

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

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Transit

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to execute Contract No. SFMTA 2016-53, Underground Storage Tank Testing Services and Maintenance Agreement with RB Petroleum Services to serve as the Underground Storage Tank Designated Operator, provide monthly and annual compliance inspections, triennial secondary containment testing, troubleshooting, updating of Storage Tank System equipment, and to provide annual education sessions regarding Underground Storage Tank regulations in an amount not to exceed \$1,200,000 and for a term not to exceed five years.

**SUMMARY:**

- The SFMTA owns and operates 35 above-ground and underground storage tanks located throughout seven of its maintenance, repair and fueling facilities.
- The Underground Storage Tank Management Program was put into place by the SFMTA to conduct underground storage tank (UST) operations in compliance with applicable laws, regulations and standards concerning UST environmental protection and provide a system of checks and balances to ensure compliance and continual improvement.
- As part of the July 2015 Consent Judgment between SFMTA and the California Water Resources Control Board, the SFMTA is required to hire a third-party certified UST Designated Operator to perform all required inspections.
- A Request for Proposals (RFP) was issued on July 6, 2016. Through a competitive process, RB Petroleum was selected as the successful proposer.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Agreement with RB Petroleum Services

**APPROVALS:**

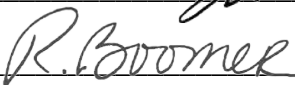
**DATE**

DIRECTOR

  
\_\_\_\_\_

10/11/16

SECRETARY

  
\_\_\_\_\_

10/11/16

**ASSIGNED SFMTAB CALENDAR DATE:** October 18, 2016

## **PAGE 2.**

### **PURPOSE**

Authorize the Director of Transportation to execute Contract No. SFMTA 2016-53, Underground Storage Tank Testing Services and Maintenance Agreement with RB Petroleum Services to serve as the Underground Storage Tank Designated Operator, provide monthly and annual compliance inspections, triennial secondary containment testing, troubleshooting, updating of Storage Tank System equipment, and to provide annual education sessions regarding Underground Storage Tank regulations in an amount not to exceed \$1,200,000 and for a term not to exceed five years.

### **GOAL**

This Agreement will meet the following goal and objectives of the SFMTA Strategic Plan:

Goal 1: Create a safer transportation experience for everyone.

Objective 1.2 Improve workplace safety and security.

Objective 1.3 Improve the safety of the transportation system.

Goal 3: Improve the environment and quality of life in San Francisco.

Objective 3.1 Reduce the Agency's and the transportation system's resource consumption, emissions, waste and noise.

Objective 3.4 Deliver services efficiently.

### **DESCRIPTION**

The SFMTA owns and operates 35 above-ground and underground storage tanks located at seven of its maintenance, repair and fueling facilities. These storage tanks are part of systems of varying complexity, the purpose of which is to store and deliver diesel, gasoline, motor oil, coolant, automatic transmission fluid and other chemicals consumed in the maintenance and up-keep of the SFMTA diesel bus fleet. The critical nature of the maintenance, management and internal oversight of these systems cannot be overstated in the forum of delivering diesel bus service to the SFMTA patrons. Regulatory oversight is performed by the Environmental Protection Agency (EPA), the State Water Resources Control Board (State Water Board) and the San Francisco Department of Public Health (SFPDH).

State law requires these systems, which include storage tanks, piping, pumps, and dispensers, be electronically monitored 24/7 to ensure environmental responsibility and regulatory compliance. State law also requires that monthly, annual, and triennial inspections and tests be performed by a certified Underground Storage Tank Designated Operator. In addition, an Underground Storage Tank Licensed Technician who installs and tests monitoring equipment, provides hands-on maintenance, service, provides emergency system service, system programming and diagnostics, calibration, and trouble-shooting for underground storage tank systems must be employed by any tank system owner. Each of these certifications are granted by the International Code Council, a body recognized by the California State Water Resources Control Board as having the authority to grant these certifications and licenses.

## **PAGE 3.**

In July 2015, the Agency entered into a Consent Judgment with the California Water Resources Control Board regarding the operation, maintenance and repair of SFMTA's storage tank systems. Hiring a third-party certified Designated Operator/Licensed Technician fulfills one of the Agency's obligations under this Consent Judgment. The third-party certified UST Designated Operator and licensed UST technician will be managed by the Manager of the SFMTA Underground Storage Tank Management Program.

On July 6, 2016, an RFP was issued to select a qualified and experienced contractor to serve as the SFMTA's Designated Underground Storage Tank Operator and Licensed Technician for a five year term. Only one vendor, RB Petroleum, submitted a proposal in response to the RFP. RB Petroleum's proposal was evaluated by the Contracts and Procurement group to ensure that minimum requirements as stated within the RFP were met. After being deemed the only responsive proposer to the RFP and its requirements, it was determined that RB Petroleum would be selected as the successful proposer.

## **STAKEHOLDER ENGAGEMENT**

None. This Agreement will have no impact to the public.

## **ALTERNATIVES CONSIDERED**

No alternatives were considered. In the interest of ensuring compliance with the Consent Judgment, the Agency is required to hire a third-party certified UST Designated Operator to perform all required inspections.

