

THIS PRINT COVERS CALENDAR ITEM NO.: 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets – Transportation Engineering

BRIEF DESCRIPTION:

Approving various routine traffic and parking modifications.

SUMMARY:

- Under Proposition A, the SFMTA Board of Directors has authority to adopt parking and traffic regulations changes.
- Taxis are not exempt from any of these regulations.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO _____ Tom Folks

ASSIGNED SFMTAB CALENDAR DATE: October 19, 2010

PAGE 2.

PURPOSE

To approve various routine traffic and parking modifications.

Benefit to the SFMTA 2008 – 2012 Strategic Plan:

GOAL

- Goal 1 - Customer Focus: To provide safe, accessible, reliable, clean and environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy
- Objective 1.1 - Improve safety and security across all modes of transportation
- Goal 2 - System Performance: To get customers where they want to go, when they want to be there
- Objective 2.4 - Reduce congestion through major corridors
- Objective 2.5 - Manage parking supply to align with SFMTA and community goals

ITEMS:

- A. ESTABLISH – TOW-AWAY NO STOPPING ANYTIME – 17th Street, south side, from 35 feet west of Corbin Place to 35 feet east of Corbin Place (to allow for the construction of a median island). **PH 8/13/10 Requested by SFMTA.**
- B. ESTABLISH – LEFT LANE MUST TURN LEFT – Brannan Street, westbound, at 7th Street. **PH 8/13/10 Requested by SFMTA.**
- C. ESTABLISH – TOW-AWAY NO STOPPING ANYTIME – Brannan Street, north side, from 7th Street to 46 feet easterly (replaces existing 14-foot red zone). **PH 8/13/10 Requested by SFMTA.**
- D. ESTABLISH – COMMERCIAL VEHICLE LOADING 30 MINUTES - 7AM to 6PM, MONDAY TO FRIDAY – Brannan Street, north side, from 46 to 86 feet east of 7th Street (40 foot zone). **PH 8/13/10 Requested by SFMTA.**
- E. REVOKE – COMMERCIAL VEHICLE LOADING 30 MINUTES - 7AM to 6PM, MONDAY TO FRIDAY – Brannan Street, north side, from 14 to 53 feet east of 7th Street. **PH 8/13/10 Requested by SFMTA.**
- F. ESTABLISH – PARALLEL PARKING – Geary Boulevard, south side, between 14th and 15th Avenues (replaces angle parking). **PH 8/13/10 Requested by SFMTA.**
- G. ESTABLISH – TOW-AWAY NO STOPPING ANYTIME – Villa Terrace, both sides, between Twin Peaks Boulevard and Pemberton Place. **PH 8/13/10 Requested by Residents.**
- H. RESCIND – RESIDENTIAL PERMIT PARKING AREA S AND Z, 8 AM TO 9 PM, MONDAY THROUGH FRIDAY – 100 block of Vicksburg Street, between 23rd and Elizabeth Streets (the street would be designated as a buffer zone street, allowing people with S and Z permits to park on the street, but residents would be only eligible to purchase Area S permits). **PH 8/13/10 Requested by Residents.**
- I. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA S AND Z, 8 AM TO 6 PM, MONDAY THROUGH FRIDAY – 100 block of Vicksburg Street, between 23rd and Elizabeth Streets (the street would be designated as a buffer zone street, allowing people with S and Z permits to park on the street, but residents would be only eligible to purchase Area S permits). **PH 8/13/10 Requested by Residents.**

- J. RESCIND – NO STOPPING EXCEPT TRUCK LOADING 30-MINUTE LIMIT, 8AM – 8PM, MONDAY TO SATURDAY, ESTABLISH – METERED GENERAL PARKING 1-HOUR LIMIT, 9AM-6PM, MONDAY TO SATURDAY – 16TH Street, north side, from 29 feet to 67 feet west of Noe Street. **PH 8/13/10 Requested by SFMTA.**
- K. ESTABLISH – NO STOPPING EXCEPT TRUCK LOADING 30-MINUTE LIMIT, 8AM – 8PM, MONDAY TO SATURDAY – 16TH Street, north side, from 7 feet to 29 feet west of Noe Street. **PH 8/13/10 Requested by SFMTA.**
- L. ESTABLISH – TOW-AWAY, NO STOPPING ANYTIME – Market Street, north side, from Noe Street to 108 feet east (spaces 2258, 2260, 2262, and 2264). **PH 8/13/10 Requested by SFMTA.**
- M. ESTABLISH – 3 METERED MOTORCYCLE PARKING SPACES – Market Street, north side, from 108 feet to 130 feet east of Noe Street (space 2256). **PH 8/13/10 Requested by SFMTA.**
- N. ESTABLISH – YELLOW METERED ZONE, 7AM – 6PM, MONDAY TO FRIDAY – Market Street, north side, from 152 feet to 174 feet east of Noe Street (space 2252). **PH 8/13/10 Requested by SFMTA.**
- O. ESTABLISH – BICYCLE LANE – Market Street, westbound, from Noe Street to 240 feet east. **PH 8/13/10 Requested by SFMTA.**
- P. ESTABLISH – TOW-AWAY, NO STOPPING ANYTIME – Market Street, south side, from 97 feet to 137 feet west of Noe Street (spaces 2307 and 2309). **PH 8/13/10 Requested by SFMTA.**
- Q. ESTABLISH – BICYCLE LANE – Market Street, eastbound, from Noe Street to 220 feet west. **PH 8/13/10 Requested by SFMTA.**
- R. ESTABLISH – BICYCLE LANE – Market Street, westbound, from Sanchez Street to 220 feet east. **PH 8/13/10 Requested by SFMTA.**
- S. ESTABLISH – TOW-AWAY, NO STOPPING ANYTIME – Market Street, south side, from 50 feet to 93 feet west of Sanchez Street (spaces 2213 and 2215). **PH 8/13/10 Requested by SFMTA.**
- T. ESTABLISH – 5 METERED MOTORCYCLE PARKING SPACES – Market Street, south side, from 93 feet to 116 feet west of Sanchez Street (space 2217). **PH 8/13/10 Requested by SFMTA.**
- U. ESTABLISH – BICYCLE LANE – Market Street, eastbound, from Sanchez Street to 220 feet west. **PH 8/13/10 Requested by SFMTA.**
- V. ESTABLISH – TOW-AWAY, NO STOPPING ANYTIME – Market Street, south side, from 51 feet to 95 feet west of Dolores Street (spaces 2041 and 2043). **PH 8/13/10 Requested by SFMTA.**
- W. ESTABLISH – BICYCLE LANE – Market Street, eastbound, from Dolores Street to 150 feet west. **PH 8/13/10 Requested by SFMTA.**
- X. ESTABLISH – TOW-AWAY, NO STOPPING ANYTIME – Market Street, north side, from 50 feet east to 72 feet east of Duboce Avenue (space #1942). **PH 8/13/10 Requested by SFMTA.**
- Y. ESTABLISH – BICYCLE LANE – Market Street, westbound, from Duboce Avenue to 185 feet east. **PH 8/13/10 Requested by SFMTA.**
- Z. INSTALL – SIDEWALK NARROWING – Market Street, north side, from Duboce Avenue to 35 feet east (narrows the sidewalk by 2’ to a width of 20’). **PH 8/13/10 Requested by SFMTA.**
- AA. INSTALL – SIDEWALK WIDENING – Market Street, north side, from 35 feet to 110 feet east of Duboce Avenue (widens the sidewalk by 5’ to a width of 20’). **PH 8/13/10 Requested by SFMTA.**

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- BB. ESTABLISH – TOW-AWAY, NO STOPPING ANYTIME – Market Street, north side, from 30 feet east to 52 feet east of Laguna Street (space #1836G). **PH 8/13/10 Requested by SFMTA.**
- CC. ESTABLISH – METERED GREEN ZONE 30-MINUTE LIMIT, 9AM – 6PM, MONDAY TO SATURDAY – Market Street, north side, from 115 feet east to 137 feet east of Laguna Street (space #1828). **PH 8/13/10 Requested by SFMTA.**
- DD. ESTABLISH – BICYCLE LANE – Market Street, westbound, from Laguna Street to 190 feet east. **PH 8/13/10 Requested by SFMTA.**
- EE. ESTABLISH – RED ZONE, TOW-AWAY NO STOPPING EXCEPT MARKED POLICE VEHICLES – 464 – 6th Avenue, east side, from 185 feet to 270 feet north of Anza Street (85-foot zone). **PH 8/27/10 Requested by SFPD.**
- FF. ESTABLISH – BLUE ZONE – “399” Main Street, east side, at parking meter #355 (20-foot zone). **PH 8/27/10 Requested by SFMTA.**
- GG. REVOKE – BLUE ZONE – 24TH Street, south side, from Noe Street to 19 feet easterly (to be replaced by general metered parking). **PH 8/27/10 Requested by SFMTA.**
- HH. ESTABLISH – BLUE ZONE – Noe Street, east side, from 2 to 22 feet north of 24th Street (20-foot zone). **PH 8/27/10 Requested by SFMTA.**
- II. REMOVE – BUS ZONE – Cesar Chavez Street, north side, from Harrison Street to 75-feet westerly; and Cesar Chavez Street, north side, from Alabama Street to 80-feet easterly. **PH 9/3/10 Requested by SFMTA.**
- JJ. ESTABLISH – BUS ZONE – Cesar Chavez Street, north side, from Harrison Street to 100-feet easterly. **PH 9/3/10 Requested by SFMTA.**
- KK. REMOVE – BUS ZONE – Sutter Street, north side, from Fillmore Street to 135 feet easterly (135-foot bus zone). **PH 9/3/10 Requested by SFMTA.**
- LL. ESTABLISH – BUS ZONE – Sutter Street, north side, from Fillmore Street to 85 feet westerly (85-foot bus zone). **PH 9/3/10 Requested by SFMTA.**
- MM. REMOVE – BUS ZONE – Fillmore Street, east side, from Sutter Street to 86 feet southerly (86-foot bus zone). **PH 9/3/10 Requested by SFMTA.**
- NN. ESTABLISH – BUS ZONE – Fillmore Street, east side, from Sutter Street to 122 feet northerly (122-foot bus zone). **PH 9/3/10 Requested by SFMTA.**
- OO. ESTABLISH – 1-HOUR PARKING, 7AM-6PM, EXCEPT SUNDAY – Missouri Street, west side, from 97 feet south of terminus to 137 feet southerly (portion north of Cesar Chavez Street). **PH 9/3/10 Requested by Resident.**
- PP. ESTABLISH – STOP SIGNS – Stopping Stanford Heights Avenue at Los Palomos Drive, making this intersection an all-way STOP; Stopping both Justin Drive and Murray Street, making this uncontrolled intersection all-way STOP; and Stopping Benton Avenue at Justin Drive, making this uncontrolled intersection a 2-way STOP. **PH 9/3/10 Requested by Residents.**
- QQ. ESTABLISH – UNMETERED MOTORCYCLE PARKING – Montgomery Street, east side, from 10 to 17 feet north of Alta Street (replaces one parking space; in conjunction with sidewalk bulbs to be constructed by the Department of Public Works). **PH 9/3/10 Requested by DPW.**
- RR. ESTABLISH – METERED TOUR BUS PARKING ONLY, 2-HOUR TIME LIMIT, 7AM-7PM EVERYDAY – North Point Street, south side, from 55 feet to 90 feet west of Kearny Street. **PH 9/3/10 Requested by Merchants.**

- SS. ESTABLISH – CROSSWALK – Crossing Ocean Avenue, east side, at I-280 On-Ramp. **PH 9/3/10 Requested by SFMTA.**
- TT. ESTABLISH – NEW TRAFFIC SIGNAL – Geneva Avenue and Howth Street. **PH 9/3/10 Requested by SFMTA.**
- UU. ESTABLISH – ONE WAY STREET – Colton Street, westbound, from Brady to Gough Streets. **PH 7/2/10 Requested by Residents.**
- VV. ESTABLISH – PERMIT PARKING ONLY FOR THE SUPERIOR COURT – Elm Street (100 Block), north side, between 10 to 52 west of Polk Street (42-foot zone). **PH 9/17/10 Requested by San Francisco Superior Court.**
- WW. ESTABLISH – 45-DEGREE ANGLE PARKING – Castro Street, east side, from 79 to 185 feet south of 24th Street (106-foot zone). **PH 9/17/10 Requested by Merchants.**
- XX. ESTABLISH – STOP SIGNS – Stopping Shrader Street at Alma Street, making this 2-way STOP an all-way STOP. **PH 9/17/10 Requested by SFMTA.**
- YY. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA Z, 2-HOUR LIMIT, 8 AM TO 6 PM, MONDAY THROUGH FRIDAY – Chattanooga Street (100 Block), both sides, between 22nd and 23rd Streets. **PH 9/17/10 Requested by Residents.**
- ZZ. ESTABLISH – TOW-AWAY, NO STOPPING ANYTIME – Quincy Street, both sides, from Pine Street to its southerly terminus. **PH 9/17/10 Requested by Business.**
- AAA. ESTABLISH – RIGHT TURN ONLY – EXCEPT BICYCLES – Grove Street, eastbound and westbound at Divisadero Street (to be removed when the traffic signal is completed). **PH 9/17/10 Requested by Resident.**
- BBB. ESTABLISH – TOW-AWAY, NO STOPPING, 7 AM TO 9 AM, MONDAY THROUGH FRIDAY – Mariposa Street, south side, between Indiana and Tennessee Streets. **PH 9/17/10 Requested by Citizen.**
- CCC. ESTABLISH – COMPACT STALL – 15th Avenue and Irving Street, south side, from 10 to 25 feet west of 15th Avenue. **PH 9/17/10 Requested by SFMTA.**
- DDD. ESTABLISH – PARKING METERS (NO TIME LIMIT, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY) – Townsend Street, both sides, between 5th and 7th Streets; Bluxome Street, south side, from 5th Street to 275 feet east of 6th Street; 6th Street, west side, from Townsend to Bluxome Streets; and 7th Street, east side, from Townsend to King Streets. **PH 10/1/10 Requested by SFMTA.**
- EEE. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA Y, 2-HOUR LIMIT, 8 AM TO 10 PM, DAILY – 6th Street, east side, from Townsend to Bluxome Streets. **PH 10/1/10 Requested by SFMTA.**
- FFF. ESTABLISH – TOWAWAY, NO STOPPING ANYTIME – Ocean Avenue, north side, from I 280 N on-ramp to I 280 S off-ramp. **PH 05/19/09 Requested by SFMTA.**

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency has received a request, or identified a need for traffic modifications as follows:

- A. ESTABLISH – TOW-AWAY NO STOPPING ANYTIME – 17th Street, south side, from 35 feet west of Corbin Place to 35 feet east of Corbin Place (to allow for the construction of a median island).
- B. ESTABLISH – LEFT LANE MUST TURN LEFT – Brannan Street, westbound, at 7th Street.
- C. ESTABLISH – TOW-AWAY NO STOPPING ANYTIME – Brannan Street, north side, from 7th Street to 46 feet easterly (replaces existing 14-foot red zone).
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WHEREAS, The public has been notified about the proposed modifications and has been given the opportunity to comment on those modifications through the public hearing process; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors, upon recommendation of the Executive Director/CEO and the Director of Transportation Engineering, does hereby approve the changes.

I hereby certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of _____.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**SAN FRANCISCO
PARKING AUTHORITY COMMISSION**

DIVISION: Sustainable Streets

BRIEF DESCRIPTION:

Supporting the formation of a new Civic Center Community Benefit District (CBD) and authorizing the Executive Director/CEO to submit a ballot in favor of the formation of the CBD.

SUMMARY:

- The Civic Center area attracts employees and visitors to government agencies, the performing arts institutions and numerous private businesses as well as a substantial number of tourists.
- Over the last year, the community has explored the formation of a CBD to raise adequate funds for implementing specific improvements and adding services, thereby enhancing the quality of life for the neighborhood residents, businesses and visitors.
- The proposed CBD would levy special assessments on the properties within the CBD boundaries. The CBD would operate effective July 1, 2011 and continue for 10 years.
- The Performing Arts Garage is located within the proposed CBD boundaries. The initial proposed annual assessment for this garage is \$9,001.49. The Civic Center Garage is also located within the proposed CBD boundaries. The proposed combined annual assessment for this garage and for the Civic Center Plaza is \$32,154.22. Since the Civic Center Garage is owned by the City's Recreation and Park Department, the Board of Supervisors will take the necessary actions on behalf of the garage.
- The area in the vicinity of the two garages would benefit from enhanced sidewalk cleaning, graffiti removal, security and street beautification efforts funded by the assessments.
- Staff supports the formation of a new CBD.

ENCLOSURES:

1. SFMTAB Resolution
2. Civic Center CBD Map
3. Table 1 - Proposed Services by Zone

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO _____ Amit M. Kothari _____

ASSIGNED SFPAC CALENDAR DATE: _____

PURPOSE

This report requests that the San Francisco Parking Authority Commission (PAC) adopt the attached resolution, supporting formation of a new Civic Center Community Benefit District (CBD) and authorizing the Executive Director/CEO to submit a ballot in favor of establishing the CBD.

GOAL

This action is consistent with the SFMTA 2008-2012 Strategic Plan.

- Goal 2: System Performance – To get customers where they want to go, when they want to be there
Objective 2.5: Manage parking supply to align with SFMTA and community goals

- Goal 3: External Affairs/Community Relations – To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry
Objective 3.1: Improve economic vitality by growing relationships with businesses, community, and stakeholder groups

- Goal 4: Financial Capacity – To ensure financial stability and effective resource utilization
Objective 4.2: Ensure efficient and effective use of resources

DESCRIPTION

Under state and City laws, property owners may form property and business improvement districts whereby property owners agree to pay assessments to fund specific programs and projects that benefit their communities. The Property and Business Improvement District Law of 1994 (Sections 36600 et seq. of the California streets & Highways Code), and the City's Business Improvement Districts Procedural Code (Sections 1510 et seq. of the Business & Tax Regulations Code) establish the requirements and procedures for the formation and administration of property and business improvement districts. In San Francisco, many of the districts formed under these laws are referred to as Community Benefit Districts (CBDs). Currently, there are several CBDs within the City and County of San Francisco.

For over a year, a 25-member Steering Committee, the Mayor's Office of Workforce and Economic Development and MJM Management Group have evaluated the challenges faced by the community and identified a variety of solutions to advance the quality of life for its residents and visitors and enhance the economic vibrancy for businesses. Since the community's needs exceed the services provided by limited government resources, the Steering Committee has put together a comprehensive plan that proposes to address what the community wants through the formation of a CBD. The preliminary CBD Management Plan, released in September 2010, outlines the following:

District Boundaries, Benefit Zones and Service Plan

The proposed district includes approximately 650 parcels within 35 full or partial blocks and stretches from Market to Turk and from Gough to Hyde streets (map attached).

Over the last year, the Steering Committee conducted extensive outreach to the property owners through community meetings, one-on-one meetings and mail surveys, and identified the following priorities for the proposed CBD:

1. Sidewalk Cleaning and Maintenance
2. Streetscape and Beautification
3. Public Safety
4. Public Space and Sidewalk Activation
5. Advocacy Related to Civic Center Plaza Events

Since the needs of a particular block may differ from those of other blocks or the entire district, the proposed CBD is divided into three zones. This will allow for implementing a service plan that is more specific and beneficial to each zone, thereby providing for the most efficient use of the assessment dollars. Details of the proposed services and improvements for each zone are shown in Table 1 - Proposed Services by Zone (attached).

Budget

Based upon the needs of the community, a first year budget of \$743,970 has been identified in the Preliminary Plan. The breakdown of proposed expenses is as follows:

Service	Proposed Expense
Executive Director / Administration	\$160,130
Safety Program	381,000
Activation of Public Places (Zone 2 only)	25,000
Cleaning (Zone 3 only)	109,000
On-call Graffiti Removal	36,400
Beautification	25,000
Special Projects / In-kind Services	7,440
Total	\$ 743,970

The annual budget for subsequent years will be prepared by the Civic Center CBD and submitted to the Board of Supervisors. Of the total annual budget, 99 percent of the revenues will be generated from the special benefit assessments (based on 50 percent building area / 50 percent linear frontage). The remaining one percent revenue will be generated from other sources such as grants, donations and in-kind contributions.

Property Assessments

The Civic Center CBD Steering Committee developed an assessment methodology that is fair and equitable to all parcels within the proposed CBD. Since all parcels within the district will benefit from the formation of the CBD, an appropriate assessment has been proposed for each parcel. The annual assessment for each parcel is based on one or more of the following:

- Linear footage of the lot abutting the public right of way
- Gross building area
- Location in a particular benefit zone, and
- Use

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The assessments for future years (years two through 10) may be adjusted for inflation based upon the San Francisco-Oakland-San Jose Consumer Price Index, not to exceed three percent annually. Unless extended by the property owners, the CBD will terminate after 10 years.

District Management

To effectively govern the newly formed CBD, a 501(c)(3) non-profit corporation, named Civic Center Community Benefit District, Inc. will be formed. The Corporation's Board of Directors will include small and large property owners, businesses owners, residents and representatives of government agencies in the area. In compliance with Section 1511(f) of the San Francisco Business Tax and Regulations Code, at least 20 percent of the Board will consist of commercial tenants or business owners that do not own commercial property within the District.

Schedule

Through a petition process begun in September 2010, the community is attempting to document the required support from property owners in the Civic Center area to initiate the CBD formation process. Assuming that sufficient support is received from property owners, the anticipated schedule for the remainder of the process is as follows:

- October 26, 2010 - Hearing before Board of Supervisors on resolution of intent to form the CBD and authorization to mail the ballots to all affected property owners.
- December 14, 2010 - Ballots due. Public hearing before Board of Supervisors and, unless a majority of the weighted ballots cast are opposed to formation, Board of Supervisors decision on CBD formation.
- July 1, 2011 - Formation of the CBD.
- December 2011 - Collection of First Year's Assessment.
- January 2012 - Assessments transferred to CBD from the City. Services initiated.

In general, the staff encourages neighborhood associations and community groups to work together with City staff to identify community needs, secure necessary funds and jointly develop an implementation plan. Staff believes that the proposed CBD initiative, including the planned services and administration, will benefit the community at large, including the two public parking facilities operated by the SFMTA. The proposed assessments include \$9,001.49 for the Performing Arts Garage and \$32,154.22 for the Civic Center Plaza and Civic Center Garage. Under Article XIID (4) of the California Constitution, government property in CBDs must be assessed unless the property receives no special benefit from the improvements and services funded by the assessments.

The enhanced maintenance of sidewalks, additional security and streetscape improvements in the proximity of the two garages will benefit thousands of garage patrons every day. Due to significant benefits in return for an annual assessment of approximately \$9,000 for the Performing Arts Garage, staff recommends supporting the formation of the CBD. Since the Civic Center Plaza and the Civic Center Garage are owned by the Recreation and Park Department, the Board of Supervisors will take the necessary actions on behalf of the garage.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

Not supporting the formation of the proposed CBD would require increased resources from various City departments including the SFMTA in order to provide the proposed services. Therefore, the formation of the CBD, which will levy an annual assessment to all properties benefiting from the improvements, is recommended.

FUNDING IMPACT

Approval of this resolution will have no fiscal impact on the approved FY2010-2011 SFMTA Operating Budget. Formation of this CBD will result in an annual assessment of approximately \$9,000 beginning FY2011-2012, which is approximately one percent net income for the garage. Adequate funds to support this assessment will be included in the Performing Arts Garage's FY2011-2012 Operating Budget. The proposed assessment for the Civic Center Plaza and Civic Center Garage will have no fiscal impact on the SFMTA Operating Budget.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

At its October 26, 2010 meeting, the Board of Supervisors will receive the results of the petition process and, if there is sufficient support from property owners, may pass a resolution of intent to proceed with formation of the district, and authorize the mailing of ballots to the affected property owners within the proposed CBD. If a majority of the weighted ballots cast by property owners do not oppose formation of the CBD, final action on formation of the CBD by the Board of Supervisors is anticipated in December, 2010.

RECOMMENDATION

Staff recommends that the PAC adopt the attached resolution, supporting formation of a new Civic Center CBD and authorizing the Executive Director/CEO to submit a ballot in favor of establishing the CBD.

SAN FRANCISCO
PARKING AUTHORITY COMMISSION

RESOLUTION No. _____

WHEREAS, Sections 36600 et seq. of the California streets and Highway Code, and Article 15 of the San Francisco Business and Tax Regulations Code establish the requirements and process for the formation and administration of property and business improvement districts, including Community Benefit Districts (CBDs); and,

WHEREAS, Due to limited government resources, there is support in the Civic Center neighborhood for exploring new ways to fund cleaning, greening, beautifying, marketing, promoting and maintaining a vibrant and inviting community; and,

WHEREAS, The Civic Center Steering Committee, consisting of a broad range of members from various government and private entities in the Civic Center area proposes to form a CBD for the area bounded by Market, Hyde, Turk and Gough streets; and,

WHEREAS, The Steering Committee has developed a CBD Management Plan that identifies community challenges and priorities, proposed projects and services, annual assessments for each parcel, a budget, and a plan for administration of the CBD; and,

WHEREAS, Formation of the CBD will benefit hundreds of property owners and residents by improving community livability and strengthening economic vibrancy in the Civic Center area; and,

WHEREAS, The Performing Arts Garage owned by the Parking Authority is located within the proposed CBD boundaries and would be subject to annual assessments, and the total assessment for the first year of operation (Fiscal Year 2011-2012) would be \$9,001.49; and,

WHEREAS, Formation of the CBD will result in cleaner sidewalks, enhanced safety, improved streetscapes and additional marketing that will benefit the garage as well as the community; now, therefore, be it

RESOLVED, That the Parking Authority Commission supports the formation of the Civic Center Community Benefit District, and authorizes the Executive Director/CEO to submit a ballot in favor of the formation of the CBD.

