

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

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Sustainable Streets

**BRIEF DESCRIPTION**

Authorizing the Director of Transportation to execute Contract No. SFMTA 2019-36, Transportation Planning Services with Nelson Nygaard, to prepare the ConnectSF program's Transit Corridors Study, in an amount not to exceed \$942,000, and for a 26-month term ending August 31, 2021, with two optional one-year extensions.

**SUMMARY:**

- The Transit Corridors Study is an integral part of ConnectSF, the City's long-range transportation planning program.
- Guided by ConnectSF's 50-year vision and goals, the Transit Corridors Study will identify and prioritize the next pipeline of public transportation investments for San Francisco; identify priority transit corridors; make recommendations for mode and service characteristics; estimate the projects' benefits and costs; and prioritize investments.
- In response to a request for proposals (RFP) to prepare the Transit Corridors Study released in January 29, 2019, a selection panel reviewed submittals, interviewed firms, and evaluated Nelson Nygaard Consulting Associates, Inc. as the highest-ranking proposer.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Agreement with Nelson\Nygaard

**APPROVALS:**

**DATE**

DIRECTOR  \_\_\_\_\_ May 28, 2019

SECRETARY  \_\_\_\_\_ May 28, 2019

**ASSIGNED SFMTAB CALENDAR DATE:** June 4, 2019

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### **PURPOSE**

Authorize the Director of Transportation to execute Contract No. SFMTA 2019-36, Transportation Planning Services with Nelson Nygaard to prepare the ConnectSF program's Transit Corridors Study, in an amount not to exceed \$942,000, and for a 26-month term ending August 31, 2021, with two optional one-year extensions.

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

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

Goal 1: Create a safer transportation experience for everyone.

    Objective 1.1: Achieve Vision Zero by eliminating all traffic deaths.

    Objective 1.2: Improve the safety of the transit system.

    Objective 1.3: Improve security for transportation system users.

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.

    Objective 2.3: Manage congestion and parking demand to support the Transit First Policy.

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

    Objective 3.1: Use agency programs and policies to advance San Francisco's commitment to equity.

    Objective 3.2: Advance policies and decisions in support of sustainable transportation and land use principles.

    Objective 3.3: Guide emerging mobility services so that they are consistent with sustainable transportation principles.

    Objective 3.4: Provide environmental stewardship to improve air quality, enhance resource efficiency, and address climate change. Objective 3.5: Achieve financial stability for the agency.

This item will support the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicyclists, and public transit, and shall strive to reduce traffic and improve public health and safety.
4. Transit priority improvements, such as designated transit lanes and streets and improved

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- signalization, shall be made to expedite the movement of public transit vehicles (including taxis and vanpools) and to improve pedestrian safety.
8. New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments.
  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.

## DESCRIPTION

The Transit Corridors Study (TCS) is part of the ConnectSF program, which is the City's long-range transportation planning effort. The program is a multi-agency collaborative process to build an effective, equitable, and sustainable transportation system for San Francisco's future.

Different city agencies are responsible for planning efforts that relate to transportation. The SFMTA is responsible for a variety of short- and long-range plans; the San Francisco County Transportation Authority (SFCTA) prepares the Countywide Plan; and the Planning Department is responsible for the General Plan's Transportation Element. ConnectSF is a program that unifies the agencies and these disparate planning efforts with a consistent vision and set of goals. The ConnectSF goal areas are Equity, Economic Vitality, Environmental Sustainability, Safety and Livability, and Accountability and Engagement.

In Phase 1 of the program, ConnectSF representatives worked with community members throughout San Francisco to define a 50-year vision of San Francisco's future that represents the City's priorities, goals, and aspirations. This vision, which will guide plans for the City and its transportation system, was approved by the SFMTA Board, SFCTA Board, and Planning Commission in April 2018.

Phase 2 of ConnectSF consists of modal studies, including the TCS, which the SFMTA will lead. The TCS identify priority transit corridors, make recommendations for mode and service characteristics, estimate the projects' benefits and costs, and prioritize investments. The study's findings will be incorporated into the San Francisco Transportation Plan and the regional Plan Bay Area.

The SFMTA issued an RFP for transportation planning services to prepare the TCS on January 29, 2019. In response, the SFMTA received proposals on February 11, 2019, from three firms: CDM Smith, Nelson\Nygaard Consulting Services, and WSP. A selection committee consisting of staff from the SFMTA, SFCTA, and Planning Department evaluated these proposals and interviewed the three firms on February 28, 2019. The selection committee found Nelson\Nygaard to be the highest-ranking proposer.

The Small Business Enterprise (SBE) and Disadvantaged Business Enterprise (DBE) goals in this RFP were specified at 15% for SBEs and 5% for Woman-Owned DBEs. The subconsultants to Nelson\Nygaard are listed below.

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- Arup
- Elite Transportation Group, Inc. (SBE)
- M Lee Corporation (SBE)
- Strategic Economics (Women-Owned DBE and SBE)
- Transportation Analytics (SBE)

## **STAKEHOLDER ENGAGEMENT**

The work to be performed as part of the TCS is directly informed by the outreach performed during Phase 1 of ConnectSF. Outreach activities included open houses, focus groups, online surveys, in-person surveys at pop-up events located throughout San Francisco. The TCS itself has a robust public outreach component (procured under separate contract), which includes online data visualization tools, presentations to individual community groups, and community workshops. The SFMTA, SFCTA, and Planning Department are co-partners of the ConnectSF program. Both the SFCTA and Planning Department have reviewed the scope of the Transit Corridors Study and also participated in the evaluation of the proposal submittals, interviews of proposing firms, and selection of awardee. The SFCTA will continue community outreach under its own contract.

## **ALTERNATIVES CONSIDERED**

Given the extensive amount of work and specialized skills that the TCS would entail and limited staff resources, it would not be practicable to have the work performed by staff.

## **FUNDING IMPACT**

The funding for the Transit Corridors Study contract comes from three sources: (1) a Caltrans' Transportation Planning Grant for \$438,200; (2) Metropolitan Transportation Commission's Priority Development Area Planning grant for \$250,000; and (3) a Proposition K allocation for \$320,000. The total amount of funding from these three sources is \$1,008,200.

## **ENVIRONMENTAL REVIEW**

On April 1, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the ConnectSF Transit Corridors Study 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 Civil Service Commission has approved this personal services contract.  
The City Attorney has reviewed this calendar item.

**RECOMMENDATION**

SFMTA staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute Contract No. SFMTA 2019-36, Transportation Planning Services with Nelson Nygaard to prepare the ConnectSF program's Transit Corridors Study, in an amount not to exceed \$942,000, and for a 26-month term ending August 31, 2021, with two optional one-year extensions.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) wishes to obtain transportation planning consultant services to prepare the Transit Corridors Study, which is part of the City's long-range transportation planning program known as ConnectSF; and,

WHEREAS, The Transit Corridors Study will identify and prioritize the next series of public transportation investments for San Francisco; identify priority transit corridors; make recommendations for mode and service characteristics; estimate the projects' benefits and costs; and prioritize investments; and,

WHEREAS, The SFMTA issued a Request for Proposals to prepare the Transit Corridors Study on January 29, 2019; and,

WHEREAS, On February 11, 2019, the SFMTA received written proposals from three firms: CDM Smith, Nelson\Nygaard Consulting Services, Inc., and WSP; and,

WHEREAS, A Selection Committee evaluated the three written proposals, interviewed the three firms, and selected Nelson\Nygaard as the highest-ranking proposer; and,

WHEREAS, State and local sources will provide funding in the amount of \$1,008,200 for the contracted services; and,

WHEREAS, The SFMTA's Contract Compliance Office has confirmed the consultant's commitment to meeting the 15% Small Business Enterprise participation goal and the 5% Woman-Owned Disadvantaged Business Enterprise participation goal for this contract; and,

WHEREAS, On April 1, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the ConnectSF Transit Corridors Study 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 authorize the Director of Transportation to execute Contract No. SFMTA 2019-36, Transportation Planning Services with Nelson Nygaard to prepare the ConnectSF program's Transit Corridors Study, in an amount not to exceed \$942,000, and for a 26-month term ending August 31, 2021, with two optional one-year extensions.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 4, 2019.

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

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

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

**Nelson\Nygaard Consulting Associates, Inc.**

**SFMTA-2019-36**

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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  
Nelson\Nygaard Consulting Associates, Inc.  
Contract No. SFMTA 2019-36**

This Agreement is made \_\_\_\_\_, in the City and County of San Francisco, State of California, by and between Nelson\Nygaard Consulting Associates, Inc., 2 Bryant Street #300, San Francisco, CA 94105 (Contractor) and the City and County of San Francisco (City), acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

The SFMTA wishes to hire a contractor to prepare a Transit Corridors Study, which will identify and prioritize the next pipeline of public transportation investments for San Francisco. This study will identify candidate transit corridors, make recommendations for mode and service characteristics, estimate the potential projects' benefits and costs, and prioritize investments.

This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on February 11, 2019, pursuant to which City selected Contractor as the highest-qualified scorer.

The Small Business Entity (SBE) subcontracting participation requirement for this Agreement is 15% and the Woman-owned Disadvantaged Business Entity (DBE) participation requirement is 5%.

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

Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 42643-17/18 on September 24, 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, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference as provided herein.

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

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

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

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

**1.6** “**Contractor**” or “**Consultant**” means Nelson\Nygaard Consulting Associates, Inc., 2 Bryant Street #300, San Francisco, CA 94105.

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

**1.8** “**Deliverable(s)**” means Contractor’s work product resulting from the Services that are provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

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

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

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

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

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

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

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

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

**2.1** The term of this Agreement shall commence on the Effective Date, and expire 26 months thereafter, unless earlier terminated as otherwise provided herein.

**2.2** The City has two options to renew the Agreement for a period of up to one year each. The City may extend this Agreement beyond the expiration date by exercising an option at the

Director of Transportation's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5 (Modification of this Agreement).

### **Article 3      Financial Matters**

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

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

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

#### **3.3    Compensation.**

**3.3.1    Amount.** Compensation under this Agreement shall be based on a fixed amount for Tasks 1-9 not to exceed Eight Hundred Forty-Seven Thousand, Eight Hundred Dollars (\$847,800), and, for As-Needed Task 10, either a negotiated lump sum price per Task/Subtask, or actual direct costs plus a negotiated fixed profit per Task, for a total amount for Task 10 not to exceed Ninety-Four Thousand, Two Hundred Dollars (\$94,200). In no event shall the total amount of this Agreement exceed Nine Hundred Forty-Two Thousand (\$942,000).