## **FUNDING IMPACT**

\$1,200,000 of operating funds required for the operations/maintenance are budgeted in the Transit Division - Mechanical Systems Program current year budget.

## **ENVIRONMENTAL REVIEW**

On September 8, 2016, the SFMTA, under authority delegated by the Planning Department, determined that the Underground Storage Tank Testing Services and Maintenance Agreement is 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**

None

**PAGE 4.**

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute Contract No. SFMTA 2016-53, Underground Storage Tank Testing Services and Maintenance Agreement with RB Petroleum Services to serve as the Underground Storage Tank Designated Operator, provide monthly and annual compliance inspections, triennial secondary containment testing, troubleshooting, updating of Storage Tank System equipment, and to provide annual education sessions regarding Underground Storage Tank regulations in an amount not to exceed \$1,200,000 and for a term not to exceed five years.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The SFMTA owns and operates 35 above-ground and underground storage tanks located throughout seven of its maintenance, repair and fueling facilities; and,

WHEREAS, The Underground Storage Tank (UST) Management Program was established by the SFMTA to perform UST operations in compliance with applicable laws, regulations and standards concerning UST environmental protection and provide a system of checks and balances to ensure compliance and continual improvement; and,

WHEREAS, Pursuant to a Consent Judgment between the SFMTA and the California Water Resources Control Board, SFMTA is required to hire a third party UST Designated Operator to perform certain functions related to the operation, maintenance and repair of USTs; and,

WHEREAS, The SFMTA issued an RFP on July 6, 2016 and through a competitive solicitation process, RB Petroleum was selected as the successful proposer; and,

WHEREAS, On September 8, 2016, the SFMTA, under authority delegated by the Planning Department, determined that the Underground Storage Tank Testing Services and Maintenance Agreement is 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; therefore be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA 2016-53, Underground Storage Tank Testing Services and Maintenance Agreement with RB Petroleum Services to serve as the Underground Storage Tank Designated Operator, provide monthly and annual compliance inspections, triennial secondary containment testing, troubleshooting, updating of Storage Tank System equipment, and to provide annual education sessions regarding Underground Storage Tank regulations in an amount not to exceed \$1,200,000 and for a term not to exceed five years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of October 18, 2016.

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

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

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

**RB Petroleum Services**

**Contract No. SFMTA 2016-53**

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

**Agreement between the City and County of San Francisco and  
RB Petroleum  
Contract No. SFMTA 2016-53**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, in the City and County of San Francisco, State of California, by and between RB Petroleum Services, 361 Guerrero, San Francisco, Ca 94103 (“Contractor”) and City.

**Recitals**

- A.** The SFMTA wishes to hire the services of a contractor to perform underground storage tank (UST) services.
- B.** The SFMTA issued a Request for Proposals (RFP) on July 6, 2016 and selected Contractor as the highest qualified proposer pursuant to the RFP.
- C.** Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.
- D.** Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 48010-15/16 on July 16, 2015.

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, acting by and through its Municipal Transportation Agency (SFMTA).
- 1.4** “**CMD**” means the Contract Monitoring Division of the City.
- 1.5** “**Contractor**” or “**Consultant**” means RB Petroleum Services.

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

**1.7** “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.

**1.8** “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.

**1.9** “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.

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

**1.11** “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.

**1.12** “San Francisco Municipal Transportation Agency” or “SFMTA” means the agency of City with jurisdiction over all surface transportation in San Francisco.

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

**2.1** The term of this Agreement shall commence on the latter of: (i) October 4, 2016; or (ii) the Effective Date and expire on October 3, 2021, unless earlier terminated as otherwise provided herein.

**2.2** The City has options to renew the Agreement for a period of two years. The City may extend this Agreement beyond the expiration date by exercising an option at the City’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

## **Article 3 Financial Matters**

**3.1 Certification of Funds; Budget and Fiscal Provisions; 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, 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 immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the SFMTA's 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 One Million, Two Hundred Thousand Dollars (\$1,200,000.00). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. 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 address specified in Section 11.1, “Notices to the Parties,” or in such alternate manner as the Parties have mutually agreed upon in writing.

**3.3.5 Reserved. (LBE Payment and Utilization Tracking System).**

**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 Paymode-X, the City’s third party service that provides Automated Clearing House (ACH) payments. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://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.

**3.4 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.

#### **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 the Scope of 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.** 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. City's execution of this Agreement constitutes its approval of the subcontractors listed below.

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

**4.4.1 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.

**4.4.2 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.

**4.5 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.

**4.6 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.

**4.7 Reserved.**



## **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 and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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.

(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.

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

(e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(i) 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;

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

(iii) 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; and

(iv) In the event contractor's coverage for Technology Errors and Omissions Liability does not include coverage for claims listed under section 5.1.1(e)(i) contractor shall maintain in force during the full life of the agreement Cyber and Privacy Insurance that does provide coverage for such claims with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate.

**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, entitled "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 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.