I hereby certify that the foregoing resolution was adopted by the San Francisco Parking Authority Commission at its meeting of _____.

Secretary to the Commission
San Francisco Parking Authority Commission

Civic Center Community Benefit District (CBD) Map



Table 1 – Proposed Services by Zone*

**Services will be refined by the CBD management corporation board based on evaluation of need and effectiveness and availability of additional resources.*

Services	Zone 1	Zone 2	Zone 3
Ambassador Patrols – Mon-Fri	7:30am-7:30pm 4 patrols throughout all zones Shift 1: 7:30am-4pm Shift 2: 11am-7:30pm	7:30am-7:30pm 4 patrols throughout all Zones Shift 1: 7:30am-4pm Shift 2: 11am-7:30pm	7:30am-7:3pm 4 patrols throughout all zones Shift 1: 7:30am-4pm Shift 2: 11am-7:30pm
Evening Ambassador Patrols	---	6:30pm-11:30pm 4 patrols for 200 Evenings/year or equivalent Based on more Evenings/year	---
Advocacy	Provided by Executive Director	Provided by Executive Director	Provided by Executive Director
Beautification	Capital improvements such as wayfinding signage, sidewalk lighting and other streetscape improvements throughout district. Flower baskets/other greening throughout district using both assessment and non-assessment funds.	Capital improvements such as wayfinding signage, sidewalk lighting and other streetscape improvements throughout district. Flower baskets/other greening throughout district using both assessment and non-assessment funds.	Capital improvements such as wayfinding signage, sidewalk lighting and other streetscape improvements throughout district. Flower baskets/other greening throughout district using both assessment and non-assessment funds.
Public Space and Sidewalk Activation	---	Provided in Civic Center Plaza, Fulton Mall and throughout Zone 2 on sidewalks	---
Daily Cleaning and Maintenance	On call maintenance services for graffiti removal, washing down sidewalks, etc. for 20 hours/week.	On call maintenance services for graffiti removal, washing down sidewalks, etc. for 20 hours/week.	1 Maintenance worker to sweep sidewalks and remove graffiti. Shift: 7:30am-4pm daily and on call maintenance services for graffiti removal, washing down sidewalks, etc. for 20 hours/week.

THIS PRINT COVERS CALENDAR ITEM NO.: 10.5

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: CAPITAL PROGRAMS AND CONSTRUCTION

BRIEF DESCRIPTION:

Requesting authorization to advertise a Request for Proposals for Contract No. CS-163, Brokerage Services for an Owner Controlled Insurance Program for the Central Subway Project, to evaluate proposals and select a Broker, and to negotiate a contract with the selected Broker in establishing an Owner Controlled Insurance Program for the Central Subway Project.

SUMMARY:

- The selected Broker will provide necessary services to specify, market and assist in the implementation of an Owner Controlled Insurance Program and provide support services for and during the construction of the Central Subway Project.
- The estimated cost for all services requested in the RFP is \$25 million.
- Funding for broker services and insurance coverage under this Contract will be furnished from federal, state and local sources.
- The Contract Compliance Office has established a Small Business Enterprises (SBE) participation goal of 15 percent for this Contract.

ENCLOSURES:

1. SFMTA Board of Directors Resolution
2. Project Budget & Financial Plan
3. Request for Proposal, w/o appendices

APPROVALS:

DATE:

DIRECTOR OF DIVISION

PREPARING ITEM:

FINANCE (IF APPLICABLE):

EXECUTIVE DIRECTOR/CEO:

SECRETARY:

ADOPTED RESOLUTION TO BE

RETURNED TO:

Jessie Katz

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

SFMTA staff requests that SFMTA Board of Directors authorize the Executive Director/CEO to advertise a Request for Proposals (RFP) for Contract No. CS-163, Brokerage Services for an Owner Controlled Insurance Program for the Central Subway Project, to evaluate proposals and select a broker, and to negotiate a contract with the selected broker to establish an Owner Controlled Insurance Program for the Central Subway Project.

GOAL

The Central Subway Project, supported by Contract No. CS-163, is consistent with the SFMTA Strategic Plan in the following goals and objectives:

Goal 4 – Financial Capacity: To ensure financial stability and effective resource utilization

Objective 4.2 Ensure efficient and effective use of resources

DESCRIPTION

Background:

The SFMTA's Third Street Light Rail Transit (LRT) Project is the most significant capital investment in generations for the seventh largest transit system in the nation. Phase 1 of the 6.9-mile two-phase project began revenue service in April 2007, restoring light rail service to the heavily transit-dependent Third Street corridor in eastern San Francisco for the first time in 50 years.

The Central Subway Project, Phase 2 of the Third Street Light Rail Transit Project, will provide rail service to the Financial District and Chinatown, the most densely developed areas of San Francisco. The new light rail line will serve regional destinations, such as Union Square, Moscone Convention Center, Yerba Buena, and AT&T Park, as well as connect directly to BART and Caltrain, the Bay Area's two largest regional commuter rail services.

The Central Subway Project will issue seven construction contracts with a total estimated construction cost of approximately \$725 million. The construction will start in 2010 and will continue for 8 years.

The Federal Transit Administration (FTA) approved the Project schedule and budget, and have provided for additional schedule and budget contingency.

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Current Status:

The Central Subway design consists of a short portion of in-street surface light rail in the southern portion of the system before transitioning into subway operation for most of the alignment. Twin bore tunnels are proposed for the subway with three subway stations serving the Moscone/Yerba Buena, Union Square/Market Street, and Chinatown areas.

The Union Square/Market Street Station will interconnect with the existing BART/Muni Powell Street Station. A deep tunneling approach using tunnel boring machines (TBMs) is proposed to reduce surface disruption during construction, to create a more direct alignment, and to shorten the construction period. The Central Subway tunnels will pass under the existing BART/Muni Market Street subway tunnels with the rail over 100 feet below the ground surface. Most of the alignment will be located under existing street right-of-way with limited required underground easements. The stations will have center-platforms with passenger end-loading and are designed to accommodate high-floor two-car trains. Whenever feasible, off-street properties have been identified for the primary station access with transit oriented development opportunities at the Moscone/Yerba Buena and Chinatown Stations.

Construction methods consist of TBM construction of the running tunnels, which will pass through differing geological formations, including bay mud, alluvium, Colma formation, and Franciscan bedrock. Subway station construction methods will vary. The Moscone/Yerba Buena Station will be constructed using traditional top-down cut-and-cover construction. The Union Square/Market Street Station is located in a very constricted area and will most likely be constructed using a combination of cut and cover and mined sequential excavation methods. Chinatown Station, also in a very constricted area, will be constructed using mined sequential excavation.

The Project has completed the preliminary engineering work. Currently, one construction contract has been awarded to relocate utilities in the Moscone Station and the portal locations. One more construction contract to relocate utilities in the Union Square/Market Street Station location is currently being advertised for bids. Five additional construction contracts are in the final design phase. The tunnel construction is scheduled to begin in 2011. Project construction is expected to be completed in 2018.

Purpose and Scope of Request for Proposals:

The anticipated complexity of the Central Subway, including tunneling and cut-and-cover construction, in proximity to sensitive urban structures and facilities, poses significant construction challenges to the City. Five major construction contracts for tunnel, below ground stations and systems represent \$700 million of work along 1.7 mile alignment from Fourth and King Streets to Columbus Street. Given the proximity to urban structures in congested urban areas, the multiple construction contracts involving dozens of contractors, and the substantial construction cost, it is in the best interest of the Agency to implement an Owner Controlled Insurance Program (OCIP) for the major construction activities on the Third Street Light Rail Program, Central Subway Phase 2.

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The Central Subway Project will have major risk exposures during the construction. The hazards may pose significant economic and schedule impacts to the Project. The hazards may include, but are not limited to, the following:

- Worker injuries;
- Unexpected settlement to existing structures;
- Property damage and personal injuries from construction or traffic operations;
- Damages to constructed work;
- Pollution Liability and Cleanup to existing site conditions; and
- Natural hazards (earthquake, earth movement, subsidence, and flood).

An OCIP consolidating workers' compensation and general liability coverages has the potential to provide certain benefits to the Agency when compared to the traditional insurance approach or when prime contractors employ a contractor controlled insurance program. The most important advantages are:

- Greater consistency in liability coverage for all tiers of enrolled contractors;
- Ability to purchase dedicated high-excess-liability limits;
- Elimination of insurance purchasing obstacles for DBE, LBE and SBE; and
- Reduced claims and litigation costs.

The purpose of this RFP is to secure professional brokerage services to design, market and assist in the implementation of an insurance program that will provide the broadest coverage at the most reasonable cost, while adequately protecting the SFMTA and all other participating parties against the risks arising of the Project construction work.

The RFP proposes a contract with a term of eight years for the selected broker to assist the SFMTA in establishing an Owner Controlled Insurance Program and for providing related insurance services during the construction and close-out phase for the Central Subway Project. The estimated cost for insurance coverage and related services requested in the RFP is \$25 million.

On November 30, 2009, the SFMTA Board of Directors adopted Resolution No. 09-191 allowing the Executive Director/CEO or his designee to issue competitive solicitations for contract NOT requiring Board of Supervisors' approval as set forth in Charter Section 9.118. Since this RFP exceeds the contracting amount threshold of Section 9.118 that requires the Board of Supervisors' approval, the SFMTA Board of Directors' approval to advertise is requested.

Communications Policy:

Regarding communications by firms submitting proposals to the SFMTA, RFP Section 1.11 states:

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“It is the policy of the SFMTA that only employees identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from Proposers or potential Proposers seeking to influence the contractor selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the SFMTA Board of Directors finally approves the contractor selection and, if required, by the San Francisco Board of Supervisors.

All firms and sub-proposer(s) responding to this RFP are notified that they may not contact any SFMTA staff member, other than a person with whom contact is expressly authorized by this RFP, for the purpose of influencing the Contractor selection process or the award of the Contract from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA and, if required, by the San Francisco Board of Supervisors. This prohibition does not apply to communications with SFMTA staff members regarding normal City business not regarding or related to this RFP.

All firms and sub-proposer(s) responding to this RFP are notified that any written communications sent to one or more members of the SFMTA Board of Directors concerning a pending contract solicitation shall be distributed by the SFMTA to all members of the SFMTA Board of Directors and the designated staff contact person(s) identified in the RFP.

Except as expressly authorized in the RFP, where any person representing a Proposer or potential Proposer contacts any SFMTA staff for the purpose of influencing the content of the competitive solicitation or the award of the contract between the date when the RFP is issued and the date when the final selection is approved by the SFMTA Board of Directors, and, if required, by the San Francisco Board of Supervisors, the Proposer or potential Proposer shall be disqualified from the selection process. However, a person who represents a Proposer or potential Proposer may contact City elected officials and may contact the Executive Director/CEO of the SFMTA if s/he is unable to reach the designated staff contact person(s) identified in the RFP or wishes to raise concerns about the competitive solicitation.

Additionally, the firms and sub-proposer(s) responding to this RFP shall not provide any gifts, meals, transportation, materials or supplies or any items of value or donations to or on behalf of any SFMTA staff member from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA and if required, by the San Francisco Board of Supervisors.

All lobbyists or any agents representing the interests of proposing prime proposer and sub-proposer(s) shall also be subject to the same prohibitions.

An executed Attestation of Compliance (Appendix 8) certifying compliance with this section of the RFP will be required to be submitted, signed by all firms and named sub-proposer(s) as part of the response to the this RFP. Any proposal that does not include the executed Attestation of Compliance as required by this section will be

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deemed non-responsive and will not be evaluated. Any Proposer who violates the representations made in such Attestation of Compliance, directly or through an agent, lobbyist or sub-proposer will be disqualified from the selection process.”

ALTERNATIVES CONSIDERED

The principal alternatives that Agency staff considered are Traditional Insurance Programs (TIP) and a Contractor Controlled Insurance Program (CCIP). In a TIP, the project principles (contractors and subcontractors) all purchase and provide evidence to the City of their individual property/ casualty, workers’ compensation, and other required insurance coverage. A CCIP is similar to an OCIP, except the prime contractor arranges a controlled insurance program covering all or most construction project participants for some or all project phases. Given the multiple construction contracts and the substantial construction cost, it is in the best interest of SFMTA to establish an OCIP for the Central Subway Project.

FUNDING IMPACT

Funding for this contract is currently not available in full. There are no funding impacts related to issuance of this Request for Proposals. Final contract with the selected broker will not be awarded until such time that full funding is identified as part of the \$1.58 billion FTA New Starts Project which includes this contract. The Project Budget & Financial Plan for the Central Subway Project is set forth in Enclosure 2.

OTHER APROVALS RECEIVED OR STILL REQUIRED

This contract is subject to approval by the Civil Service Commission and the Board of Supervisors.

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

The Contract Compliance Office has established a 15 percent SBE goal for this contract.

RECOMMENDATION

It is recommended that the SFMTA Board of Directors authorize the Executive Director to advertise an RFP in substantially the form as enclosed herewith for Contract No. CS-163, Brokerage Services for an Owner Controlled Insurance Program for the Central Subway Project, to evaluate proposals and select a broker, and to negotiate a contract with the selected broker to assist the City to establish an Owner Controlled Insurance Program for the Central Subway Project.

Upon successful negotiations with the selected Consultant, the Executive Director will present the negotiated contract to the SFMTA Board of Directors for approval and request authorization to present the contract to the Board of Supervisor for final approval.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Final Environmental Impact Statement/Environment Impact Report (Final EIR/EIR) for the two-phase Third Street Light Rail Project (the "Project") was completed in November 1998; and,

WHEREAS, The former Public Transportation Commission approved Resolution No. 99-009 on January 19, 1999, which adopted the environmental findings pursuant to the California Environmental Quality Act (CEQA) for the Project, including mitigation measures as set forth in the Project's Final Environmental Impact Report and Mitigation Monitoring Report; and,

WHEREAS, Design and construction of the 1.7-mile Central Subway ("Central Subway Project") is Phase 2 of the Third Street Light Rail Transit Project; and,

WHEREAS, The anticipated complexity of the Central Subway, including tunneling and cut-and-cover construction, in proximity to sensitive urban structures and facilities in congested urban areas, poses significant construction challenges to the City; and,

WHEREAS, The Central Subway Project estimated construction cost for five major construction contracts for tunnel, below ground stations and systems is approximately \$700 million, with a construction duration of 8 years involving dozens of contractors and subcontractors; and,

WHEREAS, The SFMTA desires to issue a Request for Proposals for brokerage services to establish an Owner Controlled Insurance Program and support services for the Central Subway Project construction; and,

WHEREAS, The funding for work under this Contract is to be furnished from federal, state and local sources; and,

WHEREAS, The Contract Compliance Office has established a 15 percent SBE goal for this contract; and,

WHEREAS, SFMTA staff will seek the approval of this Board prior to the execution of this Contract; and,

WHEREAS, Execution of the contract is contingent upon an approval by the Civil Service Commission and the Board of Supervisors; and,

WHEREAS, Contract No. CS-163 will assist SFMTA in meeting the Strategic Plan Objective No. 4.2 -- to ensure the efficient and effective use of resources; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to advertise a Request for Proposals for Contract No. CS-163, Brokerage Services for an Owner Controlled Insurance Program for the Central Subway Project, to evaluate proposals and select a Broker, and to negotiate a contract with the selected Broker to establish an Owner Controlled Insurance Program for the Central Subway Project.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2
 THIRD STREET LIGHT RAIL PROJECT
 CENTRAL SUBWAY

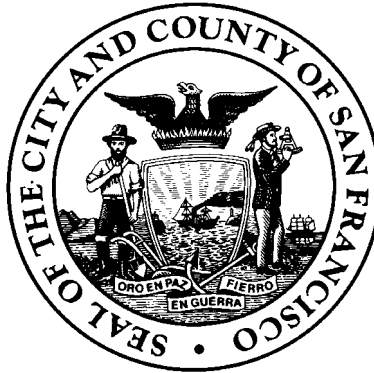
San Francisco Municipal Railway Contract No. CS-163

Cost	(\$Million)
Conceptual and Preliminary Engineering	59.41
Program Management & Construction Management	132.78
Final Design	85.94
Construction Contracts	986.68
Vehicles	26.39
Contingency	160.26
Right-of-Way	34.84
Other Professional Services	92.00
Total Central Subway Cost	\$ 1,578.30

Funding	(\$Millions)
Federal 5309 New Starts	942.20
State RTIP Grant	88.00
CMAQ	6.03
State TCRP Grant	14.00
Proposition 1B-2006 MTC Share	100.00
Proposition 1B-MTA Share	100.00
Proposition Additional 1B-MTA Share	40.00
Proposition K Sales Tax Funds	123.98
High Speed Rail Funds	27.00
Option Local and Regional Sources	137.09
Total Central Subway Funding	\$ 1,578.30

SFMTA

Municipal Transportation Agency



REQUEST FOR PROPOSALS

**Brokerage Services for an
Owner Controlled Insurance Program
for the
Central Subway Project**

(THIRD STREET LIGHT RAIL TRANSIT PROJECT PHASE 2)

**RFP No. CS-163
(CCO 10-1147)**

Deadline for Submission: November 16, 2010 at 5:00 p.m.

Official Advertisement

The San Francisco Municipal Transportation Agency (SFMTA) seeks to obtain Brokerage Services for an Owner Controlled Insurance Program for the Central Subway Project, Third Street Light Rail Project Phase 2. The contract ("Contract") for these services will be established initially for a period not to exceed eight years.

The Proposer will provide professional consulting services as specified in the Request for Proposals (RFP), either by direct assignment of Proposer's personnel or through sub-proposers.

Proposers must deliver 15 hard copies and 15 CD copies of their Proposals, together with completed forms as called for in Section III, "Submission Requirements," by **5:00 p.m. on November 16, 2010** at the following address:

**Contract Administration and Quality Management Office
SFMTA Capital Programs and Construction Division
1 South Van Ness Avenue, 3rd Floor
San Francisco, California 94103-1267
Attention: Mr. Mario Gallardo**

Prospective proposers may obtain a copy of the RFP and additional information for this RFP No. CS-163, including the forms to be submitted with the Proposal, at the address given above or by calling Mr. Mario Gallardo at (415) 701-4348.

A pre-proposal conference will be held on **November 1, 2010 at 2:00 p.m.** at 1 South Van Ness Avenue, 3rd Floor, Civic Center Conference Room No. 3074, San Francisco, California, to discuss the RFP and the Small Business Enterprise (SBE)/Non-Discrimination Requirements. Although attendance at the pre-proposal conference is not mandatory, the SFMTA strongly urges all prospective proposers and sub-proposers to attend this conference. For questions regarding the Pre-proposal Conference, contact Mr. Mario Gallardo at (415) 701-4348.

A Selection Committee and the Contract Compliance Office will evaluate each submittal. The final selection of the Proposer for this Contract will be made based on the Proposals' responsiveness to the RFP, SFMTA's evaluation of the Proposals, Proposer's Cost Proposal, oral interviews with short-listed Proposers, and each Proposer's compliance with the SFMTA's SBE/Non-Discrimination requirements.

The selected Proposer shall cooperate with SFMTA in meeting its commitments and objectives with regard to ensuring nondiscrimination in the award and administration of DOT-assisted contracts and shall use its best efforts to ensure that barriers to participation of SBE do not exist.

A fifteen percent (15%) SBE participation goal has been established for this Contract.

Questions concerning the Scope of Services or SBE/Non-Discrimination Requirements should be submitted as per Section VI of the RFP, Requests for Information or Clarification.

The work described in these specifications is to be financed with the assistance of a grant from the Federal Transit Administration, and all work described in these specifications shall be performed in accordance with Federal Transit Administration guidelines and regulations.

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Appendices:

1. SFMTA Form PM3
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5. Protest Procedures for the Bidding and Award of Federally Assisted Third Party Contracts
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7. San Francisco Administrative Code, 12B and 12C Declaration Form
8. Attestation of Compliance
9. Sample List of Available References
10. CS 163 Forms

Glossary of Definitions, Terms, and Abbreviations

DEFINITIONS

Award means authorization by resolution of the SFMTA Board of Directors for its staff to execute the Contract with the selected proposer, approval of the Contract by the San Francisco Board of Supervisors, and execution by signature of the Executive Director/CEO of the SFMTA.

Award Process includes the pre-award, award and post-award phases of a negotiated procurement, a Request for Proposals (RFP), or a sealed bid.

Bid includes the terms “offer” or “proposal” as used in the context of negotiated procurements, responses to an RFP and sealed bids.

Branch Office is a geographically distinct place of business or subsidiary office of a firm that has a key role on the Project team.

City means the City and County of San Francisco, acting through the SFMTA.

Configuration Management System is a system that manages the physical configurations and their supporting processes through documents, records and data. Such a system accommodates changes and perpetually documents how a physical system is configured. It also ensures that documents, records, and data remain concise and valid.

Contract is the agreement between the selected proposer and the City, based on the final negotiated cost, schedule and work intended under this RFP.

Contract Compliance Office (CCO) is the SFMTA office that administers compliance with federal regulations governing the Small Business Enterprise, Equal Employment and Non-Discrimination Programs, as well as the city’s Human Rights Commission’s Local Business Enterprise and Non-Discrimination Programs. The Contract Compliance reference number for this RFP is CCO No. 10-1147.

Contract Manager (CM) refers to the SFMTA Manager responsible for overseeing contractual administration of the Contract, to include review and approval of invoices, review and approval of all contractual actions and Contract interpretation.

Days refers to Monday through Friday, except for holidays observed by the City and County of San Francisco (unless otherwise indicated). The use of the term “days,” “working days” or “business days” in this Request for Proposals shall be synonymous.

Department of Parking and Traffic (DPT) refers to the Department of Parking and Traffic of the SFMTA.

Discipline includes the area of primary technical capabilities of key personnel, as evidenced by academic degrees, professional registration, certification, and/or extensive experience.

Executive Director/CEO refers to the Executive Director/CEO of the SFMTA.

Federal Transit Administration (FTA) is an operating administration of the U.S. Department of Transportation.

Key Personnel are those participants on a project who contribute in a substantive, measurable way to the Project's development. These personnel can be Proposer personnel or City personnel.

Municipal Transportation Agency ("SFMTA" or "Agency") is the agency of the City that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the public transit system in San Francisco. The Agency acts through its Board of Directors.

Post-Award Protest is a complaint by a bidder or proposer when the SFMTA Board of Directors awards a contract, or recommends that the Board of Supervisors award a contract.

Program means the Third Street Light Rail Project, Phase 2, Central Subway, which is also referenced in this RFP as the Project.

Proposal refers to a Proposer's written response/submittal to this RFP.

Proposer is a firm or a joint venture of firms responding to this RFP. The terms "responder," "firm," "proposer," "prime proposer," "consultant," "team" or "organization" in this RFP are synonymous with the term Proposer.

Protest is a complaint by a bidder or Proposer regarding a bid or the award process that arises prior to award and is formally communicated to the SFMTA's Executive Director/CEO, as provided under Appendix 5.

Relevant Projects are those projects in which the Proposer or Key Personnel had a significant role that demonstrates the Proposer's capability to perform the services called for in this RFP.

San Francisco Bay Area refers to the area within the nine Bay Area counties as currently defined by the Association of Bay Area Governments ("ABAG"), which are Alameda County, Contra Costa County, Marin County, Napa County, San Francisco County, San Mateo County, Santa Clara County, Solano County, and Sonoma County.

San Francisco Municipal Railway ("Muni") refers to the San Francisco Municipal Railway of the SFMTA.

Scope of Services are the services, tasks, and deliverables that the Proposer will provide to the SFMTA under the Contract.

Small Business Enterprise or SBE is a for-profit, small business concern with a three (3) year average gross revenue not exceeding Twelve Million Dollars (\$12,000,000) and is

certified under any of the following programs: the State of California's Small Business Program ("State Program"), the City and County of San Francisco's LBE Program ("City Program"), or the California Unified Certification Program ("Federal DBE program").

Sub-proposer refers to any firm under contract to the Prime Proposer for services under this RFP.

TERMS AND ABBREVIATIONS

BART	San Francisco Bay Area Rapid Transit District
Board	Municipal Transportation Agency Board of Directors
CCO	Contract Compliance Office
CCSF	City and County of San Francisco
CER	Conceptual Engineering Report
CFR	Code of Federal Regulations
CPM	Critical Path Method
CTS	Chinatown Station
DBI	Department of Building Inspection
DOT	U.S. Department of Transportation
DPT	Department of Parking and Traffic
DTIS	Department of Telecommunications and Information Services
EEO	Equal Employment Opportunity
EIS / EIR	Environmental Impact Study / Environmental Impact Review
FFGA	Full Funding Grant Agreement
FTA	Federal Transit Administration
GO	General Order
HRC	Human Rights Commission
IOS	Initial Operating Segment of the Third Street Light Rail Project
LPA	Locally Preferred Alternative
LRV	Light Rail Vehicle
MOS	Moscone Station
MTC	Metropolitan Transportation Commission
Modified LPA	Locally Preferred Alternative
Muni	San Francisco Municipal Railway
NOP	Notice of Preparation
NTP	Notice To Proceed
OCIP	Owner Controlled Insurance Program
OCS	Overhead Catenary System
O&M	Operations and Maintenance
OSHA	Occupational Safety & Health Administration
QA / QC	Quality Assurance / Quality Control
RFI	Request For Information
RFP	Request For Proposals
ROD	Record of Decision
ROW	Right-of-Way
SBE	Small Business Enterprise
SEIS/SEIR	Supplemental Environmental Impact Study / Supplemental Environmental Impact Report

SFCTA	San Francisco County Transportation Authority
SFFD	San Francisco Fire Department
SFMTA	San Francisco Municipal Transportation Agency
SFPD	San Francisco Police Department
TJPA	Transbay Joint Powers Authority
UMS	Union Square / Market Street Station



REQUEST FOR PROPOSALS TO PROVIDE
BROKERAGE SERVICES FOR AN OWNER CONTROLLED INSURANCE
PROGRAM
FOR THE
CENTRAL SUBWAY PROJECT (THIRD STREET LIGHT RAIL PROJECT PHASE 2)

NOTICE:

In order to ensure a fair and competitive selection process, SFMTA directs Proposers not to contact staff members, executives of the SFMTA, or individual members of the SFMTA Board of Directors regarding this RFP, except as otherwise stated in this RFP. If proposers disregard this directive, they may be disqualified from participating in the selection process.