##### **3.3.2    Items of Compensation (As-Needed Task [Task 10]). .**

**(a)    Direct Labor Rates.** The direct labor rates in Appendix C shall be fixed at that level until 12 months after effective date of this Agreement. Direct labor rates in Appendix C may be adjusted 12 months after the effective date of this Agreement. No single rate may be increased without prior written approval of the SFMTA.

**(b) Overhead.** The Consultant's compensation under this Agreement will be based on and shall not exceed the combined overhead and salary burden rates as shown on the Calculation of Charges—Overhead Rates attached as Appendix D. The rates in Appendix D may be adjusted annually with prior written approval from the Deputy Director of the Sustainable Streets Division. The Consultant's and Subconsultants' combined overhead and salary burden rates are subject to audit in compliance with Federal requirements.

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

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

**(d) Out-of-Pocket Expenses.** The SFMTA will reimburse Consultant for the actual cost of approved out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All travel expenses are to be pre-approved by the SFMTA and Consultant must obtain the best air fare available in a timely fashion. All travel receipts must accompany the invoice.

**(e) Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Consultant and subconsultant personnel

relocation costs and entertainment or personal expenses of any kind will not be reimbursable under this Contract. Office and field supplies/equipment expenses will also not be reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for the services of this Agreement. Vehicle expenses calculated on a cost-per-mile basis for travel within a 100-mile radius of the City will not be reimbursable.

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

**3.4 Payment.** Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B (Payment Schedule), attached hereto and incorporated by reference as though fully set forth herein. Compensation shall be made for Services identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. City will make payment within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists, in which case the SFMTA will only make payment on any undisputed portion of the invoice. 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.

**3.4.1 Payments for Completed Milestones.** Except as otherwise agreed to for Tasks 10 (As-Needed Tasks), payments for completed Tasks will be made on a "not-to-exceed" fixed price basis. "Not-to-exceed" means that Contractor shall perform its obligations under the Agreement for the amounts listed in Appendix B, regardless of the number of hours that Contractor has expended on the Task. The Consultant may submit invoices to the SFMTA for the lump sum or up to the "not-to-exceed" dollar amount for each completed milestone Deliverable shown in Appendix B. No payment will be made for milestones, tasks, or subtasks that have not been performed. The amount allocated to milestones, tasks, or subtasks not performed may be reallocated to other subtasks by way of a letter from the SFMTA Project Manager, without formal amendment to the Agreement, provided that an amendment shall be required annually to incorporate all such changes.

**3.4.2 Retention.** The City will withhold five percent of each payment as retention until conclusion of the Agreement. If any part of the Scope of Work is not performed, the retention amount paid to the Consultant at the conclusion of the Agreement will be adjusted downward to equal five percent of the not-to-exceed dollar amount for each milestone Deliverable completed.

**3.4.3 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.

**3.4.4 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.

**3.4.5 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. Payment shall be made by City to Contractor at the electronic address specified in Section 3.3.6, or in such alternate manner as the Parties have mutually agreed upon in writing.

- (a) Contract Number
- (b) Task or Task Order Number
- (c) Description of the work performed or services rendered; percentage completed of task and subtask
- (d) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced (for Task 10 if method of compensation is actual direct costs plus a negotiated fixed profit per Task)
- (e) Other direct costs (for Task 10 if method of compensation is actual direct costs plus a negotiated fixed profit per Task)
- (f) Subconsultant costs supported by invoice itemization in the same format as described here (if applicable)
- (g) Fixed Fee for current invoice period and amount of Fixed Fee as of date of invoice. Fixed Fee will be calculated as a prorated portion of the total fixed fee for the task for which Consultant seeks payment.
- (h) Total charges to SFMTA
- (i) SFMTA Form No. 6 – Progress Payment Report

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

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

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

### **3.5 Grant-Funded Contracts.**

**3.5.1 Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement between Contractor and City.

**3.5.2 FTA Requirements.** The provisions contained in "FTA Contract Requirements" attached as Appendix E are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

**3.6 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.

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

falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

### **3.8 Reserved. (Payment of Prevailing Wages)**

## **Article 4 Services and Resources**

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

**4.2 Notice to Proceed (Tasks 1-9).** The SFMTA will provide, by letter or email, written Notices to Proceed for each subtask (e.g., 2.1, 2.2, 2.3) of Tasks 1-9 described in Appendix A. The Consultant shall not commence work on any subtask until it receives a written NTP for the subtask. The SFMTA reserves the option to withhold Notices to Proceed for any subtask(s) in the Scope of Work.

**4.3 Information and Data.** The Consultant shall request in writing any information and data it will require to perform Task Orders. The Consultant shall identify the timing and priority for which this information and data will be required. The Consultant and City shall reach agreement as to the availability and delivery time for this data and information during initial task negotiations.

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

**4.5 As-Needed Task Requirements (Task 10).** The SFMTA will define subtask requirements. The cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the subtask in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below.

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

**4.5.2 Consultant Proposal.** The Consultant shall prepare and submit a proposal for the subtask showing:

(a) A work plan that includes a detailed description of the work to be performed and the means and methods that will be used to perform it;

(b) Milestones for completion of the subtask and Deliverables at each milestone;

(c) Personnel and the Subconsultants 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 direct salaries by position (hourly rates by position as listed in Appendix C for both Consultant and Subconsultant personnel). Labor hours for preparing monthly invoices or filling out required SBE forms will not be allowed. Consultant will manage Subconsultants so additional Subconsultant program management labor hours will not be allowed. Overtime labor hours will not be allowed without prior written approval. If overtime is approved, it will be billed at the billing rates listed and not at one and one half times the billing rate;

(ii) Overhead, including salary burden costs (% rates as listed in Appendix D) for both Consultant and Subconsultants; to arrive at this cost, the overhead rate is multiplied by the cost in (1) above;

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

(iv) Proposed profit as follows: Total profit/mark up of each Task Order as fixed fee amount not to exceed 10 percent of total amount of the Task Order (excluding Other Direct Costs), regardless whether Task Order is being performed by prime Consultant, Subconsultant(s) or combination thereof. Direct costs not included in Appendix B, profit/mark-up to be determined in budget for each task order.

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

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

**4.5.5 Subcontracting Goals.** Upon completion of negotiations, Consultant shall provide Project Manager a memo describing the proposed SBE and Woman-owned DBE (“WDBE”) goals associated with the Task Order. The memo shall include a table that lists (1) all firms performing work on the Task Order, (2) if the firm is a SBE or WDBE, (3) the dollar value and percentage of work attributed with each firm, and (4) the overall calculated SBE and WDBE goals for the Task Order. CCO will review the final negotiated Task Order scope and Consultant’s SBE and WDBE goals memo, approve or deny the goals, and issue a memo to the Project Manager. SBE and WDBE goals assigned to each Task Order shall be tracked by the CCO as part of the overall SBE and WDBE goals set forth in the Agreement.

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

**4.5.7 Notice to Proceed.** After certification, the Project Manager will send to the Consultant a written task number. The Consultant shall use the task number when submitting invoices to the Project Manager for payment.

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

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

**4.6 Key Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Consultant's authorized subcontractors) to perform the Services. Consultant shall 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 Consultant. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement. The Consultant agrees that the following key team members shall be committed and assigned to provide services under this Agreement to the level required by the SFMTA for the term of the Agreement and shall also be staffed at the local Consultant offices within the San Francisco Bay Area for all such time, unless the SFMTA agrees otherwise in writing. If the SFMTA agrees that a Key Team Member may be staffed at a location outside of the San Francisco Bay Area, the SFMTA will not reimburse travel and lodging expenses for such employee to travel to the Bay Area for this Project.

Key Team Members:

- Staffed outside San Francisco Bay Area: Thomas Brennan, Oren Eshel
- Staffed in San Francisco Bay Area: Chester Fung, Jeff Tumlin

Consultant shall advise the SFMTA immediately any time one of the Key Team Members deviates from its committed role or time on the Project (e.g., is assigned to another project). The SFMTA may in turn require Consultant to provide a remedy and/or corrective actions for such deviations.

**4.7 Current Workload and Available Resources.** The Consultant covenants that its current workload and the workload of its Subconsultants will not affect the commencement and the progress of the work under this Agreement. The Consultant shall have all the necessary professional, technical and support personnel, including those of the Subcontractors, available, ready and mobilized to perform actual work within two weeks of the receipt of NTP on a particular task. In addition, the Consultant shall make good faith efforts to have all contracts signed with

Subcontractors within three weeks of NTP. Consultant shall provide copies of said subcontracts to the SFMTA upon request.

**4.8 Information and Data.** The Consultant shall request in writing any information and data it will require from the Agency for its work. The Consultant shall identify the timing and priority for which this information and data will be required in its Task Order proposal. The Consultant and Agency shall reach agreement as to the availability and delivery time for this information and data prior to finalizing the Plan.

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

**4.10 Reserved. (Reproduction of Work Product).**

**4.11 Agency's Responsibilities Regarding Submittals.** The Agency will review and comment on Consultant's submittals generally within two calendar weeks of submittal. The Agency and Consultant will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the approved Task Order. The Agency's review and comments of Consultant submittals shall in no way relieve the Consultant of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the Agency relieve the Consultant of its independent responsibility to provide submittals and Deliverables in full compliance with local, state and federal codes, regulations and standards.

If Consultant considers certain Agency review comments or directives, either written or oral, to require work efforts not included in the approved Program Management/Implementation Plan, the Consultant shall provide Agency with either a written request for clarification of intended work or a proposal to proceed with additional work within five working days of discovering the perceived extra work, in strict accordance with the procedures specified subsection 4.5 above.

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

ARUP  
Strategic Economics  
Elite Transportation Group, Inc.  
M Lee Corporation

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

**4.13.1 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.

**4.13.2 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.

**4.14 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.

**4.15 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.

## **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, \$1,000,000 disease – each employee, and \$1,000,000 disease – policy limit; and

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 Products/Completed Operations aggregate 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 accident, "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 and aggregate 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 Commercial General Liability and Automobile Liability 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. If the insurer will not provide such notice for any reason, Contractor shall provide the 30-day notice to the City. 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 on Commercial General Liability and Automobile Liability policies.

## **5.2 Indemnification for Design Professionals and Defense Obligations.**

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

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

**5.2.3** **Intellectual Property Infringement.** Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or Deliverables supplied in the performance of Services. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract. Notwithstanding the foregoing, Contractor shall not be liable for claims or disputes in connection with any allegation of patent or copyright infringement arising out of information or intellectual property provided to Contractor by City or its agents and which are incorporated without revisions into the Contractor's Deliverables under this Agreement.

