

**THIS PRINT COVERS CALENDAR ITEM NO.: 11**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to execute Contract No. SFMTA 2018-37, Vendor Managed Inventory services with Alstom Transportation Inc., to manage and supply parts for its rail fleet maintenance program, for an amount not to exceed \$62,456,000, and for a term of three years with two, two-year options to extend the contract, to be exercised at the sole discretion of the Director of Transportation.

**SUMMARY:**

- The SFMTA manages a comprehensive, integrated transit system with an aging rail fleet that currently includes 149 Breda light rail vehicles (LRVs), 39 historic streetcars, and 31 cable cars.
- On July 13, 2013, the SFMTA Board approved a pilot Vendor Managed Inventory (VMI) services contract with Alstom Transportation Inc. (Alstom), to provide the SFMTA parts on a cost-effective and efficient basis, by providing inventory planning and automated replenishment of spare parts, with strict performance guidelines requiring defined response times and fill rates.
- The program was effective in streamlining parts acquisition, improving purchasing planning, and providing a mechanism for reverse engineering and alternate sourcing of difficult-to-obtain parts.
- The SFMTA Board approved the issuance of an RFP in January 2018 to continue the program, and in April 2018, the SFMTA received proposals from Alstom and Siemens Industry, Inc. Alstom was the highest-ranked proposer.
- Planned funding for this contract will come from the Operating Budget for the SFMTA's Rail Maintenance Section in the Transit Division.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Agreement

**APPROVALS:**

**DATE**

DIRECTOR	 _____	9/11/2018 _____
SECRETARY	 _____	9/11/2018 _____

**ASSIGNED SFMTAB CALENDAR DATE:** September 18, 2018

## **PURPOSE**

The purpose of this item is to request authorization for the Director of Transportation to execute Contract No. SFMTA 2018-37, Vendor Managed Inventory services with Alstom Transportation Inc., to manage and supply parts for its rail fleet maintenance program, for an amount not to exceed \$62,456,000, and for a term of three years with two, two-year options to extend the contract, to be exercised at the sole discretion of the Director of Transportation.

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

The goal of this project is to improve equipment and parts availability, reliability and performance in order to meet the following goals and objectives of the SFMTA's Strategic Plan:

- Goal 1: Create a safer transportation experience for everyone.  
Objective No. 1.2: Improve the safety of the transit system.
- Goal 2: Make transit and other sustainable modes of transportation the most attractive and preferred means of travel.  
Objective 2.1: Improve transit service.  
Objective 2.2: Enhance and expand use of the city's sustainable modes of transportation.
- Goal 3: Improve the quality of life and environment in San Francisco and the region.  
Objective No. 3.5: Achieve financial stability for the agency.

This action supports the following SFMTA Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
4. Transit priority improvements, such as designated transit lanes and streets and improved signalization, shall be made to expedite the movement of public transit vehicles (including taxis and vanpools) and to improve pedestrian safety.
9. The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.
10. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

## DESCRIPTION

### Background

The SFMTA manages a comprehensive, integrated transit system, which includes an aging rail fleet of 149 Breda light rail vehicles (LRVs), 39 historic streetcars, and 31 cable cars.<sup>1</sup>

The SFMTA has struggled with parts availability for its aging LRV fleet for an extended period of time. In 2011, the Agency had a significant backlog of outstanding requests to order parts. Delays in receipt of parts had a negative impact on service delivery.

In 2012, the SFMTA initiated a comprehensive approach to improving parts availability for the Transit Maintenance Division. The comprehensive approach included hiring additional Contracts & Procurement staff, updating purchasing guidelines consistent with local law to allow for more efficient purchasing, and implementation of a Vendor Managed Inventory (VMI) program for LRV parts by streamlining the purchasing process for critical parts, providing a mechanism for addressing difficult to obtain parts through reverse engineering and alternate sourcing, and improving purchasing planning so that the agency could purchase the right part at the right time, improve parts availability, and reduce existing agency inventory.

To implement the VMI program as a pilot project, in 2013, the SFMTA Board approved SFMTA Contract No. 2011/12-06 for VMI Services with Alstom, the highest-ranked proposer, in the amount of \$39,158,000; the Board of Supervisors approved the contract on July 30, 2013. The SFMTA exercised the options, and Contract No. 2011/12-06 expired on August 31, 2018. To bridge the gap between the expiration of Contract No. 2011/12-06 and the new contract, the SFMTA, through its Director of Transportation, entered into a two-month contract with Alstom, which ends on October 31, 2018.

The SFMTA believes that the VMI pilot project was effective in streamlining parts acquisition, improving purchasing planning, and providing a mechanism for reverse engineering and alternate sourcing of difficult to obtain parts. Outstanding purchase requests have declined from a high of more than 5,000 to an average of 735 requests weekly. Parts availability has improved as measured by a review of the agency's out-of-stock rate, which is presently at 3.54% and below the industry standard of 5%.

One of the most important services under the former contract was the ability to request reverse engineering of obsolete parts. Due to the aging Breda fleet and Breda no longer being in business, many of the parts have become obsolete. A total of 35 LRV parts have been reverse engineered to date. If we did not have the ability to reverse engineer these parts, the ability to run Breda cars would be affected which would have a large impact on service. In addition, the Contractor also assisted in the identification of alternative sources for needed parts. Overall, there have been quantifiable improvements in parts availability measured by a decline in the number of outstanding purchase requests, a decline in out of stock rates and an increase in parts consumption. There have also been corresponding service improvements.

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<sup>1</sup> The contract will not provide parts for the new Siemens LRVs.

During the term of the existing VMI contract, Transit Operations has reported significant improvements in vehicle availability and reliability resulting in improved service for our customers. These improvements include:

- Daily average car availability pre-VMI was 110; post-VMI is 122 representing a 20% improvement rate.
- The Mean Distance between Failures (MDBF) has increased from an average of 2,964 miles pre-VMI to 5,150 post-VMI.

As a result of greater availability and reliability, the rail fleet is operating 42% more miles post-VMI, which is part of the reason for expanded consumption rates.

In order to maximize the ability of the SFMTA to continue to secure parts on a cost-effective and efficient basis and improve reliability (i.e., increased mean distance between failures and fewer service interruptions), staff recommends continuing the existing VMI program.