ARTICLE 1 - INTRODUCTION

1.1 Summary of OCIP Program and Broker Services

The San Francisco Municipal Transportation Agency (SFMTA) is requesting responsive proposals from responsible insurance brokers to specify insurance requirements, procure the insurance policies, and implement and administer an Owner Controlled Insurance Program (OCIP) for the Central Subway Project – Phase 2 of the Third Street Light Rail Transit Project (the "Project"). The SFMTA plans to enter into a negotiated contract for specified services to compensate on a cost plus fixed fee, fixed fee, and/or rate basis contract with a not-to-exceed maximum cost with one insurance broker (Broker) of \$25,000,000. All insurance will be "zero deductible" to the SFMTA, but deductibles may be required of individual contractors. The SFMTA will compensate the selected Broker directly; the Broker will not be compensated by commissions paid by insurers. The Contract will not exceed a term of 8 years.

The SFMTA has established a Small Business Enterprise participation goal of 15 percent of the value of the Broker's services.

The selected Broker will design, market and implement the broadest insurance program that represents the best value to the SFMTA to protect the SFMTA, Project contractors, and other stakeholders against the risks arising out of the Project construction work. As described in Section 1.6, the SFMTA anticipates that the OCIP will provide third party liability, workers' compensation, and builders risk insurance for all contractors and subcontractors working on five major contracts covering the construction of the subway tunnels, three underground subway stations, and installation of the trackway and control systems for the Project. The total construction cost estimate of those five contracts is approximately \$700,000,000.

The selected Broker will perform services separated into three general tasks areas. As more specifically described in Section 2.1.1, under Task One the selected Broker will recommend coverage specifications and requirements to the Agency, market the Project to underwriters, procure and confirm the coverage provided by the insurance policies. As described in Section 2.1.2, under Task Two the selected Broker will provide on-site safety services, claims management services, conduct risk management and loss control and reduction programs. As provided in Section 2.1.3., under Task Three the selected Broker will provide a builders risk program for the Project, including recommending types of insurance and requirements, procuring insurance, and managing any claims.

1.2 Central Subway Project Description and Background

The SFMTA's Third Street Light Rail Transit (LRT) Project is the most significant capital investment in generations for the seventh largest transit system in the nation. Phase 1 of the 6.9-mile two-phase project began revenue service in April 2007, restoring light rail service to the heavily transit-dependent Third Street corridor of San Francisco for the first time in 50 years.

The Central Subway Project (the "Project"), which is Phase 2 of the Third Street Project and the subject of the OCIP under this RFP, will provide rail service to the Financial District and Chinatown, the most densely developed areas of San Francisco. The new 1.7 mile light rail line will serve regional destinations, such as Union Square, Moscone Convention Center, Yerba Buena, and AT&T Park, as well as connect directly to BART and Caltrain, the Bay Area's two largest regional-commuter rail services.

The primary purpose of the Third Street LRT Project is to accommodate existing and future transit ridership in the corridor with greater reliability, comfort and speed. By 2030, the San Francisco Planning Department projects a 26% percent increase in overall corridor population and a 61% percent increase in corridor employment. These increases are greater than the increases anticipated for the City as a whole. The Central Subway is able to serve both the mobility needs of existing land uses, as well as future development (with 76,650 riders projected for 2030).

The Third Street LRT Project will significantly improve travel times, reducing a current 46-minute bus trip between the southern terminus in Visitacion Valley and the northern terminus in Chinatown by 15 minutes to a more reasonable 31-minute LRT ride. For riders using only the Central Subway portion of the project, travel times will be reduced to less than half of current travel times, from a 20-minute bus ride to a 7-minute subway ride between the Caltrain terminal and Chinatown. The Central Subway will allow transit to bypass the congestion faced by traffic and buses on City streets. The estimated cost of the Central Subway Program is \$1.52 billion.

In August 2002, the SFMTA received FTA approval to begin Preliminary Engineering for Phase 2 - Central Subway. In early 2003, the City approved a contract with the joint venture firm of Parsons Brinckerhoff Quade & Douglas and PGH Wong Engineering (PB/Wong) to provide conceptual/preliminary engineering and environmental services for the Central Subway Project. PB/Wong and City staff completed preliminary engineering for the Central Subway Project and bid documents for utility relocations at Moscone and Union Square / Market Street Stations and progressing tunneling design.

On November 26, 2008 the FTA issued a Record of Decision (ROD) announcing the completion of the environmental process for the Central Subway project. On January 6, 2009, the City approved a contract with the joint venture firm AECOM/EPC Consultants (Central Subway Partnerships) to provide program management and construction management services for the Central Subway Project.

On January 7, 2010 the FTA authorized the project Entry into Final Design. On October 20, 2009, the City approved a contract with the joint venture firm of PB Americas and Telamon Engineering Consultants, Inc. (PB Telamon) for architectural and engineering services for the final design and construction of tunnels and utilities relocation for the Central Subway Project. On March 2, 2010 the City approved a contract with the joint venture firm of PB Americas, Michael Willis Architecture, Inc, and Kwan Hemni Architecture, Inc, (Central Subway Design Group) for architectural and engineering services for the final design and construction of stations for the Central Subway Project. On April 13, 2010 the City approved a contract with the joint venture firm of HNTB Corporation and B&C Transit, Inc. for architectural and engineering services for the final design and construction of trackwork, systems and surface stations for the Central Subway Project.

1.3 Project Goals

Specifically, the SFMTA has seven principal goals for the Project:

1. Travel and Mobility: Improve transit service to, from, and within the Central Subway Corridor, thereby enhancing the mobility of Central Subway Corridor residents, business people and visitors.
2. Transit Service Equity: Bring transit service in the Central Subway Corridor to the level and quality of service available in other sections of the City.

3. Economic Revitalization/Development: Design transportation improvements that support economic revitalization and development initiatives within the South of Market, Downtown and Chinatown Study Areas.
4. Transit-supportive Land Use: Ensure compatibility with City land use plans, policies, and transportation improvements to maximize transit ridership and reduce the number of auto trips.
5. Environmental: Provide transit improvements that enhance and preserve the city's social and physical environment and that minimize potential negative impacts during construction and operation of the line.
6. Financial: Implement cost-effective transit improvements.
7. Community Acceptance and Political Support: Provide a transportation system that reflects the needs and desires of Central Subway Corridor residents and businesses and is compatible with the City's planning and development goals.

1.4 Project Planning/Timeline

The Final Environmental Impact Statement/Environment Impact Report (Final EIS/EIR) for the Third Street Light Rail Transit Project was completed and published in November 1998. The City Planning Commission certified the Final EIS/EIR on December 3, 1998. On January 19, 1999, the Public Transportation Commission adopted the environmental findings for the Project pursuant to the California Environmental Quality Act (CEQA), including mitigation measures as set forth in the Project's Final EIR and Mitigation Monitoring Report. The FTA issued a ROD for the Initial Operating Segment (IOS) of the Project (the Third Street LRT Phase 1 or T-Third) on March 16, 1999, under the National Environmental Policy Act (NEPA). Though no New Starts federal funds were used for the T-Third project phase 1 project, the ROD did permit acquisition of limited right-of-way for the Phase 2 Central Subway that was identified in the 1998 FEIS/FEIR. The ROD deferred approval of Phase 2 until the Central Subway was incorporated into the RTP and Project funding was identified.

The PB/Wong Agreement for Preliminary Engineering included services to prepare as-needed environmental studies for the Project. As a result of a series of studies performed by PB/Wong (see Appendix 9 Available References) and public input, the SFMTA approved the designation of a Fourth/Stockton Street Alignment as the Locally Preferred Alternative on June 7, 2005. This designation allowed the Fourth/Stockton Alignment, rather than the 1998 EIS/EIR Alignment (an alignment along Third Street), to be evaluated as the Modified LPA in the FTA New Starts Program.

PB/Wong initiated preparation of a Supplemental EIS/Supplemental EIR (SEIS/SEIR) in 2005 for the Phase 2 Central Subway refined alternatives, and progressed along concurrently with the continued Preliminary Engineering efforts. Also, a panel of construction experts working with the Project design team undertook a cost reduction analysis to identify ways of reducing the cost of the Project without compromising its

overall purpose and need. In response to public input during the scoping process and recommendations from the cost reduction effort, a new option for the Fourth/Stockton Alignment design was identified. The original Fourth/Stockton Alignment was designated as Alternative 3A and the modified Fourth/Stockton Alignment was designated as Alternative 3, Option B or Alternative 3B (Modified LPA).

In May 2006, the environmental team under PB/Wong re-initiated work on the SEIS/SEIR incorporating Alternative 3B. The Draft SEIS/SEIR was released for public review on October 17, 2007. On February 19, 2008, the SFMTA Board of Directors approved the Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail on Fourth Street, as the modified Locally Preferred Alternative (the "Modified LPA") for the construction of Central Subway. After receiving public responses, the Final SEIS/SEIR was released to the FTA on April 14, 2008.

The Final SEIS/SEIR for Phase 2 (Central Subway) was adopted by the SFMTA Board on August 19, 2008. The FTA issued the ROD on November 26, 2008.

The Project will prepare and issue seven construction contract packages for bid solicitation. These contract documents will be the results of the final design process and are expected to be completed between December 2009 and July 2012. Each construction contract package will be advertised for competitive bids upon design completion. The construction process will begin in 2010 and be completed in 2017. The Systems, Track and Surface Construction Contract, is expected to be completed with Safety and Security Certification, Startup and Commissioning in July 2018. Pre-Revenue Operations will follow completed construction with Revenue Operations expected in 2018.

1.5 Project Description

The following description is based on the selected Modified Locally Preferred Alternative (LPA) No. 3, Option B or Alternative 3B. The Modified LPA alignment is shown in Figure 1-1.

Construction will extend light rail service 1.7 miles north from the T-Third line terminus located at Fourth and King Streets via Fourth and Stockton Streets to the Central Subway terminus in Chinatown. The project shall be designed and constructed to allow for a light rail extension to the Northern Waterfront in a subsequent project. After stopping at the station platform on Fourth at King Streets, light rail vehicles will continue north on Fourth Street at grade, to a double-track underground portal between Bryant and Harrison Streets under I-80. (See Figures 1-1 and 1-2.)

The Central Subway line will have a surface station on Fourth Street just north of Brannan Street and three subway stations: Moscone Station on Fourth Street between Folsom and Howard Streets, Union Square/Market Street (UMS) Station on Stockton Street centered between Geary and Market Streets, and Chinatown Station on Stockton Street between Clay and Jackson Streets. (See Figure 1-2.)

In order to accommodate light rail south of the portal, Fourth Street will be converted from one-way southbound to two-way traffic between Bryant/Townsend Street. On Fourth Street, the LRVs will operate in a semi-exclusive right-of-way, as described below. In a semi-exclusive operation, trains are physically separated from adjacent traffic except at intersections and at the 4th and Brannan surface station.

Fourth Street Surface Operation--LRVs in Semi-Exclusive Right-of-Way:

LRVs will operate between Fourth and King Streets to the portal under I-80 in a semi-exclusive double-track right-of-way, separated from adjacent traffic by a six-inch mountable curb. On Fourth Street between Townsend and Brannan Streets, the rail line would continue semi-exclusive median operations and a double crossover will be installed. Just north of Brannan Street, the tracks would spread to accommodate a center platform between Brannan and Freelon Streets. North of the platform, the tracks would come back together, crossing Bryant Street to a semi-exclusive right-of-way in the approach to the portal. The rail line would enter the subway portal in the median in a 360-foot retained cut located between Bryant and Harrison Streets.

The alignment will continue under Fourth Street to the Moscone Station, which will be located between Folsom and Howard Streets (see Figure 1-3).

Immediately north of Howard Street, the alignment will descend and continue in a side-by-side configuration to permit a crossing under the Market Street BART tunnels. Work at the crossing will require close coordination with BART, establishing allowable limits of movement of the existing Market Street tunnels, and establishment of a means to adjust the alignment of the existing Market Street tunnels and underground to correct undesirable movement due to tunneling.

There will be a combined Union Square/Market Street Station, located on Stockton between Geary and Market Streets, with a platform centered on O'Farrell Street (see Figure 1-4). It will have a common mezzanine (concourse) and one platform level that would serve both northbound and southbound trains. The south end of the Union Square/Market Street Station will connect to the east end of the Powell Street Station Mezzanine. At the north end of the Station, the main entrance will be located at the southeast corner of Union Square on Geary Street just west of Stockton Street. The entry will include escalators, elevators, and stairs and will require modifications to the Union Square garage and park. An emergency exit is located on O'Farrell Street. The existing Powell Street Station Apple Store entrance will be enlarged to provide emergency egress for the UMS Station. Emergency ventilation shafts will extend west of Stockton Street under Ellis Street, rising inside the existing vertical shaft of the Ellis/O'Farrell Garage at 123 O'Farrell Street to a height of 26 feet above the garage roof. This ventilation work will require modifications to the garage. The emergency ventilation will be designed in cooperation with BART to avoid impacts to ventilation in the existing Powell Street Station. Existing sub-sidewalk space adjacent to the Powell Street Station and BART Station facilities will be modified as needed to handle the flow

of passengers transferring between the Powell Street and UMS stations and maintain the safety and security of the Powell Street station.

North of the Union Square station, the subway will continue in twin bored tunnels under Stockton in a side-by-side configuration to the Chinatown terminus. This will permit the location of a station with a center platform, as well as a double crossover of tracks for train return in the opposite direction south of the platform. Twin storage tracks, each capable of storing two two-car trains, will extend north of the station.

The Chinatown Station will be located on Stockton Street between Clay and Jackson Streets (see Figure 1-5). It will have a mezzanine, concourse and one platform level for north and southbound trains. The main pedestrian entrance will be constructed on the west side of Stockton Street south of Washington Street (933-949 Stockton Street) to accommodate escalators, stairs, elevators, and emergency ventilation shafts. Emergency stairs will be provided by a sidewalk hatch located in a bulb-out on the west side of Stockton Street between Washington and Jackson Streets.

Summary of Station Locations

The Project will include construction of three subway stations and one surface station, as listed in the table below. The surface station will be located on Fourth Street north of Brannan Street to serve emerging development in the surrounding area. The surface station will be between 14 and 15 feet in width. The subway station platforms will be 200 or more feet in length and 26 feet in width to accommodate two-car trains using high-floor LRVs. All subway station designs will have fare gates and ticket vending machines (TVMs). All subway station platforms are single level with mezzanine and concourse levels.

CENTRAL SUBWAY Fourth/Stockton Alignment Option B STATION LOCATIONS

Station	Type	Location
Brannan	Surface – Single Center Platform	Fourth Street between Brannan and Freelon Streets
Moscone	Underground – Center platform with mezzanine and concourse level above platform level.	Fourth Street between Folsom and Howard Streets
Union Square/Market Street	Underground -Center platform with mezzanine and concourse level above the platform level and a non-paid pedestrian level between Union Square and Market Street.	Stockton Street between Market and Geary Streets
Chinatown	Underground – Center platform and a mezzanine/concourse level above the platform level.	Stockton Street between Clay and Jackson Streets