**5.2.4** **Limitations.** No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities.

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

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

## **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. 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:

- |           |                                                                   |
|-----------|-------------------------------------------------------------------|
| 3.7       | Submitting False Claims                                           |
| 4.14      | 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 term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from the SFMTA to Contractor.

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

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

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

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

**8.2.4** Any notice of default must be sent to the address set forth in Article 11, and in the manner prescribed 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:

- 3.4.1 Payment Limited to Satisfactory Services
- 3.5.1 Grant-Funded Contracts - Disallowance
- 3.6 Audit and Inspection of Records
- 3.7 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 Nondisclosure of Private, Proprietary or Confidential Information.**

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

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

#### **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 Small and Disadvantaged Business Enterprise Program.**

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

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

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

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

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

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

**10.10 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the

entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

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

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges 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: Kansai Uchida  
San Francisco Municipal Transportation Agency  
One South Van Ness Ave. 7th floor  
San Francisco, CA 94103

To Contractor: Thomas Brennan  
Nelson Nygaard Consulting Associates, Inc.  
621 SW Morrison Street, Suite 1250  
Portland, OR 97205  
tbrennan@nelsonnygaard.com

Any notice of default must be sent by overnight delivery service or courier, with a signature obtained at delivery. 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 an increase of the amount of this Agreement (SFMTA SBE/DBE Form No. 8 Declaration – Amendments of Professional Service Contracts).

**11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Contract Administrator a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contract Administrator shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

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

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

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

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

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

**11.12 Order of Precedence.** All requirements of the RFP and the representations made in the Consultant's Proposal that are not in conflict with provisions of this Agreement are incorporated by reference and made an integral part of this Agreement as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or Consultant's Proposal, this Agreement shall control except where the RFP or the Proposal refers to services not otherwise mentioned in this Agreement, in which case and to such extent the RFP or Proposal shall control. In case of conflict between the RFP and the Contractor's/Consultant's Proposal, the RFP shall govern. Documents listed as Appendices to this Agreement are incorporated by reference as though fully set forth herein.

## **Article 12        SFMTA Specific Terms**

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

**12.1.1** Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training

program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at [www.SFMTA.com/largevehicletrainingstandards](http://www.SFMTA.com/largevehicletrainingstandards). This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

**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.

<b>CITY</b>	<b>CONTRACTOR</b>
<b>San Francisco Municipal Transportation Agency</b>	<b>Nelson Nygard\Associates, Inc.</b>
Edward D. Reiskin Director of Transportation	Thomas Brennan
Authorized By:	
Municipal Transportation Agency Board of Directors	<u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u>
Resolution No: _____	By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.
Adopted: _____	
Attest: _____ Roberta Boomer, Secretary	
Approved as to Form:	City Supplier number: 0000014397
Dennis J. Herrera City Attorney	
By: _____ Robin M. Reitzes Deputy City Attorney	

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## Appendices

- A: Scope of Services
- B: Payment Schedule
- C: Calculation of Charges – Direct Labor Rates
- D: Calculation of Charges – Overhead Rates
- E: U.S. DOT Federal Requirements for Personal Services Contracts
- F: Task Order Form
- G: SBE/DBE Requirements

## **APPENDIX A**

### **Scope of Services**

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

#### **DEFINITIONS**

In addition to the definitions in Article 1 of the Agreement, the following terms are used throughout this Scope of Work. Summary definitions are provided in the following table to clarify each term's meaning in the context of this scope.

Term	Summary Definition
<b>KEY COMPONENTS</b>	
Corridor (more general)	Study area that serves as a major transportation thoroughfare (usually includes multiple parallel streets)
Alignment (more specific)	Specific transit routing within a Corridor
Mode	Means of transport (e.g., light rail, bus rapid transit, heavy rail)
Profile	Description of the operating environment of the mode (e.g., elevated, subway, exclusive surface ROW)
<b>LEVELS OF DETAIL</b>	
Concept (least detail)	Corridor + Mode + Profile Screening-level analysis only This is the level of detail to be used in the Transit Corridor Study (TCS)
Alternative (some detail)	Alignment + Mode + Stop locations Carried up to ~10% design prior to environmental review This level of detail shall be done under separate scope, not as part of the TCS (with the possible exception of limited work done under Task 10).

#### **TASK 1. PROJECT INITIATION**

The Consultant team shall collaborate with the SFMTA on the Project Initiation tasks identified below:

##### **1.1 Project Kickoff Meeting**

The Consultant team shall participate in a kickoff meeting with the SFMTA team. At a minimum, the Consultant's Project Manager and Deputy Project Manager shall attend this

meeting on-site, while other Consultant staff may be either on-site or join by phone/Skype. The Consultant shall prepare an agenda and produce meeting notes for SFMTA review and approval.

## 1.2 Develop Project Management Plan

The Consultant team shall develop a Project Management Plan (PMP) for the work to be performed as part of this Agreement. The PMP shall address the interagency decision-making process, document review timelines and process, project schedule, schedule adherence, communications, change management, and other topics identified by the SFMTA. The Consultant shall revise the PMP based on a single set of SFMTA comments.

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### DELIVERABLES:

Deliverable ID	Deliverable Name and Description
<b>1.1A</b>	Kickoff Meeting; Meeting Agenda and Notes
<b>1.2A</b>	Draft PMP
<b>1.2B</b>	Final PMP

## **TASK 2. TRANSIT CONCEPT DEVELOPMENT AND EVALUATION**

### 2.1 DEVELOP POTENTIAL TRANSIT CONCEPTS

This task shall build upon the San Francisco Transportation Plan's Needs Assessment and Network Development work being completed by the ConnectSF project team. This work is expected to identify up to ten Corridors with the most critical transportation needs, along with potential mode options to meet those needs. Work will need to be coordinated with the Streets and Freeways Study (to be performed by the Transportation Authority), which will be done in parallel under a separate contract. Periodic coordination efforts between the consultants for the Streets and Freeways Study and the TCS are anticipated.

This task shall identify one to two potential transit modal concepts (Mode and Profile) within each of the travel Corridors, including consideration of potential pathways for regional network investments. Transit modal concepts shall be confirmed in Task 3. Potential factors for identifying modal concepts include system integration, physical compatibility (e.g., right-of-way, grade, tunneling feasibility), compatibility with likely market size and passenger capacity requirements, and community fit/impacts. The modal options shall be conceptual, e.g., typical vehicle or train capacity, stop spacing, and speed characteristics based on SFMTA or regional transit services, or industry standards. These characteristics will be refined in later tasks based on the refined concept description (Task 3.1) and transit demand estimates (Task 3.3).

Consultant shall analyze the identified concepts based on current and future land use characteristics (population and employment), connections to and between current and planned activity centers and Priority Development areas, access for communities of concern, existing transit characteristics (e.g., speed/travel time, ridership, service levels), and other modal facilities (e.g., current and planned bicycle network). The analysis shall identify major constraints, including right-of-way and geography, and quality of the pedestrian network serving transit (e.g., sidewalk quality and crossing spacing). The concepts shall be analyzed in logical segments to allow consideration of opportunities for common Corridor segments, minimal operable segments, and project phasing. Data compiled from existing sources and/or any new analysis developed during this task shall support the overall evaluation framework developed in task 2.2 and that these tasks shall be carried out in parallel.

Land use compatibility characteristics to be analyzed using a Geographic Information System (GIS) include, but are not limited to:

- Existing and future population and employment density
- Proximity and service to Communities of Concern and progress toward addressing service disparities/equity gaps
- Proximity and service to Priority Development Areas
- Major trip generators (e.g., major institutions, cultural or recreational sites, neighborhood commercial and major retail centers)
- Existing and planned transit service and infrastructure, as well as any planned improvements identified in other modal studies (e.g., SFMTA's "Bicycle Strategy")

The Consultant shall recommend other characteristics to inform land use compatibility and identify other approaches for refining these concepts.

The analysis shall also identify up to six additional medium-term concepts within the ten Corridors. Medium-term concepts recognize the potential for interim transit investments in some Corridors, such as bus rapid transit (BRT) in a Corridor where light rail (LRT) or a subway are identified in the long-term, or enhancements to an existing light rail Corridor.

All transit agencies that operate in San Francisco shall be considered. As part of this exercise, the Consultant shall apply standards for typical stop spacing and service patterns for each mode as a baseline, with professional judgment allowing for adjustments to better serve demand or system needs.

*Key Assumptions:*

- Consultant shall analyze up to 16 to 26 concepts, as determined by the SFMTA, including up to six medium-term concepts.

## 2.2 EVALUATION FRAMEWORK

Under this task, the Consultant shall develop a Multiple Account Evaluation (MAE) framework that shall be used to evaluate and prioritize transit concepts. This rigorous, data-driven approach balances critical transit performance measures with criteria that identify how transit investments support desired local outcomes that the City has already identified in the five ConnectSF Vision goal areas (equity, sustainability, economic vitality, safety and livability, and governance).

The Consultant shall use the metrics and objectives that staff have developed as a starting point for the evaluation framework and propose additional measures (if necessary) to ensure the evaluation differentiates alternative investments.

The Consultant shall use an initial set of measures to evaluate concepts as part of Task 2. The Consultant shall use screening-level analysis building off of network development data (including all concepts) to provide a high-level, order-of-magnitude ridership measure (providing model inputs and interpreting results is included in Task 3.3). The Consultant shall develop high-level, order-of-magnitude operating and capital cost estimates based on conceptual operating plans/station spacing and typical unit (e.g., per-hour, per-mile, or per-station) costs. These results shall be refined in Task 3, which shall define concepts in more detail and provide additional analysis (e.g., SF-CHAMP model runs for individual concepts and more refined cost estimates). Some measures, such as environmental benefits, may not be evaluated until Task 3.2.

This task shall identify tools/methods used to evaluate concepts in Task 2.3 and 3.2 and to conduct the benefit-cost prioritization in Task 6.1. An Excel-based approach that integrates results from supporting tools (such as SF-CHAMP) is assumed in Tasks 2 and 3. The Consultant shall apply the Decision Lens in Task 6.1.

The Consultant shall facilitate a set of workshops across Task 2 to ensure agency buy-in on the decision approach and present the analysis results. The first meeting shall be concurrent with Tasks 2.1 and 2.2 and shall be used to both confirm the concepts to be carried through the analysis and the evaluation approach.

### 2.3 ASSESSMENT OF CONCEPTS

Under this task, the Consultant shall develop assessments for the 16 to 26 concepts identified in Task 2.1, including the up to six medium-term concepts. City staff shall provide the outreach findings from the efforts described in Task 9.2. to aid in development of the concepts. These assessments are anticipated to be a mix of qualitative and quantitative measures, based on the evaluation framework (Task 2.2). (Note: It may not be possible to implement some parts of the evaluation framework until Task 3, e.g., environmental benefits based on detailed ridership modeling results.)