On February 7, 2018, the SFMTA issued an RFP for VMI services for its rail fleet maintenance program for a three-year period with two, two-year options to extend the contract. The SFMTA received proposals from Alstom and Siemens Industry, Inc. The selection panel, comprised of subject matter experts from various SFMTA divisions, scored the submittals and determined, based on the criteria outlined in the RFP, that Alstom was the highest-ranked proposer.

### **Scope of Work**

The scope of services includes the following:

- Provide the SFMTA with parts on a cost-effective and efficient basis;
- Provide inventory planning and automated replenishment of parts, with strict performance guidelines regarding defined response times and fill rates;
- Provide management/replacement of obsolete parts;
- Meet the SFMTA safety standards in any program activity;
- Jointly managed inventory services facilitated through a state-of-the-art inventory system;
- Program management and oversight to ensure the successful delivery of the program;
- As-needed technical and engineering services for analysis of root-cause failure, analysis and replacement of obsolete parts, reverse engineering of obsolete parts, research for availability of parts, life cycle performance of equipment and parts, training documents for new equipment, assistance in assessment of the needs for parts and equipment replacement and establishing replacement programs, assistance in assessment of required maintenance tools for the efficient maintenance of the rail fleet, and assistance in assessment and reporting of safety hazards associated with the maintenance of the rail fleet and equipment;
- As-needed technical and engineering services for assessment, evaluation and procurement of parts for accident and collision repairs.

## **STAKEHOLDER ENGAGEMENT**

Transit Division (Rail Maintenance/Operations and Fleet Engineering), Finance and Technology Division, and affected Unions are aware of the successful completion of the pilot program and support the issuance a new contract.

## **ALTERNATIVES CONSIDERED**

The alternative to issuing this new contract would be to continue to purchase LRV, cable car, PCC, historic streetcar parts with in-house staff. Due to the lack of in-house expertise in reverse engineering and rail parts sourcing, staff determined that this was not the preferred option.

## **FUNDING IMPACT**

Funds of \$22,500,000 will be available from the FY 2019 and FY 2020 Operating Budget for the SFMTA's Rail Maintenance Section in the Transit Division. Future funding will be allocated in the next budget cycle.

## **ENVIRONMENTAL REVIEW**

On August 23, 2018, the SFMTA, under authority delegated by the Planning Department, determined that the proposed action is not 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**

The City Attorney's Office has reviewed this calendar item.

The contract will require approval from the Board of Supervisors because it is an expenditure contract in excess of \$10,000,000.

The Contract Compliance Office established a 15% Local Business Enterprise participation goal for Professional and Technical Services and 5% for Commodity/Purchases/Parts for this contract.

## **RECOMMENDATION**

Staff recommends that this Board authorize the Director of Transportation to execute Contract No. SFMTA 2018-37, VMI services, with Alstom Transportation Inc., to manage and supply parts for its rail fleet maintenance program, for an amount not to exceed \$62,456,000, and for a term of three years with two, two-year options to extend the contract, to be exercised at the sole discretion of the Director of Transportation.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) manages a comprehensive, integrated transit system with an aging rail fleet of 149 Breda LRVs, 39 historic streetcars, and 31 cable cars; and,

WHEREAS, In 2012, the SFMTA initiated a comprehensive approach to improving parts availability for its Transit Maintenance Division, which included implementation of a Vendor Managed Inventory (VMI) program for procuring LRV parts by streamlining the purchasing process for critical parts, providing a mechanism for addressing difficult to obtain parts through reverse engineering and alternate sourcing, and improving purchasing planning so that the agency could purchase the right part at the right time, improve parts availability, and reduce existing agency inventory; and,

WHEREAS, In 2013, after a competitive solicitation, the SFMTA Board approved SFMTA Contract No. 2011/12-06 for VMI Services with Alstom Transportation Inc., the highest-ranked proposer, in the amount of \$39,158,000; the Board of Supervisors approved the contract on July 30, 2013; the SFMTA exercised the options for a total Contract amount of \$55,198,000, and Contract No. 2011/12-06 expired on August 31, 2018; and,

WHEREAS, To continue maximizing the ability to secure parts on a cost-effective and efficient basis and improve reliability, the SFMTA wishes to continue the VMI program, and,

WHEREAS, On February 7, 2018, the SFMTA issued a Request for Proposals for VMI services to provide rail parts and supplies for a three-year Agreement with two, two-year options to extend the contract; and,

WHEREAS, After receiving two proposals, the selection panel determined that Alstom was the highest-ranked proposer; and,

WHEREAS, To bridge the gap between the expiration of Contract No. 2011/12-06 and the new contract, the SFMTA, through its Director of Transportation, entered into a two-month contract with Alstom, which ends on October 31, 2018; and,

WHEREAS, On August 23, 2018, the SFMTA, under authority delegated by the Planning Department, determined that the proposed action is not a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

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

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA 2018-37, Vendor Managed Inventory services, with Alstom Transportation, Inc., to provide rail parts, supplies and engineering and technical support, in an amount not to exceed \$62,456,000, and for a term not to exceed three years with two, two-year options to extend the contract, to be exercised at the sole discretion of the Director of Transportation, and be it further

RESOLVED, That the SFMTA Board authorizes the Director of Transportation to approve any additions, amendments or other modifications to the Contract that the Director, in consultation with the City Attorney, determines is in the best interest of the SFMTA, do not materially increase the obligations or liabilities of the SFMTA or City, or materially decrease the public benefits accruing to the SFMTA, and are necessary or advisable to complete the transactions contemplated and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Director of Transportation of any such documents; and be it further

RESOLVED, That the SFMTA Board of Directors urges the Board of Supervisors to approve this Agreement.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of September 18, 2018.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation

**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  
Alstom Transportation Inc.**

**Contract No. SFMTA 2018-37**

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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  
Alstom Transportation Inc.  
Contract No. SFMTA-2018-37**

This Agreement is made this [insert day] day of [insert month], 2018, in the City and County of San Francisco, State of California, by and between Alstom Transportation Inc., 1001 Frontenac Road, Naperville, IL 60563 (Contractor), and the City and County of San Francisco (City), acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

**A.** The SFMTA wishes to obtain the services of a qualified firm to provide Vendor Managed Inventory (VMI) services to manage and supply parts for its Rail Fleet maintenance program.