**5.1.6** 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.

**5.1.7** 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.

**5.1.8** 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.

**5.1.9** Notwithstanding the foregoing, the following insurance requirements are waived or modified in accordance with the terms and conditions stated in Appendix C. Insurance.

**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 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 SFMTA's direction, assigning to SFMTA any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, 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 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 SFMTA designates to be completed prior to the date of termination specified by 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 SFMTA has or may acquire an interest.

**8.1.3** Within 30 days after the specified termination date, Contractor shall submit to 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 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 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 SFMTA, and any other appropriate credits to SFMTA against the cost of the Services or other work.

**8.1.4** In no event shall SFMTA be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by 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, SFMTA may deduct: (i) all payments previously made by SFMTA for Services covered by Contractor's final invoice; (ii) any claim which 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 SFMTA's

estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

**8.1.6** SFMTA’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.
4.5	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.4	Nondisclosure of Private, Proprietary or Confidential Information
10.10	Alcohol and Drug-Free Workplace
10.13	Working with Minors
11.10	Compliance with Laws

(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 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
3.3.7(a)	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
9.1	Ownership of Results
9.2	Works for Hire
10.4	Nondisclosure of Private, Proprietary or Confidential Information
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

**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, 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 [www.sfgov.org](http://www.sfgov.org) under "Government."

**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      Nondisclosure of Private, Proprietary or Confidential Information.**

**10.4.1** 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.

**10.4.2** 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 except to the extent that a higher standard is imposed under the Statement of Work attached to this Agreement as Exhibit A.

## **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.

**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 Reserved. (First Source Hiring Program).**

**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>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. 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 Public Access to Nonprofit Records and Meetings.** If Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

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

**10.17 Reserved. (Sugar-Sweetened Beverage Prohibition)**

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

**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:            Katherine Kwok  
                         425 Geneva Ave  
                         San Francisco, Ca 94112

Phone: 415-646-2448

To Contractor: RB Petroleum  
Ron Breckenridge, President  
361 Guerrero  
San Francisco, Ca 94103

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. (Payment Card Industry (PCI) Requirements)**

**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 Project Manager a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the contracting officer 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 July 6, 2016. 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.

**11.14 Order of Precedence.** 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 shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

## **Article 12 MacBride Principles And Signature**

**12.1 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.

## **Article 13 Large Vehicle Driver Safety Training Requirements**

**13.1** 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](http://www.SFMTA.com/largevehicletrainingstandards). 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.

**13.2** 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.



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

<p><b>CITY</b></p> <p><b>San Francisco Municipal Transportation Agency</b></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: _____</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Stephanie Stuart Deputy City Attorney</p>	<p><b>CONTRACTOR</b></p> <p><b>RB Petroleum Services</b></p> <hr/> <p>Ron Breckenridge, President 361 Guerrero San Francisco, Ca 94103</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 Article 13: Large Vehicle Driver Safety Training Requirements.</p> <p>City vendor number: <b>72339</b></p>
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**Appendices**

- A: Scope of Services
- B: Calculation of Charges

## APPENDIX A

### Scope of Services

The Contractor shall perform the following items of work at the listed frequencies. The Contractor shall use a checklist issued by SFMTA staff as appropriate and applicable to each inspection performed pursuant to this Contract and shall develop a service schedule incorporating the checklist items and shall furnish this schedule (one schedule for each Facility, which must be provided within 30 days of the Effective Date of the Contract) to the Storage Tank Program Compliance Manager who will retain this schedule for signature upon the completion of each scheduled event.

#### A. Definitions

**AST:** Aboveground Storage Tank

**CalEPA:** California Environmental Protection Agency

**Call-Out:** Any request from SFMTA Storage Tank Management Staff for site services to be performed by the contractor not normally covered by a scheduled inspection.

**Contract Service Order (CSO):** Supplementary contractual and obligating document that includes a description of services and estimate (\$) for these services.

**CUPA:** California Unified Program Agencies. For the purposes of the SFMTA Storage Tank Management Program, the CUPA refers to the San Francisco Department of Public Health.

**Designated UST Operator (DO):** is an individual designated by the UST owner to be responsible for training facility employees and conducting a monthly visual inspection at the UST facility.

**Facility:** any one, or combination of, underground storage tanks used by the SFMTA at a single location or site.

**Facility Employee:** any person who is both involved with the day-to-day operation of the UST Facility (e.g., Facility supervisor) and has a role related to the operation of the USTs (i.e., responding to spills, overfills, etc.).

**Maintenance:** the normal operational upkeep to prevent a storage Tank System from releasing hazardous substances.

**Service Technician:** any licensed individual who installs or tests monitoring equipment, or provides maintenance, service, system programming or diagnostics, calibration, or troubleshooting for underground storage Tank System components.

**SOP:** SFMTA Standard Operating Procedure, a method established or prescribed to be followed routinely for the performance of designated operations.

**Storekeeper:** As defined by the SFMTA Department of Human Resources, a storekeeper is defined as the person performing responsible work involving the receipt, inspection, rotation,

storage, inventory, ordering, and issuing of a wide variety of automotive and/or transit vehicle parts, and performs related duties as assigned. For the purposes of the USTMP, the Storekeeper is responsible for all aspects of receiving deliveries intended for storage within the UST System. This includes performance as a fuel observer.