A concept sheet format may be used to present the results, including a map, sample/representative cross-section or illustration, and infographic indicators summarizing key elements of the assessment against the evaluation criteria.

These concepts shall be evaluated against considerations such as:

- Support of ConnectSF Vision policies
- Transit demand, including local and regional markets
- Topographic barriers and surface constraints
- Local and regional transit system integration<sup>1</sup>
- Local and regional transit connections
- Non-motorized network integration
- Potential neighborhood impacts
- Operational efficiency
- Geographic and social equity

*Key Assumptions:*

- Level of detail is assumed to be high-level conceptual engineering considerations, such as topography, but not more in-depth considerations such as soil and rock analysis. More detailed issues shall be identified for consideration in future studies.

## 2.4 SCREENING OF CONCEPTS

Under this task, the Consultant shall determine which of the concepts identified in Task 2.1 should advance to more detailed concept definition as part of Task 3. The evaluation framework developed in Task 2.2 shall be applied to identify how well the concepts support the outcomes identified in the ConnectSF vision. The screening of concepts shall incorporate the citywide outreach results from Task 9.2.

The Consultant shall identify four to six long-term local concepts and two to three long-term regional concepts, with a local investment option that the City can pursue in case regional investment decisions do not prioritize the identified regional investment. The recommendation shall also identify up to three medium-term concepts, for a total of up to 12 concepts, as approved by the SFMTA.

The Deliverable for this task shall be a detailed report documenting how the concepts were screened, including evaluation criteria used, methods used, and results of the evaluation for each Corridor. This document shall provide critical technical documentation and serve as a guide for decision-making. The report shall include an evaluation matrix to allow comparison of concepts.

The second workshop shall be held concurrently with Tasks 2.3 and 2.4 to present the evaluation results and re-confirm the earlier agreed-to decision approach. This meeting shall discuss key tradeoffs and focus participants toward a decision about a narrowed set of Corridors. A review cycle shall allow time for agency deliberation.

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<sup>1</sup> For the Transit Corridors Study, “system integration” is defined as the bringing together of new alignments and associated service concepts with, predominantly, the existing transit system; identifying constraints; and ensuring that the overall system functions together as a whole.

*Key Assumptions:*

- The 16 to 26 concepts shall be narrowed to up to 12 concepts, including up to three medium-term concepts.

**DELIVERABLES:**

Deliverable ID	Deliverable Name and Description
2.1A-H	Regional Coordination Meetings (8)
2.2A	Evaluation Report, Part 1 Annotated Outline
2.2B	Draft Evaluation Report, Part 1: Potential Transit Concepts and Evaluation Framework Chapters
2.2C	Evaluation Workshop #1
2.2D	Revised Evaluation Report, Part 1: Potential Transit Concepts and Evaluation Framework Chapters
2.4A	Evaluation Report, Part 2 Annotated Outline
2.4B	Draft Evaluation Report, Part 2: Concept Assessment and Screening
2.4C	Evaluation Workshop #2
2.4D	Revised Evaluation Report, Part 2: Concept Assessment and Screening

**TASK 3. CONCEPT DESCRIPTIONS AND BENEFITS**

One of the most important functions of the TCS is to develop the information necessary to enter the prioritized transit concepts into the San Francisco and regional long-range transportation planning processes, which shall require completed concept descriptions. To create concept descriptions, the Consultant shall develop fact sheets for each of the concepts identified for further study. Accompanying these fact sheets, the Consultant shall develop concept maps and descriptions to facilitate a clear understanding of concepts for concurrent and future planning and funding efforts. These descriptions shall enable a seamless handoff when prioritized concepts move into future Corridor-specific alternatives studies in preparation for environmental clearance.

**3.1 CONCEPT DESCRIPTIONS AND BENEFITS**

The Consultant shall develop a fact sheet for each of up to six local and three regional concepts to serve as the description for modeling, funding, and environmental documentation purposes, expanding the concept definition from Task 2 and incorporating community input from Task 9.3. These fact sheets shall cover the following components at the level of detail needed for input to the SF-CHAMP and/or MTC travel models: potential modes; general description of project limits, elements, and features; service levels and operating concepts; routing options; potential phasing; and opportunities for regional transit integration and multimodal coordination. For applicable Corridors, the fact sheets shall address potential medium-term concepts (up to three) in addition to the longer-term concept. If the medium-term concept is not located in the same Corridor as the longer-term concept, the Consultant shall prepare a standalone fact sheet for the medium-term concept.

The Consultant shall approach the concept definition process with attention to identifying and characterizing the variety of challenges that these transit Corridors might face. Some concepts will involve particularly challenging or complex elements (including routing, station locations, or service characteristics) for a variety of reasons, such as street geometry constraints, traffic operations, system integration, or multimodal conflicts. While this process may not solve all the identified challenges, it shall document them as feasibility issues that will need to be addressed in later stages of development.

The Consultant team shall consider a full range of modal and operational technologies. For new technologies, the Consultant team shall draw on recent work and adapt it to a San Francisco setting.

*Summary:*

- Descriptions shall be developed for up to 12 concepts, including up to three medium-term concepts.

### 3.2 ESTIMATE BENEFITS

The more detailed descriptions of the four to six local, two to three regional concepts, and three medium-term concepts developed in Task 3.1 shall include an estimate of the benefits of each concept. The Consultant shall use sketch-level tools to estimate travel time savings and help develop necessary inputs to quantify ridership benefits using the SF-CHAMP travel demand model (anticipated to be completed concurrently as part of Task 3.3). Travel model outputs (e.g., peak hour directional flows by route) shall in turn be used to refine the transit operating models developed in Task 3.1 to evaluate passenger loading, fleet requirements (used in Tasks 4 and 5), and operating costs (Task 5), and to quantify sketch-level environmental benefits (e.g., GhG emissions and air quality, based on changes to VMT).

### 3.3 ESTIMATE SF-CHAMP QUANTITATIVE PROJECT BENEFITS

This task shall use SF-CHAMP to quantify benefits for up to 12 concepts, including the three medium-term concepts. This task may occur concurrently with Task 3.2.

SFCTA planning staff will conduct SF-CHAMP model runs for this study and provide the outputs to the project team. The Consultant shall coordinate with SFCTA planning staff, including discussing project needs, defining model input specifications, and providing inputs (such as assumed station location spacing and transit service levels and capacity), and interpreting and post-processing model outputs to provide necessary information for concept benefit evaluation. The results from this task shall inform Tasks 4 and 5.

*Summary:*

- Up to 12 concepts shall be modeled.
- SFCTA shall provide results for each concept to the Consultant for post-processing and interpretation on a rolling basis as completed.

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**DELIVERABLES:**

<b>Deliverable ID</b>	<b>Deliverable Name and Description</b>
<b>3.1A</b>	Task 3, 4, and 5 Kickoff Meeting
<b>3.1B</b>	Draft Concept Descriptions Technical Memo (Technical Inputs for Tasks 3.3, 4, and 5)
<b>3.1C</b>	Sample Concept Fact Sheet
<b>3.1D</b>	Draft Concept Fact Sheets (formatted, with maps/graphics)
<b>3.1E</b>	Final Concept Descriptions and Fact Sheets
<b>3.2A</b>	Working Draft Evaluation Report, Part 3: Concept Benefits and Costs, 50% Completion (Consultant shall submit outline and in-progress work to demonstrate 50% completion)
<b>3.2B</b>	Draft Evaluation Report, Part 3, 100% Completion
<b>3.2C</b>	Revised Evaluation Report, Part 3: Concept Benefits and Costs
<b>3.3A</b>	Prepare initial 2050 model run inputs for combined Corridors (concurrent with Task 2)
<b>3.3B</b>	Interpretation/post-processing of initial 2050 model run outputs (concurrent with Task 2)
<b>3.3C</b>	Preparation of model run inputs for up to 12 total concepts (including medium-term) and SFCTA coordination
<b>3.3D</b>	Working Draft SF-CHAMP Modeling Results Technical Memo: Interpretation/post-processing of model run outputs for 50% of the up to 12 concepts

Deliverable ID	Deliverable Name and Description
3.3E	Draft SF-CHAMP Modeling Results Technical Memo: Interpretation/post-processing of model run outputs for up to 12 total concepts (including medium-term)
3.3F	Final SF-CHAMP Modeling Results Technical Memo

#### **TASK 4. STORAGE AND MAINTENANCE FACILITIES NEEDS – LOCALLY OPERATED CONCEPTS**

##### **4.1 ASSESS STORAGE AND MAINTENANCE FACILITIES NEEDS**

Based on conceptual operating plans developed for each Corridor in Tasks 2 and 3, including the results of Task 3.3, the Consultant shall quantify the number of peak vehicles of each type that would be required for each concept, along with any net new storage requirements (i.e., accounting for existing vehicles). Using the facility inventory provided by City staff as a starting point, the Consultant shall assess the available storage capacity at existing divisions (yards, garages) that could potentially serve each Corridor based on vehicle type and geography. The Consultant shall identify alternative modal options that could fit within existing capacity, develop a qualitative assessment of opportunities for new shared storage capacity, and identify modal options where centralized storage does not appear feasible.

Working in the context of available and proposed storage facilities, the Consultant shall create a plan for maintenance facilities, both attached to, and separate from, storage facilities, both shared and agency-specific. Given the fleet projections associated with conceptual operating plans, the Consultant shall identify the needed capacity for routine inspections, preventive maintenance, running repairs, and needed levels of overhaul. This needed maintenance capacity shall be stratified by fleet type and facility type. Capacity shall reflect existing and anticipated policies of the operating agencies. The Consultant's recommendations shall be designed to optimize fleet availability and synchronize with spare ratio assumptions. The technical memo for this task shall include maps and graphics illustrating the results.

The results from this task shall inform cost estimation being completed as part of Task 5 and shall be used in the benefit-cost prioritization in Task 6.1.

*Key Assumptions:*

- Up to twelve concepts shall be included.

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##### **DELIVERABLES:**

Deliverable ID	Deliverable Name and Description
4.1A	Task Meeting with Operations Staff

<b>Deliverable ID</b>	<b>Deliverable Name and Description</b>
<b>4.1B</b>	Draft Storage Requirements Memo
<b>4.1C</b>	Final Storage Requirements Memo

## **TASK 5. PRELIMINARY COST ESTIMATION**

### **5.1 DEVELOP PRELIMINARY CAPITAL AND OPERATING COSTS**

The Consultant shall prepare both capital and incremental operating and maintenance cost estimate ranges for each concept (up to 12, including up to three medium-term concepts).

The latest FTA Capital Cost Database shall be used to develop preliminary cost estimates for each of the local and regional concepts. The Consultant shall employ a baseline cost for each mode, based on unit costs (e.g., per-mile, per-station) with the concept descriptions developed in Task 3 and the associated storage and maintenance requirements (local concepts only) developed under Task 4 as inputs. At this very conceptual level, the approach for capital and operational cost estimation shall rely on benchmarking similar types of projects (pro-rated to adjust for differences in size and adjusted for local construction conditions). The Consultant shall build up unit costs for select items that may be unique to each proposed concept and are not typical of what is seen in other projects. Order-of-magnitude operations and maintenance facility costs shall be included, using general assumptions for real-estate costs.

The Consultant shall also identify an escalation formula that the SFMTA can use to make future adjustments to costs.

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### **DELIVERABLES:**

<b>Deliverable ID</b>	<b>Deliverable Name and Description</b>
<b>5.1A</b>	Conceptual Cost Estimates for Conceptual Corridors (concurrent with Task 2)
<b>5.1B</b>	Task Kickoff Workshop with Concept Design and Cost Estimation Teams
<b>5.1C</b>	Working Draft Cost Estimation Memo, including 50% of concepts
<b>5.1D</b>	Draft Cost Estimation Memo, completed for up to 12 concepts.
<b>5.1E</b>	Final Cost Estimation Memo

## **TASK 6. TCS PROJECT PRIORITIZATION AND IMPLEMENTATION STRATEGY**

### **6.1 BENEFIT-COST PRIORITIZATION**

With a completed assessment of concept benefits (Tasks 3.2 and 3.3), Corridor outreach results (Task 9.3), and preliminary costs (Task 5), the Consultant shall complete the full suite of identified evaluation measures and recommend priorities for up to 12 concepts. The Consultant shall complete the benefit-cost analysis using the Excel-based framework developed in Tasks 2 and 3, but can also consider whether to incorporate Decision Lens for this stage of the evaluation. Any required sensitivity analyses or weighting would be performed as part of this task and discussed with the ConnectSF Study team.

The Consultant shall facilitate a workshop to support concept prioritization decision-making with SFMTA, SFCTA, and SF Planning staff, including agenda-setting, discussion materials preparation, and note taking.

The prioritization shall help determine which concepts could be advanced for additional as-needed planning or engineering studies.

*Key Assumption:*

- Priorities are anticipated to be broad, i.e., at the concept-level as defined in the TCS RFP.

## 6.2 IMPLEMENTATION STRATEGY (LOCALLY OPERATED CONCEPTS)

The Consultant shall design an Implementation Strategy that can be used as an action plan for getting the recommended local concepts advanced (implementation of regional concepts is anticipated to be considered by other efforts beyond the TCS). The key challenge shall be formulating a strategy that thoroughly navigates and integrates the various driving factors affecting implementation – public sentiment, equity considerations, land use changes, funding opportunities and constraints, potential phasing and synergistic benefits with other needed projects, technology choices, engineering issues, effects on existing system operations and maintenance, and more.

The TCS Implementation Strategy developed by the Consultant shall comprise two main chapters, each of which shall be independently useful to interested stakeholders.

Chapter 1, “Internal Coordination and Phasing,” aimed at obtaining internal SFMTA alignment with the recommendations, shall describe how the TCS concepts could be integrated into the existing/planned Muni system. It shall demonstrate connections and synergies and describe other changes needed to complement these concepts. The chapter shall provide proposed phasing, including temporal phasing, that considers “low-hanging fruit” for early implementation and “bigger lifts” for later implementation.

Chapter 2, “External Coordination,” shall describe the actions and considerations necessary to gain consensus and approvals beyond SFCTA, the SFMTA, and SF Planning, including interest groups and the greater community. This chapter shall identify key stakeholders, their interests and potential concerns ascertained through Task 9, and potential ways to build consensus and support. The Consultant shall incorporate lessons learned from the implementation challenges of

past transit projects and shall look to the prior ConnectSF visioning work to identify approaches that meet ConnectSF goals while mitigating risks where possible.

The Consultant shall facilitate a workshop to help develop concept implementation and phasing strategies with SFMTA, SFCTA, and SF Planning staff, including agenda-setting, discussion materials preparation, and note taking.

In developing the Implementation Strategy, the Consultant shall draw from a selection of available research materials pertaining to topics such as transit capacity, transportation equity, and infrastructure finance.

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#### DELIVERABLES:

Deliverable ID	Deliverable Name and Description
6.1A	Draft Evaluation Report, Part 4: Benefit-Cost Analysis Framework and Prioritization
6.1B	Prioritization Workshop
6.1C	Final Evaluation Report, Part 4: Cost-Benefit Analysis Framework and Prioritization
6.2A	Draft Implementation Strategy Chapter 1: Internal Coordination and Phasing
6.2B	Draft Implementation Strategy Chapter 2: External Coordination
6.2C	Implementation and Phasing Workshop
6.2D	Final Implementation Strategy Chapters 1 & 2

### TASK 7. TRANSIT CORRIDORS STUDY REPORT

#### 7.1 DRAFT TCS REPORT

The Consultant shall prepare a draft, concise TCS Report, incorporating the Deliverables from all previous tasks. This Report shall describe the ConnectSF process and how the TCS effort fits in. The Report shall be written in clear, plain language that engages people of all education levels and backgrounds. The Report shall cross-reference detailed information in a comprehensive technical report that includes the technical memoranda from each task.

In the TCS Report, the Consultant shall communicate the priorities for local and regional transit investments, and how these investments support the ConnectSF vision and values. The Report shall illustrate how concept priorities emerged from the evaluation, including reflecting the data-driven approach and the feedback received throughout the process, and justify the recommendations. The report shall set forth a phased implementation approach for concept development, including transit service, capital investments, multimodal access, and high-level/overall funding strategies. (The detailed Funding Strategies element is currently assumed as an As-Needed task; additional detail can be integrated if this as-needed task is requested.)

The work prepared by the Consultant shall focus on engaging, digestible, and useful documents that are meaningful to City and agency staff, elected officials, and the general public.

The Consultant shall develop document and graphic design templates that are both unique to the TCS and consistent with the City's design standards and the concurrent plans. The Consultant shall coordinate regularly with the outreach team to ensure that graphic materials under this Agreement are provided in appropriate formats and on schedule.

Key Assumptions:

- Approximately 50 page report including an outreach chapter
- The Consultant shall hold a workshop-style meeting with City staff to obtain upfront buy-in on the overall document structure and design and provide a follow-on annotated outline for agency approval.
- Assumes one round of substantial revisions to the draft report, based on a single set of non-conflicting, consolidated comments from the agency team with an up to six-week review period for agency deliberation, resulting in a “Revised Draft Report” based on the agency review.

## 7.2 Final TCS Report

The Consultant shall work with the ConnectSF Study team to compile a tabular register of consolidated comments on the draft TCS Report. The Consultant shall develop a proposed resolution for each comment, circulate the register to the team, and facilitate a discussion to resolve any conflicting comments. The Consultant shall then incorporate the comments received into the TCS Report, and prepare a final version of the TCS Report.

Key Assumptions:

- Approximately 50-page report including an outreach chapter
- Basic accessibility principles shall be incorporated into document design and production throughout; with a final set of accessibility checks performed on the final document. The scope does not assume effort to ensure full accessibility (e.g., compatibility with screen readers).

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## DELIVERABLES:

Deliverable ID	Deliverable Name and Description
7.1A	TCS Report Storyboarding Workshop
7.1B	TCS Report Annotated Outline and Design Template

<b>Deliverable ID</b>	<b>Deliverable Name and Description</b>
7.1C	TCS Report Draft Infographics
7.1D	Draft TCS Report
7.1E	Revised Draft TCS Report
7.2A	Register of Comments and Responses
7.2B	Final TCS Report

## **TASK 8. PROJECT ADMINISTRATION**

The Consultant shall develop and maintain project controls, conduct regularly-scheduled team meetings with the SFMTA, and prepare timely invoices and progress reports for work performed under this Agreement.

### 8.1 Project Controls

The Consultant shall adhere to well-established and documented protocols covering all aspects of work performed under this Agreement from kickoff through close-out. This task includes:

- Maintaining a clear and detailed work plan and schedule: The Consultant shall develop and maintain a detailed short-term (e.g., one to three months) work plan to manage Deliverables and review timelines, as well as a higher-level schedule looking forward.
- Setting up and maintaining a shared document/data repository for use by the Consultant and/or agency teams (may be part of the SFMTA Sharepoint site or a separate repository).
- Ensuring team communication and coordination: The Consultant shall define clear team roles and areas of responsibility and schedule regular team check-ins.
- Meeting contracting requirements: The Consultant shares the SFMTA's commitment to diversity in hiring and contracting. The Consultant shall work closely with the project management team to ensure that all requirements are met and/or exceeded and that project reporting and tracking demonstrates progress toward these goals.
- Following quality control procedures: The Consultant shall develop outlines for each Deliverable and review them with the ConnectSF Study team to ensure upfront that the work product shall meet expectations. The project schedule shall include internal and external review times for each deliverable to allow time for reflection and revision. The Consultant's Project Manager, Deputy Project Manager, and task leads are responsible for reviewing work products at each stage of development and prior to client delivery.
- Maintaining the project Administrative Record: The Consultant shall maintain a well-organized repository of final technical documents, along with meeting notes, comment registers, and documentation of key decisions. The SFMTA Sharepoint site, or another

document storage platform provided by the SFMTA, shall be used as the project document repository.

## 8.2 Team Meetings

The Consultant shall use the bi-weekly team meetings to ensure a strong, collaborative relationship with the ConnectSF Study team and as an opportunity to walk through draft materials with staff prior to any meetings with policy makers, stakeholders, or external agency partners. These meetings shall also be used for the Consultant to preview their work on Deliverables in progress (anticipated preliminary findings, content under development, and key questions), so that City staff may provide guidance that can help draft submittals that meet reviewers' expectations.

This task assumes that a quarter of team meetings shall be held in-person and the remaining meetings may be held by phone/web conference to make efficient use of resources. Extended workshop-format meetings shall also be used at certain milestones; for example, to walk through concepts with both the concept definition and capital cost estimation team members.

For all team meetings, the Consultant shall circulate an agenda in advance for SFMTA staff input. Following each meeting, the Consultant shall prepare meeting notes and action items for SFMTA staff review and approval.

### 8.3/8.4 Invoicing and Progress Reports

The Consultant shall assign a Project Accountant in charge of preparing a consolidated invoice and maintaining the project budget report in close communication with the Consultant's Project Manager. The Consultant's Project Manager, Deputy Project Manager, and task leads shall collaborate to develop a monthly Progress Report identifying work completed, next steps, and key milestones or dates, as well as any anticipated challenges or issues.