**B.** This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on February 7, 2018, pursuant to which City selected Contractor as the highest-qualified scorer.

**C.** The Local Business Entity (LBE) subcontracting participation requirement for this Agreement is 15% for Professional and Technical Services and 5% for Commodity / Purchases / Parts. 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 PSC No. 49282-17/18 on March 5, 2018.

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 (which are incorporated by reference), and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference as provided herein.

**1.2** “Approved Equal” is an alternate component or part that complies with OEM requirements or specifications, will not compromise any OEM warranties with respect to the Rail Fleet, and has been approved as such by SFMTA Engineering.

**1.3** “CCO” means SFMTA Contract Compliance Office.

**1.4** “City” or “the City” means the City and County of San Francisco, a municipal corporation.

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

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

**1.7** “Contractor” or “Consultant” means Alstom Transportation Inc., 1001 Frontenac Road, Naperville, IL 60563.

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

**1.9** “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.

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

**1.11** “Kit” means a set of parts or supplies assembled and delivered together for use in preventive maintenance or other repairs.

**1.12** “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.

**1.13** “MDBF” means Mean Distance Between Failures.

**1.14** “MM” means Materials Management Section.

**1.15** “OEM” means Original Equipment Manufacturer.

**1.16** “OOS” means Out Of Stock

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

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

**1.19** “Proposal” means the proposal submitted by Contractor on April 30, 2018, in response to the RFP.

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

**1.21** “**Rail Fleet**” refers to the SFMTA’s fleet of light rail vehicles, historic streetcars, cable cars.

**1.22** “**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.

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

**1.24** **Task Order** means a written directive from the SFMTA to the Contractor to perform specified work.

**1.25** “**Transit Division**” is the SFMTA division that manages the planning, operation, regulation, and maintenance of the San Francisco Municipal Railway, universally known as Muni, the City-owned public transit system.

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

**2.1** The term of this Agreement shall commence on the Effective Date, and expire three years thereafter, unless earlier terminated as otherwise provided herein.

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

## **Article 3 Financial Matters**

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

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

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

**3.3 Compensation.**

**3.3.1 Amount.** In no event shall the amount of this Agreement exceed Sixty-Two Million, Four Hundred Fifty-Six Thousand Dollars (\$62,456,000). The breakdown of charges associated with this Agreement appears in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

**3.3.2 Payment.**

(a) **Payment of Annual Fee; Parts.** Contractor shall provide an invoice to the SFMTA on a monthly basis for its Annual Fee for Services completed and Parts purchased in the immediately 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 Director of Transportation, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists.

(b) **Task Orders.** Compensation for Task Orders under this Agreement (Items 3 and 4 in Appendix B) shall be based on a negotiated lump sum price per task, using the hourly rates in Appendix B. The SFMTA shall pay for Task Order work monthly, on or before the 30th day of each month for the percentage of work on each Task, as set forth in Section 4 of this Agreement, that the SFMTA Project Manager, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month.

**3.3.3 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.

**3.3.4 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.

**3.3.5 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. City will pay Contractor at the electronic address specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing.

Each invoice shall include (i) Contract order number; (ii) quantity of items; (iii) description of items; (iv) unit price; (v) total invoice amount; and (vi) supporting documentation for delivery.

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

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

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](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. A copy of the invoice shall be sent to the City address set forth in Section 11.1 (Notices to the Parties).

**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 those Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5 (Modification of this Agreement).

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

### **4.3 Subcontracting.**

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

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

NBA Engineering, Inc.  
Transmetro  
Harrison & Bonini  
T& S Trading  
Center Hardware & Supply Company Inc.

**4.4 Task Orders.** The SFMTA will define the requirements for Task Orders for as-needed work. The cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on each task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below.

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

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

- (a) A work plan that includes a detailed description by subtask of the work to be performed and the means and methods that will be used to perform it;
- (b) Milestones for completion for each subtask and deliverables at each milestone;
- (c) Personnel and the Subcontractors assigned to each part of the work, along with a resume or curriculum vitae that indicates why such personnel are qualified to perform the work; and prior experience in performing work of this nature; if not included in the original Proposal;
- (d) A detailed cost estimate for each task or subtask showing:
  - (i) Estimated hours and hourly rates, as listed in Appendix B, for both Contractor and Subcontractor personnel). Labor hours for preparing monthly invoices or filling out required LBE forms will **not** be allowed. Contractor shall manage Subcontractors so additional Subcontractor program management labor hours will **not** be allowed. Overtime

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

- (ii) Estimated reasonable out-of-pocket expenses, if any.

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

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

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

**4.4.6 Failure to Agree on Terms of Task.** In the event that the SFMTA and Contractor cannot reach agreement on the terms of the Task Order, the SFMTA may either cancel the Task Order and have the work accomplished through other available sources, or may direct the Contractor to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. The Contractor will have the right to resolve any disagreement related to an City-ordered Task Order in accordance with Section 11.6.1 of this Contract. Under no circumstances may the Contractor refuse to undertake a City-ordered task.

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

**4.5.1 Independent Contractor.** For the purposes of this Article 4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other

similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.5.2 Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

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

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

**4.8 Unavoidable Delays.**

**4.8.1 Definition.** An Unavoidable Delay is an interruption of the work beyond the control of the Contractor, which the Contractor could not have avoided by the exercise of care, prudence, foresight, and diligence. Such delays include and are limited to acts of God; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes and lockouts; freight embargoes; acts of a governmental agency; priorities or privileges established for the manufacture, assembly, or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the work ordered by the City insofar as they necessarily require additional time in which to complete the entire work; the prevention by the City of Contractor's commencing or prosecuting the work. The duration of said Unavoidable Delays shall be limited to the extent that the commencement, prosecution, and completion of the work are delayed thereby, as determined by the City.

**4.8.2 Notification of Delay.** Contractor shall notify the SFMTA as soon as Contractor has, or should have, knowledge that an event has occurred that will delay deliveries. Within five calendar days, Contractor shall confirm such notice in writing, furnishing as much detail as is available.

**4.9 Reserved. (Bonding Requirements)**

**Article 5 Insurance and Indemnity**

**5.1 Insurance.**

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

- (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- (b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(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.