**Tank:** a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of non-earthen materials, including, but not limited to, wood, concrete, steel, or plastic that provides structural support.

**Tank System:**

- Tanks, including all pumps, ports, spill buckets, and covers
- Piping, including all test boots and secondary containment
- Dispensers, including all filters, meters, hoses, nozzles, pumps, and under dispenser containers

**Monitoring Systems:** including all monitoring panels and printers, sensors, wiring, and alarms (strobe and horn)

**Underground Storage Tank (UST):** any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground.

**USTMP:** Underground Storage Tank Management Program; program includes oversight over both underground and above ground storage tanks.

**State Water Board:** State Water Resources Control Board, a board within CalEPA

**Working Hours:**

Straight Time Hours: Monday through Friday between the hours of 06:00 – 18:00.

Premium/Overtime Hours: 18:00 to 06:00, Monday through Friday; Saturday and Sunday, Twenty-four (24) hour service

All Holidays: Twenty-four (24) hour service

**B. Monthly Inspection**

The Contractor shall perform monthly visual inspections of the Storage Tank System, record the results on an inspection report, and submit said report to SFMTA’s Storage Tank Compliance Program Manager on a monthly basis. SFMTA shall provide a Facility Checklist for each Facility to be inspected.

The following is the list of monthly inspections to be performed by Contractor:

- Observe general condition of the facility Tank System
- Inspect and test all items as required by the “Designated Underground Storage Tank (UST) Operator Monthly Visual Inspection Checklist” and all items as required by

the “Monthly Above Ground Storage Tank Inspection Checklist”, as appropriate by facility.

- Complete the “Designated Underground Storage Tank (UST) Operator Monthly Visual Inspection Checklist” and the “Monthly Above Ground Storage Tank Inspection Checklist” and review any outstanding issues, violations, or failed inspection items with the Storage Tank Program Compliance Manager or his designated representative.
- Submit monthly to the SFMTA representative on site immediately following completion of the inspection.

The monthly visual inspections testing shall be completed every calendar month for each Facility and said monthly inspections should be completed on a single day or as concurrently as possible within the first 5 calendar days of each month. Contractor shall schedule a minimum interval of 20 calendar days between the performance of Monthly Inspections.

### **Schedule**

Contractor shall schedule work to be accomplished under the Contract, in consultation with SFMTA Storage Tank Program Compliance Manager, in such a manner as to cause minimum inconvenience to SFMTA staff affected by the work. Acceptance of Contractor’s proposed schedule shall be contingent on the availability of SFMTA staff to accompany the Contractor. All work shall be performed in the presence of a designated SFMTA representative.

### **Work Item Description**

Contractor shall provide all supervision, labor, materials, tools, equipment and services necessary to inspect and document condition and functionality of all aspects of the storage Tank Systems.

The Contractor shall maintain all systems to the standards of the manufacturer, including the addition of any new requirements by governing authorities.

The Contractor shall inform the SFMTA Storage Tank Program Compliance Manager, or his authorized representative, of all Tank System shutdowns that will last more than four (4) hours in duration and the reason(s) therefore (parts on order, major repairs, etc.). When the Contractor contacts the SFMTA Manager, or authorized representative, to inform of a shutdown lasting longer than 4 hours, Contractor is required to call and speak directly to SFMTA point of contact (a voicemail is not considered adequate). Following this conversation, the Contractor is then required to summarize the contents of the conversation in an email which shall be sent immediately following the phone conversation and shall copy the Storage Tank Program Manager and the point of contact (if applicable).

### **Working Hours**

All monthly inspections performed pursuant to this Section B shall be performed Monday through Friday between the hours of 06:00 – 18:00.

**C. Annual Compliance Inspection / Monitoring Certification**

Contractor shall perform an annual compliance inspection and complete the Monitoring Certification as required by law for each Facility. Performance of the annual compliance inspection and completion of the Monitoring Certification shall include all labor, materials, equipment, tools, services and supervision required for the full inspection.

The Contractor shall perform the following items of work at the listed frequencies:

The Contractor shall use a checklist issued by SFMTA staff, as appropriate and applicable to each inspection, and shall develop a schedule incorporating the checklist items and shall furnish said schedule to the Storage Tank Program Compliance Manager who will retain the schedule for signature upon the completion of each scheduled event. Contractor shall provide one schedule for each Facility which must be provided at the issuance of the Contract or annually at the completion of the previous year’s certification, as appropriate.

The annual compliance inspection and monitoring certification shall be completed annually as required by Title 23 CCR Chapter 16. In addition, the Contractor shall perform the same annual inspection and monitoring certification for all AST systems.

The following is the minimum list of work associated with performing the annual compliance inspection and monitoring certification:

- Observe the general condition of the facility Tank System
- Inspect and test all items as required by the “Annual Underground Storage Tank Compliance Inspection Checklist” and the “Annual Monitoring Certification”.
- Complete the “Annual Underground Storage Tank Compliance Inspection Checklist” and the “Annual Monitoring Certification” and discuss any outstanding issues, violations, or failed inspection items with the Storage Tank Program Compliance Manager or his designated representative.