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## DELIVERABLES

Deliverable ID	Deliverable Name and Description
8.1A-T	Project Controls: Updated schedules and work plans (ongoing); administrative record maintained on SFMTA Sharepoint site.
8.2A-T	Team Meetings: Meeting agendas and notes for each meeting.
8.4A-T	Progress Reports (monthly)

## TASK 9. PUBLIC OUTREACH (COMPLETED BY CITY STAFF AND OUTREACH CONSULTANT)

The project schedule and flowchart shall identify the key coordination points between the TCS technical tasks and the multi-project outreach efforts. The Consultant shall coordinate with the ConnectSF Study Team, the outreach consultant, and other related study teams, as needed.

Key Assumptions:

- For each of the three phases of the multi-project outreach that are directly relevant to the TCS (9.2, 9.3, and 9.4), this task assumes attendance at up to two meetings (one person) for coordination with other efforts, and attendance at up to three public meetings (one person). The attendee shall be the Consultant's Project Manager or Deputy Project Manager.

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## DELIVERABLES

Deliverable ID	Deliverable Name and Description
9.2A	Parallel project/outreach coordination meeting
9.2B	Parallel project/outreach coordination meeting
9.2C	Public meeting attendance
9.2D	Public meeting attendance
9.2E	Public meeting attendance
9.3A	Parallel project/outreach coordination meeting
9.3B	Parallel project/outreach coordination meeting
9.3C	Public meeting attendance
9.3D	Public meeting attendance
9.3E	Public meeting attendance
9.4A	Parallel project/outreach coordination meeting
9.4B	Parallel project/outreach coordination meeting
9.4C	Public meeting attendance
9.4D	Public meeting attendance
9.4E	Public meeting attendance

## TASK 10 ADDITIONAL AS-NEEDED PLANNING AND ENGINEERING STUDIES

This task is intended for additional studies that may be identified during the term of the Agreement, such as topics described in 10.1 below. As-needed tasks will be assigned under the provisions of Section 4.5 of the Agreement.

### 10.1 Additional As-Needed Conceptual Engineering and/or Planning Tasks

Conceptual engineering and/or Planning Tasks could include the following:

- Conceptual plan and profile drawings
- Conceptual system and site plans, including multimodal transfer schemes
- Typical cross-sections
- Typical stop/station layout
- Conceptual engineering design narrative and risk assessment
- Land use analyses
- GIS mapping
- Additional capital and/or operating cost estimates
- Additional cost-benefit analyses
- White papers and technical memoranda on planning or engineering topics
- Analysis of funding strategies

## **2. Services Provided by Attorneys**

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

## **3. Reports**

Contractor shall submit written reports as requested by the SFMTA. Format for the content of such reports shall be determined by the SFMTA. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted electronically.

## **4. Department Liaison**

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

**APPENDIX B**  
**PAYMENT SCHEDULE**

Milestone	Deliverable Name and Description	Payment Basis is "Invoiced upon completion and SFMTA acceptance of deliverable" as a lump sum amount unless otherwise stated below	Lump Sum Total for Tasks 1-9 except Not to Exceed Total for Tasks based on Unit Costs as Noted in the "Payment Basis" Column
<b>1.1A</b>	Kickoff Meeting; Meeting Agenda and Notes		\$6,200
<b>1.2A</b>	Draft Project Management Plan		\$3,700
<b>1.2B</b>	Final Project Management Plan		\$1,000
<b>2.1A-H</b>	Regional Coordination Meetings	Unit Cost: up to \$550 per meeting Quantity: Up to 8 meetings total Invoiced upon completion of each meeting.	\$4,500
<b>2.2A</b>	Evaluation Report, Part 1 Annotated Outline		\$8,500
<b>2.2B</b>	Draft Evaluation Report, Part 1: Potential Transit Concepts and Evaluation Framework Chapters		\$33,900
<b>2.2C</b>	Evaluation Workshop #1		\$16,900
<b>2.2D</b>	Revised Evaluation Report, Part 1: Potential Transit Concepts and Evaluation Framework Chapters		\$16,300
<b>2.4A</b>	Evaluation Report, Part 2 Annotated Outline		\$9,400
<b>2.4B</b>	Draft Evaluation Report, Part 2: Concept Assessment and Screening		\$37,500
<b>2.4C</b>	Evaluation Workshop #2		\$18,800
<b>2.4D</b>	Revised Evaluation Report, Part 2: Concept Assessment and Screening		\$23,400
<b>3.1A</b>	Task 3, 4, and 5 Kickoff Meeting		\$4,700
<b>3.1B</b>	Draft Concept Descriptions Technical Memo (Technical Inputs for Tasks 3.3, 4, and 5)		\$28,400
<b>3.1C</b>	Sample Concept Fact Sheet		\$4,700
<b>3.1D</b>	Draft Concept Fact Sheets (formatted, with maps/graphics)		\$33,100

**APPENDIX B**  
**PAYMENT SCHEDULE**

<b>3.1E</b>	Final Concept Descriptions and Fact Sheets		\$18,900
<b>3.2A</b>	Working Draft Evaluation Report, Part 3: Concept Benefits and Costs, 50% Completion		\$22,200
<b>3.2B</b>	Draft Evaluation Report, Part 3, 100% Completion		\$22,200
<b>3.2C</b>	Revised Evaluation Report, Part 3: Concept Benefits and Costs		\$15,900
<b>3.3A</b>	Prepare initial 2050 model run inputs for combined corridors (concurrent with Task 2)		\$1,800
<b>3.3B</b>	Interpretation/post-processing of initial 2050 model run outputs (concurrent with Task 2)		\$1,800
<b>3.3C</b>	Preparation of model run inputs for up to 12 total concepts (including medium-term) and SFCTA coordination		\$5,400
<b>3.3D</b>	Working Draft SF-CHAMP Modeling Results Technical Memo: Interpretation/post-processing of model run outputs for 50% of the up to 12 concepts		\$9,000
<b>3.3D</b>	Draft SF-CHAMP Modeling Results Technical Memo: Interpretation/post-processing of model run outputs for up to 12 total concepts (including medium-term)		\$9,000
<b>3.3F</b>	Final SF-CHAMP Modeling Results Technical Memo		\$7,200
<b>4.1A</b>	Task Meeting with Operations Staff		\$2,200
<b>4.1B</b>	Draft Storage Requirements Memo		\$13,300
<b>4.1C</b>	Final Storage Requirements Memo		\$5,600
<b>5.1A</b>	Conceptual Cost Estimates for Conceptual Corridors (concurrent with Task 2)		\$5,700
<b>5.1B</b>	Task Kickoff Workshop with Concept Design and Cost Estimation Teams		\$2,800
<b>5.1C</b>	Working Draft Cost Estimation Memo, including 50% of concepts		\$17,000
<b>5.1D</b>	Draft Cost Estimation Memo, completed for up to 12 concepts.		\$17,000
<b>5.1E</b>	Final Cost Estimation Memo		\$11,300

**APPENDIX B**  
**PAYMENT SCHEDULE**

<b>6.1A</b>	Draft Evaluation Report, Part 4: Benefit-Cost Analysis Framework and Prioritization		\$16,700
<b>6.1B</b>	Prioritization Workshop		\$8,400
<b>6.1C</b>	Final Evaluation Report, Part 4: Cost-Benefit Analysis Framework and Prioritization		\$14,600
<b>6.2A</b>	Draft Implementation Strategy Chapter 1: Internal Coordination and Phasing		\$11,900
<b>6.2B</b>	Draft Implementation Strategy Chapter 2: External Coordination		\$7,900
<b>6.2C</b>	Implementation and Phasing Workshop		\$7,900
<b>6.2D</b>	Final Implementation Strategy Chapters 1 & 2		\$9,900
<b>7.1A</b>	TCS Report Storyboarding Workshop		\$6,700
<b>7.1B</b>	TCS Report Annotated Outline and Design Template		\$6,700
<b>7.1C</b>	TCS Report Draft Infographics		\$10,100
<b>7.1D</b>	Draft TCS Report		\$26,800
<b>7.1E</b>	Revised Draft TCS Report		\$13,400
<b>7.2A</b>	Register of Comments and Responses		\$5,100
<b>7.2B</b>	Final TCS Report		\$14,300
<b>8.1A-T</b>	Project Controls: Updated schedules and work plans (ongoing); administrative record maintained on SFMTA Sharepoint site	Unit Cost: up to \$4,450 per month, with justification based on amount of activity during the month Quantity: up to 18 months	\$80,100
<b>8.2A-T</b>	Team Meetings: Meeting agendas and notes for each meeting	Unit Cost for regular/phone meetings: \$1,250 Unit Cost for large/In-person meetings: \$3,700 Quantity: up to 36 meetings total, 75% regular, 25% large Invoiced upon completion of each meeting and SFMTA acceptance of corresponding meeting agenda and notes	\$67,000

**APPENDIX B**  
**PAYMENT SCHEDULE**

<b>8.4A-T</b>	Progress Reports (monthly)	Unit Cost: up to \$900 per monthly progress report upon completion and SFMTA acceptance Quantity: up to 18 progress reports	\$16,200
<b>9.2A-E, 9.3A-E, 9.4A-E</b>	Parallel project/outreach coordination meeting and/or Public meeting attendance	Unit cost: \$520 per meeting Quantity: 15 meetings total	\$7,800
<b>SUBTOTAL NOT TO EXCEED (TASKS 1-9)</b>			<b>\$770,800</b>
<b>FEE NOT TO EXCEED (TASKS 1-9)</b>			<b>\$77,000</b>
<b>TOTAL NOT TO EXCEED (TASKS 1-9)</b>			<b>\$847,800</b>

**OPTIONAL TASK**

<b>10.1</b>	Milestones and Deliverables to be determined based on actual scope of as-needed task orders	To be determined when as-needed task orders are issued	\$85,700
<b>OPTIONAL TASK FEE NOT TO EXCEED (TASK 10)</b>			<b>\$8,500</b>
<b>OPTIONAL TASK TOTAL NOT TO EXCEED (TASK 10)</b>			<b>\$94,200</b>
<b>SUBTOTAL NOT TO EXCEED (ALL TASKS)</b>			<b>\$856,500</b>
<b>FEE NOT TO EXCEED (ALL TASKS)</b>			<b>\$85,500</b>
<b>TOTAL NOT TO EXCEED (ALL TASKS)</b>			<b>\$942,000</b>