**FIGURE 1-1
ALTERNATIVE 3 –FOURTH/STOCKTON ALIGNMENT OPTION B (MODIFIED LPA)**

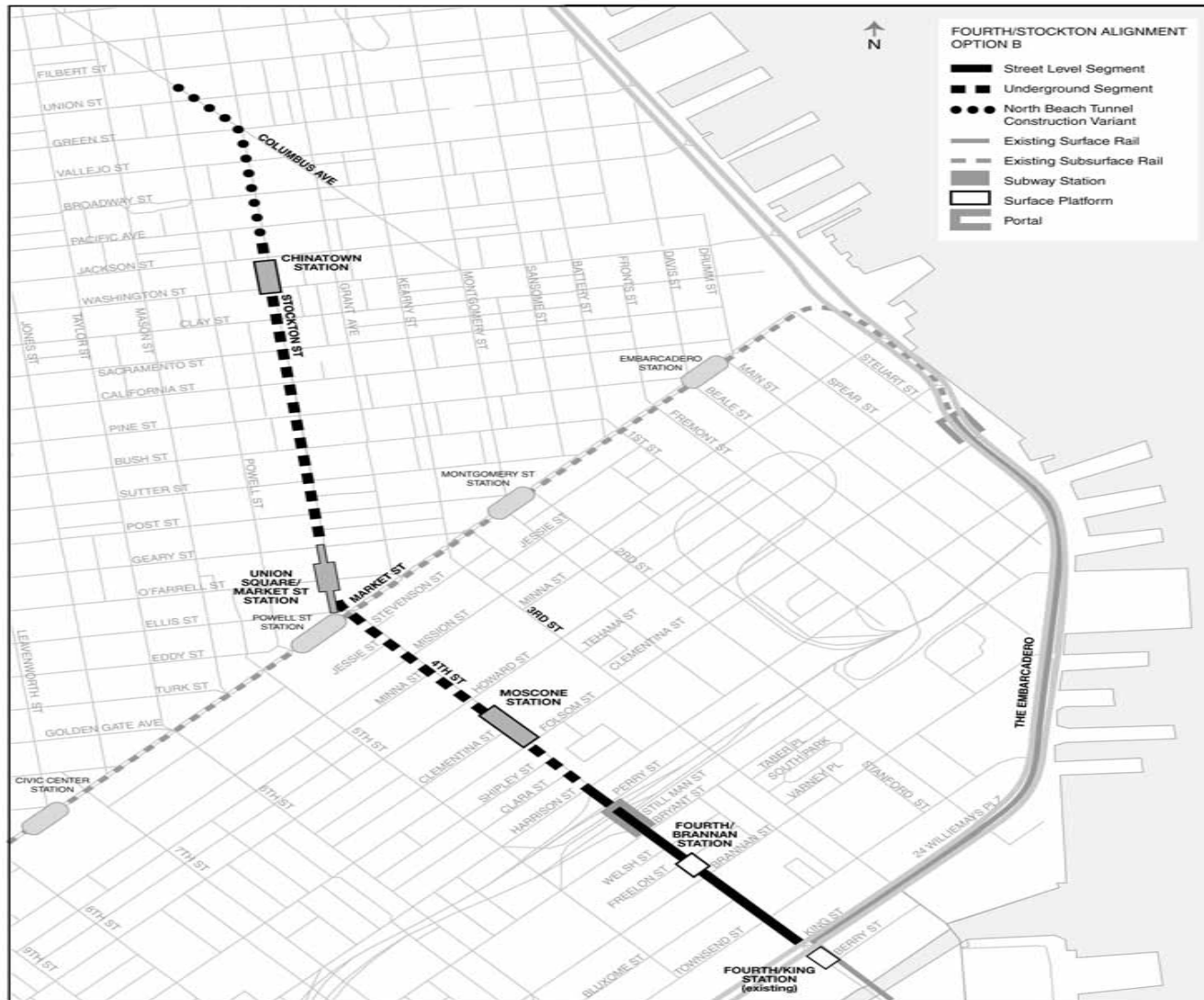


FIGURE 1-2: FOURTH/STOCKTON ALIGNMENT OPTION B PROFILE

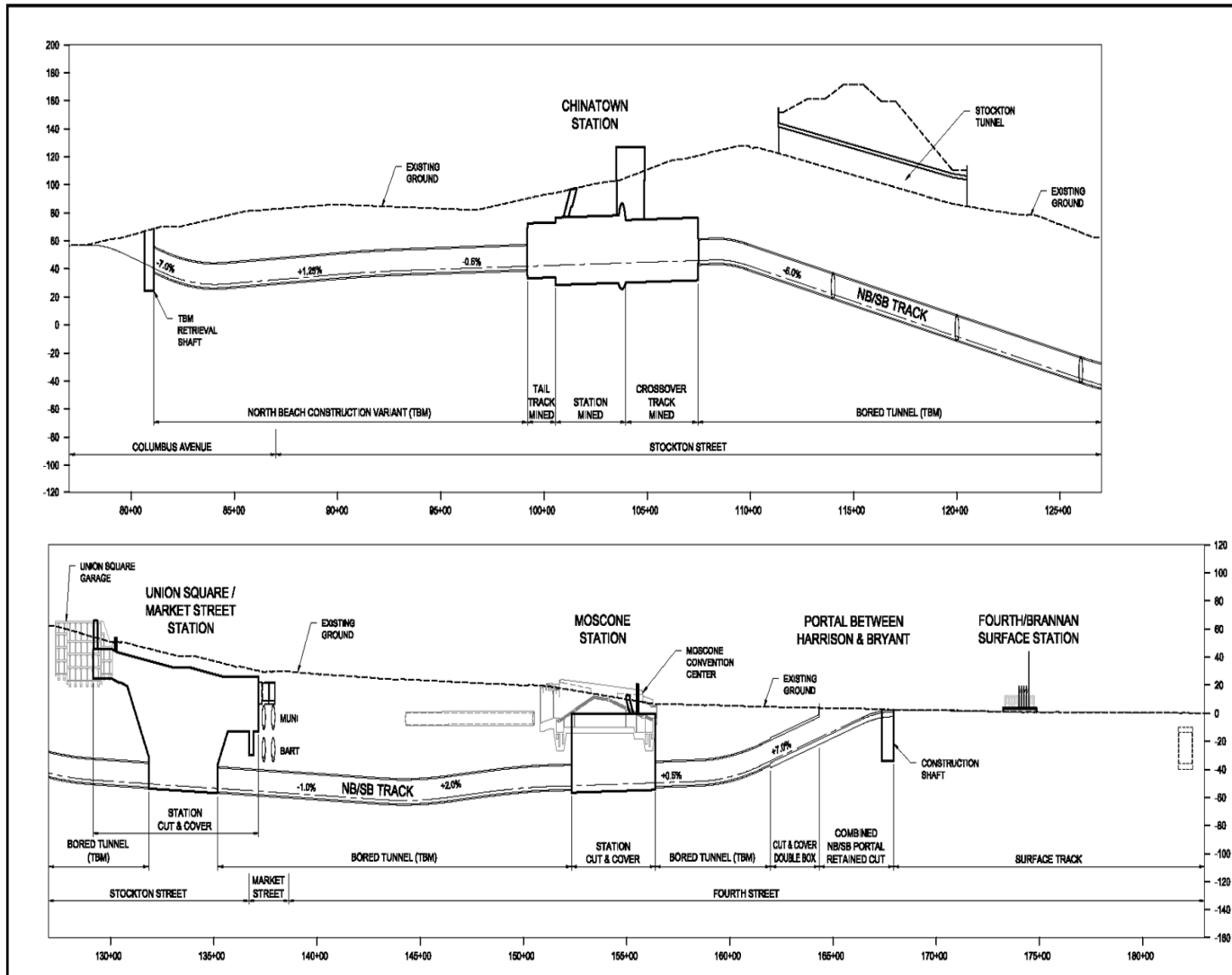


FIGURE 1-3: FOURTH/STOCKTON ALIGNMENT OPTION B - MOSCONE STATION

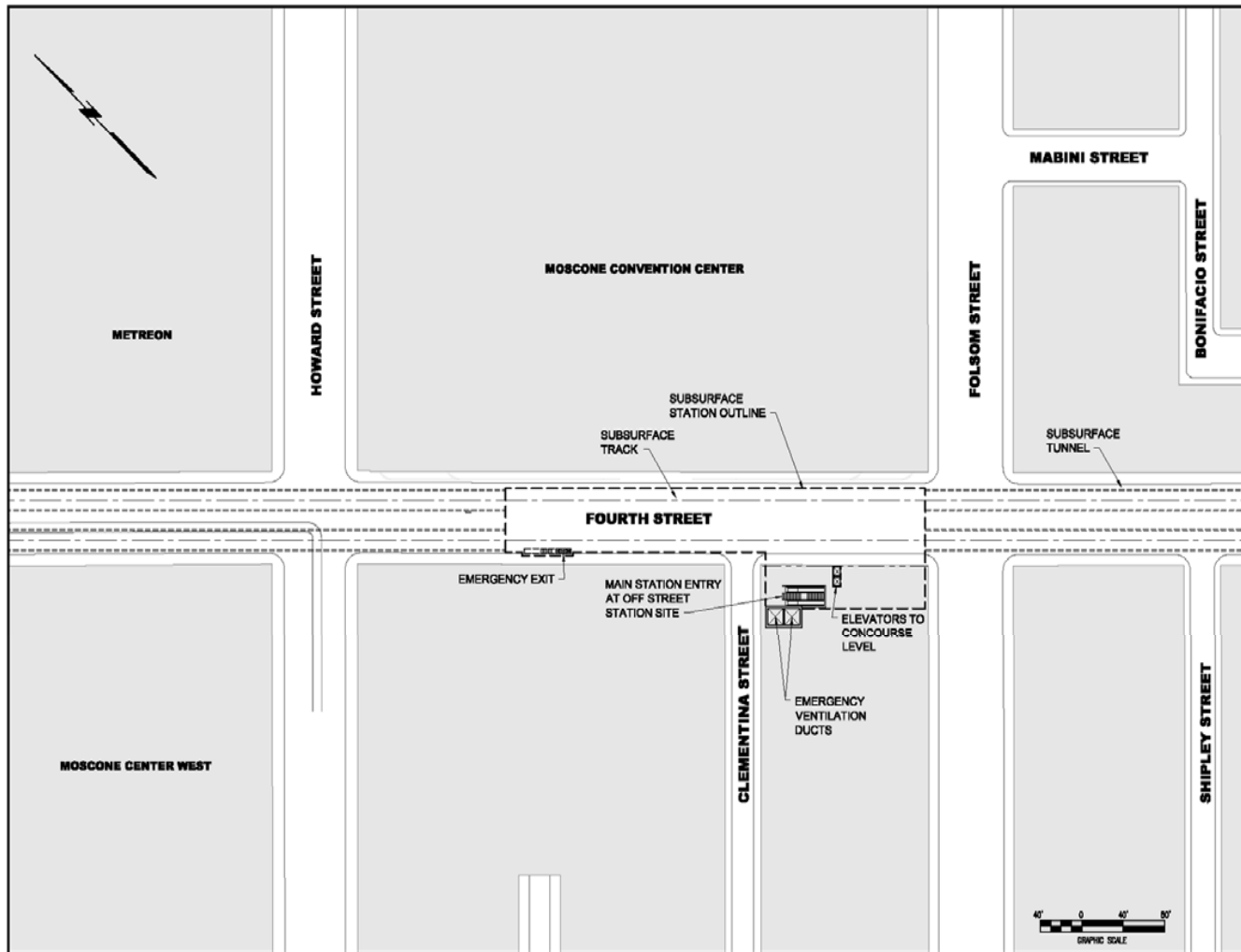


FIGURE 1-4: FOURTH/STOCKTON ALIGNMENT OPTION B - UNION SQUARE/MARKET STREET STATION

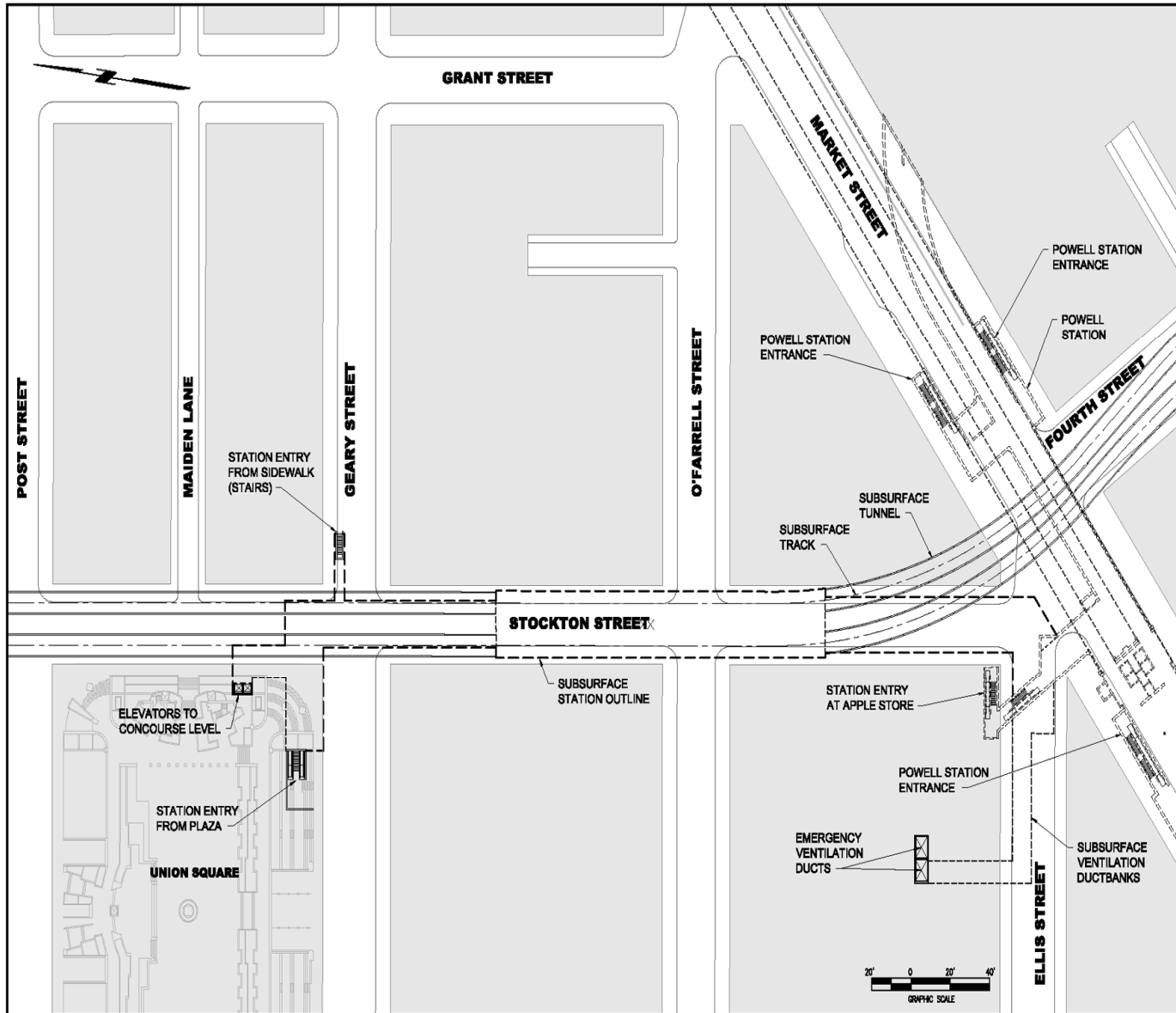
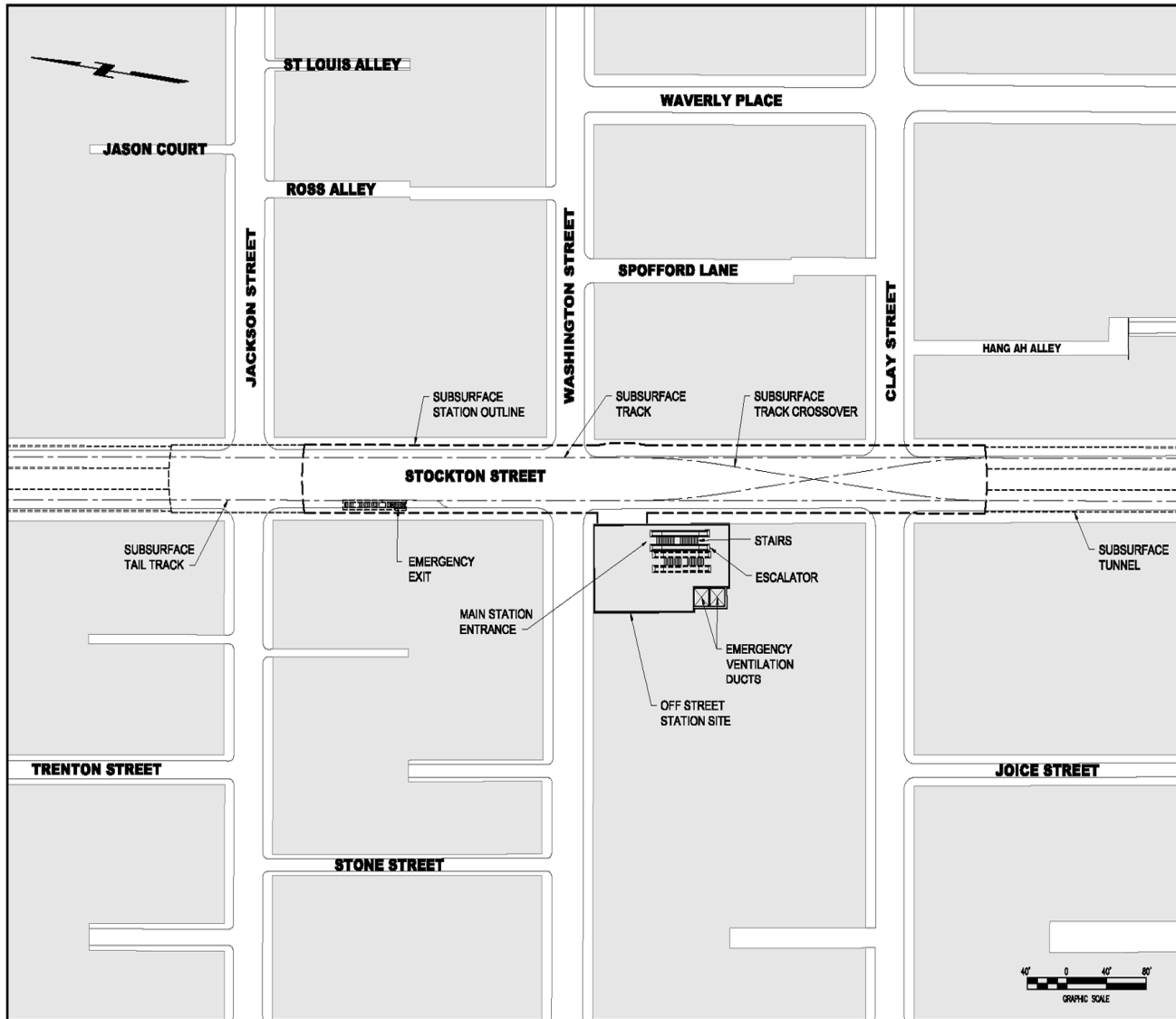


FIGURE 1-5: FOURTH/STOCKTON ALIGNMENT OPTION B - CHINATOWN STATION



1.6 Operations Control Center Facility

The SFMTA intends to build new Operations Control Center (OCC) facilities, to host a suite of integrated systems, with the goals: to facilitate meeting SFMTA's strategic objectives of improving transit reliability and delivery of other real-time transportations functions; and to accommodate command-and-control functions for today's transportation needs and the Central Subway as well as expansion capability for future service expansions. The OCC facilities are planned at two locations: a new primary facility; and a secondary "back-up" facility which will either be a retrofit of the existing MUNI OCC or at a new location. System redundancy measures shall include a separate, secondary OCC, fully functional and equipped to serve as a backup control center for an extended length of time. Space within the existing OCC is very limited and interruption of service during construction is not an option. It is therefore necessary to establish interim arrangements during the transition through a number of system and component cutovers. These interim transitions will require significant planning and field investigation to ensure that each new component or system not only delivers as required to support the system, but also de-energizes, uninstalls, disconnects the old system or components without impacting ongoing operations. In addition, improvements to the existing building(s) and building infrastructure systems may be required as part of the development of a secondary OCC.

1.7 Tentative Construction Contract Packages

The following contracts have been or will be issued to construct the Project. Only Construction Contract Packages Nos. 3, 4, 5, 6 and 7 will be covered by the OCIP.

1.7.1 Construction Contract Package No. 1--Utilities Contract 1: **Relocation of utilities for Moscone Station (MOS) on 4th St between Howard and Folsom and utilities at the Tunnel Portal on 4th St between Harrison and Bryant.**

1.7.2 **Construction Contract Package No. 2--Utilities Contract 2:** Relocation of utilities under sidewalks at Union Square/Market Street Station (UMS), including relocation of existing private sub-sidewalk basement facilities into adjacent building and building closure walls where needed and construction of an overhead contact system for temporary trolley coach reroute on Mason Street.

1.7.3 **Construction Contract Package No. 3--Tunneling Contract:** Tunneling from I-80 to North Beach, including Tunnel Boring Machine (TBM) procurement, launch box, cross passage, extraction shaft, utility support, portal construction, relocations and traffic control as required, mitigation measures to minimize and remediate the effects of settlement due to

tunneling, protection of trees near extraction shaft, and temporary utilities in tunnels.

- 1.7.4 Construction Contract Package No. 4-- Union Square/Market Street Station Contract:** Includes traffic routing, temporary curb, temporary streetlights, temporary traffic signals, utility support and workaround as needed, mitigation measures to prevent changes to groundwater and minimize and remediate the effects of settlement due to the combination of tunneling and excavation, connection to and capacity improvements to the Powell Street Station, modifications to the Powell Street Station Apple Store entrance, the Ellis Street and Union Square garages, and Union Square Park, finishes, railings, Agent Booths, doors, gates, AC substation, elevators, escalators, lighting, emergency ventilation fans including local controls, HVAC , fire alarm, suppression and protection, interface relays, panels, and wiring to provide status indications and remote control of station systems and interfaces to communication systems and equipment installed under Contract Package No. 7, conduit and protection devices between interface and power panels doors, temporary power, restoration of Stockton Street overhead contact system (OCS) and removal of temporary OCS, streetlights, traffic signals, curbs, station waterproofing and waterproofing over underground spaces including sub-sidewalk basements, sidewalks, pavement restoration and resurfacing, interface and systems testing, manuals, training, station safety and security certification, start-up and commissioning, as-built and record documents, and furnishing of specified spare parts. An existing sub-sidewalk space adjacent to the Powell Street Station and BART station facilities will be modified as needed to handle the flow of passengers transferring between the Powell Street and UMS Stations and maintain the safety and security of the Powell Street Station.
- 1.7.5 Construction Contract Package No. 5--Chinatown Station Contract:** Includes traffic routing, utility support and workaround as needed, mitigation measures to prevent changes to groundwater and minimize and remediate the effects of settlement due to the combination of tunneling and excavation, tunnel cross passages, finishes, railings, Agent Booth, doors, AC and DC Traction Power substations, elevators, escalators, lighting, emergency ventilation fans including local controls, HVAC, fire alarm, suppression and protection, interface relays, panels, wiring to provide status indications and remote control of station systems, interfaces to communications systems and equipment installed under Contract Package No. 7, conduit and protection devices between interface and power panels and crossover cavern, station waterproofing and waterproofing over underground spaces, utility relocation as needed, repair of utilities disturbed during construction, sidewalk and pavement restoration and resurfacing, interface and systems testing, manuals, training, station safety and security certification, start-up and commissioning, as-built and record documents, and furnishing of specified spare parts.

1.7.6 Construction Contract Package No. 6--Moscone Station Contract:

Includes traffic routing, utility support and workaround, mitigation measures to minimize and remediate the effects of settlement due to the combination of tunneling and excavation, finishes, railings, Agent Booths, doors, AC and DC Traction Power substations, elevators, escalators, lighting, emergency ventilation fans including local controls, HVAC, fire alarm, suppression and protection, doors, interface relays, panels, and wiring to provide status indications and remote control of station systems and interfaces to communications systems and equipment installed under Contract Package No. 7, conduit and protection devices between interface and power panels, station waterproofing and waterproofing over underground spaces, pavement restoration and resurfacing, interface and systems testing, manuals, training, station safety and security certification, start-up and commissioning, as-built and record documents, and furnishing of specified spare parts.

1.7.7 Construction Contract Package No. 7--Surface, Trackwork and

Systems Contract: This contract package includes removal of temporary tunnel utilities; and completion of all remaining work needed to test, safety and security certify the Project and enable the SFMTA to satisfactorily operate and maintain the project as intended, including but not limited to construction of tunnel invert concrete, track, emergency walkways, railings, lighting, wet standpipes, undercar deluge, remaining conduits in tunnel and stations, Radio base stations and antennae (includes both SFMTA & Emergency Services systems), Overhead Contact System, traction power feeders and detection system, switch machines, PA, CCTV, supervisory control and data acquisition (SCADA), emergency and other communications, Fare Collection, Ticket Vending Machines (TVM), Advanced Train Control Systems (ATCS) compatible with existing LRV onboard equipment, and train destination audible and visual announcement displays and other passenger information systems, system installations at four (to be determined) monitoring/control centers, Station Signage, demobilization and clean-up of tunnel staging areas, surface work south of Harrison Street, including traffic routing, 4th and Brannan Surface Station construction, adjustment or relocation of utilities in conflict with the track, curb, sidewalk, and pavement restoration and resurfacing; project-wide integration testing, manuals, training, safety and security certification, start-up and commissioning, as-built and record documents, and furnishing of specified spare parts. Systems installations include all work required to install and integrate systems at the SFMTA Operations Control Center (OCC). At the SFMTA's discretion, scope will include replacement of legacy systems at the OCC, and full integration with systems in the Central Subway; this work may include replacement of system elements that are physically located in the existing Metro subway, or other remote locations, but are controlled from the OCC, including: passenger information systems, fire alarm, SCADA, and emergency phones. This work also includes work at the OCC facilities necessary to

support systems installations. If the SFMTA exercises its option for the Final Design of the OCC work, construction of the OCC Final Design are included in this Construction Contract Package; this could include construction of related facility improvements of the existing OCC at 131 Lenox, as well as improvements at an alternate “interim” site to make all facility modifications necessary to implement an interim primary OCC, to serve until a new primary OCC could be constructed and made operational.

Additionally, at the SFMTA’s sole discretion, this work may include construction and/or renovation, outfitting and start-up of a new primary Operations Control Center (OCC). This work would include all building structural elements, operating theater, equipment rooms, offices, shop areas, storage areas, elevators, escalators, lighting, environmental systems, power, building security, emergency and alarm systems, wiring, communications, parking facilities as required, finishes and furnishings. This work would also include installation of all OCC systems, extended from the interim OCC as required, and integration to implement full redundancy with the secondary OCC. This work would include cutover without impacting revenue service, testing, training, documentation, warranties and spare parts.

The following are the current estimated construction cost for each construction contract that are anticipated to be included in an OCIP for the Central Subway Project:

Construction Contract	Cost
Tunnel Contract	\$ 195,000,000
Union Square/Market Street Station Contract	\$ 168,000,000
Chinatown Station Contract	\$ 141,000,000
Moscone Station Contract	\$ 87,000,000
Surface, Trackwork and Systems Contract	\$ 95,000,000

Construction Contract	Advertisement Date	NTP Date	Construction Duration
Tunnel Contract	1 st Q 2011	2 nd Q 2011	40 Months
Union Square/Market Street Station Contract	4 th Q 2011	2 nd Q 2012	56 Months
Chinatown Station Contract	1 st Q 2012	2 nd Q 2012	52 Months
Moscone Station Contract	2 nd Q 2012	3 rd Q 2012	49 Months
Surface, Trackwork and Systems Contract	3 rd Q 2012	1 st Q 2013	60 Months

1.8 Coordination with Pertinent Parties

To accomplish the scope of services, the selected Proposer will coordinate with SFMTA staff, pertinent San Francisco City agencies, Central Subway design consultants and Central Subway Program Management/Construction Management (PM/CM) consultants.

1.9 Non-Collusion

By submitting a Proposal, Proposers represents and warrants that such proposal is genuine and not a sham, collusive or made in the interest or on behalf of any person not named in the proposal.

Proposer further warrants that Proposer has not, directly or indirectly, induced or solicited any other proposer to put in a sham proposal, or any other person, firm or corporation to refrain from proposing. Proposer also warrants that the Proposer has not in any manner sought by collusion to secure to the Proposer an advantage over any other proposer including committing or otherwise excluding underwriting markets not quoted in the proposal for the purpose of preventing other proposers from using those markets (“blocking”).

1.10 No Market Contact

This RFP is intended to aid in SFMTA’s selection of a single insurance Broker-of-Record to market all of SFMTA’s OCIP coverage. Proposers are prohibited from contacting insurance markets at this stage of the selection process. Failure to observe this condition may result in your firm’s disqualification from the proposal process.

1.11 Notice to Proposers Regarding Conflicts of Interest

The selected Proposer will be required to fully comply with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City’s Charter, Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The selected Proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Depending on the final scope of the Contract, the employees of the Proposer to which this Contract is awarded, as well as its Sub-proposers' employees, may be required to submit to the City, within 10 calendar days of contract award, a Statement of Economic Interest, California Fair Political Practices Commission Form 700, under the requirements of California Government Code section 7300 et seq. and San Francisco Campaign and Governmental Code section 3.1-102.

A copy of the Form 700 may be found at the following website:
<http://www.fppc.ca.gov/forms/700-10-11/Form700-10-11.pdf>

1.12 Proposers May Contact Only Designated City Personnel Regarding this RFP and Contract

It is the policy of the SFMTA that only employees identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from Proposers or potential Proposers seeking to influence the contractor selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the SFMTA Board of Directors finally approves the contractor selection and, if required, by the San Francisco Board of Supervisors.

All Proposers and sub-proposer(s) responding to this RFP are notified that they may not contact any SFMTA staff member, other than a person with whom contact is expressly authorized by this RFP, for the purpose of influencing the Contractor selection process or the award of the Contract from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of the SFMTA, the Executive Director/CEO, and, if required, by the San Francisco Board of Supervisors. This prohibition does not apply to communications with SFMTA staff members regarding normal City business not regarding or related to this RFP.

All firms and sub-proposer(s) responding to this RFP are notified that any written communications sent to one or more members of the SFMTA Board of Directors concerning a pending contract solicitation shall be distributed by the SFMTA to all members of the SFMTA Board of Directors and the designated staff contact person(s) identified in the RFP.

Except as expressly authorized in the RFP, where any person representing a Proposer or potential Proposer contacts any SFMTA staff for the purpose of influencing the content of the competitive solicitation or the award of the contract between the date when the RFP is issued and the date when the final selection is approved by the SFMTA Board of Directors, and, if required, by the San Francisco Board of Supervisors, the Proposer or potential Proposer shall be disqualified from the selection process. However, a person who represents a Proposer or potential Proposer may contact City elected officials and may contact the Executive Director/CEO of the SFMTA if s/he is unable to reach the designated staff contact person(s) identified in the RFP or wishes to raise concerns about the competitive solicitation.

Additionally, the firms and sub-proposer(s) responding to this RFP shall not provide any gifts, meals, transportation, materials or supplies or any items of value or donations to or on behalf of any SFMTA staff member from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA and if required, by the San Francisco Board of Supervisors.

All lobbyists or any agents representing the interests of proposing prime proposer and sub-proposer(s) shall also be subject to the same prohibitions.

Each Proposer and its named subcontractors must submit with its Proposal an executed Attestation of Compliance form (Appendix 8) certifying compliance with the restrictions and prohibitions set out in this Section 1.12. Any Proposal that does not include the executed Attestation of Compliance as required by this Section will be deemed non-responsive and will not be evaluated. Any Proposer who violates the representations made in such Attestation of Compliance, directly or through an agent, lobbyist or sub-proposer will be disqualified from the selection process.

ARTICLE 2 - SCOPE OF SERVICES

The scope of services for the selected Broker is generally described in this Article 2, but is subject to clarification and amendment based on the negotiations with the selected Broker. A copy of a standard professional services agreement is included as in Attachment 3 to the RFP. The standard agreement form may be modified and adapted to the specific terms and conditions required for the agreed-upon insurance brokerage services. Proposers should note that the SFMTA has already considered issues of liability, indemnity, insurance and obligation of performance, and the Agency's terms are set out in the form contract. The SFMTA may determine that a Proposal is nonresponsive if the Proposal takes exception to those contract provisions or otherwise seeks to substantially shift risk to the SFMTA.

2.1 Tasks

The scope of services will be performed in three tasks, with Task One comprising the specification, marketing and implementation of the OCIP prior to the start of construction. Task Two encompasses necessary broker and administrative services during the construction and post-construction periods of the Project, which include administration of the insurance program through construction and completed operations periods, as well as related project services for claims administration, liability/property/employee loss control and safety program, publication of insurance and loss control manuals, project insurance briefings; financial administration of the above matters and other incidental services which may be agreed upon. Task Three will comprise the specification, marketing and implementation of a comprehensive Builders Risk program prior to the start of construction. The final scope of broker services will be based upon Project needs.

While the final scope of services will become part of the fee-for-service contract, the SFMTA expects that such services will include, but not be limited to, services described in the following Tasks.

2.1.1 Task One: OCIP Specification Marketing and Implementation Services

The selected Broker will evaluate Project risks as they affect types and amounts of insurance, in order to recommend to SFMTA the final OCIP specification and structure, addressing the mutually agreed objectives for the OCIP which include:

- Coverage comparable to other recent major transit projects in the United States
- Minimization of insurers involved and coverage disputes
- Setting of Contractor deductibles
- Above-average safety/loss control, possibility of dividends and other cost reduction incentive programs

- Consolidation of claims administration
- Maximization of purchasing leverage

The selected Broker in consultation with the SFMTA will develop an OCIP appropriate for the Central Subway Project and the needs of the SFMTA. The selected Broker will secure insurance coverage for the OCIP that may include types of insurance described in this Task. In addition to these coverages, the SFMTA is requesting that Proposers propose options and alternatives to an OCIP that may better serve Project objectives, regardless of whether those options might include insurance programs other than an OCIP.

The current Project schedule indicates a construction start date of second quarter 2011 for the first construction contract to be covered under the OCIP; it is essential that Task I activities are completed by this date. The scope of the specification, marketing and implementation services will include, but not necessarily be limited to, the following activities:

A. Insurance Brokerage Services

1. Design, market and implement the broadest insurance program at the most reasonable cost that adequately protects SFMTA and all other parties against the risks arising out of the Project construction work.
2. Develop specific coverage requirements for the OCIP that should consider the following:
 - a. General Liability Insurance with appropriate levels of coverage,
 - b. Workers' Compensation and Employer's Liability Insurance meeting Project needs and statutory requirements,
 - c. Zero deductible to the City and appropriate deductibles to prime contractors, and
 - d. Additional Insurance that may be required, such as
 - i. Railroad Protective Liability Insurance,
 - ii. Contractor's Pollution Legal Liability Insurance and
 - iii. Others Insurance appropriate for a complex public works program
3. Represent SFMTA in all negotiations with insurers, underwriters, insurance regulatory authorities and other parties in regard to SFMTA's Owner Controlled Insurance Program.
4. Verify coverage scope and amounts, coverage exceptions, wording and accuracy of each policy, binder, certificate, endorsement or other document received from insurers and obtains revisions in such documents as needed.
5. Negotiate and verify the accuracy of all rates and premiums charged.
6. Promptly submit originals of all policies and endorsements to SFMTA.
7. Provide information and resources to SFMTA personnel.
8. Obtain answers from underwriters to policy coverage questions.
9. Attend meetings with the SFMTA Board, other City agencies or departments, government regulatory agencies, and other SFMTA personnel or interested parties as requested.