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

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

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

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

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

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

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

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

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

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

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

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

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

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

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

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

## **Article 7      Payment of Taxes**

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

**7.2**      Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

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

**7.2.2**    Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to

report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

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

**7.2.4** Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.5	Submitting False Claims
4.5	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws
13.1	Nondisclosure of Private, Proprietary or Confidential Information

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

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

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

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

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

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

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

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

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

- 3.3.2 Payment Limited to Satisfactory Services
- 3.4 Audit and Inspection of Records
- 3.5 Submitting False Claims
- Article 5 Insurance and Indemnity
- 6.1 Liability of City
- 6.3 Liability for Incidental and Consequential Damages
- Article 7 Payment of Taxes
- 8.1.6 Payment Obligation
- 9.1 Ownership of Results
- 9.2 Works for Hire
- 11.6 Dispute Resolution Procedure
- 11.7 Agreement Made in California; Venue
- 11.8 Construction

11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability
13.1	Nondisclosure of Private, Proprietary or Confidential Information

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

## **Article 9 Rights In Deliverables**

**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

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

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

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by

reference in this Article and elsewhere in the Agreement (Mandatory City Requirements) are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca](http://www.amlegal.com/codes/client/san-francisco_ca).

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

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

**10.4 Reserved.**

**10.5 Nondiscrimination Requirements**

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

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B (LBE Ordinance). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 15% for Professional and Technical Services and 5% for Commodity/Purchases/Parts of the Services except as otherwise authorized in writing by the Director of CMD. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

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

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

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

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

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the

limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

**10.12 Reserved. (Slavery Era Disclosure).**

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

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

**10.14.1** Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

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

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

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

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

**10.18 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:             Virginia Harmon  
                           Manager, Contract Compliance Office  
                           One South Van Ness Avenue, 6<sup>th</sup> Floor  
                           San Francisco, CA 94103

To Contractor:     Mr. Jack Martinson  
                           Vice President and Customer Director  
                           Alstom Transportation Inc.  
                           1001 Frontenac Road  
                           Naperville, IL 60563

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

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

**11.3 Reserved.**

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1 (Notices to Parties) regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

**11.5.1 City-Ordered Changes.** The City may order changes in the Work and may order extra materials and extra work in connection with the performance of the Agreement, and the Contractor shall respond within 30 days to such orders, except that:

If changes ordered in design, workmanship, services, or materials are of such a nature as to increase or decrease the cost or the time required to execute the change in scope of Work, the City shall make a reasonable and proper adjustment in the Contract price, delivery schedule, or both, as agreed upon by the Contractor and the Agency as the reasonable and proper allowance for the increase or decrease required.

No order for any alteration, modification, or extra that will increase or decrease the cost of the Work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the City in the manner required under City law. No oral statement of any person whomsoever shall in any manner or degree modify or otherwise affect the terms of this Contract.

## **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 Project Manager 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.

**11.6.3 Authority of Project Manager.** The Project Manager shall decide all questions that may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions that may arise as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. In discharging the responsibilities outlined above, the Project Manager shall at all times act fairly and reasonably. Any appeal of the Project Manager's decisions shall be in accordance with the provisions of Section 11.6.1 of this Agreement. As

with any claim, change, extra or additional work, Contractor shall be paid in accordance with the payment provisions set out in Section 3 of this Contract when the dispute is finally resolved.

Should any questions arise as to the meaning and intent of the Contract, the matter shall be referred to the Project Manager, who, in consultation with other City representatives, as applicable, and with input the Contractor, shall decide the true meaning and intent of the Contract. The Project Manager's decision in this regard shall be administratively final and conclusive.

**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, including amendments, the RFP, and Contractor's proposal dated April 30, 2018. 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, the order of precedence shall be (a) this Agreement and any amendments, (b) the RFP, and (c) the Contractor's proposal.

## **Article 12 SFMTA Specific Terms**

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

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

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

## **Article 13 Data and Security**

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

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

**13.1.2** In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

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

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

**Article 14 MacBride Principles And Signature**

**14.1 MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

<p><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: _____ Roberta Boomer, Secretary</p> <p>Board of Supervisors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Clerk of the Board</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p>	<p><b>CONTRACTOR</b></p> <p><b>Alstom Transportation Inc.</b></p> <hr/> <p>Mr. Jack Martinson Vice President and Customer Director Alstom Transportation, Inc. 1001 Frontenac Road Naperville, IL 60563</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City vendor number: 0000025721</p>
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## **Appendices**

- A: Scope of Services
  - Exhibit A-1: Alstom/SFMTA Warranty Process
  - Exhibit A-2: Reporting and Monitoring Plan
  
- B: Calculation of Charges
  - Exhibit B-1: LRV and Cable Car Parts List – Available upon request
  - Exhibit B-2: PCC, Histories, Milan Parts List – Available upon request
  
- C: Task Order Request Form

## **Appendix A Scope of Services**

### **A. Program Goals and Objectives**

The SFMTA has developed the following goals for management of parts for the Rail Fleet:

- Provide parts to the SFMTA on a cost-effective, efficient basis, and in a timely manner,
- Provide inventory planning and automated replenishment of parts, with strict performance guidelines regarding defined response times and fill rates;
- Ensure that parts provided would allow the SFMTA to meet its objectives in terms of availability and reliability (i.e., MDBF, service interruptions);
- Provide management/replacement of obsolete parts;
- Meet the SFMTA safety standards in any program activity.

### **B. General Description of Services**

The work shall include project management and oversight, parts procurement and delivery, technical and engineering services and support for collision repairs.

#### **1. Project Management / Oversight/ and all Associated Administration Services**

- a. Within one month from Notice to Proceed, Contractor shall provide a Project Management Plan, which shall include all of the Contractor's program management structure in sufficient detail to allow the SFMTA to properly oversee all areas under this Contract as described in the Proposal. This shall also include, but not necessarily be limited to:
  - 1) Organization – Contractor shall provide an organization chart, subject to approval by the SFMTA, including names and a definition of the responsibilities and qualifications of all personnel therein, for the Contractor. The SFMTA must approve any changes in Contractor's key staff.
  - 2) Process and Communications Plan: The internal methods, communications, correspondence coding system, and documentation control to be used to monitor, oversee, and manage the project.
  - 3) Quality Management: The Contractor's Quality Assurance Plan, which shall be incorporated into this Contract.