**Appendix C**  
**Calculation of Charges – Direct Labor Rates**

**Consultant Staff Burdened Hourly Labor Rates and Key Personnel** (direct hourly labor rates inclusive of overhead)

Firm	Title	Named Key Personnel	Rate
Nelson\Nygaard	Principal 5	Thomas Brennan	\$265.79
Nelson\Nygaard	Principal 6	Jeff Tumlin	\$261.56
Nelson\Nygaard	Principal 3		\$192.77
Nelson\Nygaard	Sr Associate 2		\$148.18
Nelson\Nygaard	Sr Associate 1		\$137.63
Nelson\Nygaard	Sr Associate 1	Oren Eshel	\$129.17
Nelson\Nygaard	Sr Associate 1		\$124.29
Nelson\Nygaard	Cartography/GIS Manager		\$129.48
Nelson\Nygaard	Graphic Designer		\$116.90
Nelson\Nygaard	Associate 2		\$87.56
Nelson\Nygaard	Associate 1		\$82.96
Nelson\Nygaard	Intern		\$50.43
Arup	Principal		\$442.08
Arup	Principal		\$337.22
Arup	Associate Principal		\$257.88
Arup	Associate Principal		\$252.22
Arup	Associate	Chester Fung	\$198.38
Arup	Senior Engineer		\$162.10
Arup	Senior Planner		\$160.12
Arup	Senior BIM Technician		\$132.62
Arup	Planner		\$123.37
Elite Transportation Group	President		\$192.00
Elite Transportation Group	VP		\$192.00
Elite Transportation Group	Project Manager		\$73.07
M Lee Corporation	Chief Estimator		\$211.64
M Lee Corporation	Senior Estimator		\$161.70
Strategic Economics	Principal/Vice President		\$213.10
Strategic Economics	Associate		\$106.03
Strategic Economics	Research Associate		\$96.20
Transportation Analytics	Principal		\$166.30

**APPENDIX D**  
**Calculation of Charges – Overhead Rates**

<b>Firm</b>	<b>Rate</b>	<b>Multiplier</b>
Nelson\Nygaard	180.19%	2.80
Arup	194.72%	2.95
Strategic Economics	233.44%	3.33
M Lee Corporation	137.80%	2.38
Elite Transportation Group	60.00%	1.60
Transportation Analytics	99.00%	1.99

## APPENDIX E

### **FTA/FHWA REQUIREMENTS FOR FEDERALLY FUNDED PERSONAL SERVICES AND PROCUREMENT CONTRACTS**

#### **I. DEFINITIONS**

**A. Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

**B. California Department of Transportation (Caltrans)** is an agency of the State of California and a direct recipient of grant funds from FHWA.

**C. Contractor** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA and/or FHWA.

**D. Cooperative Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.

**E. Federal Highway Administration (FHWA)** is an operating administration of the U.S. DOT.

**F. Federal Transit Administration (FTA)** is an operating administration of the U.S. DOT.

**G. FTA Directive** includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

**H. Government** means the United States of America and any executive department or agency thereof.

**I. Metropolitan Transportation Commission (MTC)** has been designated as the Metropolitan Planning Organization (MPO - federal) and the Regional Transportation Planning Agency ("RTPA" - state) for the San Francisco Bay Region and is a direct recipient of funds from the FHWA for its Priority Development Area Program.

**J. Program Supplement** means the agreement between Subrecipient and MTC through which MTC provides FHWA funding for the Project.

**K. Project** means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Restricted Grant Agreement with Caltrans or Program Supplement with MTC applicable to the Project.

**L. Restricted Grant Agreement** means the agreement between Subrecipient and Caltrans through which Caltrans provides FTA funding for the Project.

**M. Subrecipient** means the San Francisco Municipal Transportation Agency, an agency of the City and County of San Francisco, which receives Federal assistance through Caltrans and MTC.

**N. Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.

**O. Third Party Contract** means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA or FHWA.

**P. Third Party Subcontract** means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA or FHWA.

**Q. U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

## **II. FEDERAL CHANGES**

Contractor shall at all times comply with all applicable FTA and FHWA regulations, policies, procedures and directives, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

## **III. COST PRINCIPLES**

**A.** Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., and 2 CFR Part 200, as applicable, shall be used to determine the cost allowability of individual items.

**B.** Contractor agrees to comply with federal procedures in accordance with 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards).

**C.** Any costs for which payment has been made to a Contractor that are determined by subsequent audit to be unallowable under 2 CFR Part 200 and 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000 et seq., are subject to repayment by Contractor to City.

**D.** All reimbursements to Contractor will be allowable as Project costs only after those costs are incurred and paid for by the subcontractors.

## **IV. ACCESS TO RECORDS**

**A.** The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

**B.** The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

**C.** The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

## **V. DEBARMENT AND SUSPENSION**

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

## **VI. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor; to solicit or secure this Agreement; and that it has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award, or formation of this Agreement. For breach or violation of this warranty, the SFMTA shall have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## **VII. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR**

**A.** The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

**B.** The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## **VIII. CIVIL RIGHTS -- FEDERAL**

**A. Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

**B. Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

**1. Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**2. Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**3. Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

**C.** The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

## **IX. CIVIL RIGHTS – STATE**

**A.** In the performance of this Agreement, Contractor and its subcontractors shall not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Contractor and its subcontractors shall take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor and its subcontractors shall post in conspicuous places, available to employees for employment, notices to be provided by the State of California setting forth the provisions of this Fair Employment section.

**B.** Contractor and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 1290-0 et seq.), and the applicable regulations promulgated thereunder (California code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

**C.** Contractor shall include the above provisions in all subcontractors to perform work under this Agreement

## **X. DBE/SBE ASSURANCES**

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

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

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

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

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

**C.** The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

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

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

**1. Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or

approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

**2. Federal License.** In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, “for Federal Government purposes,” any subject data or copyright described below. As used in the previous sentence, “for Federal Government purposes” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party:

- a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
- b. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.

**3. FTA Intention.** When FTA awards Federal assistance for experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.

**4. Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

**5. Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

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

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

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

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

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

**A. Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**B. Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.

**C. Withholding for unpaid wages and liquidated damages** - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

**D. Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

### **XIV. ENERGY CONSERVATION REQUIREMENTS**

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

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

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

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

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

**A.** Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

**XVII. PRIVACY**

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

**XVIII. DRUG AND ALCOHOL TESTING**

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

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

## **XXI. BUY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$150,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

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

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## **XXIII. RECYCLED PRODUCTS**

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

## **XXIV. BUS TESTING** (*applies to contracts for rolling stock*)

To the extent applicable, the Contractor (or Manufacturer) agrees to comply with the requirements of 49 U.S.C. § 5323(c) and FTA implementing regulations at 49 CFR Part 665, and shall perform the following:

**A.** A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the Recipient at a point in the procurement process specified by the Recipient which will be prior to the Recipient's final acceptance of the first vehicle.

**B.** A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

**C.** If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the Recipient prior to Recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

**D.** If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

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

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

**A. Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.

**B. Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.

**C. Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

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

**A.** The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

**B.** The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government

reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

**C.** The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

## **XXVII. FLY AMERICA**

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

## **XXVIII. INCORPORATION OF FTA AND FHWA TERMS**

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

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

**A.** The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

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

5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

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

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

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

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

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

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

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

### **XXXII. SEAT BELT USE**

In compliance with Executive Order 13043 "Increasing Seat Belt Use in the United States", April 16, 1997 23 U.S.C. Section 402 note, the SFMTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel

that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

## **APPENDIX F**

### **TASK ORDER REQUEST FORM**

San Francisco Municipal Transportation Agency

Contract No. and Title: \_\_\_\_\_

Task Title: \_\_\_\_\_ Date Initiated: \_\_\_\_\_

Type of Request:

New Task Order- No. XX

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

Total Amount Being Requested: \$XXXX

Index Code: \_\_\_\_\_

Task Start Date: \_\_\_\_\_ Modification Start Date: \_\_\_\_\_

Estimated Completion Date: \_\_\_\_\_

Funding Source: \_\_\_\_\_ Proposed Task SBE/DBE Goal: XX%

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

Work to be Performed:

Brief Description

Deliverables:

<u>Description</u>	<u>Date Req'd</u>	<u>Quantity</u>
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## **APPENDIX G**

### **SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

#### **SBE/DBE REQUIREMENTS**

##### **Architects, Engineers, Planners, and Environmental Scientists and Other Professional Services**

#### **I. POLICY**

The San Francisco Municipal Transportation Agency (SFMTA), recipient of federal financial assistance from the Federal Transit Administration (FTA), is committed to and has adopted, a Small Business Enterprise (SBE) and Disadvantaged Business Enterprise (DBE) Program to implement the Disadvantaged Business Enterprise regulations in 49 C.F.R. Part 26 (the "Regulations"), issued by the Department of Transportation (DOT).

It is the policy of the SFMTA to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which SBEs and DBEs can compete fairly for contracts and subcontracts relating to SFMTA's construction, procurement and professional services activities. To this end, SFMTA has developed procedures to remove barriers to SBE and DBE participation in the bidding and award process and to assist SBEs and DBEs to develop and compete successfully outside of the SBE/DBE program. In connection with the performance of this contract, the Contractor will cooperate with SFMTA in meeting these commitments and objectives.

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

The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or Subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate.

#### **A. Applicability**

Under 49 CFR Sections 26.3 and 26.51, and in response to the Federal Transit Administration's (FTA) March 23, 2006, publication of the Department of Transportation's (DOT) guidance concerning the federal DBE program that applies to grant recipients within the Ninth Circuit, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement race-neutral means of facilitating DBE participation in instances where the SFMTA lacks evidence of discrimination or its effects on DBEs. Per DOT requirements, the SFMTA

conducted a disparity study to determine if substantial disparities exist in the utilization of DBEs in the SFMTA's federally existed contracts. The results of the study concluded that for the SFMTA's professional services contracts, DBEs owned by women are underutilized, and DOT has authorized the SFMTA to establish contract goals for women-owned DBEs. The Regulations are incorporated into this Program as though fully set forth herein. This Program applies to all SFMTA contracts that are funded, in whole or in part, by DOT federal financial assistance.

## **B. Objectives**

The objectives of this program are to:

1. Remove barriers to SBE and DBE participation in the bidding, award and administration of SFMTA contracts;
2. Assist SBEs and DBEs to develop and compete successfully outside of the Program;
3. Ensure that the Program is narrowly tailored in accordance with 49 C.F.R. Part 26;
4. Ensure that only SBEs and DBEs meeting the eligibility requirements are allowed to participate as SBEs and DBEs;
5. Identify business enterprises that are qualified as SBEs and DBEs and are qualified to provide SFMTA with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;
6. Develop communications programs and procedures which will acquaint prospective SBEs and DBEs with SFMTA's contract procedures, activities and requirements and allow SBEs and DBEs to provide SFMTA with feedback on existing barriers to participation and effective procedures to eliminate those barriers; and
7. Administer the Program in close coordination with the various divisions within SFMTA so as to facilitate the successful implementation of this Program.