All Annual Checklist reports shall be submitted within 14 calendar days of the completion of the inspection.

**Schedule**

Contractor shall schedule work to be accomplished under the Contract, in consultation with SFMTA Storage Tank Program Compliance Manager, in such a manner as to cause minimum inconvenience to tenants affected by the work. SFMTA’s acceptance of Contractor’s proposed schedule shall be contingent on the availability of SFMTA staff to accompany the Contractor. All work shall be performed in the presence of a designated SFMTA representative. All work shall be completed a minimum of 30 days prior to the date required by the State Water Resources Control Board and/or any and all applicable laws.

### **Work Item Description**

Contractor shall provide all supervision, labor, materials, tools, equipment and services necessary to inspect and document condition and functionality of all aspects of the storage Tank Systems.

The Contractor shall maintain all systems to the standards of the manufacturer, including the addition of any new requirements of the governing authorities.

The Contractor shall inform the SFMTA Storage Tank Program Compliance Manager, or his authorized representative, of all Tank System shutdowns that will last more than four (4) hours in duration and the reason(s) therefore (parts on order, major repairs, etc.). When the Contractor contacts the SFMTA Manager or authorized representative to inform of a shutdown lasting longer than 4 hours, the contractor is required to call and speak directly to SFMTA point of contact (a voicemail is not considered adequate). Following this conversation, the Contractor is then required to summarize the details of the conversation in an email which shall be sent immediately following the phone conversation and shall copy the UST Program Manager and the point of contact (if applicable).

### **Working Hours**

All work performed in connection with the Annual Compliance Inspection/Monitoring Certification shall be performed Monday through Friday between the hours of 06:00 – 18:00.

### **D. SB 989: Triennial Secondary Containment Testing**

Contractor shall perform Secondary Containment Testing as required by and consistent with under federal, state and/or local law for each Facility.

The Contractor shall perform the following items of work every 3 years. The Contractor shall use a checklist issued by SFMTA staff as appropriate and applicable for secondary containment testing and shall develop a schedule for completing such testing (one schedule for each Facility). The schedule for the initial secondary containment testing shall be provided upon execution of the Contract. Subsequent schedules shall be provided upon the completion of the initial secondary containment testing. Contractor shall submit the testing schedules to the Storage Tank Program Compliance Manager who will retain the schedules for signature by the Contractor upon the completion of each scheduled event.

Secondary containment testing shall be completed every 3 years as required by Title 23 CCR Chapter 16.

The following is the minimum list of work associated with performing the triennial secondary containment testing:

- Inspect and test all items as required by the “Secondary Containment Testing Report Form”.
- Complete the “Secondary Containment Testing Report Form” and review any outstanding issues, violations, or failed inspection items with the Storage Tank Program Compliance Manager or his designated representative. All Secondary Containment reports shall be submitted within 14 calendar days of the completion of the inspection.

### **Schedule**

Contractor shall schedule work to be accomplished under the Contract, in consultation with SFMTA Storage Tank Program Compliance Manager, in such a manner as to cause minimum inconvenience to SFMTA staff affected by the work. Acceptance of the Contractor’s proposed schedule shall be contingent on the availability of SFMTA staff to accompany the Contractor. All work shall be performed in the presence of a designated SFMTA representative. All work shall be completed a minimum of 30 days prior to the date required by the State Water Resources Control Board and/or any and all applicable laws.

### **Work Item Description**

Contractor shall provide all supervision, labor, materials, tools, equipment and services necessary to inspect and document condition and functionality of all aspects of the storage Tank Systems.

The Contractor shall maintain all systems to the standards of the manufacturer, including the addition of any new requirements of the governing authorities.

The Contractor shall inform the SFMTA Storage Tank Program Compliance Manager, or his authorized representative, of all Tank System shutdowns that will last more than four (4) hours in duration and the reason(s) therefore (parts on order, major repairs, etc.). When the Contractor contacts the SFMTA Manager, or authorized representative, to inform of a shutdown lasting longer than 4 hours, the Contractor is required to call and speak directly to SFMTA point of contact (a voicemail is not considered adequate). Following this conversation, the Contractor is then required to summarize the details of the conversation in an email which shall be sent immediately following the phone conversation and shall copy the UST Program Manager and the point of contact (if applicable).

### **Working Hours**

All work related to Secondary Containment Testing shall be performed Monday through Friday between the hours of 06:00 – 18:00.

## **E. Facility Employee Training**

Contractor shall provide on-the-job training for Facility employee(s) within 30 days of hire (or change in responsibilities), and thereafter, on an annual basis. SFMTA staff will notify the Contractor to any training needs related to new employees, change in responsibilities, etc. The Contractor shall conduct Facility specific training as required by Title 23 CCR Chapter 16 at each Facility.

The Contractor shall perform the Facility Employee Training at the frequencies set forth in this paragraph. The Contractor develop a training schedule and shall furnish this schedule to the Storage Tank Program Compliance Manager. At each training the Contractor shall provide a sign-in sheet which includes the name and signature of the participating facility employees. Upon completion of each training event the list of attendees shall be given to the Storage Tank Program Compliance Manager. Contractor shall provide, within 30 days of the effective date of the Contract, one employee training schedule for each Facility. Training shall be completed twice annually thereafter or as needed when needed as required by Title 23 CCR Chapter 16. If training is required more than annually due to staffing changes, the Contractor will be notified by the Storage Tank Compliance Manager.

The following is the minimum list of Facility employee training:

- Site specific operation of the UST and/or AST system in a manner consistent with the Facility's Best Management Practices;
- The employee's role with regard to UST and/or AST monitoring equipment as specified in the written UST Monitoring Plan and/or SPCC;
- The employee's role with regard to spills and overfills as specified in the written UST Response Plan;
- Name(s) of contact person(s) for emergencies and monitoring equipment alarms;

### **Schedule**

Contractor shall schedule work to be completed under the Contract, in consultation with SFMTA Storage Tank Program Compliance Manager, in such a manner as to cause minimum inconvenience to personnel affected by the work and at least 30 days before the date required by the State Water Resources Control Board. SFMTA's acceptance of Contractor's proposed schedule shall be contingent on the availability of SFMTA staff to accompany the Contractor. All work shall be performed in the presence of a designated SFMTA representative.

Since the frequency of the incidental Facility Employee Training is not known, the City will allow 2 hours per training session on a time and materials basis. The SFMTA operates fueling facilities on 24 hour daily schedules. Accordingly, training may be required on day, swing, or graveyard shifts to accommodate the facility schedules. Contractor shall price this item per training session and no allowance for overtime/shift pay will be incorporated into the price for such services.



Invoices for each training session must itemize the time and date at the Facility (not to exceed 2 hours), the materials (if any) used and a description of the training given. The MTA Storage Tank Program Compliance Manager or his appointed representative must sign the Timesheets.

### **Work Item Description**

Contractor shall provide all supervision, labor, materials, tools, equipment and services necessary to complete the training in accordance with all applicable federal, state and local laws. Note: As stated, the SFMTA shall provide the sign-in checklist at the beginning of each training session and will be responsible for its completion.

### **Working Hours**

Straight time work shall be performed Monday through Friday between the hours of 06:00-18:00. Work performed Monday through Friday from 18:00 to 06:00 and Saturdays and Sundays will be considered premium time.

## **F. Troubleshooting and Repairs**

Contractor shall provide service as required by law for each Facility. The term “Services” include all labor, materials, equipment, tools, and supervision required for the full repair or modification to any Tank System, or Tank System component, as necessary. Contractors must respond to any emergency calls within one hour of notification from the SFMTA.

Contractor shall perform all work related to the installation or testing of monitoring equipment, and shall provide maintenance, service, system programming or diagnostics, calibration, and trouble-shooting for all pertinent system components.

### **Schedule**

The frequency of the trouble-shooting and repairs of systems contract work is not known and shall be performed on a time and materials basis with a “not-to-exceed without authorization stipulation”. Contractor shall provide a reasonable written estimate to the Program Compliance Manager for approval before commencing any work under this section unless the service is for emergency work to prevent an unauthorized release or if the repair(s) can be completed within one (4) hours. If no Trouble-Shooting or System Repairs Contract Work is performed during the five-year period, there shall be no compensation due or owed to the Contractor and the Contract Service Order will be adjusted accordingly.

Since the frequency of the LT Contract Service Work is not known, the City estimates that the hours stated in the Calculation of Charges per Tank System for the Contract are reasonable for this Facility. The unit prices will allocate a portion of the hours for Straight time and for Premium time to establish the hourly unit prices for the Contract but the number of actual hours for these services may vary. If additional or less hours are deemed necessary to perform

LT Contract Work during the Contract, the unit prices for Straight Time and/or Premium Time included in the Proposal will be used to calculate the adjustment (modification) to the Contract Service Order.

Invoices for each Call-Out must itemize the time at the jobsite, the materials used, a timesheet and a description of the work performed. Invoices shall also identify and describe any problem(s) that still exist. The MTA Storage Tank Program Compliance Manager, or his designated representative, must sign the Timesheets prior to submission with Invoices.

### **Work Item Description**

Contractor shall provide all supervision, labor, materials, tools, equipment and services necessary to inspect, trouble-shoot, service, repair and return full functionality of all aspects of the storage Tank Systems, including any and all documentation required by applicable federal, state or local laws.

The Contractor shall maintain all systems to the standards of the manufacturer, including the addition of any new requirements of the governing authorities.

The Contractor shall inform the SFMTA Storage Tank Program Compliance Manager, or his authorized representative, of all Tank System shutdowns that will last more than four (4) hours in duration and the reason(s) therefore (parts on order, major repairs, etc.).

### **Parts Plus 12% Mark-up**

Parts and Materials charges shall be at Contractor's net cost plus 12% mark-up (parts and materials invoices shall be submitted with Contractor's regular invoice). Charges are only for parts and materials incorporated into the storage Tank Systems at the Facility.

Contractor shall obtain written approval from the SFMTA Storage Tank Program Manager to replace parts with either Original Equipment Manufacturer (OEM) or generic parts.

Unless otherwise specified, all replacement parts shall be new and of the same design, size chemical composition and generally equal to the material originally supplied by the manufacturer.

### **Subcontracting 15% Mark-up**

Subcontracted work charges shall be at the Contractor's net cost plus 15% mark-up.

Contractor shall obtain written approval from SFTMA Storage Tank Program Manager to sub-contract any work, prior to the performance of the work.

The SFMTA reserves the right to direct the Contractor to sub-contract any works, as needed.

### **Working Hours**

The work performed under this section involves unanticipated repairs to the Tank Systems or providing emergency services to the Facility to bring the Tank Systems back to their normal operating condition.

- Straight Time Hours Requirement:
  - o Whenever possible all work shall be performed Monday through Friday between the hours of 06:00 – 18:00.
- Premium/Overtime Service Call-Out Requirements:
  - o At the request of the Facility’s designated representatives, Contractor shall provide overtime call-out services for the sites covered by this Contract as follows:
    - 18:00 to 06:00, Monday through Friday
    - Saturday and Sunday: Twenty-four (24) hour service
    - All Holidays: Twenty-four (24) hour service
- Travel Time Allowances:
  - o For the purposes of all work involved with this contract, no compensation will be given for travel time. Payments will be made for on-site work only.

**G. Emergency Service Call-out**

An Emergency Service call-out is necessary in the following situations:

- To remedy a potentially dangerous (injury threatening) situation;
- To correct a situation which, if not corrected, would lead to an unauthorized release from any Tank System;
- Any event in which the SFMTA is unable to fuel vehicles or otherwise dispense products from the Tank Systems that impacts service at any of the Facilities;
- Any service required to ensure compliance with all applicable regulations.

**Emergency Call-out Performance Requirements**

- Contractor shall maintain 24 hour response.
- Emergency Service call-out response shall be made within one (1) hour.

In the event the Contractor is unable to respond within the time stipulated, the SFMTA reserves the right to contract with a third-party vendor at the discretion of SFMTA staff. The SFMTA will deal directly with this vendor and the Contractor will receive no compensation for this work. In addition, the Contractor will be accessed liquidated damages as agreed upon in the final Contract Agreement.

- Contractor shall be responsible for restoring the Tank System to a safe and satisfactory operating condition.
- Contractor shall not be compensated for travel time related to emergency service call-out.

**H. Small Parts Supply**

Contractor shall supply and maintain at each Facility a locked cabinet with an adequate supply of alarm buttons, emergency stop buttons, indicator bulbs, incidental parts for repairs of monitoring system, sumps, dispensers, fill ports, spill buckets, gaskets, O-rings and all other common replacement components unique to each Facility. Muni shall be invoiced for replacement of all consumed parts.

**I. Housekeeping**

General cleaning must be on-going as conditions warrant:

- All debris such as wiping rags, absorbent pads, trash, etc., resulting from the work shall be promptly removed on a daily basis by the Contractor.
- All flammable material will be stored in a fire rated metal container supplied by the Contractor or at the Facility's flammable storage area so designated by the SFMTA staff.

**J. Inspection By SFMTA Storage Tank Program Compliance Manager**

SFMTA Storage Tank Program Compliance Manager, or his designee, reserves the right to monitor the work by whatever means he or she deems necessary, including employing others to inspect and/or test the condition of the Tank Systems.

**K. Drawings and Control Prints**

SFMTA shall make available to Contractor, drawing and sensor diagram prints at each Facility. Contractor shall be responsible for alerting SFMTA to any action requiring the updating of these drawings when and if changes are made.

**L. Contractor Performance Requirements**

1. Licenses and Permits: Contractor shall procure and pay for all permits and licenses necessary to perform the work identified in this Scope of Services.
2. Contractor shall obtain, at its sole cost and expense, all permits and certificates as required by the State of California and the International Code Council to perform work as a Designated Operator and/or Licensed Technician, and perform all required inspections and tests.
3. Contractor shall provide TWENTY-FOUR (24) HOUR EMERGENCY SERVICE as set forth in this Scope of Services and further defined in the Trouble Shooting and Repairs of Systems Section of this Appendix A.

4. Contractor shall submit a proposed schedule for the submission of reports and service records for the approval of the Program Compliance Manager. Contractor shall submit monthly service records and annual inspection reports for each Facility in accordance with such approved schedule. These records shall identify the cause of all Tank System shutdowns and resolution of the same. Timely submission of these monthly records shall be a condition of receiving any Contract payments.
5. All work required under the Contract shall be performed as promptly as possible, and in any event within the time set forth in the Contract, and such work shall be subject to approval and acceptance by the Storage Tank Program Compliance Manager, however, such approval and acceptance shall not relieve the Contractor from the obligation to correct any incomplete, inaccurate or defective work, all of which shall be promptly remedied by the Contractor on demand, without cost to SFMTA.

**Appendix B**  
**Calculation of Charges**

Monthly Inspection

Facility	Unit Price (Monthly)	Extension Price (5 years)
Woods Diesel Bus Maintenance	\$225.00	\$13,500.00
Flynn Diesel Bus Maintenance	\$125.00	\$7,500.00
Scott Non-Revenue Vehicle Maintenance	\$50.00	\$3,000.00
Kirkland Diesel Bus Maintenance	\$200.00	\$12,000.00
Islais Creek Diesel Bus Maintenance	\$225.00	\$13,500.00
Marin Diesel Bus Maintenance	\$50.00	\$3,000.00
Muni Metro Turnaround	\$50.00	\$3,000.00
<b>PROPOSED COST SUB-TOTAL</b>	<b>\$925.00</b>	<b>\$55,000</b>

Annual Inspection/Monitoring Certification

Facility	Unit Price (Monthly)	Extension Price (5 years)
Woods Diesel Bus Maintenance	\$1,200.00	\$6,000.00
Flynn Diesel Bus Maintenance	\$500.00	\$2,500.00
Scott Non-Revenue Vehicle Maintenance	\$250.00	\$1,250.00
Kirkland Diesel Bus Maintenance	\$600.00	\$3,000.00
Islais Creek Diesel Bus Maintenance	\$850.00	\$4,250.00
Marin Diesel Bus Maintenance	\$250.00	\$1,250.00
Muni Metro Turnaround	\$250.00	\$1,250.00

Facility	Unit Price (Monthly)	Extension Price (5 years)
<b>PROPOSED COST SUB-TOTAL</b>	<b>\$3,900.00</b>	<b>\$17,000</b>

SB-989 Secondary Containment Testing

Facility	Unit Price (Per SB-989 Test)	Extension Price (2 Tests)
Woods Diesel Bus	\$2,200.00	\$4,400.00
Kirkland Diesel Bus Maintenance	\$1,100.00	\$2,200.00
<b>PROPOSED COST SUB-TOTAL</b>	<b>\$3,300.00</b>	<b>\$6,600.00</b>

Facility Employee Training

Facility	Unit Price (Monthly)	Extension Price (5 years)
Woods Diesel Bus Maintenance	\$1,200.00	\$6,000.00
Flynn Diesel Bus Maintenance	\$500.00	\$2,500.00
Scott Non-Revenue Vehicle Maintenance	\$250.00	\$1,250.00
Kirkland Diesel Bus Maintenance	\$600.00	\$3,000.00
Islais Creek Diesel Bus Maintenance	\$850.00	\$4,250.00
Marin Diesel Bus Maintenance	\$250.00	\$1,250.00
<b>PROPOSED COST SUB-TOTAL</b>	<b>\$3,900.00</b>	<b>\$17,000</b>

Trouble Shooting and Repairs of Systems

- 1) The Designated Operator/Licensed Technician Hourly Rate line item shall be used to calculate work performed solely by the Designated Operator/Licensed Technician. This hourly rate does not include any of the other crafts listed below.

- 2) For cost proposal comparison purposes, the Designated Operator/Licensed Technician line item will be calculated using an allowance of 2300 straight time hours and 1040 premium time hours. The other listed craft's line items for straight time hours and premium time hours will be calculated using the hours shown in line D an F, respectively. The hour quantities are used for cost proposal comparison purposes only and are not necessarily indicative of the actual hours worked for any craft. Payments will be based on actual hours worked.
- 3) For the purposes of calculating a cost proposal amount, the base price for all listed crafts will be calculated using the amount proposed by each contractor for straight and premium (overtime) hourly rate. The cost extension will be calculated using the entered rates. The total cost amount reflected here will then use the hours listed in Note 2.

Trouble Shooting & Repairs of Systems

Craft	Unit Price – Straight time hourly rate	Unit Price – Premium Time Hourly Rate	Straight Time Hours Bid	Straight Time Hour Total	Premium Time Hours Bid	Premium Time Hour Total
Designated Operator/Technician	\$80.00	\$90.00	2300	\$184,000.00	1040	\$93,600.00
Plumber	\$125.00	\$180.00	1200	\$150,000.00	165	\$29,700.00
Electrician	\$125.00	\$180.00	200	\$25,000.00	35	\$6,300.00
Operating Engineer	\$115.00	\$165.00	200	\$23,000.00	35	\$5,775.00
Laborer	\$75.00	\$110.00	1200	\$90,000.00	165	\$18,150.00
<b>COST PROPOSAL SUB-TOTAL</b>				<b>\$472,000.00</b>		<b>\$153,525.00</b>



Bid Recapulation

Sub-Total Monthly Inspection	\$55,000.00
Sub-Total Annual Inspection/Monitoring Certification	\$17,000.00
Sub-Total SB-989 Secondary Containment Testing	\$6,600.00
Sub-Total for Facility Employee Training	\$5,600.00
Sub-Total for Trouble Shooting & Repairs of Systems	\$625,525.00
<b>COST PROPOSAL TOTAL</b>	<b>\$710,225.00</b>

*\* Replacement parts for the other service contract work shall be at contractor's net cost plus 12% markup (parts invoices must accompany request for payments).*