#### **b. Jointly Managed Inventory Support**

Contractor shall provide all new OEM vehicle parts or Approved Equal(s) for the term of the Contract as per the attached Unit Price Schedule (Appendix B, Item 2). Items not currently identified as Approved Equals by SFMTA Engineering must be tested and approved by SFMTA Engineering. All vendor requests for Approved Equals must include a cost analysis and materials performance analysis for review, unless such requirements are waived by the SFMTA.

Parts, Kits, supplies, accessories and components supplied by the Contractor shall meet or exceed the quality of the items furnished originally for the equipment (OEM or equivalent). If the OEM updates the quality of the parts for its current production, parts purchased after that change shall meet or exceed the updated

quality specification. The Contractor shall notify the SFMTA when manufacturers or suppliers make any changes to parts or to items included in Kits (e.g., part numbering, quality, function), and shall document such changes.

The SFMTA reserves the right to increase or decrease the list of parts in the Unit Price Schedule at any time during the term of the Contract. The Contractor may add or remove parts through a change letter, subject to approval of the SFMTA. The Contractor shall maintain inventory balances of the parts provided under the Contract at a storeroom located within the Bay Area (i.e., separate from SFMTA storerooms and not located on SFMTA property) (currently on Mare Island). Inventory will be the property of the Contractor until it is received and accepted by the designated SFMTA storeroom. The SFMTA reserves the right to conduct on-site visits of the Contractor's warehouse facilities on Mare Island for approval and verification of the inventoried parts. The SFMTA, in its sole discretion, will reject parts, equipment, materials, and supplies it deems inferior and not in accordance with OEM standards.

In addition to inventory maintained by the Contractor in its warehouse, the Contractor shall maintain an in-stock balance of high usage parts identified by the SFMTA, equal to 1/6 (two months) of the annual projected demand, to support readily available parts demands. The Contractor shall issue parts from its inventory balances to the SFMTA's storerooms when indicated by the Contractor's inventory management system or the SFMTA makes a special request. Contractor shall deliver needed parts from its inventory balances to the SFMTA-designated locations on a daily basis, excluding weekends and legal holidays.

c. Labeling of Materials

1) Parts. Contractor shall include, at a minimum, the following information on all labels on parts:

- a. SFMTA part number
- b. PO number
- c. Date shipped

2) Kits.

- a. Kits shall be labeled in the same manner as parts (see above);
- b. The bill of materials (packing slip) shall be attached with the packaged Kit(s);
- c. Individual Kit components shall be stamped or tagged with the appropriate manufacturer's identification (e.g., serial number) that will ensure component traceability throughout the component's useful life;
- d. Contractor may not substitute components in a Kit that have not been tested and approved by SFMTA Engineering;
- e. Contractor shall routinely inspect components for compliance with the appropriate specifications. Contractor shall ensure that manufacturers and suppliers document any changes to items included in the Kits (e.g., availability, quality, function).

d. Reporting and Monitoring Requirements

- 1) The performance standard for parts delivered under this contract is expected to be at an overall minimum of 98 percent material availability rate per month, with daily deliveries, excluding weekends and legal holidays (in order for parts to be counted as delivered daily, the SFMTA's order must be received by 1:00 PM PT the previous day).
- 2) The Contractor shall provide reports to assist in measuring the performance of this Contract. The reports shall include, but are not limited to, the following:
- 3) General Reports
  - Number of deliveries to a customer or location;
  - Parts requested vs. parts delivered (on time delivery);
  - Parts below minimum stock (at Contractor or customer site);
  - Stock at hand at Contractor's site;
  - Stock on order;
  - Stock value on hand;
  - Warranty returns;
  - Demand compared to issues;
  - Missing parts/Out Of Stock parts (OOS);
  - Analysis of consumption compared to forecast.

Exhibit 2 includes reporting and monitoring requirements that will be used to measure the performance of this Contract

4) Annual Reports

The Contractor shall submit to the SFMTA an annual report that summarize the year's activity in a format agreed upon by the Contractor and the Agency. The Contractor shall submit the annual reports on the anniversary of the Effective Date and every other anniversary date thereafter. The following specific annual reports are required, at a minimum, to be submitted to the SFMTA:

a. Annual Sales Summary Report

The Contractor shall submit an Annual Sales Summary Report that summarizes the pricing paid by the SFMTA for all parts invoiced to and paid by the Agency. The prices shall be broken down by each invoice issued during the course of the year. At a minimum, the Report shall include invoice number, invoice date, part number, part description, quantity sold per invoice, unit price, and extended total. The Report shall show an annual total for the quantity, average unit price, and a grand total for the extended cost.

b. Annual Parts Warranty Report

The Contractor shall submit an Annual Warranty Report that summarizes all parts sold to the Agency over the prior 12 months that qualify for warranty coverage. The Report shall clearly identify the warranted part by serial number, or another identifying number that can be traced to the sale of the item.

5) Ad Hoc Reporting

The SFMTA reserves the right to obtain additional reports as required. All reports are required to specifically identify each part number in detail using the SFMTA part number format. Reporting must be provided electronically (Excel format or other format approved by the SFMTA).

The timely submission of all reports is a necessary and material term of this Agreement.

c. Meetings

1) Monthly Planning Meeting:

- Review the list of parts and Kits based on the activities during the previous month and on the maintenance, with the following possible actions:
  - Revision of the annual consumption forecast
  - Revision of the minimum quantity per item and per order
  - Revision of the maximum quantity per period of time
  - Addition or deletion of parts and Kits
  - Review of exceptions for over/under-consumed parts and agree on the actions required
  - Preventative maintenance parts consumption

2) Monthly Project Review meeting:

- Review the performance of the VMI program
- Follow-up on the performance of the VMI program:
  - On-time complete deliveries
  - Number of parts that have been issued
  - Status of any warranty claims
  - Dollar value of parts issued
  - Detailed review of any other issues
- Inventory levels
- Monthly Expenditure Report
- Financial review
- Change order status
- Review of options proposed by Contractor for obsolete parts, follow-up on availability and cost of possible replacement parts or other alternatives
- Engineering task status
- Fleet material campaigns
- Ongoing and upcoming overhauls by the SFMTA

