic Edge Consulting	Subcontractor	Vice President	\$225.00	\$232.88
10	Civic Edge Consulting	Subcontractor	Sr. Project Manager	\$175.00	\$181.13
11	Civic Edge Consulting	Subcontractor	Project Manager/Assistant	\$150.00	\$155.25
12	Civic Edge Consulting	Subcontractor	Outreach Assistant II	\$80.00	\$82.80
13	Civic Edge Consulting	Subcontractor	Outreach Assistant I	\$60.00	\$62.10
14	Civic Edge Consulting	Subcontractor	Social Media Coordinator	\$135.00	\$139.73
15	Berkeley Media Studies Group	Subcontractor	Director	\$249.00	\$257.72
16	Berkeley Media Studies Group	Subcontractor	Sr. Media Researcher	\$88.00	\$91.08
17	Berkeley Media Studies Group	Subcontractor	Media Researcher	\$85.00	\$87.98
18	Berkeley Media Studies Group	Subcontractor	Research Intern	\$44.00	\$45.54
19	Berkeley Media Studies Group	Subcontractor	Communications Manager	\$114.00	\$117.99
20	Berkeley Media Studies Group	Subcontractor	TA Specialist	\$68.00- \$86.00	\$70.38- \$89.01
21	Craft & Commerce, LLP	Subcontractor	Campaign Lead	\$210.00	\$217.35
22	Craft & Commerce, LLP	Subcontractor	Strategy Lead	\$210.00	\$217.35
23	Craft & Commerce, LLP	Subcontractor	Campaign Manager	\$120.00	\$124.20
24	EMC Research, Inc.	Subcontractor	Sr. Principal	\$170.00	\$175.95
25	EMC Research, Inc.	Subcontractor	Principal	\$105.00	\$108.68
26	EMC Research, Inc.	Subcontractor	Sr. Analyst	\$85.00	\$87.98
27	InterEthnica, Inc.	Subcontractor	Principal	\$150.00	\$155.25
28	InterEthnica, Inc.	Subcontractor	Researcher	\$150.00	\$155.25
29	InterEthnica, Inc.	Subcontractor	Media Planner and Buyer	\$150.00	\$155.25
30	InterEthnica, Inc.	Subcontractor	Account Manager	\$150.00	\$155.25
31	InterEthnica, Inc.	Subcontractor	Sr. Project Manager	\$125.00	\$129.38
32	InterEthnica, Inc.	Subcontractor	Project Manager	\$125.00	\$129.38
33	InterEthnica, Inc.	Subcontractor	Graphic Designer	\$125.00	\$129.38
34	InterEthnica, Inc.	Subcontractor	Translator	\$95.00	\$98.33
35	InterEthnica, Inc.	Subcontractor	Interpreter	\$150.00	\$155.25
36	Zeba Media	Subcontractor	Media Planner	\$125.00	\$129.38

**Appendix C
TASK ORDER REQUEST FORM**

San Francisco Municipal Transportation Agency

Contract No. and Title: _____

Task Title: _____ **Date Initiated:** _____

Type of Request:

New Task Order- No. XX

Modification - No. _____ (attach approved original and all modifications to date)

Total Amount Being Requested: \$XXXX

Index Code: _____

Task Start Date: _____ **Modification Start Date:** _____

Estimated Completion Date: _____

Funding Source: _____ **Proposed Task LBE Goal: XX%**

Project Title: _____

Work to be Performed:

Brief Description

Deliverables:

Description

Date Req'd

Quantity