10. Prepare insurance certificates and endorsements as requested by SFMTA.
11. Submit invoices for services in SFMTA approved format.
12. Assure that insurance policies are placed with reputable and financially responsible insurers.

B. OCIP Schedule

Provide a written schedule of significant OCIP activities, coordinated with the Project schedule to permit an orderly and thorough process of discussion and decision-making leading to implementation of the OCIP prior to the start of construction.

2.1.2 Task Two: OCIP Support Services

OCIP Support Services provides for necessary broker services during the construction and post-construction periods of the Project. It is intended that the scope of such services will include, but not necessarily be limited to, the following activities:

A. Risk Control Services

1. Continually monitor SFMTA's operations and loss exposures, evaluate risks, determine the needed level of risk retention and risk transfer, and recommend appropriate coverage changes to existing coverage and placement of additional coverage.
2. Assist SFMTA in designing consolidated loss control and worker safety programs, incorporating the responsibilities of SFMTA, consultants, contractors, construction manager, insurers and any other parties designated by SFMTA.
3. Review design, construction and other contracts, and advise SFMTA on risk transfer implications.
4. Advise SFMTA on loss control issues involving design consultants.

B. Claims Management Service

1. Assist SFMTA in designing claims management processes for general liability and workers compensation claims that meet City requirements and objectives..
2. Assist SFMTA in the adjustment and settlements of claims and losses.
3. Maintain accurate claim data on an accident/incident-date basis and provide SFMTA with status reports, in form and frequency as agreed with SFMTA.
4. Recommend contractor deductible levels and apply deductibles to appropriate contractors for each claim. Assist SFMTA in recovering deductible amounts from the respective contractor.
5. Assist SFMTA in coordinating claims where existing SFMTA insurance programs dovetail with OCIP.

6. Advise SFMTA on coverage application to specific claims.
7. Arrange medical services near the Project site for parties injured from OCIP covered activities, and negotiate fees for those services.

C. OCIP Administration Services

1. Submit on an annual basis, no more than 45 days after each OCIP program anniversary, a written report addressing:
 - a. Insurance program earned premiums and incurred losses by year by coverage line;
 - b. Anticipated issues regarding insurance terms and conditions and other indications of market conditions, trends and anticipated changes;
 - c. Identified problems in areas such as claim handling, safety hazards, uninsured risks, etc.;
 - d. Recommendations for improved OCIP design;
 - e. Services performed and planned;
 - f. Accounting of all income received on SFMTA's behalf or account, and the method by which fees are calculated;
 - g. Issues related to coordination of OCIP with SFMTA's existing insurance program.
2. Prepare a work plan, as directed by SFMTA, to establish activities, milestones, deliverables, staffing, billing rates and intervals and other matters as negotiated in the Broker Services Contract.
3. Enroll all parties to be insured by OCIP in a timely and accurate manner.
4. Secure and maintain up-to-date evidence of automobile liability and all other required insurance from all contracting parties on the Project.
5. Review and analyze insurance provisions of bid documents from subcontractors.
6. Thoroughly educate contractors on all aspects of their participation in the OCIP.
7. Prepare and distribute to all contractors and subcontractors an OCIP manual that provides information about the insurance program, safety program, claims reporting, statistical record keeping and other requirements.
8. Coordinate the timely filing of required workers' compensation statistical reports.

D. Loss Control and Safety Services

1. Assist SFMTA in the development of a design and construction loss control program that includes:
 - a. An inspection program
 - b. A safety training program
 - c. A safety manual
 - d. First aid and injury programs
 - e. Safety incentive and disincentive programs

2. Assist in the implementation of a Lost Control and Work Site and Worker Safety Program.
3. Assist in the development of crisis management, disaster control and related public information programs.
4. Assist SFMTA in the development of a design and construction loss control incentive and disincentive program for contractors and consultants.
5. Assist SFMTA in screening contractor proposals to determine whether or not the cost of insurance has been removed from the proposal, and the impact of the individual contractor's loss experience on cost.
6. Conduct pre-construction-condition survey for safety issues of all existing facilities likely to be affected by construction activities.
7. Assist the SFMTA in setting loss history criteria for qualification or prequalification of contractors

E. Risk Management Information System Services

1. Provide a system to provide the SFMTA monthly and annual reports summarizing OCIP progress, accomplishments, current and planned activities, safety, claims, and other pertinent information.
2. Maintain contractor tracking logs that include:
 - a. Contractors' and subcontractors' contract, deductible, and work progress information
 - b. Contractors and tiered relationships: e.g., general contractor, subcontractor, and lower tier subcontractors
 - c. Contract date, start-up date, and completion date
3. Develop and maintain policy and form information tracking system to track form receipt and transmittal of contractor and insurance carriers.
4. Monthly payroll reporting, as necessary, or integration of the OCIP payroll requirements to existing Project payroll reporting functions.
5. Exception reporting that identifies contractors who are not submitting required underwriting data, applications, payroll reports, certificates of insurance and termination of work forms.
6. Financial information, including development and trending of claims, reserve analysis, retrospective analysis if appropriate, records of transactions and other information as appropriate.

2.1.3 Task Three: Builders Risk

The selected Broker will advise the SFMTA as to placement and implementation of a Builders Risk insurance program appropriate for the Project, including amounts of coverage, deductibles, self insured retention (SIR), retentions, administration, and policy requirements. The SFMTA requests that Proposers provide options and alternatives to a Builders Risk OCIP that may better serve the Project and SFMTA objectives, including but not limited to CCIPs, traditional contractor provided insurance, and other possible non-OCIP options. Proposers must also address advantages and availability of earthquake insurance.

The Builders Risk program should include:

- Suggested markets
- Limits, retentions, deductibles or SIRs.
- Recommendations for soft cost coverage
- Explanation of the current market environment for earthquake coverage for this the risks posed by the Project

2.2 Savings and Superior Services

Proposers are to offer concepts that will save money and provide superior service, while affording maximum protection to SFMTA. Services provided through another agent or Broker or by an insurer, should be detailed and shown to be coordinated with all other services.

2.3 Compliance with FTA Procurement Requirements

The Broker will procure goods and services necessary for this Project and OCIP consistent with the requirements of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," FTA Circular 4220.1F, the FTA Master Agreement, and Applicable FTA Certifications and Assurances.

2.4 Proposal Specifications as Part of Contract

These specifications shall be deemed part of the contract between the SFMTA and the selected Proposer. Unless otherwise indicated by the Proposer, all specification requirements shall be considered as having been complied with by the Proposer.

ARTICLE 3 - SUBMISSION REQUIREMENTS

3.1. Submittal of Proposals

All Proposers must submit the complete response to the Request for Proposal (RFP) by the deadline, delivered to the address stated below. All Proposers must submit 15 hard copies and 15 CD copies of the Technical and Cost Proposal. All Proposers must submit separately from the response to the RFP 2 hard copies of the SBE documentation/ forms (Appendix 2). Partial or total omission of any of the required items under Section 3.3 from a response to the Request for Proposal may disqualify Proposals from further consideration. The SFMTA will not accept or consider a Proposal submitted after the deadline. The SFMTA will not consider a Proposal that does not conform to the submission requirements of this RFP.

All responses to the Request for Proposals must be received at SFMTA by:
November 16, 2010 at 5:00 p.m.

Proposals must be delivered to:

Contract Administration and Quality Management Office
SFMTA Capital Programs and Construction Division
One South Van Ness Avenue, 3rd Floor
San Francisco, California 94103-1267
Attention: Mr. Mario Gallardo (415) 701-4348

3.2 Submittal Guidelines

The response to the Request for Proposals shall be in clear, concise writing within the format provided by the SFMTA. Legibility, clarity, and completeness of the response to the Request for Proposals are essential.

The Proposer must demonstrate that it has read the RFP and understands the Project needs and requirements. A Proposal should be specific and responsive to SFMTA's business requirements. The Agency will view unfavorably generic Proposals and generic marketing materials.

Proposals must be in a professional format no more than 60 pages on double sided recycled paper (30 sheets). Any larger sheets included must be folded to that size. Pages must be consecutively numbered within each section or part.

Cover page and tab dividers will not be included in the page count. All pages must be 8-1/2" x 11", minimum size 12 font, unless otherwise noted in this RFP. Size 10 font and 11"x17" page size are allowed for preparing table/spreadsheet, chart, or schedule. Each 11"x17" page will be counted as two pages towards the maximum page counts list above.

Proposals must include the Proposer's firm name (and in the event the Proposer is a joint venture, the names of the individual forms comprising the joint venture), business address, and the name, title and business address of the responsible principals, with their email address, telephone and facsimile (fax) numbers, who may be contacted during the proposal evaluation period for clarifications or discussions as well as receiving notices from SFMTA.

If the Proposer is a joint venture or a partnership, the Proposal must include a copy of the executed joint venture agreement or executed partnership agreement. If the Proposal is based upon an association, provide the type of arrangement and describe the contractual relationship. Failure to attach a copy of the appropriate agreement may render a Proposal non-responsive.

Proposals must be signed by an official authorized to bind the Proposer and shall constitute a firm offer for at least 180 calendar days from the last date for submission of Proposals set forth herein. SFMTA may request Proposers to extend the period of time specified herein by written agreement between SFMTA and the Proposer(s) concerned.

3.3 Technical and Cost Submittal Documents – Format and Content

The content required under this Subsection constitutes the written Proposal that is to be submitted in accordance with Subsections 3.1 and 3.2 above. The Proposer must use the following format to structure the Proposal:

3.3.1 Technical Proposal

A. Introduction

1. Letter of Introduction

The Proposer is required to submit a letter of introduction, not to exceed two pages in length, which bears the signature of an authorized representative of the Proposer. The Letter of Introduction shall designate by name not more than two senior managers authorized to negotiate and sign the contract with SFMTA on behalf of the Proposer, and shall clearly state the Proposer's commitment to successfully fulfill Project requirements. Additionally, the Letter of Introduction should include an acknowledgement of acceptance of contract terms and conditions and insurance requirements, and an indication of Proposer's compliance or non-compliance with minimum qualifications.

2. Executive Summary

A Proposer must furnish an executive summary briefly describing the qualifications and organization of the proposed consulting team (including the Proposer, Sub-proposers, and Key Personnel); highlighting the key points of the Proposal; demonstrating a thorough understanding of the Project, key issues and requirements; describing why your team is most qualified, including any value additional and differentiators; and verifying that the Proposer's consulting team will meet all requirements set out in the RFP.

3. Exceptions to the Form of Agreement

Proposers shall be prepared to accept the terms and conditions of the Form of Agreement, which is set out in Appendix 3 to this RFP. If a Proposer is unable or unwilling to comply with any requirements of the standard contract agreement, the Proposer must identify the requirements to which it objects, clearly explain why the Proposer cannot comply with them and offer alternative language in the Introductory Section of its Proposal. Proposers should note that the SFMTA has considered issues of liability, insurance, indemnity and performance responsibility. Proposers understand and by submission of a Proposal agrees that the SFMTA in its sole and absolute discretion may determine a Proposal to be nonresponsive if it seeks to challenge the SFMTA's prior determination of these issues or otherwise seeks to shift substantial risk to the SFMTA.

B. Team Organization and Qualifications

The Proposer must clearly describe the overall composition of its team, each member firm and roles, knowledge of transit and tunnel construction, relevant experience and performance references. The Proposer, at a minimum, must clearly discuss the following:

1. Describe the team composition, structure, specific roles/functions of each team member (if more than one) and contact information. Clearly indicate which team member (firm) will be lead the OCIP or individual OCIP task(s);
2. For each team member, provide a brief profile identifying pertinent attributes that demonstrate the strength of the team members in terms of the history of the firm, size of the firm in revenue dollars and employees, relevant experience in designing, implementing and servicing an OCIP for large scale subway tunnel and transit development projects;
3. Describe the team's qualifications and provide details of relevant project experience. **A Proposer must demonstrate the following minimum**

qualifications and the overall team must meet the following minimum qualification:

- a. The Proposer must have successfully performed full-service OCIP services for a minimum of five years;
 - i. The Proposer, in the last eight years, must have provided these services for at least three OCIP with at least three agencies;
 - ii. Each of the three referenced OCIPs must have had construction costs of at least \$250 million;
 - iii. The Proposer in the three referenced OCIPs must have performed services substantially similar to those requested in this RFP (i.e., the tasks described in Tasks One, Two and Three, including specifying coverage requirements, marketing program to underwriters; negotiating and confirming coverage provisions and costs; administering loss prevention and safety programs for general liability, workers compensation, and builders risk;
 - iv. The Proposer in one of the three OCIP must be for a subway tunnel and/or transit system construction; and
 - v. Provide a table showing the three OCIP client references, the names of the referenced projects, and the name of the contact person, his/her title, address, phone number and fax number, and dates of involvement in the referenced project.

C. Project Organization, Key Personnel and Staffing Ability

A Proposer must provide a clear organization and management structure that addresses the Scope of Services. A Proposal must address the following:

1. Project Organization

- a. Describe in detail the Proposer's corporate organization and identify key personnel relationships including quality assurance/ quality control personnel. In addition to a written description, provide organizational chart(s) on an 8-1/2x11 inch paper to showing the organization and the relationships;
- b. Describe in detail how the Proposer's team will be organized and identify the relationships among all the Sub-proposers and all the key personnel. Describe in detail how the Proposer plans to allocate responsibilities/lead roles and work between Proposer/ and SFMTA staff for the various tasks. In addition to a written description, provide organizational chart(s) on an 8-1/2x11 inch paper showing the proposed organization and the relationships;

- c. Describe in detail how the Proposer and each Sub-proposer within the proposed organization will interface with each other and interface with City staff and communicate effectively across tasks/activities; and
 - d. Describe in detail the proposed management approach, methods and tools to manage project staffing and tasks so as to consistently provide quality, cost effective and timely services for all phases of the Project.
2. Key Personnel
- a. The person identified as the project manager must have successfully managed at least three projects of a similar nature and scope to the one described in this RFP;
 - b. Provide a clear identification of all other key personnel by task, by firm/sub-proposer and a clear statement of commitment from each firm/sub-proposer for the all work elements;
 - c. Include a detailed discussion of team member responsibilities as well as an identification of which resources will perform the work in the specified tasks identified in the OCIP Schedule;
 - d. Furnish a resume (maximum of 2 pages per resume) for each proposed team member with education, relevant project experience, credentials, and specific functional and technical abilities; and
 - e. Include a proposed manpower analysis, which is a labor resource table denoting the labor-hour allocation to the Project by task.
3. Staffing Ability. Describe in detail the Proposer and each Sub-proposer's ability to timely provide quality staff to meet Project demands. Illustrate the depth of resources of the Proposer and each Sub-proposer with respect to the Scope of Services of the Project.

D. Relevant Experience and References

1. A Proposal must summarize, highlight and supplement the information contained in the PM3 forms and resumes. A Proposer must describe the qualifications, experience and major or unusual accomplishments for each of the following:
 - a. Proposer and each of its Sub-proposers
 - b. The Key Personnel to be assigned to the Project and any other management personnel directly involved and having an important role with the Contract
 - c. The personnel proposed to be assigned individual OCIP tasks

2. Proposals must include a discussion of the firm(s) and the Key Personnel to be assigned to the Project , as follows:
 - a. Qualifications of the brokerage firm(s) including but not limited to:
 - i. Knowledge of the insurance and reporting requirements relevant to the Project
 - ii. Experience in providing OCIP coverage during the last ten years (describe projects and list contact persons and telephone numbers)
 - iii. Specific services provided by the Broker on each OCIP project
 - iv. Understanding of construction standards, procedures and organization
 - v. Provide most recent audited financial statements and annual reports
 - b. Qualifications of the designated key individuals to be assigned to this Project, including:
 - i. Resumes of each person
 - ii. Percentage of each person's time to be dedicated to this Project
 - iii. Confirm SFMTA right of prior approval for changes of key project personnel
 - c. Provide a staff roster on a spreadsheet (11"x17" pages and minimum size 10 font are acceptable) showing the names of the individuals proposed including key personnel for this Project. In addition, list their current employers, highlight summary of their qualifications, experience and relevant projects worked on in the past; and their present job assignments including brief descriptions of their titles, projects, construction contract amounts, locations, duties, and assignment start and end dates. Describe any experience and effectiveness that the firms or personnel had in working within San Francisco's construction climate and labor practice.
 - d. Lengthy and detailed information Proposer and Subconsultants shall be contained in the PM3 forms and individual personnel in resumes. PM3 forms and personnel resumes shall be enclosed in the appendix and will not be counted toward the page limit. Personnel resumes should describe the roles, responsibilities and major accomplishments achieved for each project, along with dates of involvement.
 - e. Provide a table in the appendix showing three different client references for each subcontractor firm listed and each individual proposed for each task, including contact person, his/her title, address, phone number and fax number, from the most recent projects undertaken by such firm and individuals.

E. Methodology and Approach

A Proposer must describe in detail its methodology and approach to design, market, implement and service/administer the OCIP. The Proposer shall address and expand, as necessary, upon the Scope of Services as described in this RFP. At a minimum, the technical methodology and approach should address the following:

1. Program Design and Marketing
 - a. Describe the precise manner the Proposer will assist SFMTA in identifying risks arising from construction operations.
 - b. What assistance would the Proposer provide in reviewing contracts between SFMTA and contractor and between contractors and subcontractors?
 - c. What insurance coverage or formal self-insurance programs would the Proposer consider necessary for this Project?
 - d. Describe the coverage features for each line of coverage that the Proposer believes would be most valuable to the project owner. Would your firm be involved in coverage design or drafting of manuscript coverage? Describe.
 - e. Identify the markets the Proposer feel would most efficiently handle SFMTA's risks on this Project by line of coverage. Specifically describe for each market:
 - i. The reasons for its use
 - ii. The Proposer's experience with similar placement for other clients
 - iii. The Proposer's current premium volume with the market
 - iv. The specific procedures the Proposer uses to evaluate each domestic and foreign insurer in terms of its overall financial integrity and the limit of liability or amount of insurance that may be safely placed with such insurer.
 - f. What would be the Proposer's strategy for approaching and negotiating with these markets?
 - g. Describe the Proposer's proposed involvement and ownership relationships with surplus lines facilities, specialty Brokerage firms, foreign Brokers, reinsurance intermediaries and other parties in the marketing process.
 - h. Exactly what information would the Proposer need to develop underwriting specifications for insurers?
 - i. What would be included in the Proposer's underwriting submission?
 - j. Describe the Proposer's strategy to assure that no gaps, overlaps or lapses in coverage will occur.
 - k. What would be the Proposer's approach to layering of primary and excess coverage?
 - l. Estimate the time required to properly market each line of coverage and identify the role, if any, of SFMTA in the marketing effort.

2. OCIP Administration Services
 - a. How would the Proposer handle enrollment, administration and policy issuance for the several hundred contractors likely to be employed on this Project?
 - b. What services would the Proposer provide to collect and verify information required from contractors (e.g., payroll)?
 - c. What procedures would the Proposer develop to communicate the Project OCIP requirements to contractors?
 - d. What steps would the Proposer recommend to assure that contractor construction bids are actually net of insurance costs?
3. Claims Management
 - a. What claims management services would the Proposer provide for each type of insurance coverage (general liability, workers compensation, and builders risk)?
 - b. How would the Proposer work with the owner to identify OCIP claims and efficiently transfer claims information?
 - c. What measures would the Proposer take to screen out contractor claims not arising out of this Project?
 - d. How would the Proposer interact with the primary insurers with regard to claims handling?
 - e. What would be the Proposer's role in dealing with excess insurers regarding claims?
 - f. How would the Proposer manage claims reviews?
4. Safety and Loss Control
 - a. Describe in detail the Proposer's role in safety and loss control as respects insurer, contractor and owner safety and loss control functions for each type of insurance coverage.
 - b. Describe the actual functions of the Proposer's safety personnel, including detailed job descriptions relative to the Project.
 - c. Describe a contractor loss control incentive and disincentive program that the Proposer has used in the Reference Projects and its demonstrated results.
 - d. What would be the Proposer's role in disaster management?
 - e. How would the Proposer communicate and enforce the safety program to the various Contractors and other parties involved in the Project?
5. Risk Management Information Systems
 - a. Describe in detail the Proposer's capabilities for gathering and managing information important to successful project control.
 - b. What types of claims, risk, and loss data would the Proposer gather and how would the Proposer use that information?
 - c. Describe the types and frequency of reports that the Proposer would provide to the SFMTA Provide detailed descriptions and examples as an appendix to the Proposal.
 - d. What contractor information would the Proposer maintain and to what purpose?

- e. How would the Proposer's information system interface with those of the insurers, especially with regard to claims? Describe in detail.
6. OCIP Schedule
As part of the appendices, which will not be counted towards the 10-page limit, provide a schedule (11"x17" pages and minimum size 10 font are acceptable) demonstrating the OCIP plan, identifying all key task and durations required for completion of each task of this Contract, and indicating the overall duration. The proposed schedule should include required durations for SFMTA reviews/approvals of a minimum of ten (10) working days. The schedule should be coordinated with the Project dates as defined in Section I - Introduction to permit an orderly and thorough process of discussion and decision-making leading to implementation of the OCIP prior to the start of construction.
7. Issue Identification and Resolution
The Proposal should include a description of any specific constraints, problems and issues that need to be addressed prior to or in the course of the design of the OCIP, and should include Proposer's proposed methods and/or procedures for resolving or mitigating those issues. SFMTA also requests that Proposers propose options and alternatives that would better serve the Project, regardless of whether those options might have major impact on the program herein described.

3.3.2 Standard City and County of San Francisco Forms.

The following are required to be submitted with the Proposal:

- A. Completed SFMTA Form PM3 (Appendix 1)
- B. Completed Business Tax Declaration (Appendix 4)
- C. Completed Certification Regarding Lobbying (Appendix 6)
- D. Completed San Francisco Administrative Code Chapters 12B and 12C Declaration Form (Appendix 7)
- E. Completed Attestation of Compliance (Appendix 8)

Both Proposer and Sub-proposers will need to submit forms for items A, B, C, and E described in this paragraph, which are not included in the page limit specified in Paragraph 3.2. Only the prime Proposer needs to submit forms for Item D above.

3.3.3 SBE Forms required to be submitted with Proposal (Note: SBE Forms provided in Appendix 2 to this RFP)

In addition to the requirements on the content of the Proposal discussed above, Proposers must submit the following as appendices to their Proposals:

- A. Consultant/Joint Venture Partner and Subconsultant Participation Report (SFMTA SBE Form No. 1)

- B. SBE Consultant/Subconsultant Participation – Good Faith Efforts (SFMTA SBE Form No. 2)
- C. Bidders List (SFMTA SBE Form No. 2A)
- D. SBE Consultant/Joint Venture Partner/Subconsultant – Gross Revenue Declaration (SFMTA SBE Form No. 2B)
- E. SFMTA Questionnaire Nondiscrimination Requirements (SFMTA SBE Form No. 3)
- F. SBE Subconsultant Participation Declaration (SFMTA SBE Form No. 4)
- G. Small Business Enterprise Acknowledgement Declaration (SFMTA SBE Form No. 5)
- H. A Copy of the firm’s Nondiscrimination Program or EEO Policy Statement (if any)
- I. Schedule B – Joint Venture Participation Form, if applicable (available upon request)

Forms described in this paragraph are not included in the Proposal page limit specified in Paragraph 3.2.

Both Proposer and Sub-proposers will need to submit Items D (required of all SBEs), E, F (required of Proposer and any Sub-Proposer using an SBE as a lower tier subconsultant), and H.

Items A, B, and C of this paragraph apply to the prime Proposer only. Item G applies to SBE Sub-proposers only. Information about all firms submitting quotes or proposals to the prime and Sub-proposers must be included on Item C (Bidders List). Directions for completing Items A through F can be found in the SBE Program in Appendix 2.

3.3.4 Cost Proposal

Cost Proposals shall include separate sections for Task One, Task Two and Task Three as described in this Section and complete services cost on CS163 Forms 1 set out in Appendix 10 to this RFP. The CS163 Forms required in this Section are not included in the proposal page limit specified in Paragraph 3.2.

- A. In preparing and submitting a Cost Proposals, a Proposer shall adhere strictly to the requirements described in this Section. A Proposer must provide a detailed work plan for all OCIP tasks for all Project phases described in this RFP, including optional tasks and any tasks not listed in the Scope of Services that are important for the successful execution of the OCIP. Additional services or innovative concepts or approaches that are proposed but not specifically requested in this RFP must be costed separately for the each listed described service. In the work plan, the Proposer may sort, group, delete, combine, and separate the proposed tasks and subtasks. The work plan shall facilitate the determination of the cost of the services.