## **C. Administration of Program**

The Director of Transportation is responsible for adherence to this policy. The DBE Liaison Officer (DBELO) shall be responsible for the development, implementation and monitoring of this program. It is the expectation of the Municipal Transportation Board of Directors and the Director of Transportation that all SFMTA personnel shall adhere to the provisions and the spirit of this program.

#### **D. Prohibited Discrimination**

SFMTA shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by the Regulations on the basis of race, color, sex or national origin. The City and County of San Francisco also prohibits discrimination on the basis of (the fact or perception of a person's) race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

**E.** SFMTA shall not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this program with respect to individuals in the groups or categories or having the characteristics listed above.

**F.** SFMTA has signed the federal assurances regarding non-discrimination required under 49 C.F.R. Section 26.13. See III.D (Contract Assurances) for requirements of Contractor and Subconsultants.

### **II. DEFINITIONS**

Any terms used in SFMTA's SBE/DBE Program that are defined in 49 C.F.R. Section 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations.

**A. Disadvantaged Business Enterprise (DBE):** A DBE is a for-profit, small business concern (1) that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which 51% of the stock is owned by one or more socially and economically disadvantaged individuals; (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (3) that is certified under the California Unified Certification Program.

**B. Small Business Enterprise (SBE):** An SBE is a for-profit, small business concern with a three-year average gross revenue not exceeding current SBA size standards appropriate for its type of work and is either verified eligible by the SFMTA or the State of California's Small Business Program with the Department of General Services, the California Unified Certification Program with a U.S. Department of Transportation recipient, or the City and County of San Francisco's LBE program with the Contract Monitoring Division.

### **III. SBE/DBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS**

#### **A. SBE and DBE Participation Goals**

Goals of 15 percent SBE and 5% Woman-owned DBE have been established for this contract. These goals will apply to the following types of contracts or scope of work in the

contract: Construction – Building, Heavy; Construction-Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection, Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering services (to include professional and technical services); Surveying and Mapping; Drafting (Design Services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (Construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

## **B. Determining the Amount of SBE and DBE Participation**

The SFMTA strongly encourages the prime contractor to make every good faith effort to include SBEs and DBEs to perform meaningful work in all aspects of the projects. To accomplish this goal, the following guidance is provided:

### **1. SBE and DBE Participation**

SBE and DBE participation includes contracts (other than employee contracts) with SBEs and DBEs for any goods or services specifically required for the completion of the work under the Agreement. An SBE or DBE may participate as a prime contractor/consultant, subcontractor/consultant, joint venture partner with a prime or consultant, vendor of material or supplies incorporated or expended in the work, or a supplier of other services such as shipping, transportation, testing, equipment rental, insurance services and other support services necessary to fulfill the requirements of the Agreement.

### **2. Function**

SBEs and DBEs must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing and supervising the work. However, an SBE or DBE may contract out a portion of the work if it is considered to be a normal industry practice. If an SBE or DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SBE or DBE shall be presumed not to be performing a commercially useful function.

### **3. Determining the amount of SBE and DBE Participation**

SBE and DBE participation includes that portion of the contract work actually performed by a certified SBE or DBE with its own forces. An SBE or DBE may participate as a prime contractor, subcontractor, joint venture partner, or vendor or supplier of materials or services required by the contract.

An SBE's or DBE's participation can only be counted if it is performing a commercially useful function.. An SBE or DBE is performing a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the SBE or DBE is not responsible for

at least 30 percent of the work with its own forces, or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function.

The Contractor shall determine the amount of SBE and DBE participation for each SBE and DBE performing work on the contract in terms of both the total value of the work in dollars and the percentage of the total contract bid price. The Contractor shall also determine the total amount of SBE and DBE participation for the entire contract. The Contractor shall count SBE and DBE participation according to the following guidelines:

**a. SBE or DBE Prime Contractor**

Count the entire dollar amount of the work performed or services provided by the SBE's or DBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as SBE or DBE participation by the SBE or DBE Prime Contractor.

**b. SBE or DBE Subcontractor**

Count the entire amount of the work performed or services provided by the SBE's or DBE's own forces, including the cost of materials and supplies obtained for the work (except for materials and supplies purchased or leased from the Prime Contractor) and reasonable fees and commissions charged for the services. Do not count any work subcontracted by an SBE or DBE subcontractor to another firm as SBE or DBE participation by said SBE or DBE subcontractor. If the work has been subcontracted to another SBE or DBE, it will be counted as SBE or DBE participation by that other SBE or DBE.

**c. SBE or DBE Joint Venture Partner**

Count the portion of the work that is performed solely by the SBE's or DBE's forces or if the work is not clearly delineated between the SBE or DBE and the joint venture partner, count the portion of the work equal to the SBE's or DBE's percentage of ownership interest in the joint venture.

**d. SBE or DBE Regular Dealer**

Count 60 percent of the costs of materials and supplies obtained from an SBE or DBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly bought, kept in stock and sold or leased to the public in the usual course of business (except regular dealers of bulk items such as petroleum, cement and gravel who own and operate distribution equipment in lieu of maintaining a place

of business). This applies whether an SBE or DBE is a prime contractor or subcontractor.

**e. Other SBEs or DBEs**

Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from an SBE or DBE that is not a manufacturer or regular dealer. Do not count the cost of the materials and supplies.

**C. Submission of Certification for SBEs and DBEs**

All firms wishing to receive credit for participation under the SFMTA's SBE/DBE Program must be certified as bona fide SBEs or DBEs with the SFMTA. This requires either submission of: (1) the completed certification applications for either SBEs, DBEs, or LBEs, or (2) submission of the SFMTA's small business verification application. For information regarding where to obtain applications for these certifications, please contact the SFMTA Contract Compliance Office at:

San Francisco Municipal Transportation Agency  
Contract Compliance Office  
One South Van Ness Avenue 6th floor  
San Francisco, California 94103  
(415) 701-4362  
Attn: Sheila Evans-Peguese

**D. Contract Assurances**

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

**E. Use of SBE and DBE Firms**

The Consultant shall use the specific SBEs and DBEs listed to perform the work and supply the materials for which each is listed unless the Consultant obtains CCO's prior written consent. Unless prior written consent by CCO is provided, the Consultant shall not be entitled to any payment for work or material unless it is performed or supplied by the listed SBE or DBE.

**F. Substitution of Subconsultants and Suppliers**

The Consultant shall not terminate an SBE or DBE subconsultant or supplier for convenience and then perform the work with its own forces. Before requesting the termination

and/or substitution of an SBE or DBE subconsultant, the Consultant must give notice in writing to the SBE or DBE subconsultant, with a copy to CCO, of its intent to request to terminate and/or substitute, and the reason for the request. The Consultant must give the SBE or DBE five days to respond to the notice and advise CCO and the Consultant of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Consultant's request should not be approved. CCO must approve the request in writing in order for the substitution to be valid. The substitution may also have to be approved by the SFMTA Board of Directors.

When an SBE or DBE subconsultant is terminated as provided in this section, or fails to complete its work on the contract for any reason, the Consultant shall make good faith efforts to find another SBE or DBE subconsultant to substitute for the original SBE or DBE. These good faith efforts shall be directed at finding another SBE or DBE to perform at least the same amount of work under the contract as the SBE or DBE that was terminated, to the extent needed to meet the established SBE or DBE contract goal.

#### **G. Addition of Subconsultants and Suppliers**

The Consultant shall notify CCO prior to any addition of an SBE/DBE or non-SBE/non-DBE subconsultant or supplier to the project. Submit SBE/DBE SFMTA Form No. 4 for each new SBE or DBE subconsultant or supplier. Any new SBE or DBE subconsultant or supplier approved by CCO also must submit SFMTA SBE/DBE Form No. 5.

#### **H. Prompt Payment to Subcontractors**

In accordance with SFMTA's SBE/DBE Program, no later than three days from the date of Contractor's receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subconsultants. Unless the prime consultant notifies the CCO Director in writing within 10 working days prior to receiving payment from the City that there is a bona fide dispute between the prime consultant and the subconsultant. Within five working days of such payment, Consultant shall provide City with a declaration under penalty of perjury that it has promptly paid such subconsultants for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants. **Effective January 1, 2019, the CCO will implement an online contract compliance monitoring system, B2GNow. If this contract is awarded after implementation of B2GNow, rather than completing and submitting SBE/DBE Form No. 7, the Consultant shall enter its subconsultant payment information into the B2GNow system. Subconsultants are then required to acknowledge payment from the Consultant online using the B2GNow system. B2GNow system training will be made available to the Consultant and its subconsultants.**

Consultant may withhold retention from subconsultants if City withholds retention from Consultant. Should retention be withheld from Consultant, within 30 days of City's payment of retention to Consultant for satisfactory completion of all work required of a subconsultant, Contractor shall release any retention withheld to the subconsultant. Satisfactory completion shall mean when all the tasks called for in the subcontract with subconsultant have been accomplished and documented as required by City.

If the Consultant does not pay its subconsultant as required under the above paragraph, it shall pay interest to the subconsultant at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

## **IV. MONITORING AND COMPLIANCE**

### **A. SBE and DBE Records; Reporting Requirements**

The Contractor shall maintain records of all SBE and DBE participation in the performance of the contract including subcontracts entered into with certified SBEs and DBEs and all materials purchased from certified SBEs and DBEs.

The Contractor shall submit SBE and DBE participation reports to SFMTA on a monthly basis, or as otherwise directed by the CCO. The reports shall identify the name and address of each SBE and DBE performing work on the project, and show the total dollar amount requested for payment and the total dollar amount actually paid to each SBE and DBE. Within thirty (30) days of completion of the contract, or as otherwise directed by the CCO, the Contractor shall submit a final summary SBE/DBE report to the CCO.

### **B. Noncompliance; Administrative Remedies**

SFMTA will implement appropriate mechanisms to ensure that its prime contractors and subcontractors comply with SBE/DBE Program regulatory requirements. SFMTA will apply legal and contractual remedies available under federal, state and local law.

SFMTA will also include a monitoring and enforcement mechanism to verify that the work committed to SBEs and DBEs at contract award is actually performed by the SBEs and DBEs. This mechanism will provide for a running tally of actual SBE and DBE attainments and include a provision ensuring that SBE and DBE participation is credited toward overall or contract goals only when payments are actually made to SBE and DBE firms.