3) Daily contacts between Contractor and the SFMTA for management of parts deliveries and any urgent matters

d. SFMTA Materials Management Inventory System:

Contractor and the SFMTA will use the existing SFMTA interfaces to communicate with its Materials Management Inventory System.

e. Warranty

- The Contractor shall warrant and guarantee that the parts and Kits provided under this Agreement shall be free from defects for one year from the date of issuance of the part to the SFMTA. Furthermore, Contractor shall provide pass-through OEM warranties covering periods beyond one year. Contractor shall administer warranty recovery on included Parts from the OEM vendors.
- Warranty claims should be processed in accordance with the warranty claims process defined in Exhibit 1. Any warranty claim must be submitted within the applicable warranty period or, for defects occurring within the last month of the warranty period, no later than 30 days after the warranty period. Claims should identify the serial number of the part, include a detailed description of the problem, and identify the vehicle from which the part was removed.
- In the event of a part failure during the warranty period, the failed part shall be returned to Contractor and handled through the warranty process
- In the event Contractor rejects a warranty claim, SFMTA engineers, in consultation with Contractor's engineers, will assess the cause of the failure.
- If Contractor and SFMTA engineers determine that the SFMTA's use or misuse did not solely contribute to the failure, Contractor shall provide a credit for the returned components.
- Contractor shall provide, at its own expense, all parts, labor, tools and space required to complete warranty repairs or have the Contractor replace defective Parts.
- The warranty on parts, components or subsystems replaced as a result of a standard warranty repair shall be assigned a new warranty period equal to the original manufacturer's or contract part warranty, whichever is longer, effective the replacement date.
- For more details regarding the warranty process, refer to the flowchart in Exhibit 1 of this Appendix A.

f. Material Returns

The SFMTA shall return a delivered part or Kit to Contractor if the part or Kit is damaged by Contractor or if it does not conform to the part or Kit ordered. Contractor shall pick up the damaged part or kit from the Storerooms at the Contractor's cost. Contractor shall replace the damaged or non-conforming part within 48 hours or, at the SFMTA's option, provide the SFMTA with a full credit for the part.

## 2. Parts

Contractor shall provide parts based on the negotiated prices attached in Appendix B, Exhibits B-1 and B-2. The prices in Exhibits B-1 and B-2 may be updated periodically by letter, subject to approval of the SFMTA. Exhibits B-1 and B-2 also contain parts for which prices have not yet been negotiated; when those prices have been determined (subject to approval of the SFMTA), the Exhibits shall be updated by letter.

## 3. As-Needed Technical & Engineering Services

Contractor shall provide as-needed technical and engineering services to support the management of this Contract upon receipt of task orders from the SFMTA. The performance

and status of each engineering task will be reported at the monthly program review. Examples of such support include, but are not limited to:

- a. Analysis of root-cause failure;
- b. Analysis and replacement of obsolete parts;
- c. Reverse engineering of obsolete parts;
- d. Industry research for availability of equipment and parts;
- e. Life cycle performance of equipment and parts;
- f. Training documents for new equipment;
- g. analyzing repetitive part/equipment failures;
- h. Providing alternatives for review to allow for streamlining of maintenance costs;
- i. Assistance in assessing the needs for parts and equipment replacement and establishing replacement programs;
- j. Assistance in the assessment of required maintenance tools for the efficient maintenance of the Rail Fleet;
- k. Assistance in the assessment and reporting of safety hazards associated with the maintenance of the Rail fleet and equipment;
- l. Any other engineering services deemed necessary to support the VMI contract.

#### **4. As-Needed Parts and Services to Support Collision Repairs**

Contractor shall provide as-needed technical and engineering services prior to procurement of parts to support repairs necessitated by collisions of the fleet. The SFMTA will issue task orders to authorize such services and order parts, as necessary. Examples of such support include but are not limited to:

- a. Accident/damage assessment;
- b. Vehicle monitoring and analysis;
- c. Vehicle condition assessment and evaluation.

#### **5. End of Contract Disposition of Materials**

At the conclusion of the Contract:

- a. The SFMTA assumes no responsibility to purchase parts acquired by the Contractor under this Contract except as follows: The SFMTA will purchase parts held by the vendor for this Contract that are specialized for the SFMTA (SFMTA engineering will collaborate with Contractor to establish the specialized parts list if needed) at the agreed-upon unit price at a quantity that does not exceed a three-month supply. If the SFMTA has required Contractor to purchase and stock a certain quantity of parts, or if the actual consumption is less than that estimated by the SFMTA, the SFMTA will purchase the remaining stock for those parts at the end of the Contract, even if the stockholding is greater than a three-month supply. The SFMTA acknowledges remaining inventory of certain parts may exceed a three-month supply if and when the Contractor is subject to minimum order quantities from its suppliers. In such cases, the three-month supply maximum shall not apply, and the SFMTA will purchase all remaining of such parts.
- b. Contractor shall return to the SFMTA all the transaction data contained in GSI (Global Single Instance), Alstom's Enterprise Resource Planning System, in a format agreed upon with the SFMTA

- c. Contractor agrees not to use any data obtained from the SFMTA for any purposes not related to this Agreement.

# Exhibit A-1

## Alstom / SFMTA Warranty Process

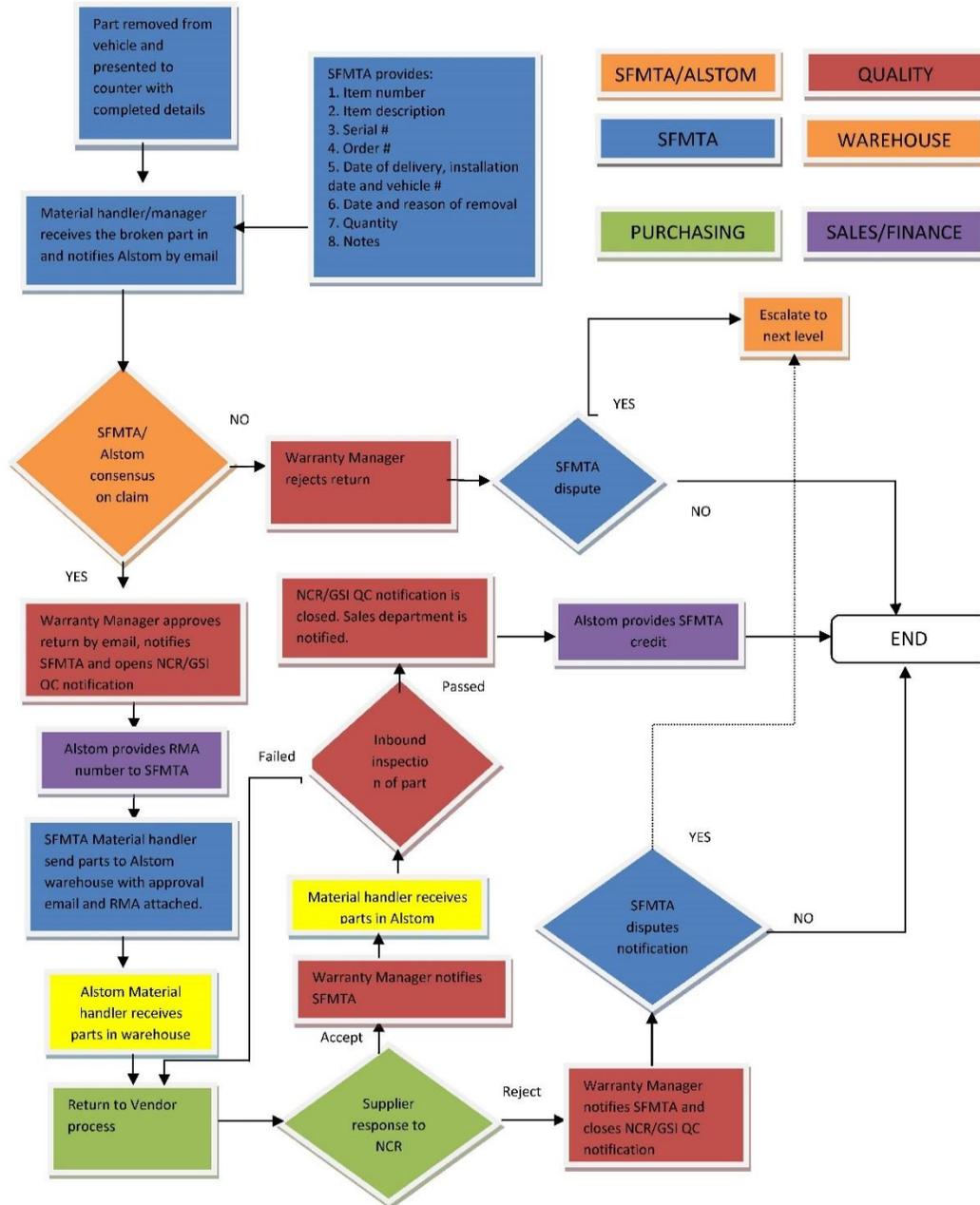


Fig.1 – Warranty Administration Process flowchart without Partsfolio

**Exhibit A-2  
Reporting and Monitoring Plan**

	<b>Item</b>	<b>Goal/Measurable</b>	<b>Follow Up / Action</b>	<b>Frequency of Measurement</b>
1	Daily delivery and fulfillment of parts (in order for parts to be counted as exceeding the daily delivery window, demand must be received by 1:00 PM PT the day before.)	Compliance from point of demand	Review delivery performance, noting that compliance will impact monthly fee as described in Appendix B	Weekly monitoring with monthly report
2	Reduction in cost	Improvement in performance, i.e., timely receipt of parts; and documented reduction in parts costs	Review performance related to receipt of parts; and review costs associated with provision of parts, as compared to prior years	Weekly monitoring and monthly reporting
3	Incidence of Out of Stock parts (OOS)	Occurrences of OOS	Review history, usage, stock levels, min/max with vendor	Weekly monitoring and monthly reporting
4	Incidence of product returns/warranty	Occurrences of product defects	Any failure of part or defect of material for a period of one year will be repaired or replaced by Contractor at his expense; consistent problems will be subject to vendor reliability engineering review	Monthly monitoring and reporting
5	Vendor automated inventory management system provides updates/interface with EAMS (Enterprise Asset Management System)	Data interface on daily basis to provide real time updates. Consistent and timely data is critical to success of program	Data interface problems will be immediately reviewed with vendor in consultation with SFMTA IT for resolution	Weekly monitoring and monthly reporting
6	Consolidated monthly billing	Compliance required	Review of procurement and inventory records for supporting documentation	Monthly monitoring and reporting

**Appendix B  
Calculation of Charges  
(Not to Exceed)**

**Schedule of Prices**

<b>ITEM</b>	<b>DESCRIPTION</b>	<b>YEAR 1</b>	<b>YEAR 2</b>	<b>YEAR 3</b>	<b>EXTENDED PRICE</b>
Item 1	Service Fee: Project Management / Oversight/ and all associated administration fee to manage the project. (See attached for details)	\$3,060,000 (\$255k /month)	\$3,156,000 (\$263K/month)	\$3,240,000 (\$270K/month)	\$9,456,000
Item 2	Total Part Prices (Sum of Exhibits B-1 and B-2)	\$15,000,000	\$15,000,000	\$15,000,000*	\$45,000,000
Item 3	As-needed technical & engineering services (Allowance is for all three years)	Allowance	Allowance	Allowance	\$3,000,000
Item 4	As-needed parts and services to support collision repairs (Allowance is for all three years)	Allowance	Allowance	Allowance	\$5,000,000
<b>Total</b>					<b>\$62,456,000</b>

**Billing**

**1. Item 1 – Service Fee**

- a. Contractor shall invoice a fixed fee for administrative services at the beginning of each month, payable as provided in Section 3.3.1 of the Agreement. The amount of this fixed fee is shown in Table 1 below on a scale, based on the Contractor’s performance for Material Availability (as defined below) for the previous month.
- b. The monthly performance for Material Availability shall be based on the weekly OOS percentages. The calculation for determining the monthly performance is as follows:
  - Run weekly report showing OOS percentage (date and time of the report creation must be the same for each week)

- At month's end, calculate Material Availability based on the average of all the weekly OOS percentages for that month. Submit this calculation along with all the weekly reports with the monthly invoice for the fixed fee. In addition, all back-up records must be produced when requested by the SFMTA.

**Material Availability = 100% – average of all weekly OOS percentages for the month**

Where:

- OOS percentage = [number of missing parts / number of parts on the Contract that have a forecast at the time the report is run (i.e. excluding items determined to be repairable and items to be monitored)] \* 100
- Average of all weekly OOS percentages for the month = sum of all weekly OOS percentages / number of weeks for the month

**Example:** If the average of all weekly OOS percentages for the month = 0.68%, then Material Availability = 100% – 0.68% = 99.32%

- Contractor shall not be penalized for lack of Material Availability under the following situations:
  - Parts with consumption above forecast;
  - Obsolete parts;
  - Parts in the process of being reverse-engineered at the SFMTA's request;
  - Parts that have been determined by SFMTA Maintenance to have no forecasted consumption rate, and for the Contractor to monitor usage only;
  - Parts that appear at zero stock for less than 24 working hours, i.e., weekends and holidays excluded;
  - Where the SFMTA has adjusted inventory to zero, e.g., during physical inventory counts;
  - OOS in only one location, where there is sufficient stock in another storeroom;
  - For new parts, until after the first delivery of such parts.
- If the SFMTA exercises its option to extend the term of the Agreement, Contract prices will be re-negotiated.
- The table below shows calculated Materials Availability and monthly fees: The performance standard for parts delivered under this Contract is based on an overall 98% fill rate. The SFMTA may consider performance below 97.50% as non-performance by the Contractor unless acceptable justification is provided.

Performance Percentage	2018-2019 Monthly	2019-2020 Monthly	2020-2021 Monthly
100%	\$255,000	\$263,000	\$270,000
99.75%	\$254,000	\$262,000	\$269,000
99.50%	\$253,000	\$261,000	\$268,000
99.25%	\$252,000	\$260,000	\$267,000
99.00%	\$251,000	\$259,000	\$266,000
98.75%	\$250,000	\$258,000	\$265,000
98.50%	\$249,000	\$257,000	\$264,000
98.25%	\$248,000	\$256,000	\$263,000
98.00%	\$247,000	\$255,000	\$262,000
97.75%	\$246,000	\$254,000	\$261,000
97.50%	\$245,000	\$253,000	\$260,000

**2. Item 2 – Parts Prices**

- a. The Contractor may request to add parts to the Contract at the same price as the SFMTA’s last price paid, without any non-recurring engineering charge to the SFMTA. The SFMTA will approve a reasonable request to add parts to the Contract within two weeks of the official request.
- b. Within 10 days following the end of each month, Contractor shall submit an invoice based on the deliveries to the SFMTA during the prior month. This invoice shall be electronically sent to the SFMTA via batch file.
- c. The part prices are fixed for the base Contract as shown in Appendix B (Exhibits B-1 and B-2). The prices for years two and three reflect a negotiated amount of 2% escalation per year. If the actual escalation on individual parts or Kits will be in excess of 7% in years two or three, the prices of such parts or Kits shall be amended to reflect the actual escalation. This change in the prices shall be reviewed and determined 30 days prior to the start of the second and third years, and shall be fixed for the entire succeeding contract year. Should the SFMTA decide not to purchase the part or Kit at the increased price in years two or three, the SFMTA may remove the part or Kit from the Contract, provided that the SFMTA purchases Contractor’s entire inventory for such part or Kit at the price prior to the escalation in excess of 7%.
- d. The amount for Item 2 is based on a cap of \$9 million dollars of parts purchased annually. For every \$100,000 in parts procured above \$9 million, Contractor may submit an additional charge of \$22,000 at the end of the Contract year.
- e. There will be a one-time charge of \$450 for every part added to the Price list at the request of the SFMTA, which shall cover all costs associated with adding the part. The parts with missing prices in Exhibits B-1 and B-2 will not be subject to this charge when prices are determined.

- f. Parts and Kits prices in the Schedule of Prices include 5% overhead, 3.5% freight, and all applicable taxes.
- g. In no event shall the total price for parts and Kits exceed the amounts in the Schedule of Prices above.
- h. Parts Price List  
 Exhibit B-1 – LRV and Cable Car Parts List – Available upon request  
 Exhibit B-2 – PCC, Historics and Milan Parts List – Available upon request

**Item 3**

**As-Needed Technical and Engineering Services:** The SFMTA will negotiate and issue task orders for as-needed technical and engineering services, using the rates listed below. Each task order will include scope, delivery schedule, milestone payments and deliverables. Contractor shall submit each invoice according to the approved payment schedule and task deliverables.

A	Contractor Technical and Engineering Support	\$136 / Hour
B	NBA Engineering	\$272 / Hour

**Item 4**

**As-needed Parts and services to support accident and collision repairs:** The SFMTA will negotiate and issue task orders for as-needed technical and engineering services, using the rates listed below. Parts procured as the result of the assessment of collisions and accident repairs shall be provided at the same prices as listed in Appendix B, Exhibits B-1 and B-2.

Each task order will include scope, delivery schedule, milestone payments and deliverables. Contractor shall submit each invoice according to the approved payment schedule and task deliverables.

A	Contractor Technical and Engineering Support	\$136 / Hour
B	NBA Engineering	\$272 / Hour

Appendix C

TASK ORDER FORM

<b>San Francisco Municipal Transportation Agency</b>		
<b>Contract No. and Title:</b> _____		
<b>Task Title:</b> _____	<b>Date Initiated:</b> _____	
<b>Type of Request:</b>		
<input type="checkbox"/> <b>New Task Order- No. __</b>		
<input type="checkbox"/> <b>Modification - No. __ (attach approved original and all modifications to date)</b>		
<b>Total Amount Being Requested: \$XXXX</b>		
<b>Chartfield Codes:</b> _____		
<b>Task Start Date:</b> _____	<b>Modification Start Date:</b> _____	
<b>Estimated Completion Date:</b> _____		
<b>Funding Source:</b> <u>Local</u> _____	<b>Proposed Task LBE Goal:</b> <u>XX</u> %	
<b>Project Title:</b> _____		
<b>Work to be Performed:</b>		
 <b>Brief Description</b>		
<b>Deliverables:</b>		
<u>Description</u>	<u>Date Req'd</u>	<u>Quantity</u>