- B. Insurance premiums shall be paid through the Broker as other direct costs without markup. All compensation for the services described in Tasks One, Two and Three shall be paid as described herein, net of profit and compensation for risk, which shall be separately identified in the final contract for services under this RFP as the "Broker's Premium Fee." The SFMTA shall pay any commissions on premium directly to the Broker. The Broker shall submit an affidavit under penalty of perjury that it has not received any compensation from any person or entity other than that paid Broker by the City to market, establish, implement and administer the OCIP for the Project. All compensation for all services under this RFP shall be compensated as provided herein, net of insurance premiums.
- C. A Proposer must review the requirement of the SBE Program in Appendix 2 of this RFP in preparing its Cost Proposal. The Cost Proposal must also include cost associated with the SBE Program. In particular, the Trainee requirements and expenses must be integral to the Proposal.
- D. The Proposer must carefully review all requirements of the Agreement in Appendix 3 of this RFP prior to preparation of its Cost Proposal. In the preparation of its Cost Proposal, the Proposer must assume that the SFMTA will not agree to modify to the terms of the form agreement as to allocation of legal or financial risk.
- E. A Proposer's Cost Proposal should include the following:
1. Direct hourly rates by proposed position of all personnel involved or proposed for the Proposer and all Sub-proposers. All position and associated rate information must be provided in CS163 Form 2. The direct salary rates may be adjusted at twelve (12) month intervals, but each increase shall be no more than the lesser of the Consumer Price Index (CPI) or two percent (2%) for the eight year term of the contract. The CPI shall be defined as the Consumer Price Index for San Francisco-Oakland-San Jose, All Items, [1982-84=100] for All Urban Consumers. Rate increases require SFMTA approval and shall apply only to Work performed after the SFMTA's approval of the increased rates.
 2. Most recent, audited overhead rates for Proposer and all Sub-proposers, if applicable. (A copy of the most recent independent audit of overhead rates for each firms listed in a Proposal must be included in the Proposal.) The overhead rates shall be based on the assumption that City staff and Proposer staff will collocate in one office during the construction phase.
 3. A detailed breakdown of labor hours for each task and each subtask by phase, by firm and by personnel classifications/grades.
 4. A detailed cost breakdown for each task and each subtask by phase, by firm and by personnel classifications/grades.

5. Summary of each firm and Sub-proposer's direct cost and indirect costs for each task and each subtask, including a breakdown of the other direct reimbursable costs.
 6. Cost Proposal for tasks or subtasks that the Proposer proposes to complete on a Cost plus Fixed Fee subject to a maximum cost basis.
 7. Proposed fixed fee profit for each task and subtask.
 8. Vehicle use or mileage rates and any other applicable rates.
 9. A detailed breakdown of any proposed Other Direct Costs (ODCs).
 10. Total not-to-exceed budget for the eight years, broken down on an annual basis.
- F. A Proposal must clearly state all assumptions on which the Proposal cost estimate is based, i.e., what work or tasks are included or excluded in the cost estimates.
- G. The following expenses will not be tracked or reimbursed separately as Other Direct Costs or Out-of-Pocket Costs under this Contract:
1. Computer usage
 2. Facsimile and telecommunication expenses
- H. The SFMTA will not reimburse the Proposer for any of the following expenses:
1. Proposer and Sub-proposers' personnel relocation costs.
 2. Purchases of office and field supplies/equipment, unless the supplies or equipment are not ordinary/typical supplies and equipment AND uniquely required of this Project AND serving only this Project, in which case the costs shall be separately identified in the Cost Proposal. These items will then need to be turned over to SFMTA at the end of Project, where applicable.
 3. Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis.
 4. Any travel expenses, including transportation, meals, lodging costs, which are beyond the limit set forth in the attached Professional Services Agreement under Appendix 3.
 5. Any overnight courier services extending outside of the Bay Area between Proposer offices or that are beyond the limit set forth in the attached Professional Services Agreement under Appendix 3.

6. Any personal or entertainment expenses.
 - I. Expenses shall only be reimbursed where and as specifically provided for in the Agreement. In determining whether specific expenses may be reimbursed, the City will apply federal common grant contract requirements as set out in the most recent version of the following authorities: OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments," 2 CFR Part 225; FTA Circular 4220.1F; FTA Best Practices Procurement Manual. The SFMTA has not adopted the Federal Acquisition Regulations ("FAR") and shall not be bound by those regulations or by court decisions interpreting the FAR.
 - J. The final costs of the Proposers services to be provided and insurance procured under this RFP will be negotiated based on the needs and budget of the Project.. The selected Proposer will not commence work on the Project until the SFMTA issues a notice to proceed with the work.

ARTICLE 4 - EVALUATION AND SELECTION CRITERIA

4.1 Selection Process

The selection process used by SFMTA generally follows City and FTA procurement guidelines. All Proposals will be evaluated by a Selection Committee comprised mainly of SFMTA staff. SFMTA will be the sole judge as to which Proposal is best and, in ascertaining the best Proposal, will take into consideration the financial resources, reputation, experience in performing similar work, as generally described below.

Step One: The SFMTA will evaluate each written Proposal based on the evaluation criteria listed in Section 4.2.1 A through E, using a 100-point rating system. Each member of the Selection Committee will separately score each firm's written Proposal. The Selection Committee's scores for each firm will be totaled, and the result will be divided by the number of Selection Committee members to obtain an averaged written evaluation score for each firm, which will be a maximum of 100 points.

The SFMTA will evaluate written criteria listed in Section 4.2.1 F Cost Proposal, using a 50-point rating system. The lowest price responsive proposal from a responsible Proposer will receive 50 points; every other Price Proposal will be scored proportionately based on the percentage by which that Price Proposal exceeded the price of the lowest-priced Proposal.

The SFMTA will multiply the averaged scores for each firm from evaluation of the written Proposal for criteria A through E by 30 percent and add the scores for each firm from the evaluation of the criteria F Cost Proposal. Based on those resulting scores, the SFMTA will determine which firms are within the competitive range (the "short list"). Those firms in the short list will be invited to attend an oral presentation/interview with the Selection Committee.

Step Two: The short-listed firms and their sub-proposers will be required to appear (in no particular order) before the Selection Committee for an oral interview, presentation of their Proposal and detailed discussion of the elements of their Proposal. Presentations at the oral interview must be made by the Proposer's key team members who will be assigned to perform the Contract. The key team members should actively participate in the oral presentations to the Selection Committee. Members of the Selection Committee may direct questions to specific members of the Proposer's team. The SFMTA may require short-listed firms to furnish additional information prior to or at the interview.

Using the evaluation criteria in Section 4.2.2 each member of the Selection Committee will separately score each firm's oral interview and presentation (20 point maximum). The SFMTA will total individual the evaluation scores from all Selection Committee members and then divide the total by the number of Selection Committee members, to obtain an average interview evaluation score for each firm.

Step Three: The SFMTA will multiply the averaged score for each Proposer from the evaluation of the written Proposal for criteria A through E (Step 1) by 30 percent, add the score received for criteria F, the Cost Proposal, (Step 1) and add the averaged score received from the evaluation of the oral interview (Step 2). The result will determine the ranking of the Proposers.

$$\text{Proposer Score} = [\text{average (A + B + C + D + E)} \times 0.30] + F + \text{average (G)}$$

The selection of any proposal shall not imply acceptance by the City of all terms in the proposal, which may be subject to further negotiations and approvals before the City may be legally bound thereby. In the event that the SFMTA determines that an agreement cannot be reached with the highest-ranked Proposer, SFMTA may choose to discontinue negotiations with the highest-ranked Proposer and enter into negotiations with other qualified firms in the order of their ranking. SFMTA reserves the right to accept other than the lowest-priced offer and to reject proposals that are not responsive to this RFP.

4.2 Evaluation Criteria

4.2.1 Written Proposal

The SFMTA will review each written Proposal to ensure that it meets the minimum qualifications, is otherwise responsive to the RFP, and complies with City contracting requirements. The Selection Committee will then evaluate all responsive Proposals based on the following criteria:

- A. Proposal (5 points maximum):** Responsiveness to all items requested in the RFP, overall organization and clarity of proposal.
- B. Team Organization and Qualifications (15 points maximum):** Evaluation of Proposer capabilities, relevant project experience, knowledge of subway tunnel and transit construction; consulting team's composition, structure, roles/function; team's qualifications in providing OCIP services.
- C. Project Organization, Key Personnel and Staffing Ability (20 points maximum):** Evaluation of the Proposer's team organizational and management structure in managing the sub-proposers, staff, tasks and quality; ability to provide timely/readily available qualified and adequate staffing and services to support Project demands. The Evaluation Committee reserves the right to visit the local offices of the Proposer and sub-proposers as part of its evaluation.
- D. Relevant Experience and References (30 points maximum):** Evaluation of capability, specific relevant experience, qualifications of each firm and each sub-proposer, especially the proposed key personnel for each task, and client references as to past project performance. The Selection Committee retains the right to independently verify and evaluate relevant experience and client references, including any sources not mentioned in the Proposal.

- E. Methodology and Approach (30 points maximum):** Evaluation of Proposer's understanding of the services for each task; effectiveness of its plan, program and method of execution; understanding of special issues, risks, problems and constraints, and approach towards mitigating and resolving them.
- F. Cost Proposal (50 points maximum):** Evaluation of cost for each Task I, II and III for completeness and detail; tasks and subtasks activities; other direct cost; fixed fee profit.

4.2.2 Oral Interview/Presentation

The SFMTA Selection Committee will conduct oral interviews at the Bay Area office of each short-listed Proposer. Prior to the interviews, SFMTA will notify the short-listed candidates in writing as to the time and length of the interview, the general format of the interview.

- G. Oral Interview/Presentation (20 points maximum):** In general, the oral interview will consider the Proposer's overall presentation, communication skills and ability to explain and answer questions from the Selection Committee regarding the Proposer's written Proposal. The Selection Committee will score the Oral Interview/Presentation based on the quality of responses provided and the quality of the team attending and presenting at the interview, including their expertise, communication skills, knowledge of the Proposal and Program, and the overall quality of their presentation.

ARTICLE 5 - TENTATIVE SCHEDULE

The tentative schedule for this RFP is listed below. SFMTA reserves the right to change the schedule at any time.

Advertise RFP	October 21-22, 2010
Pre-Proposal Conference	November 1, 2010
Proposals Due	November 16, 2010
Evaluation and Notify Short-Listed Firms	December 2010
Interviews	December 2010
Send out letter on first ranked firm	December 2010
Negotiations	January 2011
Send out Letter of Intent to Award to All Proposers	January 2011
SFMTA Board Approval of Contract Award	February 2011
Civil Service Commission Approval	February 2011
Board of Supervisors Approval	February 2011
City Controller Certification of Funds	February 2011
Notice to Proceed	March 2011

ARTICLE 6 - TERMS AND CONDITIONS FOR RECEIPT OF PROPOSALS

6.1 Validity of Proposal/Errors and Omissions in RFP/Requests for Information or Clarification

The Proposals (including cost Proposal) shall be valid for at least 180 calendar days from the last date Proposals are due at the SFMTA.

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify SFMTA, in writing, if the Proposer discovers any ambiguity, discrepancy, omission, or other errors in the RFP. Any such notification should be directed to SFMTA promptly after discovery, but in no event later than fifteen (15) calendar days prior to the date for receipt of Proposals. Modifications and clarifications, where required, will be made by addenda as provided below.

Questions regarding this RFP should be addressed in writing to:

Mr. Mario Gallardo
Contract Administration and Quality Management Office
SFMTA Capital Programs and Construction Division
One South Van Ness Avenue, 3rd Floor
San Francisco, California 94103
(415) 701-4300 fax

Questions sent via facsimile transmission are acceptable; however, it is the responsibility of the sender to ensure that the transmission was sent properly. SFMTA will send responses in writing, along with all the questions received, to all official recipients of this RFP. All questions must be received by SFMTA no later than 5:00 pm fifteen (15) days prior to the proposal due date. SFMTA may or may not respond to questions received after that time.

6.2 Addendum / Addenda

SFMTA may modify the RFP prior to the proposal due date by issuing written addenda. Addenda will be sent via regular, first class U.S. mail to the last known business address of each firm listed with SFMTA as having received a copy of the RFP for proposal purposes. SFMTA will make reasonable efforts to notify proposers in a timely manner of modifications to the RFP. Notwithstanding this provision, the Proposer must be responsible for ensuring that its Proposal reflects any and all addenda issued by SFMTA prior to the proposal due date regardless of when the proposal is submitted. Therefore, SFMTA recommends that proposers call SFMTA to verify, prior to submitting a proposal, whether an addendum or addenda have been issued.

For information, call Mr. Mario Gallardo at (415) 701-4348.

6.3 Revisions to Proposals

A Proposer may revise a proposal on the Proposer's own initiative at any time before the deadline for submission of Proposals. The Proposer must submit the revised proposal in the same manner as the original. A revised Proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised Proposal, or commencement of a revision process, extend the proposal due date for any Proposer.

At any time during the Proposal evaluation process, SFMTA may require a Proposer to provide written or oral clarification of its proposal. SFMTA reserves the right to make an award without further clarifications of proposals received.

6.4 Reservation of Rights by City

SFMTA reserves the right to cancel this RFP at any time without liability prior to execution of the Contract. The issuance of this RFP is a solicitation for proposals only. This RFP is not an offer and does not constitute an agreement by the City or the SFMTA that any contract will actually be entered into by the City and/or SFMTA. The City and SFMTA expressly reserves the right, at any time, to:

- A. Waive any defect or informality in any response, Proposal, and proposal review procedure;
- B. Reject any or all Proposals;
- C. Accept any Proposals in whole or in part;
- D. Reissue a Request for Proposals;
- E. Prior to submission deadline for Proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
- F. Procure any service specified in this RFP by any other means; or
- G. Determine that no project/contract will be pursued.

The SFMTA reserves the right to award the Contract to other than the Proposer that submitted the lowest priced Proposal. SFMTA will be the sole judge as to which Proposal is best by providing the best value to the City, and in ascertaining the best Proposal, will take into consideration each Proposer's financial resources, reputation, experience in similar situations and facilities for providing the services requested, as set out herein.

6.5 Award and Certification Required

In accordance with San Francisco Administrative Code Chapter 21, no proposal may be accepted and no contract in excess of \$500,000 may be awarded by the City and County of San Francisco until such time as (a) the Executive Director/CEO recommends the Contract for award and (b) the San Francisco Municipal Transportation Agency adopts a resolution awarding the Contract. Under Charter Section 9.118(b), the Board of Supervisors must approve contracts with anticipated expenditures in excess of \$10,000,000. Pursuant to Charter Section 3.105, all contract awards are subject to certification by the Controller as to the availability of funds.

6.6 Objections to RFP Terms

Should a Proposer object on any ground to any provision or legal requirement set forth in this RFP, the Proposer must, not more than ten calendar days after the RFP is issued, provide written notice to the SFMTA setting forth with specificity the grounds for the objection. The failure of a Proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

6.7 Errors and Omissions in Proposal

Failure by the SFMTA to object to an error, omission, or deviation in a Proposal will in no way modify the RFP or excuse a Proposer from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

6.8 Financial Responsibility

The City accepts no financial responsibility for any costs incurred by a Proposer in responding to this RFP. Submissions in response to this RFP (with exception of the cost proposals of those Proposers not selected) will become the property of the City and may be used by the City in any way deemed appropriate.

6.9 Small Business Enterprise (SBE)/Non-Discrimination Requirements

The following information is provided to assist Proposers in the preparation of proposals. Please also see Appendix 2 for a description of SFMTA's SBE Program, along with all forms required for submittal of proposals and for use by Proposers.

A. Policy

The SFMTA is committed to a Small Business Enterprise Program ("SBE Program") for the participation of SBEs in contracting opportunities. The SFMTA is also committed to compliance with the federal regulations in 49 CFR Part 26, issued March 4, 1999, as amended from time to time (the "Regulations"). The Regulations are incorporated into this SBE Program

as though fully set forth herein. It is the intention of the SFMTA to create a level playing field on which SBEs can compete fairly for contracts and subcontracts relating to the procurement and professional services activities of the SFMTA.

B. Questions

Questions concerning SBE/Non-Discrimination Requirements should be addressed to:

Mr. Mario Gallardo
Contract Administration and Quality Management Office
SFMTA Capital Programs and Construction Division
One South Van Ness Avenue, 3rd Floor
San Francisco, CA 94103
Telephone: (415) 701-4348

C. Non-Discrimination in Employment

SFMTA will evaluate the Proposer's response to the Questionnaire on Recruitment, Hiring, and Training Practices (SFMTA SBE Form No. 3) to determine whether the Proposer is in compliance with the Nondiscrimination Requirements.

Should SFMTA deem it necessary, the SFMTA will seek a written commitment from the Proposer to use good faith efforts to provide equal employment opportunities during the term of the contract. One measure of such a commitment would be comparing utilization of women and minorities with the relevant labor market in order to improve parity between the composition of the Proposer's workforce and the available labor market. The Proposer may be required to provide the SFMTA with the relevant data regarding its labor market.

D. SBE Goal

The Contract Compliance Office has established a fifteen percent (15%) SBE participation goal for this Contract. The goal is calculated on costs reimbursed and compensation paid to the Broker. That is, the SBE participation goal is based on calculation of the value of all costs of the Contract, less Insurance Premiums net of all costs, fees and other compensation paid to the Broker. Small business firms may qualify for this Program by enrollment in either the State of California's Small Business Program, the federal DBE Program, or the City and County of San Francisco's LBE Program. The SBE goal applies 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 and Engineering Services; Surveying and Mapping; Drafting (design services); Landscape Architecture; Building Inspection; Insurance Agencies and Brokerages and related services; Machinery and Equipment Rental (construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

To be determined responsive, a Proposer must demonstrate in its submittal that it will meet this goal in the performance of this contract; or if it is unable to meet the goal, the Proposer must submit documentation (SFMTA Form No. 2 – SBE Consultant/Subconsultant – Good Faith Efforts) with its Proposal that it performed good faith efforts, prior to submission of the bid or proposal, to meet this goal. A Proposer that is not responsive to these requirements shall be ineligible for award of the contract.

6.10 Nondiscrimination In City Contracts-Benefits Ordinance

A. Discrimination Prohibited.

Chapter 12B and 12C of the Administrative Code are incorporated by reference as though fully set herein. Chapter 12B and 12C prohibit discrimination by city contractors in employment, the use of property and the provision of employee benefits.

1. Please refer to Appendix 7 regarding the Non-discrimination Program mandated by Chapter 12B of the San Francisco Administrative Code. Documentation regarding Charter 12B and 12C compliance must be on file with or submitted to the CCSF Human Rights Commission (HRC). For further information, contact HRC at (415) 252-2500.
2. The selected Proposer must agree to abide by the following standard contract provisions regarding Chapter 12B and 12C.

B. Nondiscrimination; Penalties

1. Contractor Shall Not Discriminate. In the performance of this contract, Contractor agrees not to discriminate 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) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking

accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments, or organizations operated by Contractor.

2. Subcontracts. Contractor shall incorporate by reference in all subcontractors the provision of Sections 12B.2 (a), 12B.2(c) -12B.2 (k) and 12C.3 of the San Francisco Administrative Code, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with obligations in this subsection shall constitute a material breach of this Agreement.
3. Nondiscrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations within the United States, discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.
4. Condition to Contract. As a condition to this Agreement, Contractor must execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (HRC). A copy of Form HRC-12B-101 and information regarding Chapter 12B requirements are available at: <http://www.sf-hrc.org/index.aspx?page=31>.
5. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 12B and 12C of the San Francisco Administrative Code are incorporated by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under Chapter 12B and 12C of the Administrative Code, including but not limited to remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payment due Contractor.

6.11 San Francisco Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, Proposers' responses to RFPs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

6.12 Public Access to Meetings and Records

If a Proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City-funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, the Proposer must comply with the reporting requirements of that Chapter. The Proposer must include in its Proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Proposer's meetings and records, and (2) a summary of all complaints concerning the Proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary must also describe the disposition of each complaint. If no such complaints were filed, the Proposer must include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Proposer's Chapter 12L submission shall be grounds for rejection of the Proposal and/or termination of any subsequent Agreement reached on the basis of the Proposal.

6.13 Proposer's Obligations under the Campaign Reform Ordinance

Proposers must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a Proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the Proposer is prohibited from making contributions to:

- The officer's re-election campaign
- A candidate for that officer's officer
- A committee controlled by that officer or candidate

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 of the S.F. Campaign and Governmental Conduct Code may result in the following criminal, civil, or administrative penalties:

- Criminal: Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
- Civil: Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
- Administrative: Any person who intentionally or negligently violates section 1.126 may be held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, contact the San Francisco Ethics Commission at (415) 554-9510.

6.14 Resource Conservation

All documents submitted in response to this RFP must be on recycled paper and printed on double-sided pages to the maximum extent possible unless otherwise required herein.

6.15 San Francisco Business Tax Certificate

San Francisco Ordinance No. 345-88 requires that, in order to receive an award, a firm located in San Francisco or doing business in San Francisco must have a current Business Tax Certificate. Since the work contemplated under the proposed Agreement will be performed in San Francisco, a San Francisco

Business Tax Certificate will be required. The Business Tax Declaration (Appendix 4) should be completed and submitted with the Proposal.

6.16 Certification Regarding Lobbying

All prospective Proposers are required to complete and submit along with their Proposals, the certification form in Appendix 6 regarding lobbying. The same certification shall be obtained and submitted from all lower tier participants (Sub-proposers, suppliers) with work greater than \$100,000.

6.17 Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Lower Tier Covered Transactions (Third Party Contracts over \$25,000)

This contract is covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or Proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the San Francisco Municipal Transportation Agency (“SFMTA”). If it is later determined that the bidder or Proposer knowingly rendered an erroneous certification, in addition to remedies available to the SFMTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or Proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

6.18 Notification of Limitations on Contributions

This paragraph applies if your Proposal exceeds \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the “Conduct Code”) Section 3.700 et. seq., and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who have discretion to approve and do in fact approve this contract from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for

compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are “public benefit recipients” of the contract. Public benefit recipients of the contract are defined as: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

A party to any contract awarded under this solicitation must acknowledge that it understands that any public official who approves this contract may not accept campaign contributions, gifts, or future employment from the Contractor except as provided under the Conduct Code. The contractor must agree to notify any other individuals or entities that may be deemed “public benefit recipients” under the Conduct Code because of this contract.

Upon request, the contractor must further agree to furnish, before the contract is entered into, such information as any public official approving this contract may require in order to ensure such official’s compliance with the Conduct Code. Upon request, the City will agree to provide, before the contract is entered into, a list of public officials who, under the Conduct Code, approve the contract to the contractor. Failure of any public official to abide by the Conduct Code will not constitute a breach by either the contractor or the City of the contract. Neither party to the contract will have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

6.19 No Waiver

No waiver by the City of any provision of this RFP shall be implied from any failure by the City to recognize or take action on account of any failure by a Proposer to observe any provision of this RFP.

ARTICLE 7 - CITY CONTRACT REQUIREMENTS

7.1 Agreement for Professional Services

The selected Proposer will be required to enter into a contract substantially similar to the form services agreement , attached hereto as Appendix 3. Failure to timely execute the contract, or to furnish any and all certificates, bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

Proposers are urged to pay special attention to the requirements of the Minimum Compensation Ordinance (§43 in the Agreement), the Health Care Accountability Ordinance (§44 in the Agreement), and the First Source Hiring Program (§45 in the Agreement), as summarized in paragraphs B, C, D below.

7.2 Minimum Compensation Ordinance (MCO)

The selected Proposer will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements. For the contractual requirements of the MCO, see § 43 of the Form Agreement appended to this RFP.

For the amount of hourly gross compensation currently required under the MCO, see www.sfgov.org/olse/mco. Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract.

Additional information regarding the MCO is available on the web at www.sfgov.org/olse.

7.3 Health Care Accountability Ordinance (HCAO)

The selected Proposer will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Proposers should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at www.sfgov.org/olse/hcao.

7.4 First Source Hiring Program

If the contract is more than \$50,000, then Administrative Code Chapter 83, the First Source Hiring Program (FSHP), may apply. Generally, this ordinance requires contractors to notify the First Source Hiring Program of available entry-level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment.

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at <http://www.sfhsa.org/302.htm>.

ARTICLE 8 - PROTEST PROCEDURES

Any protest must be in conformance with the Protest Procedures as detailed in Appendix 5.

ARTICLE 9 - APPENDICES

1. SFMTA Form PM3
2. Small Business Enterprise (SBE) Program for Professional and Technical Services for Federally Funded Projects
3. Form of Agreement: City and County of San Francisco Professional Services Contract Agreement
4. Business Tax Registration Declaration
5. Protest Procedures for the Bidding and Award of Federally Assisted Third Party Contracts
6. Certification Regarding Lobbying
7. San Francisco Administrative Code, 12B and 12C Declaration Form
8. Attestation of Compliance
9. Sample List of Available References
10. CS 163 Forms

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THIS PRINT COVERS CALENDAR ITEM NO.: b10.6

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: CAPITAL PROGRAMS AND CONSTRUCTION

BRIEF DESCRIPTION:

Requesting authorization to execute Contract No. CS-164, Central Subway Project Owners Protective Professional Indemnity ("OPPI") Insurance Services Agreement, with Gallagher Construction Services and to bind each layer of coverage for the Central Subway Project Owners Protective Professional Indemnity Insurance with each insurer for a total amount not to exceed \$6,800,000 and for a term not to exceed ten years.

SUMMARY:

- The seven joint venture partners of the design consultant firms for the final design of the Central Subway Project each have between \$5 million and \$20 million in practice insurance to protect against potential losses arising from design errors and omissions.
- Arthur J. Gallagher & Co Insurance Brokers of California, Inc. will provide services necessary to procure Owners Protective Policy Insurance that will provide the SFMTA excess liability coverage to supplement the practice policies coverage provided by the Central Subway Project's final design consultant firms.

ENCLOSURES:

1. SFMTA Board of Directors Resolution
2. Project Budget & Financial Plan
3. Contract

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

_____ Jessie Katz _____

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

Requesting authorization to execute Contract No. CS-164, Central Subway Project Owners Protective Professional Indemnity Insurance ("OPPI") Services Agreement, with Arthur J. Gallagher & Co Insurance Brokers of California, Inc., and to procure design liability insurance coverage for the Central Subway Project, for total coverage amount of not less than \$30,000,000 and for a total cost not to exceed \$6,800,000 inclusive of all premiums, fees, costs and taxes, for a term not to exceed ten years.

GOAL

OPPI insurance coverage for the Central Subway Project will provide liability protection that is consistent with the SFMTA Strategic Plan in the following goals and objectives:

Goal 4 – Financial Capacity: To ensure financial stability and effective resource utilization

Objective 4.2 Ensure efficient and effective use of resources

DESCRIPTION

Background:

The Central Subway Project is the second phase of SFMTA's Third Street Light Rail Project. The Project will add 1.67 miles of light rail track north from the northern end of the new Third Street Light Rail at Fourth and King Streets to a terminal in Chinatown. The Project will serve regional destinations, including Chinatown (the most densely populated area of the country that is not currently served by modern rail transportation), Union Square, Moscone Convention Center, Yerba Buena, South of Market areas and AT&T Park. The Project will also connect BART and Caltrain (the Bay Area's two largest regional commuter rail services), serve a low auto ownership population of transit customers, increase transit use and reduce travel time, reduce air and noise pollution, and provide congestion relief. The public interest and necessity require the construction and operation of the Project to achieve such benefits.

The Project will include twin bore, subsurface tunnels to connect the Project's three subway stations and provide direct rail service to Union Square and Chinatown. The Project has been planned and located in a manner that will be most compatible with the greatest public good and the least private injury.

Current Project Status:

The preliminary engineering work for the Project has been completed. On January 7, 2010, the FTA issued its approval for the Project to enter into Final Design. Three design consultant teams in conjunction with SFMTA staff are currently preparing design packages that the SFMTA will issue for competitive contract bids to construct the Project. The next construction contract is scheduled to begin construction in 2011, and the start of revenue operation is scheduled for 2018.

PAGE 3.

Purpose and Scope of Contract:

The SFMTA, with the assistance of the City Risk Management Division, seeks to procure OPPI insurance coverage for the Central Subway Project. OPPI coverage would provide first-party indemnity to the SFMTA for liability arising from errors and omissions in the final design of the Central Subway Project that is not covered by the design consultants' professional practice liability insurance policies.

The complexity of the Central Subway Project, including tunneling and/or cut-and-cover construction using multiple construction contractors, in proximity to high-rise buildings, the BART tunnel, the Powell Street Station and other sensitive structures and facilities, poses significant liability to the City. Each of the joint venture partners of the final design consultants will provide professional liability insurance coverage to the City of between \$5,000,000 and \$20,000,000. These policy amounts were reached through protracted contract negotiations with the design consultants. Those policies would provide first line coverage for any claim arising from the consultants' errors and omissions in their respective designs, but those policies do not insure against claims arising from the design work of City staff. City staff is integrated into the design teams for the Project. In addition, the consultants' policies may be inadequate to address a catastrophic loss or multiple large claims arising from a single event. An OPPI policy would provide excess design liability coverage where the consultants' policies are inadequate and where the City has direct liability for a design error or omission.

An OPPI is not underwritten by a single insurance underwriter. Several underwriters contract with each other through a qualified insurance broker to provide multiple vertical layers of coverage. The layering of coverage allows the Agency to obtain greater total insurance protection at a lower premium as risk of loss is shared among multiple insurers. Due to the highly specialized nature of OPPI insurance and related brokerage services, SFMTA staff determined that it is in the best interests of the Central Subway Project and the Agency to utilize the services of an insurance broker selected by the City's Risk Management Division to market, negotiate and place the excess insurance policies for the OPPI.

By competitive process, in September 2008, the Risk Manager created a pool of prequalified insurance brokers to provide specialized insurance services to the City. Arthur J. Gallagher & Co Insurance Brokers of California, Inc. ("Gallagher") was ranked first in that process, and on that basis and based on its having the requisite experience in placing OPPI insurance coverage for large and complex construction projects was selected to provide the SFMTA brokerage services for the OPPI.

The broker's services will include but are not limited to identifying OPPI insurance underwriters, marketing the Central Subway Project to the underwriters and claims process management to provide layered insurance coverage excess of that provided by the Central Subway Project's final design consultants in an amount greater than \$55,000,000. Underwriters that have tentatively agreed to provide an initial \$30,000,000 coverage include:

<u>Insurer</u>	<u>Limit</u>
Catlin	\$12,500,000
Axis Surplus	\$12,500,000
Alterra	\$5,000,000
Total	\$30,000,000

To increase the OPPI coverage limit, the initial coverage policies must first be established, which will then attract additional investors to provide higher OPPI insurance limits. Although final coverage amounts cannot be known until the broker fully markets the Central Subway Program to all appropriate insurance markets, SFMTA staff and the Risk Manager anticipate that the final OPPI coverage will exceed \$55,000,000.

The broker's compensation for marketing, procuring and binding the OPPI coverage and for administering claims arising under the OPPI policies will be negotiated based on the extent of the final coverage procured. Generally the broker's fee will not exceed 10 percent of the insurance premium, and in no case will the costs of the OPPI coverage exceed \$6,800,000, inclusive of insurance premiums, broker's fees, costs and taxes. The broker's contract term is for 10 years, which coincides with periods for design, construction and close-out phases of the Central Subway Project.

It is not possible to know the final cost of the OPPI coverage and the included broker's fees until the broker is under contract and firm policy premium quotes have been received and evaluated. Staff will evaluate whether the quoted OPPI insurance premium costs are reasonable by conducting market price comparisons with similar insurance programs adjusted for scale of the covered capital project. The current OPPI program cost estimate of \$6,800,000 is based on tentative costs estimates that assume \$60,000,000 in coverage. Staff will further ensure that the insurance broker fees and charges to put the OPPI coverage in place are fair and reasonable by application of FTA compensable cost principals and rules, including review of the broker's audited overhead rates, labor rates, profits and consideration of risk assumed by the broker for placement of an insurance program with a term of ten years or more.

ALTERNATIVES CONSIDERED

An alternative is a project specific professional liability which would provide each project design professional listed on the policy a single policy with shared limits of liability. There are few underwriters providing project specific coverage at the levels required by the Central Subway Project, and the initial cost estimates for that coverage far exceeded the estimated costs for an OPPI. In addition, a project specific policy provides lesser coverage than an OPPI. A project specific policy would have limits shared by all design professionals on the Project, and litigation costs would likely substantially erode final coverage available to resolve claims. In contrast, the OPPI structure requires each design professional to maintain his/her own professional liability coverage and provides the City with a separate policy for the City's benefit only, at a more economical cost.

PAGE 5.

FUNDING IMPACT

Consultant services under this contract are funded from federal, state and local sources. The Central Subway Project Budget & Financial Plan is set forth in Enclosure 2.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No further action required; Civil Service Commission approval was obtained by the Risk Manager for contracting with broker in its prequalified pool on April 21, 2008 under Civil Service Approval No. 4146-07/08.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Executive Director or his designee to execute Contract No. CS-164, Central Subway Project Owners Protective Professional Indemnity Insurance Services Agreement, with Arthur J. Gallagher & Co Insurance Brokers of California, Inc. and to bind each layer of coverage for the Central Subway Project Owners Protective Professional Indemnity Insurance with each insurer for a total amount not to exceed \$6,800,000 and for a term not to exceed ten years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Final Environmental Impact Statement/Environment Impact Report (Final EIS/EIR) for the Central Subway Project (the "Project"), which is phase-two of the Third Street Light Rail Project, was completed in November 1998; and,

WHEREAS, The former Public Transportation Commission approved Resolution No. 99-009 on January 19, 1999, which adopted the environmental findings pursuant to the California Environmental Quality Act (CEQA) for the Project, including mitigation measures as set forth in the Project's Final Environmental Impact Report and Mitigation Monitoring Report; and,

WHEREAS, The complexity of the final designs for the construction of the Central Subway Project, which are being completed by three design teams integrated with City staff, may present significant liability to the City that cannot be covered by the design consultants' design errors and omissions liability insurance, and the consultants' insurance will not cover the work of City staff involved in Project design; and,

WHEREAS, To project against the risk of potential loss due to errors and omission in the final designs for the Central Subway Project that are not covered by the design consultants' design liability insurance, the SFMTA desires to obtain excess design liability insurance in the form of an Owners Protective Professional Indemnity Insurance ("OPPI"), which can only be procured through a qualified and licensed insurance broker; and,

WHEREAS, Arthur J. Gallagher & Co Insurance Brokers of California, Inc. ("Gallagher") is a qualified broker from the City's Risk Management Division's pool of brokers, who was ranked first in the selection process administered by the Risk Management Division and which has been identified as having unique experience and expertise in the procurement and administration of OPPI programs; and,

WHEREAS, Staff will confirm that the costs of Gallagher's services are fair and reasonable by review of competitive bid quotations from other brokers and application of FTA costs allowance principles, rules and regulations, and staff will confirm that the insurance premiums charged are fair and reasonable based on market analyses of OPPI coverage placed on other projects of similar size; and,

WHEREAS, Establishment of an OPPI insurance program will assist the SFMTA in meeting the Strategic Plan Objective No. 4.2 -- to ensure the efficient and effective use of resources; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO or his designee to execute Contract No. CS-

164, Central Subway Project Owners Protective Professional Indemnity Insurance Services Agreement with Arthur J. Gallagher & Co Insurance Brokers of California, Inc. and bind layers of Protective Professional Indemnity Insurance coverage for the Central Subway Project with insurers for total coverage amounts not less than \$30,000,000, for broker's fees commensurate to final value of insurance coverage procured, total costs not to exceed \$6,800,000 inclusive of all policy premiums, broker's fees, costs and taxes and for a term not to exceed ten years.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2
 THIRD STREET LIGHT RAIL PROJECT
 CENTRAL SUBWAY

Owners Protective Professional Indemnity (OPPI) Insurance

Cost	(\$Million)
Conceptual and Preliminary Engineering	59.41
Program Management & Construction Management	132.78
Final Design	85.94
Construction Contracts	986.68
Vehicles	26.39
Contingency	160.26
Right-of-Way	34.84
Other Professional Services	92.00
Total Central Subway Cost	\$ 1,578.30

Funding	(\$Millions)
Federal 5309 New Starts	942.20
State RTIP Grant	88.00
CMAQ	6.03
State TCRP Grant	14.00
Proposition 1B-2006 MTC Share	100.00
Proposition 1B-MTA Share	100.00
Proposition Additional 1B-MTA Share	40.00
Proposition K Sales Tax Funds	123.98
High Speed Rail Funds	27.00
Option Local and Regional Sources	137.09
Total Central Subway Funding	\$ 1,578.30

ENCLOSURE 3
THIRD STREET LIGHT RAIL PROJECT
CENTRAL SUBWAY
CONTRACT

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

**Agreement between the City and County of San Francisco and
Arthur J. Gallagher & Company Insurance Brokers of California, Inc.
for Insurance Broker Services for an Owners Protective Professional Indemnity Insurance
Program for the Central Subway Project**

Contract No. CS-164

This Broker Services Agreement ("Agreement" or "Contract"), SFMTA Contract No. CS-164 is dated for convenience as October 19, 2010, made in the City and County of San Francisco, State of California, by and between: Arthur J. Gallagher & Company Insurance Brokers of California, Inc. ("Broker"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA") and City's Risk Management Division ("Risk Manager").

RECITALS

WHEREAS, the SFMTA and the Risk Management Division of the City and County of San Francisco wishes to secure the services a qualified insurance broker to provide insurance services to implement and assist in the operation of an Owners Protective Professional Indemnity Insurance Program ("OPPI Program") for the SFMTA's Central Subway Project, which services shall include providing advice and assistance to the SFMTA and Risk Manager and placement and negotiation of insurance policies for the OPPI Program; and,

WHEREAS, the services of an experienced insurance broker and advisor are required to manage the City's risk and to structure, place and negotiate policies of insurance relating to the City; and,

WHEREAS, the Risk Manager issued a Request for Qualifications ("RFQ") on April 23, 2008 to select a pool of qualified insurance brokers with which City may contract to provide insurance services; and

WHEREAS, Broker was included in the Risk Management Division's pool of prequalified insurance brokers under a contract dated October 31, 2008, and the Risk Manager selected Broker as the most qualified in that pool to provide OPPI Program services for the Central Subway Project; and

WHEREAS, Broker represents and warrants that it is qualified to perform the services required by the City, as set forth under this Agreement;

WHEREAS, Approval from the Civil Service Commission for this Agreement as a task order issued by the Risk Manager was obtained on April 21, 2008 under Civil Service Approval No. 4146-07/08.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Certification of Funds. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation. The City's obligation hereunder shall not at anytime exceed the amount certified by the Controller for the purpose and period stated in such certification. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of the City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. Funding for the Contract may be certified in parts, as funds become available. Broker shall not perform Work in excess of the amount certified for the Contract. THIS SECTION 1 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term and Expiration of the Agreement.

a. Subject to Section 1, the term of this Agreement shall be for a period of ten (10) years commencing on the Effective Date of the Agreement.

b. Prior to expiration of this Agreement, Broker shall commence and perform, with diligence, all actions necessary on the part of Broker to effect the termination of this Agreement and to minimize the liability of Broker and City to third parties as a result of expiration. Further, Broker shall perform all actions necessary for the uninterrupted continuance of insurance policies secured pursuant to this Agreement with the City and/or through an alternative Broker of the City's choosing. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation those listed in Section 21(b) of this Agreement.

3. Effective Date of Agreement. This Agreement shall become effective when the Controller has certified to the availability of funds and Broker has been so notified in writing.

4. Services Broker Agrees to Perform. The Broker agrees to perform the services provided for in Appendix A, "Description of Services" attached hereto and as described in the recitals stated above, all which are incorporated by reference as though fully set forth herein

5. Broker's Compensation and Total Costs.

a. Broker shall be compensated for providing to the City the services described in Appendix A through retail and wholesale commissions received from City's payment to insurance companies either directly or through Broker. The City will not directly compensate Broker for services provided under this Agreement but only through Broker's commission arrangements with City's insurers. Broker's compensation shall be negotiated with the City; the final amount of compensation to be paid to Broker shall be based on the premium cost of OPPI insurance coverage actually placed for the Project, but Broker's compensation shall in no case

exceed Six Hundred Eighty Thousand Dollars (\$680,000) or ten percent of the final premium cost, whichever is less. The total cost to the City for placing OPPI insurance for the Project shall not exceed Six Million Eight Hundred Thousand Dollars (\$6,800,000), which amount is inclusive of all insurance premiums, broker fees, costs, and taxes.

b. Before presenting the City with potential insurance policies, Broker will disclose to the City all compensation agreements it has with any insurer to which it has marketed the City's book of insurance. Prior to each placement by Broker and prior to binding any coverages for the City's insurance programs, Broker shall disclose to the City and obtain the City's approval of any commissions and/or contingent income collected or to be collected by Broker or its affiliates with respect to such placement. The City will also be provided prior to binding any policy with an accounting of any amounts to be paid to Broker, Broker's affiliates, and/or non-Broker intermediaries if available, in connection with coverages placed for the City's insurance programs, including any fees, if applicable, paid to Broker for services it provides to third parties. In addition, Broker will annually provide the City with a summary of all Broker revenue applicable to the City's insurance programs including all fees paid to or income generated from wholesale operations or intermediaries used in the process of obtaining the City's insurance coverage or services.

c. Upon request by the City, Broker shall provide to the City such information necessary to review the underlying costs, profit, and return for assumed risk that are paid to broker through the fees received by broker from the underwriters and insurers. The purpose of the City's review is to determine whether the compensation paid to broker is fair and reasonable by market analyses and by application of the cost accounting principles and allowable expenses provisions set out in FTA Circular 4220.1F, the FTA Best Practices Procurement Guide, and the authorities respectively referenced therein. Brokers mandatory disclosures include but are not limited to:

- 1) Direct labor costs (hourly wages or salary to personnel performing work under this Agreement)
- 2) Labor fringe benefits costs
- 3) Overhead rates for expenses for home office and local office, as applicable, where work on this Agreement is performed
- 4) General and administrative expenses not included in overhead rates as applied to direct labor costs
- 5) Amount of profit earned under this Agreement

d. Broker's disclosures to the City of the amounts and basis for its compensation under this Agreement is subject to the false claims prohibitions and remedies as provided in Section 8, below. Any intentional misstatement, intentional false statement, or intentional omission of material fact necessary for the City to determine whether Broker's compensation under this Agreement is fair and reasonable may be considered a false claim.

e. Broker is permitted to receive commissions from insurers for the individual coverages placed for the City's insurance programs. However, Broker is prohibited from including the coverages placed for the City in Broker's aggregate with an insurer used to calculate contingent income based on the total volume of coverage placed by Broker with insurer.

f. Insurance placements made by Broker on the City's behalf may require the payment of state surplus lines or other premium taxes and or fees in addition to the premium itself. Broker will invoice the City for the payment of these taxes and fees with the premium.

g. In no event shall City be liable for interest or late charges for any late payments.

h. No charges shall be incurred under this Agreement nor shall any payments become due to Broker until reports, services, and policy documents required under this Agreement are received from Broker and approved by the City's Director of Risk Management as being in accordance with this Agreement. City may require an insurer to withhold payment to Broker in any instance in which Broker has failed or refused to satisfy any material obligation provided for under this Agreement. Broker shall disclose to City all amounts paid to Broker or otherwise received by Broker for services provided and insurance placed for the Project pursuant to this Agreement. Broker shall refund to the City any amounts Broker receives from any insurer that exceed the amount of negotiated by City and Broker for services provided and insurance procured pursuant to this Agreement.

i. The Controller is not authorized to pay invoices submitted by Broker prior to Broker's submission of SFMTA SBE Form No. 6: Progress Payment Report. If SFMTA SBE Form No. 6 is not submitted with Broker's invoice, the Controller will notify the department, the SFMTA Contract Compliance Office and Broker of the omission. If Broker's failure to provide SFMTA SBE Form No. 6 is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until SFMTA SBE Form No. 6 is provided.

j. Following City's payment of an invoice, Broker has five (5) days to submit SFMTA SBE Form No. 7: Subconsultant Payment Declaration verifying that all subcontractors have been paid and specifying the amount and date of payment.

6. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Broker for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not

authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. Payment; Invoice Format. Invoices furnished by Broker under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Broker shall be subject to audit by City. Payment shall be made by City to Broker at the address specified in the section entitled “Notices to the Parties.”

8. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code, is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (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.

9. Federal Contract Requirements. Contractor shall comply with all applicable federal contracting laws, regulations and requirements, including but not limited those described in Appendix A to this Agreement.

10. Taxes. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Broker. Broker recognizes and understands 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 Broker to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Broker, on behalf of itself and any permitted successors and assigns, recognizes and understands that Broker, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Broker, 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. Broker 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.

(3) Broker, 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). Broker 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.

(4) Broker 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.

11. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Broker, shall in no way lessen the liability of Broker to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Broker without delay.

12. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Broker. Broker will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Broker. Broker shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Broker, or by any of its employees, even though such equipment be furnished, rented or loaned to Broker by City.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor. Broker or any agent or employee of Broker 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. Broker or any agent or employee of Broker 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. Broker or any agent or employee of Broker is liable for the acts and omissions of itself, its employees and its agents. Broker 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 Broker's performing services and work, or any agent or employee of Broker providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between

City and Broker or any agent or employee of Broker. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Broker'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 Broker performs work under this Agreement.

b. Payment of 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 Broker 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 Broker 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 Broker for City, upon notification of such fact by City, Broker shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Broker under this Agreement (again, offsetting any amounts already paid by Broker 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, Broker shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Broker is an employee for any other purpose, then Broker agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Broker was not an employee.

15. Insurance.

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

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

(2) Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(4) Errors and Omissions insurance with limits not less than \$5,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

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

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

c. All policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

San Francisco Municipal Transportation Agency
1 South Van Ness Avenue,
3rd Floor San Francisco, CA 94103
Attention: Shahnám Farhangí
In re: Contract No. CS-164

Matt Hansen, Director
Risk Management Division
City and County of San Francisco
25 Van Ness Ave., Suite 410
San Francisco, California 94102

d. Should any of the required insurance be provided under a claims-made form, Broker shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) 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.

e. 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.

f. 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.

g. Before commencing any operations under this Agreement, Broker shall do the following: (a) 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, and (b) furnish to City complete copies of policies promptly upon City request. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. Approval of the insurance by City shall not relieve or decrease the liability of Broker hereunder.

i. If a subcontractor will be used to complete any portion of this Agreement, the Broker shall ensure that the subcontractor shall provide all necessary insurance and shall name the City, its officers, agents and employees and the Broker listed as additional insureds.

16. Indemnification

a. General. To the fullest extent permitted by law, Broker shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Broker or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Broker, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

b. Limitations. No insurance policy covering the Broker's performance under this Agreement shall operate to limit the Broker's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Broker assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

c. Copyright infringement. Broker 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 or services to be supplied in the performance of Broker's services under this Agreement. 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.

17. Incidental and Consequential Damages. Broker shall be responsible for incidental and consequential damages resulting in whole or in part from Broker's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 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.

19. Intentionally left blank.

20. Default; Remedies. Each of the following shall constitute an event of default (“Event of Default”) under this Agreement:

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

- 8. Submitting false claims
- 10. Taxes
- 15. Insurance
- 24. Proprietary or confidential information of City
- 30. Assignment
- 37. Drug-free workplace policy,
- 53. Compliance with laws
- 57. Protection of private information
- 58. Graffiti removal

(2) Broker fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Broker.

(3) Broker (a) is generally not paying its debts as they become due, (b) 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, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Broker or of any substantial part of Broker’s property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Broker or with respect to any substantial part of Broker’s property, (b) 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 (c) ordering the dissolution, winding-up or liquidation of Broker.

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, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Broker any Event of Default;

Broker 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 Broker under this Agreement or any other agreement between City and Broker all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Broker pursuant to the terms of this Agreement or any other agreement. 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.

21. Termination for Convenience

a. 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 Broker written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Broker shall commence and perform, with diligence, all actions necessary on the part of Broker to effect the termination of this Agreement on the date specified by City and to minimize the liability of Broker 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:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At City's direction, assigning to City any or all of Broker's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City 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.
- (5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- (7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Broker and in which City has or may acquire an interest.

c. Within 30 days after the specified termination date, Broker shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Broker, without profit, for all services and other work City directed Broker to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Broker's direct costs for services or other work. Any overhead allowance shall be separately itemized. Broker may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Broker can establish, to the satisfaction of City, that Broker would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Broker of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(4) A deduction for the cost of materials to be retained by Broker, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Broker or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on 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 such subsection (c).

e. In arriving at the amount due to Broker under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Broker's final invoice; (2) any claim which City may have against Broker in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8. Submitting False Claims
9. Disallowance
10. Taxes
11. Payment Does Not Imply Acceptance Of Work

13. Responsibility For Equipment
14. Independent Contractor; Payment Of Taxes And Other Expenses
15. Insurance
16. Indemnification
17. Incidental And Consequential Damages
18. Liability Of City
24. Proprietary Or Confidential Information Of City
26. Ownership Of Results
27. Works For Hire
28. Audit And Inspection Of Records
48. Modification Of Agreement.
49. Administrative Remedy For Agreement Interpretation.
50. Agreement Made In California; Venue
51. Construction
52. Entire Agreement
56. Severability
57. Protection Of Private Information

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the Term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Broker 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. This subsection shall survive termination of this Agreement.

23. Conflict of Interest. Through its execution of this Agreement, Broker acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City. Broker understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Broker may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Broker agrees that all information disclosed by City to Broker shall be held in confidence and used only in performance of the Agreement. Broker shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties and City Liaison.

a. Notices. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, or by e-mail, and shall be addressed as follows:

To City: Municipal Transportation Agency
One South Van Ness Avenue, 3rd Floor
San Francisco, CA 94103
Attn: Shahnám Farhangí
Phone: 415-701-4284
Fax: 415-701-4300
Email: Shahnám.farhangí@sfmta.com

With a copy to:

To City: City and County of San Francisco
Risk Management Division
25 Van Ness Avenue., Suite 750410
San Francisco, California 94102
Attention: Matt Hansen
Tel: 415-554-2302
Fax: 415-554-2357
Email: matt.hansen@sfgov.org

To Broker: Scott Whiteside
Executive Vice President
Gallagher Construction Services
Arthur J. Gallagher & Co. Insurance Brokers of Calif., Inc.
1 Market Street, Spear Tower, Second Floor
San Francisco, CA 94105
Telephone: 415-288-1637
Email: Scott_Whiteside@AJC.com

with a copy to: Douglas Bowring President,
Arthur J. Gallagher & Co. Insurance
Brokers of California, Inc.
1 Market Street, Suite 200
Spear Street Tower
San Francisco, CA 94105
Email: Douglas_Bowring@AJC.com

b. Notice of Default. Any notice of default must be sent by registered mail.

26. Ownership of Results. Any interest of Broker or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Broker or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Broker may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire. If, in connection with services performed under this Agreement, Broker or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, 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 are the

property of the City. If it is ever determined that any works created by Broker or its subcontractors under this Agreement are not works for hire under U.S. law, Broker hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Broker may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records. Broker agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Broker 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. Broker shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting. Broker is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment. The services to be performed by Broker are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Broker unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. 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.

32. Earned Income Credit (EIC) Forms . Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Broker shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Broker has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Broker; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Broker of the terms of this Agreement. If, within thirty days after Broker receives written notice of such a breach, Broker fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Broker fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under

applicable law. Any Subcontract entered into by Broker shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Intentionally left blank.

34. Nondiscrimination; Penalties

a. Broker Shall Not Discriminate. In the performance of this Agreement, Broker agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts. Broker shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Broker's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits. Broker 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 bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract. As a condition to this Agreement, Broker shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Broker shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Broker understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each

calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Broker and/or deducted from any payments due Broker.

35. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Broker acknowledges and agrees that he or she has read and understood this section.

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

37. Drug-Free Workplace Policy. Broker acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Broker agrees that any violation of this prohibition by Broker, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation. Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Broker to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act. Broker acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Broker shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Broker agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Broker, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors’ bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records. If the Broker receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Broker shall

comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Broker agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Broker further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Broker acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Broker further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions. Through execution of this Agreement, Broker 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. Broker acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Broker further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Broker's board of directors; Broker's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Broker; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Broker. Additionally, Broker acknowledges that Broker must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

43. Requiring Minimum Compensation for Covered Employees

Broker agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Broker's obligations under the MCO is set forth in this Section. Broker is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

The MCO requires Broker to pay Broker's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Broker is obligated to keep informed of the then-current requirements. Any subcontract entered into by Broker shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Broker's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of

the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Broker.

Broker shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

Broker shall maintain employee and payroll records as required by the MCO. If Broker fails to do so, it shall be presumed that the Broker paid no more than the minimum wage required under State law.

The City is authorized to inspect Broker's job sites and conduct interviews with employees and conduct audits of Broker.

Broker's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Broker fails to comply with these requirements. Broker agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Broker's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

Broker understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Broker fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Broker fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

Broker represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

44. Requiring Health Benefits for Covered Employees

Broker agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Broker shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Broker chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Broker is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Broker's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Broker if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Broker fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Broker fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Broker shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Broker shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Broker shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Broker based on the Subcontractor's failure to comply, provided that City has first provided Broker with notice and an opportunity to obtain a cure of the violation.

e. Broker shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Broker's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Broker represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Broker shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Broker shall keep itself informed of the current requirements of the HCAO.

i. Broker shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Broker shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Broker shall allow City to inspect Broker's job sites and have access to Broker's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Broker to ascertain its compliance with HCAO. Broker agrees to cooperate with City when it conducts such audits.

m. If Broker is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Broker later enters into an agreement or agreements that cause Broker's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Broker and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Broker shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Broker shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions. Broker shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions. Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages. Broker agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts. Any subcontract entered into by Broker shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Broker may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, “Political Activity”) in the performance of the services provided under this Agreement. Broker agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City’s Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Broker violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Broker from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Broker’s use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic. Broker may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Broker may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Broker from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Broker shall cooperate with the SFMTA to submit to the SFMTA Contract Compliance Office any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (SFMTA SBE Form No. 8: Amendments of Professional Services Contracts).

49. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. 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.

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

52. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48, "Modification of Agreement."

53. Compliance with Laws. Broker shall keep itself fully informed of the City's Charter, codes, ordinances 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.

54. 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 Broker, will be paid unless the provider received advance written approval from the City Attorney.

55. Intentionally Left Blank.

56. 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.

57. Protection of Private Information. Broker has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Broker agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Broker pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Broker.

58. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Broker shall remove all graffiti from

any real property owned or leased by Broker in the City and County of San Francisco within forty eight (48) hours of the earlier of Broker's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Broker to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Broker to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements. Broker agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Broker agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Broker agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Broker's failure to comply with this provision.

60. Slavery Era Disclosure

a. Broker acknowledges that this contract shall not be binding upon the City until the Director of Administrative Services receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director of Administrative Services finds that Broker has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Broker shall be liable for liquidated damages in an amount equal to the Broker's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000, whichever is greatest as determined by the Director of Administrative Services. Broker acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Broker from any Contract with the City.

c. Broker shall maintain records necessary for monitoring their compliance with this provision.

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

62. Approval by Counterparts. This Contract may be approved by counterpart signature pages, each of which is deemed an original and all of which shall be read together to constitute a single document. Counterpart signature pages shall be delivered by a party to the other party by telephone facsimile or email PDF.

Included Appendices

- A: Federal Contract Requirements
- B: Services to be provided by Broker
- C: Compensation Provisions

[The remainder of this page has been intentionally left blank.]

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

CITY

**San Francisco
Municipal Transportation Agency**

Nathaniel P. Ford Sr.
Executive Director/CEO

Approved as to Form:

Dennis J. Herrera
City Attorney

By:

Robert K. Stone
Deputy City Attorney
n:\ptc\as2010\1000387\00655423.doc

AUTHORIZED BY:

**MUNICIPAL TRANSPORTATION
AGENCY BOARD OF DIRECTORS**

Resolution No: _____

Adopted: _____

Attest: _____
Roberta Boomer, Secretary to the
SFMTA Board of Directors

CONTRACTOR

**Arthur J. Gallagher & Company Insurance
Brokers of California, Inc.**

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Douglas Bowring
President,
Arthur J. Gallagher & Co. Insurance
Brokers of California, Inc.
1 Market Street, Suite 200
Spear Street Tower
San Francisco, CA 94105

City vendor number: **76237**

APPENDIX A

FEDERAL TRANSPORTATION ADMINISTRATION REQUIREMENTS FOR FEDERALLY FUNDED PERSONAL SERVICES AND PROCUREMENT CONTRACTS

1. DEFINITIONS

A. **Approved Project Budget** means the most recent statement, approved by the Federal Transportation Administration (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. **Broker or Contractor** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

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

D. **Federal Transit Administration (FTA)** is an operating administration of the U.S. Department of Transportation.

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

F. **Grant Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.

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

H. **Project** means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.

I. **Recipient** means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

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

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

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

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

2. FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

3. 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 C.F.R. 18.36(i) (11).

4. DEBARMENT AND SUSPENSION

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

5. 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.

6. CIVIL RIGHTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue, including, but not limited to, 49 C.F.R. § 26. The Contractor shall also comply with the provisions of the SFMTA's Small Business Enterprise (SBE) Program for Professional and Technical Services.

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 C.F.R. 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 C.F.R.

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.

7. 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.

8. CLEAN WATER REQUIREMENTS

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.

9. CLEAN AIR

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.

10. 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.

11. 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 C.F.R. Part 655.

12. TERMINATION FOR CONVENIENCE OF CITY

See Agreement Terms and Conditions.

13. TERMINATION FOR DEFAULT

See Agreement Terms and Conditions.

14. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. 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 C.F.R. 661.7, and include microcomputer equipment, software, and small purchases (\$100,000 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 C.F.R. 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

15. 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 loading 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.

16. 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 C.F.R. Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

17. 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 C.F.R. 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.

19. 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 C.F.R. 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.

20. DISALLOWANCE

If Broker claims or receives payment from City for a service, reimbursement for which is later disallowed by the United States Government or other government authority, Broker 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 Broker under this Agreement or any other Agreement. By executing this Agreement, Broker certifies that Broker is not suspended, debarred or otherwise excluded from participation in federal assistance

programs. Broker acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

21. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

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APPENDIX B

SERVICES TO BE PROVIDED BY BROKER

A. Description of Services. As generally described below, and as further directed by the SFMTA and the Risk Manager, the Broker shall provide the City all necessary insurance broker and related professional services necessary to implement an Owners Protective Professional Indemnity Insurance Program covering the final design of the Central Subway Project. Said services shall include but are not limited to marketing the Central Subway Project to insurers, negotiation insurance premium amounts and policy terms and conditions, oversight of claims processing and claim advocacy on behalf of the City, reporting to the City and underwriter as required, communication with insurers concerning any aspect of the OPPI Program, claims tracking, and claims process management.

B. The Central Subway Project. The Central Subway Project includes the design and construction of Phase 2 of the Third Street Light Rail Project. A request for Proposals for the three design packages for the Project were released in March 2009. Three separate design contracts were subsequently awarded to the following firms:

- Design Package #1 [CS-155-1] – PB Telamon, a Joint Venture
- Design Package #2 [CS-155-2] – Central Subway Design Group, a Joint Venture
- Design Package #3 [CS-155-3] – HNTB-B&C Joint Venture

The SFMTA agreed in the contracts with each of the three engineering firms selected to provide the final design for Central Subway Project to implement an umbrella/excess Owner's Protective Professional Indemnity ("OPPI") Insurance Program to provide supplemental insurance coverage for design errors and omissions. The majority joint venture partners to the prime design contractors agreed to provide \$20 million error and omission practice insurance, and the minority partners each provided \$5 million in coverage. The insurance, liability and indemnity provisions of the design contracts listed above are hereby incorporated by reference for the sole purpose of further describing the insurance program for the design of the Central Subway Project that the OPPI to be implemented by Broker will supplement.

The OPPI coverage will provide first-party indemnity to the SFMTA for damages incurred from design errors and omissions (i.e., professional design liability). The OPPI will provide supplemental professional liability insurance (excess umbrella and gap coverage) to cover City losses from design errors and omissions that exceed the practice insurance policies of the design consultants and where design liability coverage fails (gap coverage). The OPPI will also provide design liability insurance coverage for design work performed by City employees. The estimated total OPPI coverage to be obtained will be between \$50 million and \$75 million. The OPPI policy will be structured to provide at least 10 years of coverage for design liability related to the Central Subway Project.

C. Broker Tasks. In exchange and as consideration for Commission Fees paid to the Broker, the Broker shall perform the following specific tasks to establish and manage the OPPI and effect the purposes of this Agreement, which shall include but is not limited to the following:

1. Design an excess Professional Liability insurance program that meets or exceeds the City's contractual obligations to provide an OPPI, as those obligations are set out in the three final design contracts.
2. Design insurance specifications for the review of insurance underwriters. The insurance specifications shall include detailed descriptions of the Central Subway Project, copies of the three final design contracts, and any other Central Subway Project documents and information required by underwriters.
3. Schedule and attend meetings with the Central Subway Project team and interested underwriters to review the project detail and inspect the route of the project.
4. Market the OPPI program to interested underwriters, which will include identifying underwriters, soliciting coverage and premium quotes, and conducting interviews as needed.
5. Represent the City in all negotiations with underwriters, insurers, insurance regulatory agencies and other parties as necessary for the program implementation and insurance placement for the OPPI Program.
6. Verify the accuracy and completeness of the terms and conditions of all policies, binders, certificates, endorsements, and other documents received from insurers, and obtain all necessary revisions as needed.
7. Verify the accuracy and market competitiveness (fairness) of all rates and premiums charged.
8. Promptly submit originals of all policies and endorsements to the City.
9. Obtain answers from underwriters to any policy coverage question.
10. Prepare insurance certificates and endorsements as requested.
11. Submit timely invoices to the City for each insurance policy in the OPPI.
12. Assure that insurance policies are placed with reputable and financially responsible insurers.
13. Provide a detailed summary of OPPI insurance, listing all participating insurers, policy numbers, policy terms, and premiums.
14. Assist the City in making claims under any OPPI policy.
15. Assist the City in the adjustment and settlement of claims or losses covered by the OPPI.

16. Provide an annual management report listing any updates in policy forms, terms and conditions, placement of additional policies, claim activity and any other relevant activity related to the OPPI program.

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

E. SFMTA and Risk Manager Liaison. In performing the services provided for in this Agreement, Broker's liaison with the SFMTA and the Risk Manager will be:

Matt Hansen
Director of Risk Management
25 Van Ness, Suite 750
San Francisco, CA 94102
415-554-2300

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THIS PRINT COVERS CALENDAR ITEM NO. : 10.7

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs & Construction

BRIEF DESCRIPTION:

Awarding the San Francisco Municipal Transportation Agency Contract No. 1242, 5 Fulton Ductbank Construction, and authorizing the Executive Director/CEO to execute the contract with Con-Quest/Abbett Electric, a Joint Venture (AJV), located at 290 Toland Street, San Francisco, CA 94124, as the lowest responsive and responsible bidder, in the amount of \$6,053,975 and a term of 365 calendar days.

SUMMARY:

- On July 6, 2010, the Executive Director/CEO of the San Francisco Municipal Transportation Agency (SFMTA) notified the SFMTA Board of Directors that he had authorized a bid call for Contract No. 1242, 5 Fulton Ductbank Construction.
- The scope of work under this project includes installing manholes, duct bank, underground conduits, curb ramps, steel poles and foundations, traction power cables and appurtenances; demolishing existing overhead-fed traction power system; modifying existing overhead contact system; replacing streetlights; demolishing and reconstructing existing street pavement; and adjusting of existing castings, manhole frame and cover to grade; providing, maintaining, replacing and removing temporary traffic striping, pavement markings and markers.
- Twelve bids were received and publicly opened on August 25, 2010, one of which was found to be non-responsive to the bidding requirements.
- Staff recommends awarding Contract No. 1242 to Con-Quest/Abbett Electric AJV as the lowest responsive and responsible bidder, in the amount of \$6,053,975.
- Federal and local sources are providing funds for the work under this contract.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget & Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

_____ Jessie Katz _____

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

The purpose of this calendar item is to award San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1242, 5 Fulton Ductank Construction, and to authorize the Executive Director/CEO to execute the contract with Con-Quest/Abbett Electric AJV, as the lowest responsive and responsible bidder, in an amount not to exceed \$6,053,975 and a term of 365 calendar days.

GOAL

Contract No. 1242 would assist in the implementation of the following goals, objectives and initiatives in the SFMTA Strategic Plan:

Goal 1: Customer Focus: To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy

- Objective 1.1 Improve safety and security across all modes of transportation
- Objective 1.4 Improve accessibility across transit services
- Objective 1.5 Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare)

Goal 2: System Performance: To get customers where they want to go, when they want to be there

- Objective 2.1 Improve transit reliability to meet 85% on-time performance standard
- Objective 2.2 Ensure efficient transit connectivity and span of service
- Objective 2.3 Fulfill bicycle and pedestrian network connectivity
- Objective 2.4 Reduce congestion through major corridors

Goal 5: SFMTA Workforce: To provide a flexible, supportive work environment and develop a workforce that takes pride and ownership of the agency's mission and vision and leads the agency into an evolving, technology-driven future

- Objective 5.1 Increase resources available to employees in performing their jobs (tools, staff hours, etc.)
- Objective 5.2 Improve facilities in which people are working
- Objective 5.3 Improve internal communication and employee satisfaction

DESCRIPTION

Background

Contract No. 1242 is identified in the latest San Francisco Municipal Railway Short Range Transit Plan under the Infrastructure Program and within the Overhead Rehabilitation Program. The Infrastructure Program consists of capital projects to build and maintain the fixed guideway elements such as the trolley overhead system, which includes replacement of the overhead wires, related poles and traction power systems serving the light rail and trolley coach lines.

PAGE 3.

Rehabilitation of the overhead system would reduce operational problems, reduce maintenance and increase system reliability.

Scope of Work

The Muni's trolley Overhead Contact System (OCS) includes feeder cables which transmit power to the trolley buses. The feeder cables along Fulton Street are supported by trolley poles located on the south side of the street, which currently are overhead fed. Installation of the traction power ductbank to put the feeder cables underground would reduce the risk of weather-related damages to the traction power feeder cables that feed the OCS; thus, improve the reliability of the 5 Fulton route. Installation of the ductbank would also improve maintainability, system safety, as well as provide a nicer landscape for residents and people visiting the park.

The scope of work under this project includes installing manholes, ductbank, underground conduits, curb ramps, steel poles and foundations, traction power cables and appurtenances; demolishing existing overhead-fed traction power system; modifying existing overhead contact system; replacing streetlights; demolishing and reconstructing existing street pavement; adjusting existing castings, manhole frame and cover to grade; and providing, maintaining, replacing and removing temporary traffic striping, pavement markings and markers.

The time allotted to substantially complete construction of the project is 365 calendar days from the date of the written Notice to Proceed. The Contractor shall complete all remaining work within 120 calendar days from Substantial Completion. Liquidated damages are \$5,000 per calendar day of delay to substantially complete construction and \$1,000 per calendar day of delay in final completion of all remaining contract work.

Bids Received

On July 6, 2010, the Executive Director/CEO of the SFMTA notified the SFMTA Board of Directors that he had authorized a bid call for Contract No. 1242, 5 Fulton Ductbank Construction, in accordance with Board Resolution No. 09-191, which delegates, among other things, the authority to issue bid calls to the Executive Director/CEO.

On August 25, 2010, SFMTA's Capital Programs and Construction Division received and publicly opened twelve bid proposals.

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The twelve bids are as follows:

Bidders		Bid Amount
1	Disney Construction 875 Mahler Road, #188 Burlingame, CA 94010	\$5,807,595
2	Con-Quest/Abbett Electric AJV 290 Toland Street San Francisco, CA 94124	\$6,053,975
3	Proven Management 712 Sansome Street San Francisco, CA 94111	\$6,345,445
4	Blocka Construction 4455 Enterprise Street Fremont, CA 94538	\$6,725,000
5	NTK Construction, Inc. 501 Cesar Chavez Street, 3 rd Floor San Francisco, CA 94103	\$6,741,200
6	Mountain Cascade, Inc. P.O. Box 5050 Livermore, CA 94551	\$6,898,540
7	Potelco, Inc. 14103 Stewart Road Sumner, WA 98390	\$6,997,545
8	Rosendin Electric 880 N. Mabury Road San Jose, CA 95133	\$7,352,111
9	Stacy & Witbeck 1320 Harbor Bay Parkway, Suite 240 Alameda, CA 94502	\$7,508,795
10	Ranger Pipelines P.O. Box 24109 San Francisco, CA 94124	\$7,775,494
11	Underground Construction 5145 Industrial Way Benicia, CA 94510	\$8,360,275
12	Synergy Project Management 150 Executive Park Boulevard, #4750 San Francisco, CA 94134	\$8,422,966

The bid from Disney Construction was found to be non-responsive to the Federal Transit Administration's (FTA) Buy America requirements and had to be rejected in accordance with FTA regulations. After reviewing all proposals, staff has determined that Con-Quest/Abbett Electric AJV is the lowest responsive and responsible bidder. The engineer's estimate was \$7,390,000.

PAGE 5.

The Contract Compliance Office reviewed the bid proposals and confirmed that Con-Quest/Abbett Electric AJV will meet the Small Business Enterprise (SBE) participation goal of 15 percent established for this contract and will commit to meeting the Non-discrimination Equal Employment Requirements of the contract. Con-Quest/Abbett Electric AJV is in compliance with Chapter 12B Equal Benefits Provision of the San Francisco Administrative Code.

ALTERNATIVES CONSIDERED

The project team held discussions with Maintenance staff concerning whether the work should be done by in-house staff. The preference was to have a contractor perform the work because contractors have enough crews with electrical and construction expertise to complete the work in a timely manner with minimal impact to Operations. Staff determined that contracting out to contractors was the practical alternative.

FUNDING IMPACT

The conceptual and design phases of the project were funded with programmed Federal Transit Administration (FTA) funds, with 20 percent Prop K dollars and I-Bond funds serving as local match. Funding for construction comes from a combination of programmed FTA funds, with 20 percent local matching funds from Prop K. All funding for this project has been secured.

The budget and financial plan for this project is presented in Enclosure 2 of the calendar item.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney has reviewed this report.

No other approvals from any other agency are required for the award of this contract.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors award and authorize the Executive Director/CEO to execute SFMTA Contract No. 1242, 5 Fulton Ductbank Construction, to Con-Quest/Abbett Electric AJV as the lowest responsive and responsible bidder, for a contract amount of \$6,053,975 and a term of 365 calendar days.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1242, 5 Fulton Ductbank Construction, is identified in the latest San Francisco Municipal Railway Short Range Transit Plan under the Infrastructure Program, which consists of capital projects to rehabilitate and maintain fixed guideway and make infrastructure repairs and improvements within the Overhead Rehabilitation Program; and,

WHEREAS, The work to be performed under this project includes installing manholes, duct bank, underground conduits, curb ramps, steel poles and foundations, traction power cables and appurtenances; demolishing existing overhead-fed traction power system; modifying existing overhead contact system; replacing streetlights; demolishing and reconstructing existing street pavement; adjusting existing castings, manhole frame and cover to grade; and providing, maintaining, replacing and removing temporary traffic striping, pavement markings and markers; and,

WHEREAS, On July 6, 2010, the Executive Director/CEO notified the SFMTA Board of Directors that he had authorized a bid call for Contract No. 1242 in accordance with Board Resolution No. 09-191, which delegates, among other things, the authority to issue bid calls to the Executive Director/CEO; and,

WHEREAS, On August 25, 2010, the SFMTA received and publicly opened twelve bid proposals in response to its invitation for bids, one of which was rejected as being non-responsive to the bidding requirements; and,

WHEREAS, the SFMTA determined that Con-Quest/Abbett Electric, a Joint Venture (AJV), located at 290 Toland Street, San Francisco, CA 94124, is the lowest responsive and responsible bidder, in the amount of \$6,053,975; and,

WHEREAS, The SFMTA Contract Compliance Office reviewed the bid proposals and confirmed that Con-Quest/Abbett Electric AJV will meet the revised Small Business Enterprise participation goal of 15 percent established for this contract and will commit to meeting the Non-discrimination Equal Employment Requirements of the contract; and

WHEREAS, The project is funded by Federal grants (80 percent) and by local funding sources (20 percent); now, therefore, be it

RESOLVED, That SFMTA Board of Directors authorizes the Executive Director/CEO to execute SFMTA Contract No. 1242, 5 Fulton Ductbank Construction with Con-Quest/Abbett Electric AJV as the lowest responsive and responsible bidder, in an amount not to exceed \$6,053,975 and a term of 365 calendar days.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2

Contract No. 1242

**5 Fulton Ductbank Construction
Project Budget and Financial Plan**

PROJECT BUDGET

Category	Budget
Conceptual Engineering Phase Staff Support (SFMTA and Other Dept. Services)	\$367,263
Detail Design Phase Staff Support (SFMTA and Other Dept. Services)	\$794,296
Construction Phase Construction Contract, Contingency, and Staff Support	\$11,305,704
Total Cost	\$12,467,263

FINANCIAL PLAN

Project Funding Source	Amount
Federal Grant	\$9,973,810
Local Grants	
Proposition K	\$2,334,594
I-Bond	\$158,859
Total	\$12,467,263

THIS PRINT COVERS CALENDAR ITEM NO. : 10.8

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Office of the SFMTA Board of Directors

BRIEF DESCRIPTION:

To amend the SFMTA Board of Directors' Rules of Order to change the start time for regular meetings of the SFMTA Board of Directors from 12 noon to 1:00 pm

SUMMARY:

- The Chairman of the Board would like the Board to consider changing the time regular meetings of the Board of Directors begin from 12 noon to 1:00 pm on the first and third Tuesday of every month.
- In order to discuss this proposal and take action, notice must be given to the public that this will be considered at a duly noticed public meeting.
- Notice was given on October 1, 2010 by placing notice on the SFMTA's website and at the San Francisco Public Library.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____ N/A _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO _____ Roberta Boomer

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

To amend the SFMTA Board of Directors' Rules of Order to change the time that meetings of the SFMTA Board of Directors start from 12 noon to 1:00 pm.

GOAL

This calendar item will address the SFMTA's Strategic Goal 3 – External Affairs/Community Relations: To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry.

DESCRIPTION

The Chairman of the SFMTA Board of Directors would like the Board to consider changing the time that regular meetings of the SFMTA Board of Directors begin from 12 noon to 1:00 pm on the first and third Tuesday of every month.

In order to discuss this proposal and take action, notice must be given to the public that this will be considered at a duly noticed public meeting.

Article 7, Section 4 of the SFMTA Board of Directors' Rules or Order states that "an amendment to the Rules of Order may, after ten days' notice, be adopted by the affirmative vote of a majority of the members of the board". In compliance with this requirement, notice was given on October 1, 2010 by placing notice on the SFMTA's website and at the San Francisco Public Library. E-mail and mailed notice was also given to members of the public who receive notice of SFMTA Board meetings.

If approved, the SFMTA Board of Directors' Rules of Order Article 4, Section 1 would be amended to delete "at noon" and replaced with "at 1:00 pm" as follows:

ARTICLE 4 - MEETINGS

Section 1. Regular Meetings. The board shall hold a regular meeting in the chambers of the Municipal Transportation Agency Board of Directors in City Hall at 1:00 pm every first and third Tuesday.

ALTERNATIVES CONSIDERED

None.

FUNDING IMPACT

None.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

The City Attorney has reviewed this report.

RECOMMENDATION

The decision to change the start time of the Board's regular meetings is a policy matter for the SFMTA Board of Directors.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Chairman of the SFMTA Board of Directors would like the Board to consider changing the time for regular meetings of the SFMTA Board of Director from 12 noon to 1:00 pm on the first and third Tuesday of every month and

WHEREAS, In order to discuss this proposal and take action, notice must be given to the public that this will be considered at a duly noticed public meeting; and,

WHEREAS, Article 7, Section 4 of the SFMTA Board of Directors' Rules or Order states that "an amendment to the Rules of Order may, after ten days' notice, be adopted by the affirmative vote of a majority of the members of the board"; and,

WHEREAS, In compliance with this requirement, notice was given on October 1, 2010 by placing on the SFMTA's website and at the San Francisco Public Library; now therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors does hereby amend the SFMTA Board of Directors' Rules of Order Article 4, Section 1 to change the time for meetings of the SFMTA Board of Directors from 12 noon to 1:00 pm, effective November 2, 2010.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency