

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.2**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Parking and Traffic

**BRIEF DESCRIPTION:**

Approving various routine traffic and parking modifications as consent calendar items per the attached resolution.

**SUMMARY:**

- Under Proposition A, the SFMTA Board of Directors has authority to adopt parking and traffic regulations changes

**ENCLOSURES:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

PREPARING ITEM \_\_\_\_\_

EXECUTIVE DIRECTOR/CEO \_\_\_\_\_

SECRETARY \_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO \_\_\_\_\_ Maxine Louie

**ASSIGNED SFMTAB CALENDAR DATE:** \_\_\_\_\_

## PURPOSE

To approve various routine traffic and parking modifications.

### Benefit to the SFMTA 2008 – 2012 Strategic Plan:

- 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 - STOP SIGNS - Bella Vista Way at Sequoia Way, making this intersection an all-way STOP. **PH 10/31/08 Requested by Mayor's Office**
- B. ESTABLISH - TOW-AWAY NO STOPPING ANYTIME - 25th Street, both sides, between 3rd and Illinois Streets; Cesar Chavez, north side, between 3rd and Michigan Streets; and Cesar Chavez, south side, between 3rd and Illinois Streets. **PH 10/31/08 Requested by DPT**
- C. ESTABLISH - ANGLE PARKING (45-DEGREE) - 25th Street, south side, between Illinois and Louisiana Streets. **PH 10/31/08 Requested by DPT**
- D. ESTABLISH - NO PEDESTRIAN CROSSING - 25th Street and Illinois Street, southeast corner, (MME LRV Access Area). **PH 10/31/08 Requested by DPT**
- E. ESTABLISH - RED ZONE - San Anselmo Avenue, south side, from the crosswalk at Santa Ana Avenue to 28 feet easterly. **PH 10/31/08 Requested by Resident**
- F. ESTABLISH - RED ZONE - Buchanan Street, west side, from Lombard Street to approximately 20 feet southerly. **PH 10/31/08 Requested by SFMTA**
- G. ESTABLISH - ONE-WAY STREET - Elm Street, westbound, between Franklin and Gough Streets. **PH 10/31/08 Requested by Residents**
- H. ESTABLISH - NO PARKING ANYTIME - Elm Street, south side, between Franklin and Gough Streets. **PH 10/31/08 Requested by Residents**

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 - STOP SIGNS - Bella Vista Way at Sequoia Way, making this intersection an all-way STOP.
- B. ESTABLISH - TOW-AWAY NO STOPPING ANYTIME - 25th Street, both sides, between 3rd and Illinois Streets; Cesar Chavez, north side, between 3rd and Michigan Streets; Cesar Chavez, south side, between 3rd and Illinois Streets.
- C. ESTABLISH - ANGLE PARKING (45-DEGREE) - 25th Street, south side, between Illinois and Louisiana Streets.
- D. ESTABLISH - NO PEDESTRIAN CROSSING - 25th Street and Illinois Street, southeast corner, (MME LRV Access Area).
- E. ESTABLISH - RED ZONE - San Anselmo Avenue, south side, from the crosswalk at Santa Ana Avenue to 28 feet easterly.
- F. ESTABLISH - RED ZONE - Buchanan Street, west side, from Lombard Street to approximately 20 feet southerly.
- G. ESTABLISH - ONE-WAY STREET - Elm Street, westbound, between Franklin and Gough Streets.
- H. ESTABLISH - NO PARKING ANYTIME - Elm Street, south side, between Franklin and Gough Streets.

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 Parking and Traffic, 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. :** \_\_\_\_\_

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the SFMTA Executive Director/CEO, or his designee, to advertise a Request for Proposals for Financial Advisory Services on substantially the same terms as presented to the SFMTA Board of Directors.

**SUMMARY:**

- Proposition A gives the SFMTA increased responsibility and authority with respect to the long-term financial stability of the agency. This request for proposals ("RFP") would solicit proposals for a financial advisor ("FA") to assist the SFMTA with analyzing its finances and ensuring financial stability.
- The FA would assist in developing a Financing Plan to provide the most economical structure for any given financing after a thorough review and analysis of the existing financial resources, cash flows, and legal structure of the SFMTA.
- The FA would provide as-needed financial advice regarding market conditions and trends, financial products, credit and credit analysis, third party alternative financing and special facility financing as well as analyses and evaluations of potential refundings and new money issues.
- The FA will also provide financial analytical support for transit oriented development projects, public/private partnerships and leveraging of SFMTA assets.
- The contract would be for an initial term not to exceed three years, with two one-year options to extend, exercised at the discretion of the SFMTA.

**ENCLOSURES:**

1. SFMTAB Resolution
2. RFP Documents

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION  
PREPARING ITEM

\_\_\_\_\_

\_\_\_\_\_

FINANCE

\_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO

\_\_\_\_\_

\_\_\_\_\_

SECRETARY

\_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION  
BE RETURNED TO

Steven Lee (1 SVN 7<sup>th</sup> Floor)

**ASSIGNED SFMTAB CALENDAR DATE:** \_\_\_\_\_

## **PAGE 2.**

### **PURPOSE**

The purpose of this calendar item is to authorize the SFMTA Executive Director/CEO, or his designee, to advertise a Request for Proposals for Financial Advisory Services on substantially the same terms as presented to the SFMTA Board of Directors.

### **GOAL**

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

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

4.1 Increase revenue by 20% or more by 2012 by improving collections and identifying new sources

4.2 Ensure efficient and effective use of resources

This item supports all other Strategic Plan goals indirectly.

### **DESCRIPTION**

With the approval of Proposition A in November 2007, the SFMTA has a greater responsibility to ensure the long-term financial stability of the agency, secure funding for major capital projects and establish a long-term financial plan that will enable the agency to maintain the highest level of service to the public. Proposition A also authorized the SFMTA to issue debt.

This RFP would solicit proposals for a Financial Advisor ("FA") to assist the Agency with achieving these goals and making the best use of this authority. The FA would assist staff to develop a Financing Plan with the most economical structure for any given financing after a thorough review and analysis of the existing financial resources, cash flows, and legal structure of the SFMTA.

The Financial Advisory Services would include, but not be limited to, the following:

- Providing as-needed financial advice regarding market conditions and trends, financial products, credit and credit analysis, third party alternative financing and special facility financing.
- Preparing analyses and evaluations of potential refundings and new money issues.
- Provide financial analytical support for transit oriented development projects, public/private partnerships and leveraging of SFMTA assets.
- Participating in rating agency presentations and preparation of official statements and assisting as needed in the selection of underwriters, escrow agent, verification agent, trustee and any other members required for a financing team.
- The FA would also provide other financial services as requested.

The initial term of the proposed contract is three years, with two one-year options to extend, exercised at the discretion of the SFMTA. The SFMTA would have the right to cancel this contract at its convenience at any time upon 30 days written notice.

### **PAGE 3.**

The evaluation of the Financial Advisory Service proposals would be based on the following criteria:

<b>Criterion:</b>	<b>Points</b>
Project Approach	35 Points
Assigned Project Staff	30 Points
Experience of Firm and Subconsultants	20 Points
Fees	15 Points
<b>Total Points</b>	<b>100 Points</b>

The top three proposers would be invited to an oral interview in which each of the top three proposers will have the opportunity to increase their score by an additional 15 points.

The final agreement will be substantially in the form of the Agreement for Professional Services attached to the RFP as Appendix F.

The SFMTA Contract Compliance section has established a 20% Local Business Enterprise sub-participation goal for this contract.

The City Attorney has reviewed this report.

### **ALTERNATIVES CONSIDERED**

Alternatives were not considered because the Financial Advisory Services that the SFMTA is seeking are of a specialized nature and is most effectively provided by professionals in this field that have specific knowledge and proven skills.

### **FUNDING IMPACT**

The funding impact for this contract will be determined after the proposals are evaluated.

### **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

- SFMTA Board approval is required for final award of contract to the highest scoring responsive and responsible proposer.
- Civil Service Commission approval is required for the Professional Services Contract.

### **RECOMMENDATION**

Staff recommends that the San Francisco Municipal Transportation Agency Board of Directors authorize the SFMTA Executive Director/CEO, or his designee, to advertise a Request for Proposals for Financial Advisory Services on substantially the same terms as presented to the SFMTA Board of Directors.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The San Francisco Municipal Transportation Agency "SFMTA" has prepared a Request for Proposals ("RFP") for Financial Advisory Services; and,

WHEREAS, The Financial Advisor chosen through this RFP would assist in the developing a Financing Plan to provide the most economical structure for any given financing after a thorough review and analysis of the existing financial resources, cash flows, and legal structure of the SFMTA; and,

WHEREAS, The Financing Plan would help to ensure the long-term financial stability of the SFMTA, secure funding for major capital projects and establish a long-term financial plan to enable the SFMTA to maintain the highest level of service to the public; and,

WHEREAS, The Financial Advisor would also provide as-needed financial advice regarding market conditions and trends, financial products, credit and credit analysis, third party alternative financing and special facility financing as well as prepare analyses and evaluations of potential refundings and new money issues; and,

WHEREAS, The contract would be for an initial term not to exceed three years, with two one-year options to extend, to be exercised at the discretion of the SFMTA; and,

WHEREAS, The selection of the Financial Advisor will be based on the proposer's project approach, assigned project staff, the experience of the proposer and any subconsultants, and the proposed fees; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the SFMTA Executive Director/CEO, or his designee, to advertise a Request for Proposals for Financial Advisory Services on substantially the same terms as presented to this Board of Directors.

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



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# **San Francisco Municipal Transportation Agency**

## **Request for Proposals for Financial Advisor**

Date issued:	December 5, 2008
Pre-proposal conference:	December 19, 2008
Proposal due:	January 30, 2009



**Request for Proposals for Financial Advisor**

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**Appendices:**

- A. HRC Attachment 2: Requirements for Architecture, Engineering and Professional Services Contracts, for contracts \$29,000 and over (separate document).  
Proposers must submit the following forms:
  - Form 2A HRC Contract Participation form
  - Form 2B HRC "Good Faith" Outreach Requirements form
  - Form 3 HRC Non-discrimination Affidavit
  - Form 5 HRC Employment form
  - Form 4 Joint Venture Participation Schedule (if applicable)
- B. Standard Forms: Listing and Internet addresses of Forms related to Taxpayer Identification Number and Certification, to Business Tax Declaration, and to Chapters 12B and 12C, and 14B of the S.F. Administrative Code
- C. Attestation of Compliance
- D. Certification Regarding Debarment, Suspension, and Other Responsibility Matters
- E. Certification Regarding Lobbying
- F. Agreement for Professional Services (form P-500) – separate document

## **Request for Proposals for Financial Advisor**

### **I. Introduction and Schedule**

#### **A. General**

The San Francisco Municipal Transportation Agency (SFMTA) is a department of the City and County of San Francisco and governed by a 7-member Board of Directors appointed by the Mayor and confirmed by the Board of Supervisors. Currently, the SFMTA is composed of the San Francisco Municipal Railway (Muni), the Department of Parking and Traffic (DPT) and the Parking Authority (PA). In addition, the Board of Supervisors recently approved a resolution signifying its intent to transfer the Taxi Commission to the SFMTA in by the end of the calendar year.

Muni is one of America's oldest public transit agencies, the largest in the Bay Area and seventh largest system in the United States. It currently carries more than 200 million riders annually. Operating historic streetcars, modern light rail vehicles, diesel buses, alternative fuel vehicles, electric trolley coaches and the world famous cable cars, Muni's fleet is among the most diverse in the world. DPT manages all traffic engineering functions within San Francisco, including the placement of signs, signals, traffic striping, curb markings, and parking meters. SFMTA and the PA manage 40 City-owned garages and metered parking lots.

SFMTA's comprehensive mandate is unlike any other in this nation. Proposition E passed by the San Francisco voters in November 1999 amended the City Charter, calling for the creation of the SFMTA by consolidating Muni and DPT by July 1, 2002. The incorporation was intended to support the City's Transit First Policy. On November 6, 2007, the voters passed Proposition A mandating that the SFMTA manage transportation and all movement on City streets, including pedestrians, bicycles, automobiles and public transit. The Proposition also provides for the SFMTA to manage the City's taxi program pending approval by the Mayor and Board of Supervisors. Additionally, the voters provided SFMTA with increased financial and management autonomy unlike any other City department including the ability to issue debt directly (see Attachment One for summary of the key provisions of Proposition A).

The SFMTA's annual operating budget is approximately \$784 million and the SFMTA prepares a multi-year capital plan and financing plan which shows anticipated funding sources from federal and state grants and local sales tax. The five year capital plan currently estimates \$4.5 billion in projects with \$2.8 billion in funding identified. A summary of the 30-year capital plan is enclosed as Attachment Two.

The SFMTA is in the process of completing a study and analysis of the possible imposition of the City of transit operations fees or other charges upon businesses located in the downtown, Financial District and possibly other commercial areas of San Francisco, to help defray the operating cost of public transit services that benefit such businesses. Included for your reference as Attachment Three is the Executive Summary submitted by the consultant working on this study describing revenue options for transit services in San Francisco.

**San Francisco Municipal Transportation Agency  
RFP for Financial Advisor**

Additional information about the SFMTA can be found at the following site:  
<http://www.sfmta.com/cms/ahome/indxabmu.htm> and City financial information, including financial information for the SFMTA can be found at the following site:  
[http://www.sfgov.org/site/controller\\_index.asp?id=1362](http://www.sfgov.org/site/controller_index.asp?id=1362)

There are three outstanding lease revenue bonds which were issued by the Parking Authority.

<b>Issue Name</b>	<b>Final CUSIP</b>	<b>Final Maturity</b>	<b>Original Par</b>	<b>Par Outstanding</b>
Refunding Series 1998-1 (Moscone Center Garage)	797700DF5	2008	6,895,000	1,595,000
Refunding Series 1999-1, Parking Meter Revenue	797700EC1W	2020	22,390,000	20,150,000
Series 2000A, North Beach Garage	797700EY3	2022	8,185,000	7,115,000
Total			\$37,470,000	\$28,860,000

The SFMTA also administers leases with non-profit parking corporations for the Fifth and Mission Garage, the Union Square Garage, the Sutter Stockton Garage and the Ellis O'Farrell Garage that have outstanding bonds. There remains outstanding debt on these garages totaling approximately \$32,000,000.

The SFMTA is seeking the following financial services for a contract term of three years, with two one-year options, which may be exercised at the SFMTA's discretion. The SFMTA will reserve the right to cancel the contract at its convenience at any time upon 30 days written notice. Requested financial advisory services may include, but are not limited to, assisting the SFMTA to:

- Develop a Financing Plan which will provide the most economical structure for any given financing after a thorough review and analysis of the existing financial resources, cash flows, and legal structure of the SFMTA.
- Provide as-needed financial advice regarding market conditions and trends, financial products, credit and credit analysis, third party alternative financing and special facility financing.
- Prepare analyses and evaluations of potential refundings and new money issues.
- Review and evaluate financing options, derivative and other innovative products, financial feasibility studies, legal documents, and pricing of any financing and any escrow.
- Participate in rating agency presentations and preparation of official statements.

**San Francisco Municipal Transportation Agency  
RFP for Financial Advisor**

- Assist as needed in the selection of underwriters, escrow agent, verification agent, trustee and any other members required for a financing team.
- Provide other financial services as requested.

During the term of its contract, the financial advisors may not propose any financing transactions nor serve as underwriter or swap counterparty for any SFMTA financing. Furthermore, the financial advisors may not terminate their contracts prematurely for the purpose of then serving as underwriter or swap counterparty for any SFMTA financing.

**B. Schedule**

The anticipated schedule for selecting a financial advisor is:

<u>Tentative Schedule</u>	<u>Date</u>
RFP issuance Date	<u>December 5, 2008</u>
Pre-proposal conference	<u>December 19, 2008 at 2:00 p.m.</u>
Deadline for submission of written questions or requests for clarification	<u>January 9, 2009 at 5:00 p.m.</u>
Proposals due	<u>January 30, 2009 not later than 5:00 p.m.</u>
Oral interview with firms selected for further consideration	<u>Week of February 16, 2009</u>
Award of Contract	<u>April 2009</u>

## **II. Scope of Work**

The Scope of Work is to be used as a general guide and is not intended to be a complete list of all work necessary to complete the project. The SFMTA does not guarantee any minimum scope and may at its discretion add or subtract scope during contract negotiations.

### **A. FINANCIAL PLANNING SERVICES**

#### **1. FINANCIAL PLAN:**

- (a) The Financial Advisor shall consult with SFMTA and City officials, bond counsel, disclosure counsel, and the underwriter, and rating agencies to develop a financing plan which will provide the most economical structure for any given financing. The Financing Plan shall include, but not be limited to, the following:
  - i. A thorough review and analysis of the existing financial resources, cash flows, and legal constraints of the SFMTA, as well as all relevant data pertaining to the financing plan.
  - ii. A determination of the amount of debt necessary to be issued.
  - iii. A determination of the individual debt financing structure, which will result in the SFMTA receiving the lowest possible borrowing cost offset against risks.
- (b) Financial Advisor will provide guidance on the timing, structure and method of raising capital for proposed transactions in the financial plan.
- (c) Financial Advisor will monitor and keep the SFMTA informed of changing state and federal laws in connection with the SFMTA's financings and will be available to provide assistance and advice on any legislative issues impacting the SFMTA's financings.

#### **2. ANALYZE FUTURE DEBT CAPACITY:**

Financial Advisor will assist SFMTA to devise financial models to evaluate the viability of various financing strategies to provide the required level of funding over time.

#### **3. IDENTIFY FINANCING ALTERNATIVES:**

Financial Advisor will develop objective financing plans incorporating a full range of financing alternatives including; pay-as-you-go, revenue bonds, lease financing or special district debt as appropriate.

### **B. DEBT MANAGEMENT SERVICES**

#### **1. MAINTAIN DEBT SCHEDULES:**

Following each sale of debt the Financial Advisor will update and maintain schedules for the

SFMTA including, but not limited to:

- (a) Schedules reflecting outstanding debt
- (b) Debt capacity
- (c) Debt service schedules
- (d) Ratings
- (e) Assessed values

**San Francisco Municipal Transportation Agency  
RFP for Financial Advisor**

- (f) Authorized but unissued debt
- (g) Financial Advisor will maintain a copy of transcripts for which they have provided financial advisory services.

**2. RETENTION/NEGOTIATION OF UNDERWRITERS AND OTHER FINANCIAL INSTITUTIONS**

Financial Advisor will assist and advise SFMTA with the negotiations with underwriters with respect to rates, compensation and terms of bond purchase agreements; in addition, Financial Advisor under the direction of the SFMTA will negotiate the terms and provisions of agreements with trustee banks, investment providers, verification agents and other agents or consultants as requested by the SFMTA.

**3. DEVELOP, MONITOR AND COORDINATE FINANCING SCHEDULE**

- (a) Financial Advisor will prepare a bond sale calendar that clearly identifies the responsibilities of each participant in the transaction.
  - i. SFMTA will have sufficient time for review of all disclosure materials prior to final printing and distribution.
  - ii. Financial Advisor will keep SFMTA staff informed about the progress of the financing and, if necessary, modify the schedule to meet changing circumstances.
  - iii. Financial Advisor will work to ensure that financing documents accurately reflect the key financial objectives of SFMTA.
- (b) Financial Advisor will structure bond sale calendar to provide sufficient time to structure and implement a successful bond proceeds investment strategy.

**3. ANALYZE DEBT STRUCTURE ALTERNATIVES:**

- (a) Financial Advisor will analyze the debt structure and provide a determination based on the following three elements:
  - i. Is the proposed amortization schedule optimally structured;
  - ii. Are SFMTA's pledged revenues sufficient to meet coverage requirements; and,
  - iii. Is the proposed maturity schedule designed to attract the widest participation from underwriters and potential investors.
- (b) Financial Advisor will provide advice and assistance concerning debt covenants, pledge of revenues, flow of funds, legal coverage requirements, and secondary market disclosure requirements.
- (c) Financial Advisor will utilize the information from policy review and development to formulate the issue structure and other terms under which the bonds are to be offered addressing the following key issues:
  - i. Maturity Schedule and Debt Service-provide advice and assistance in planning debt issue, determining the principal amount of debt to be sold, and develop a maturity schedule for each bond issue.
  - ii. Call Features-Financial Advisor will perform detailed analyses of call features, analyzing the effects of shorter call options, schedules of call premiums, non-callable bonds and the potential impact such structures may have on marketing and interest costs of the bonds.

**San Francisco Municipal Transportation Agency**  
**RFP for Financial Advisor**

- iii. Credit Enhancement-Financial Advisor will assist SFMTA to analyze the financial benefits and risks of obtaining credit enhancement. Financial Advisor will assist SFMTA to negotiate the cost and terms of such credit enhancement.
4. DEVELOP FINANCING DOCUMENTS:
- (a) Financial Advisor will assist SFMTA with the review of all legal documents and for drafting, printing, and distributing all disclosure documents prior to the bond sale.
  - (b) Financial Advisor will coordinate with SFMTA officials, bond counsel, and other team members in the preparation, review and finalization of all bond document preparation activities including:
    - i. Arranging for debt sales advertising in appropriate trade journals and publications such as the Bond Buyer and making all necessary arrangements for each bond sale with the registrar and trustee.
    - ii. Coordinate the printing and delivery of securities and notify the purchaser of the date and place that payment will be made.
5. COORDINATE THE MARKETING OF BONDS:
- (a) To assist the SFMTA with the timing of proposed issues, Financial Advisor will closely monitor financial markets and evaluate the potential impact of financial events on a new or refunding issue of SFMTA debt.
  - (b) Financial Advisor will assist the SFMTA in coordinating its offerings with those of other issuers. This effort is designed to focus underwriter interest in the SFMTA's transactions by separating them from other sales. The overall goal is to identify a market in which: interest rates are stable; the supply of tax-exempt securities is light; and there is significant demand from both institutional and retail investors.
  - (c) Working closely with SFMTA staff and counsel, Financial Advisor will be actively involved in the review and development of key disclosure materials utilized to market the SFMTA's debt (including the necessary documents for electronic bidding, if appropriate). These disclosure materials include the preliminary official statement ("POS"), the final official statement ("OS"), and for competitively bid issues, the official bid form and the notice of sale.
  - (d) Financial Advisor will work closely with SFMTA staff and financing team members including counsel to ensure that the necessary documents comply with all laws.
  - (e) Assist with structuring and securing a line or letter of credit when necessary.
6. RATING AGENCY CONTACTS:
- (a) Financial Advisor will assist SFMTA with the development of presentation material and coordinate the introduction of SFMTA as a new issuer to the three major rating agencies, Moody's Investors Service, Standard & Poor's Corporation and Fitch Ratings
  - (b) Financial Advisor will determine both credit strengths and weaknesses prior to any presentation of materials to rating analysts based on a clear understanding of the analytical methods utilized by Moody's Investors Service, Standard & Poor's Corporation and Fitch Ratings.
  - (c) In consultation with SFMTA, Financial Advisor will provide rating agencies with information necessary to enable such agencies to analyze the structure and credit quality of SFMTA, including any proposed debt issuances thereof.

**San Francisco Municipal Transportation Agency  
RFP for Financial Advisor**

**7. BOND PRICING:**

- (a) Financial Advisor will provide the SFMTA with market information relating to comparable issues in the market, comparisons of takedown levels and important economic data releases.
  - i. Financial Advisor will provide aggressive and informed representation to prospective bidders on behalf of the SFMTA in the pricing of securities.
  - ii. Financial Advisor will assist in the evaluation of competitive bids (including the timely verification of the winning bid) and actively monitor market conditions to effectively advise the SFMTA as to the most appropriate market timing for its security offerings.
- (b) Financial Advisor will provide the SFMTA with a final pricing report to enable SFMTA to evaluate the competitiveness of the pricing of the bonds.
  - i. The report will be a summary of the bond pricing, final pricing and debt service schedules, orders and allocation of bonds (for negotiated financings), review of market conditions, bond rating reviews, and related news articles.
  - ii. The report will serve as a measure of the fairness of the pricing terms, and also as a comprehensive reference to which the SFMTA may refer in the future

**8. ASSIST WITH PRECLOSING AND CLOSING:**

- (a) Financial Advisor will work with bond counsel and other members of the financing team to prepare a schedule of tasks to be completed prior to closing and identify the party responsible for completing the task. These tasks include completing the final official statement, preparing closing documents, arranging for the transfer of funds and the investment of funds.

**C. PROJECT ANALYSIS**

**PROJECT ANALYSIS**

- (a) Financial Advisor will provide the SFMTA with financial analytical support in the specific projects, including but not limited to the following types of projects:
  - i. Transit Oriented Development
  - ii. Real Estate Development
  - iii. Land Purchase and Sales
  - iv. Property Build out
  - v. Leveraging of other SFMTA assets



### III. Submission Requirements

#### A. Time and Place for Submission of Proposals

**Proposals must be received by 5:00 p.m., on Friday, January 30, 2009.** Postmarks will not be considered in judging the timeliness of submissions. Proposals may be delivered in person and left with or mailed to:

Steven Lee  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, California 94103  
(415) 701-4592

Proposers shall submit **ten (10) complete copies** in a sealed envelope clearly marked **“Request for Proposal for Financial Advisory Services”**. **In addition, complete and submit as attachments to the proposal all required forms listed herein as Appendices A through E.**

#### B. Format

Firms interested in responding to this RFP must submit the following information, in the order specified below. Please limit your proposal to no more than 25 pages in length (no small than size 12 font), excluding required forms and attachments:

#### C. Content

##### 1. Title Page

Show the name of agency/firm, address, telephone number, name of contact person, date and the subject: **“SFMTA – RESPONSE TO REQUEST FOR PROPOSAL FOR FINANCIAL ADVISORY SERVICES”**

##### 2. Table of Contents

Include a clear identification of the material by section and by page number.

##### 3. Cover Letter and Executive Summary (1-2 pages)

This letter should be signed by the person in proposer's firm who is authorized to negotiate terms, render binding decisions and commit the firm's resources.

Summarize the proposer's understanding of the work to be done and make a positive commitment to perform the work in accordance with the terms of the proposal being submitted. This section should summarize the key points of your submittal. In addition, you must include a statement that your firm understands that if selected as financial

**San Francisco Municipal Transportation Agency  
RFP for Financial Advisor**

advisor, your firm is prohibited from proposing any financing transactions or serving as underwriter or party for any SFMTA financing for the duration of the contract and may not terminate the contract to do so.

**4. Firm Overview**

Provide a brief description of how the firm is organized, including the businesses in which it is engaged, the location of offices, the number of public finance professionals in each office, and the role of the municipal department in the firm. Indicate the firm's commitment to the municipal bond industry and comment on any recent significant changes in the firm's organization. Include a discussion of the specific expertise and services that distinguish the firm. Identify and describe at least three completed or ongoing projects performed by the proposer within the past five years that are similar to the services being requested by SFMTA.

**5. Personnel and References**

Provide the names, proposed roles, background and experience, office location and availability of the personnel that would work on the SFMTA's account, and specifically identify the primary person(s) who will be responsible for managing the relationship with the SFMTA. The lead staff proposed for the project must have had a similar role in at least two comparable projects within the past five years from the date of this RFP. The proposal should include a description of similar completed or ongoing projects to which the lead staff has been assigned, as well as references for those projects. Identify who will provide any computer financial analysis services. For the proposed personnel, provide a list of five clients those persons have worked with in the last 36 months; a brief description of the type and size of transaction and the services that were provided; and the names, titles, addresses and telephone numbers of the government officials primarily responsible for the transactions. This list should include only clients which are similar to the SFMTA. Provide written assurance that the personnel assigned to this project will not be substituted during the terms of the agreement without SFMTA's prior written approval.

**6. Transportation or Other Relevant Financing Experience**

Provide a description of 1.) the firm's and 2.) the proposed personnel's relevant experience over the last three years with transit clients or other transportation clients that you believe are relevant to this proposed engagement. Identify the public transit agencies for which the firm is currently serving as financial advisor or underwriter. Include three case studies, if available, that illustrate the firm's experience with relevant services where the proposed personnel have served as financial advisor.

**7. Long-term Strategic Financial Planning Experience**

Provide a description of 1.) the firm's and 2.) the proposed personnel's relevant experience over the last three years with long-term strategic financial planning. Include three case studies, if available, that illustrate experience with relevant services where the proposed personnel have served as financial advisor.

**8. Tax-Exempt New Money and Derivative Product Experience**

Describe 1.) the firm's and 2.) the proposed personnel's relevant experience over the last three years with tax-exempt new money and derivative products. Include three case studies, if available, that illustrate experience with relevant transactions where the proposed personnel have served as financial advisor.

**9. Taxable Financing Experience**

Describe 1.) the firm's and 2.) the proposed personnel's relevant experience over the last three years with taxable financing. Include three case studies, if available, that illustrate experience with relevant transactions where the proposed personnel have served as financial advisor.

**10. Advance and Current Refunding Experience**

Provide a description of 1.) the firm's and 2.) the proposed personnel's relevant experience over the last three years with advance and current refundings. Include three case studies, if available, that illustrate experience with relevant services where the proposed personnel have served as financial advisor.

**11. Synthetic Advance Refundings and Other Related Financing Experience**

Provide a description of 1.) the firm's and 2.) the proposed personnel's relevant experience over the last three years with synthetic advance refundings and other related financings. Include three case studies, if available, that illustrate experience with relevant services where the proposed personnel have served as financial advisor.

**12. Market and Pricing Information**

Describe the knowledge, experience and resources of 1.) the firm and 2.) the proposed personnel in tracking and monitoring the tax-exempt and taxable bond markets, including fixed rate, variable rate, swaps and other derivative products, and the government securities market. Include a discussion of the firm's participation in underwriting tax-exempt and taxable bonds, acting as a principal in swap transactions, and providing investment services. Also discuss the firm's process for ensuring that the SFMTA receives the best price for any bonds, financings involving swaps and other derivative products, and any escrow securities as part of any refunding. Include a discussion of how the success of any pricing will be evaluated.

### **13. Disciplinary Action**

List any and all disciplinary action, administrative proceeding, malpractice claim or other like proceeding against the firm or any of its personnel relating to the firm's services as financial advisor that are pending or which occurred in the last five (5) years.

### **14. Disclosure**

Disclose all compensation/fee arrangements (formal or informal) that the firm, its related entities or any proposed personnel currently has, or within the past twelve months has had, with any other potential parties to contemplated financings in which your firm was engaged in any capacity. Such parties include, but are not limited to, swap providers, investment contract providers, verification agents, financial advisory firms, investment banking firms, any other consultants or financial institutions, and law firms.

Proposers should advise the SFMTA of any potential conflict known by the firm and discuss how, if selected, your firm would address any concerns raised by such dual representation. Proposers should identify all the transportation and municipal agencies that the firm is currently representing. If your firm is selected as the SFMTA's financial advisor, during the contract period your firm must notify the SFMTA when you enter into any new contracts with any municipal clients.

### **15. Fee Proposal**

The SFMTA intends to award this contract to the firm that it considers will provide the best overall program services. The SFMTA reserves the right to accept other than the lowest priced offer and to reject any proposals that are not responsive to this request.

Please provide a fee proposal in a sealed envelope that includes the following:

- a. Total fee for each of the disciplines identified in the Scope of Work with a not-to-exceed figure; and
- b. Hourly rates for all team members. Hourly rates and itemized costs may be used to negotiate changes in the Scope of Work if necessary.

#### **A. Cost Proposal**

Present a concise list of the scope of services and the work products that your firm proposes to provide. Given your proposed scope of services and work products, discuss your proposed fee arrangement based on each of the following alternatives:

1. Compensation on a fixed annual cost, payable monthly.

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2. Compensation on a time and expense basis, with a list of hourly billing rates for the proposed personnel and any proposed increases in such rates during the term of the contract, and the types of reimbursable expenses with proposed charges.
3. Compensation on a cents-per-bond or per \$1,000 of notional amount basis to be paid on a contingent basis for specific financing issues.

Fees will be subject to adjustment based upon assignment by the Executive Director/CEO of more than one firm to a single project. Any omissions or ambiguities in the cost proposal will be construed most favorable to the SFMTA.

**B. Reimbursement of “Out-of-Pocket” Expenses**

The SFMTA shall reimburse for “Out-of-Pocket” expenses upon proper invoice rendered with appropriate receipts attached. Such expenses include long distance telephone, postage, air express charges, fax, reproduction and related costs necessarily incurred as Financial Advisor. Such expenses will be paid from legally available funds of the SFMTA. Travel expenses related to performance of the services to the SFMTA, and approved in advance by the SFMTA, will be reimbursed in accordance with the City’s travel policy. Any costs incurred by Financial Advisor which are not specifically provided for herein shall be the expense of Financial Advisor

## **IV. Evaluation and Selection Criteria**

### **A. Selection Criteria**

The proposals will be evaluated by a selection committee. The SFMTA intends to evaluate the proposals generally in accordance with the criteria itemized below. Up to three of the firms with the highest scoring proposals will be interviewed by the committee to make the final selection.

The following criteria shall be used in the evaluation of proposals:

#### **1. Project Approach (35 points)**

- a. Understanding of the project and the tasks to be performed
- b. Responsiveness, organization and clarity of proposal related to the scope of work
- c. Understanding of the SFMTA specific issues
- d. Creative solutions and ideas proposed
- e. Reasonableness of work schedule and fee proposal.

#### **2. Assigned Project Staff (30 points)**

- a. Recent experience of staff assigned to the project and a description of the tasks to be performed by each staff person;
- b. Professional qualifications and education;
- c. Qualifications and experience in structuring, negotiating and implementing the full range of tax-exempt and taxable bond and note financings, and other derivative product options;
- d. Experience with, and knowledge of transportation, municipal and California issuers and financings;
- e. Responses of references;
- f. Location and availability to the SFMTA staff; and
- g. Tenure of the proposed staff with firm and length of time in the industry; and
- h. Workload, staff availability and accessibility.

#### **3. Experience of Firm and Subconsultants (20 points)**

- a. Expertise of the firm and subconsultants in the fields necessary to complete the tasks;
- b. Demonstrated ability to track and monitor relevant tax-exempt and taxable bond, swap and other derivative products and government securities markets;
- c. Commitment to public finance;
- d. Responses of references;
- e. Quality of recently completed projects, including adherence to schedules, deadlines and budgets; and
- f. Experience with similar projects.

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**4. Fees (15 points)**

**5. Oral Interview (15 points)**

Following the evaluation of the written proposals, the three proposers receiving the highest scores will be invited to an oral interview. The interview will consist of a brief presentation by the proposer, standard questions asked of each of the three proposers, and possibly follow-up questions to clarify the content of the proposal. Up to 15 points will be added to the written proposal for the oral interview base on the proposer's presentation and responses to the questions asked by the selection committee regarding project approach, assigned project staff and the experience of the firm and subconsultants.

**V. Pre-proposal Conference and Contract Award**

**A. Pre-Proposal Conference**

Proposers must attend the **mandatory pre-proposal conference** on **Friday, December 19, 2008**, at 2:00 p.m. to be held at the SFMTA located at One South Van Ness Avenue, Seventh Floor, San Francisco, California 94103. All questions will be addressed at this conference and any available new information will be provided at that time. If you have further questions regarding the RFP, please contact the individual designated in Section VI.B.

**B. Contract Award**

The SFMTA will select a qualified proposer with whom SFMTA staff shall commence contract negotiations. The selection of any proposal shall not imply acceptance by the SFMTA of all terms of the proposal, which may be subject to further negotiations and approvals before the SFMTA may be legally bound thereby. If a satisfactory contract cannot be negotiated in a reasonable time the SFMTA, in its sole discretion, may terminate negotiations with the highest ranked proposer and begin contract negotiations with the next highest ranked proposer.

Pursuant to Charter Section 3.105, all contract awards are subject to certification by the Controller as to availability of funds.

## **VI. Terms and Conditions for Receipt of Proposals**

### **A. Errors and Omissions in RFP**

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the Department, in writing, if the proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the Department promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

### **B. Inquiries Regarding RFP**

Inquiries regarding the RFP and all oral notifications of an intent to request written modification or clarification of the RFP, must be directed to:

Steven Lee  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, California 94103

Or

Steven.Lee@SFMTA.com

### **C. 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 Department 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.

### **D. Change Notices**

The SFMTA may modify the RFP, prior to the proposal due date, by issuing Change Notices, which will be posted on the Office of Contract Administration “OCA” website <http://mission.sfgov.org/OCABidPublication/>. The proposer shall be responsible for ensuring that its proposal reflects any and all Change Notices issued by the SFMTA prior to the proposal due date regardless of when the proposal is submitted. Therefore, the SFMTA recommends that the proposer consult the OCA website frequently, including shortly before the proposal due date, to determine if the proposer has downloaded all Change Notices.

### **E. Term of Proposal**



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Submission of a proposal signifies that the proposed services and prices are valid for 120 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

**F. Revision of Proposal**

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, the SFMTA may require a proposer to provide oral or written clarification of its proposal. The SFMTA reserves the right to make an award without further clarifications of proposals received.

**G. Errors and Omissions in Proposal**

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

**H. Financial Responsibility**

The SFMTA accepts no financial responsibility for any costs incurred by a firm in responding to this RFP. Submissions of the RFP will become the property of the SFMTA and may be used by the SFMTA in any way deemed appropriate.

**I. 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 candidates for such an office, or committee controlled by such 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.

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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 office
- a committee controlled by the 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 may result in the following criminal, civil, or administrative penalties:

1. **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.
2. **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.
3. **Administrative.** Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

**J. Communications Prior To Contract Award**

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 contractor selection is finally approved by the SFMTA Board of Directors and, if required, by the San Francisco Board of Supervisors.

All firms and subcontractor(s) responding to this RFP are hereby notified that they may not contact any SFMTA staff member, other than a person with whom contact is expressly

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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 subcontractor(s) responding to this RFP are hereby 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 in writing 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 subcontractor(s) responding to this RFP will 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 contractors and subcontractor(s) shall also be subject to the same prohibitions.

An executed Attestation of Compliance, attached hereto as Appendix C, certifying compliance with this section of the RFP will be required to be submitted signed by all firms and named subcontractor(s) as part of the response to this RFP. 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 subcontractor will be disqualified from the selection process.

**K. Sunshine Ordinance**

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, 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

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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.

**L. 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 S.F. Administrative Code, the proposer must comply with Chapter 12L. 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 shall also describe the disposition of each complaint. If no such complaints were filed, the proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in proposer's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

**M. Reservations of Rights by the SFMTA**

The issuance of this RFP does not constitute an agreement by the SFMTA that any contract will actually be entered into by the SFMTA. The SFMTA expressly reserves the right at any time to:

1. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Reissue a Request for Proposals;
4. 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;
5. Procure any materials, equipment or services specified in this RFP by any other means; or
6. Determine that no project will be pursued.

**N. No Waiver**

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

**O. Local Business Enterprise Goals and Outreach**

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The requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”) shall apply to this RFP.

**1. LBE Subconsultant Participation Goals**

The LBE subconsulting goal for this project is 20 % of the total value of the goods and/or services to be procured.

Each firm responding to this solicitation shall demonstrate in its response that it has used good-faith outreach to select LBE subcontractors as set forth in S.F. Administrative Code §§14B.8 and 14B.9, and shall identify the particular LBE subcontractors solicited and selected to be used in performing the contract. For each LBE identified as a subcontractor, the response must specify the value of the participation as a percentage of the total value of the goods and/or services to be procured, the type of work to be performed, and such information as may reasonably be required to determine the responsiveness of the proposal. LBEs identified as subcontractors must be certified with the San Francisco Human Rights Commission at the time the proposal is submitted, and must be contacted by the proposer (prime contractor) prior to listing them as subcontractors in the proposal. Any proposal that does not meet the requirements of this paragraph will be non-responsive.

In addition to demonstrating that it will achieve the level of subconsulting participation required by the contract, a proposer shall also undertake and document in its submittal the good faith efforts required by Chapter 14B.8(C)&(D) and HRC Attachment 2, Requirements for Architecture, Engineering and Professional Services Contracts.

Proposals which fail to comply with the material requirements of S.F. Administrative Code §§14B.8 and 14B.9, HRC Attachment 2 and this RFP will be deemed non-responsive and will be rejected. During the term of the contract, any failure to comply with the level of LBE subcontractor participation specified in the contract shall be deemed a material breach of contract. Subconsulting goals can only be met with HRC-certified LBEs located in San Francisco.

**2. LBE Participation**

The SFMTA strongly encourages proposals from qualified LBEs. Pursuant to Chapter 14B, the following rating discount will be in effect for the award of this project for any proposers who are certified by HRC as a LBE, or joint ventures where the joint venture partners are in the same discipline and have the specific levels of participation as identified below. Certification applications may be obtained by calling HRC at (415) 252-2500. The rating discount applies at each phase of the selection process. The application of the rating discount is as follows:

- a. A 10% discount to an LBE; or a joint venture between or among LBEs; or
- b. A 5% discount to a joint venture with LBE participation that equals or exceeds 35%, but is under 40%; or

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- c. A 7.5% discount to a joint venture with LBE participation that equals or exceeds 40%; or
- d. A 10% discount to a certified non-profit entity.

If applying for a rating discount as a joint venture: The LBE must be an active partner in the joint venture and perform work, manage the job and take financial risks in proportion to the required level of participation stated in the proposal, and must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the LBE joint venture's work shall be set forth in detail separately from the work to be performed by the non-LBE joint venture partner. The LBE joint venture's portion of the contract must be assigned a commercially useful function.

**3. HRC Forms to be Submitted with Proposal**

a. All proposals submitted must include the following Human Rights Commission (HRC) Forms contained in the HRC Attachment 2: 1) Form 2A: HRC Contract Participation Form, 2) Form 2B: HRC "Good Faith Outreach" Requirements Form, 3) Form 3: HRC Non-Discrimination Affidavit, 4) Form 4: HRC Joint Venture Form (if applicable), and 5) Form 5: HRC Employment Form. If these forms are not returned with the proposal, the proposal may be determined to be non-responsive and may be rejected.

b. Please submit only two copies of the above forms with your proposal. The forms should be placed in a separate, sealed envelope labeled HRC Forms.

If you have any questions concerning the HRC Forms, you may call Mr. André Boursse, SFMTA Contract Compliance Office, 1 South Van Ness Avenue, 3rd Floor, San Francisco, CA 94103; phone: 415-701-4362, fax: 415-701-4347.

**VII. Contract Requirements**

**A. Standard Contract Provisions**

The successful proposer will be required to enter into a contract substantially in the form of the Agreement for Professional Services, attached hereto as Appendix C. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsement, surety bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The SFMTA, 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 Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits, (§Section 34 in the Agreement); the Minimum Compensation Ordinance (§Section 43 in the Agreement); the Health Care Accountability Ordinance (§Section 44 in the Agreement); the First Source Hiring Program

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(§Section 45 in the Agreement); and applicable conflict of interest laws (§Section 23 in the Agreement), as set forth in paragraphs B, C, D, E and F below.

**B. Nondiscrimination in Contracts and Benefits**

The successful proposer will be required to agree to comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the HRC's website at [www.sfhrc.org](http://www.sfhrc.org).

**C. Minimum Compensation Ordinance (MCO)**

The successful 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 Section 43 in the agreement.

For the amount of hourly gross compensation currently required under the MCO, see [www.sfgov.org/olse/mco](http://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/mco](http://www.sfgov.org/olse/mco).

**D. Health Care Accountability Ordinance (HCAO)**

The successful 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. Contractors 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](http://www.sfgov.org/olse/hcao).

**E. First Source Hiring Program (FSHP)**

If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) 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 [www.sfgov.org/moed/fshp.htm](http://www.sfgov.org/moed/fshp.htm) and from the First Source Hiring Administrator, (415) 401-4960.

**F. Conflicts of Interest**

The successful proposer will be required to agree to comply fully 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 successful proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of 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.

Individuals who will perform work for the City on behalf of the successful proposer might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful proposer that the City has selected the proposer.

**VIII. Protest Procedures**

**A. Protest of Non-Responsiveness Determination**

Within five working days of the SFMTA's issuance of a notice of non-responsiveness, any firm that has submitted a proposal and believes that the SFMTA has incorrectly determined that its proposal is non-responsive may submit a written notice of protest. Such notice of protest must be received by the SFMTA on or before the fifth working day following the SFMTA's issuance of the notice of non-responsiveness. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the SFMTA to determine the validity of the protest.



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**B. Protest of Contract Award**

Within five working days of the SFMTA's issuance of a notice of intent to award the contract, any firm that has submitted a responsive proposal and believes that the SFMTA has incorrectly selected another proposer for award may submit a written notice of protest. Such notice of protest must be received by the SFMTA on or before the fifth working day after the SFMTA's issuance of the notice of intent to award.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the SFMTA to determine the validity of the protest.

**C. Delivery of Protests**

All protests must be received by the due date. If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the SFMTA received the protest. Protests or notice of protests made orally (e.g., by telephone) will not be considered. Protests must be delivered to:

Nathaniel P. Ford, Sr.  
Executive Director/CEO  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, Seventh Floor  
San Francisco, California 94103

With copy to:

Sonali Bose  
CFO/Director of Finance & Information Technology  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, Seventh Floor  
San Francisco, California 94103

## **Attachment One**

The November 2007 Charter Amendment or Proposition A includes the following changes:

- Requires the SFMTA to comply with the city's "climate action plan" to reduce greenhouse gas emissions from San Francisco's transportation sector to 20 percent below 1990 levels and to report on progress toward that goal in an update every two years;
- Enhances the SFMTA's role in transportation (not just transit) management related to oversight of bicycles, pedestrians and street management in addition to public transit and automobile management;
- Moves the authority to set fares, fines and fees from the Board of Supervisors to the SFMTA Board of directors;
- Moves the authority for service changes including bus stops placements and signal placements, from the Board of Supervisors to the SFMTA Board in order to support the City's Transit First policy more effectively;
- Authorizes the SFMTA to issue debt directly;
- Increase the parking tax allocation to the SFMTA from 40 percent to 80 percent (represents an increase of approximately \$26 million annually based on current tax rates);
- Allows the SFMTA to keep 100 percent of all increases in parking fees, fines, and taxes that currently is required to be shared by the City's General Fund (approximately \$10 million a year based on the last five years of information);
- Allows the SFMTA to hire exempt managers up to 2.5 percent of its workforce;
- Changes the salary cap for operators to a salary floor to allow for negotiations of work rule changes and flexibility of work rules in return for higher wages;
- Gives the MTA the ability to establish traffic and parking regulations to improve transportation safety and efficiency and transit performance;
- Allows the SFMTA to assume all the labor and hiring practices previously held by the City; and
- Allows the SFMTA to move funds within its budget as long as a two-year budget is approved by the Board of Supervisors and SFMTA manages within the limits of the approved budget (currently the City Controller's approval is required to move funds)

## Attachment Two

### SFMTA CAPITAL INVESTMENT PROGRAM

#### “MAJOR CAPITAL PROJECTS- 30 Year Outlook“

*(All amounts are projections and are escalated in Billions \$)*

Project Title	Estimated Costs	Projected Funding	Remaining Balance	% Funded
<b>Infrastructure Program:</b> Central Subway Project, Track/Rail, Overhead Lines, Radio Replacement, Train Control Systems, AVL, Traffic Signals, Signs, Striping, Pedestrian, Traffic Calming, BRT, and various Info Tech projects	<b>\$22.5B*</b>	<b>\$11.9B</b>	<b>\$10.6B</b>	<b>50%</b>
<i>Central Subway Project</i>	<i>\$1.3B</i>	<i>\$1.3B</i>	<i>-</i>	<i>100%</i>
<b>Fleet Program:</b> LRV, Cable Car, Street Car, and Non-Revenue vehicles	<b>\$6.5B</b>	<b>\$3.9B</b>	<b>\$2.5B</b>	<b>67%</b>
<b>Equipment Program:</b> Maintenance Equipment, Homeland Security, Electronic Signage, Tunnel/Yard Intrusion Systems, Facility Video Cameras Connectivity, GPS/GPM upgrades, Subway PBX System, Bus/Rail Driver Training Simulators	<b>\$1.7B</b>	<b>\$1.9B</b>	<b>-</b>	<b>111%</b>
<b>Facilities Program:</b> Islais Creek, Flynn Ventilation System & Roof, MME, Woods Rehab, Presidio Rehab, Kirkland Rehab, Potrero Rehab, Green Facility Rehab, Facility Safety Improvements, Central Control Facility Rehab, and various other facility maintenance projects	<b>\$0.8B</b>	<b>\$0.4B</b>	<b>\$0.4B</b>	<b>50%</b>
<b>TOTAL</b>	<b>\$31.5B</b>	<b>\$18.1</b>	<b>\$13.4</b>	<b>57%</b>

## Attachment Three



# FINAL Memorandum

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To: Sonali Bose (via email)  
From: Robert D. Spencer  
Cc: Christopher Wornum, Cambridge Systematics (via email)  
Date: April 16, 2008  
Re: Revenue options for transit services in San Francisco

## Executive Summary

The purpose of this memorandum is to explore options for increasing revenue for the San Francisco Metropolitan Transportation Agency (MTA). Specifically the MTA is interested in revenue options that meet the following criteria:

- Provide additional ongoing funding for transit services from downtown businesses; and
- Avoid a requirement for voter approval by the electorate or property owners.

Given the legacy of voter-approved initiatives culminating in Proposition 218 (approved by California voters in 1996) this memorandum focuses on an evaluation of the following local revenue options:

- Special assessments (imposed on merchants rather than real property);
- User fees and charges; and
- Regulatory fees and permits.

The evaluation resulted in the following conclusions:

- A tenant-based special assessment for transit services could be modeled on the 1989 Business Improvement District (BID) statute. However, the assessment would need to withstand a majority protest for adoption.
- A user fee paid by downtown businesses would require some type of voucher program where businesses purchase transit vouchers from MTA and re-sell them at a discount to their customers and employees. Vouchers would provide the holder a discount off the transit regular fare. We estimate that there is insufficient incentive for businesses to subsidize transit services through a voucher program simply because businesses have not seen it in their interest to do so to date.
- A regulatory fee imposed on downtown businesses to reduce traffic congestion (vehicle use) by subsidizing transit services offers an intriguing option. Unlike the special assessment, this option would not be subject to a majority protest provision.

## Introduction

The purpose of this memorandum is to explore options for increasing revenue for the San Francisco Metropolitan Transportation Agency (MTA). Specifically the MTA is interested in revenue options that meet the following criteria:

1. Provide additional ongoing funding for transit services from downtown businesses; and
2. Avoid a requirement for voter approval by the electorate or property owners.

Given the legacy of voter-approved initiatives culminating in Proposition 218, current California law substantially narrows the revenue options available to local agencies that do not require voter approval.<sup>1</sup> Either a majority vote of the electorate or affected property owners (depending on the revenue measure) is needed to adopt new, or increase existing, revenues that are:

- ♦ General taxes;
- ♦ Special taxes (two-thirds majority approval required);
- ♦ Special assessments (imposed on real property); or
- ♦ Property-related fees.

In this fiscal and legal environment the only remaining viable local revenue option is a specific type of special assessment along with various types of fees and charges:

- ♦ Special assessments (not imposed on real property);
- ♦ User fees and charges;
- ♦ Regulatory fees and permits; and
- ♦ Development impact fees and other exactions on new development.

The MTA already has adopted a development impact fee, the Transit Impact Development Fee. Thus the focus of this memorandum is on the first three options on the list above (special assessments not imposed on property, user fees, and regulatory fees). Each of these options is explored in the sections that follow.

## Special Assessments Not Imposed On Real Property

The Parking and Business Improvement Area Law of 1989<sup>2</sup> provides the authority for local agencies to impose special assessments on businesses within a designated area. The Fourth District Court of Appeal ruled in 1999 that these assessments are not subject to the property owner voting requirements of Proposition 218 because the assessments are imposed on

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<sup>1</sup> See California State Constitution, Articles XIIIIC and XIIID.

<sup>2</sup> Streets & Highways Code §§ 36500-36551.

businesses and not property owners.<sup>3</sup> The Court distinguished the assessments imposed under this law with assessments imposed under a similar law but on property owners, the Property and Business Improvement Area Law of 1994.<sup>4</sup>

- ♦ Business improvement districts (BIDs) formed under the 1989 law are commonly known as “tenant-based BIDs” and assessments are typically collected through the payment of business licenses.
- ♦ Business improvement districts formed under the 1994 law are commonly known as “property-based BIDs” (PBIDs) and assessments are typically collected through the property tax rolls. Imposition of the assessment on property owners results in these assessments being subject to the property owner voting requirements of Proposition 218.

Key elements of the Parking and Business Improvement Area Law of 1989 (tenant-based BIDs) relevant to adoption of an assessment for transit include:

1. Limited or no statutory authority for transit services;
2. Special benefit findings;
3. Majority protest provisions and importance of local business support; and
4. Procedure for billing and collecting.

Each of these issues is addressed in the subsections that follow.

### ***Limited Or No Statutory Authority For Transit Services***

For allowable uses of revenues the law specifically lists certain “improvements” such as streetscape improvements and parking facilities, and certain “activities” such as promotion of public events, music in any public place and tourism.<sup>5</sup> The experience of existing BIDs suggest that expenditures are focused on minor street improvements, promotional activities, street cleaning, and security. Consequently a “downtown transit circulator” bus or van, or similar service, would seem to be a proper use of BID revenues for transit. But funding transit services that serve more than just the downtown may be subject to challenge. The law does contain general language allowing funding for “activities which benefit businesses located and operating in the area”.

The City’s charter status provides the City the ability to augment state statute and address the concerns noted above. The City has already done this with regards to the 1994 PBID statute in Chapter 15 of its Business and Tax Regulations Code. City staff recommends that if an ordinance is adopted specifically for a transit assessment that ordinance should:

- ♦ Expressly authorize the levy of assessments on business for transit service that specially benefits the businesses;

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<sup>3</sup> *Howard Jarvis Taxpayers Association v. City of San Diego*, 1999.

<sup>4</sup> Streets & Highways Code §§ 36600-36671.

<sup>5</sup> Streets & Highways Code §§ 36506, 36510, and 36513.



- ♦ Set forth the minimum substantive and procedural requirements for formation and renewal of transit assessment districts (which could then be augmented by the SFMTA in accordance with the policy decisions of the SFMTA Board);
- ♦ Authorize the levy of multiyear assessments rather than requiring annual reauthorization; and
- ♦ Specify the procedures to be followed for the issuance of assessment bonds or other assessment-backed indebtedness if the SFMTA Board wants flexibility to borrow against future assessment proceeds.

### ***Special Benefit Findings***

Any assessment must establish a “special benefit” attributable to businesses paying the assessment. Special benefit is derived from improvements or services funded by the assessment.

To be “special” the benefit received by a business paying the assessment must be over and above the general benefit of transit services received by businesses located outside the assessment district, or received by residents throughout the City. In addition, the amount of the special assessment for any particular business must reflect the relative special benefit received by that business.

Thus, from a technical perspective the assessment should be based on quantitative data that demonstrates the following:

- ♦ Assessment revenues are funding different types and/or levels of service than available elsewhere in the city. Level of service can be documented by the density of transit service (such as passenger capacity per square mile) compared to other areas of the City.
- ♦ The assessment paid by a specific business used to estimate the relative cost of “special benefit” transit services received by that business.
  - Businesses can be grouped in broad categories and pay assessments based on average levels of benefit for each category. The North American Industry Classification System (NAICS) provides a business categorization method.
  - The assessment should vary by size of business within each category to reflect relative levels of transit demand. Employment would provide an adequate metric as long as businesses categories reflect differences in customer transit use as well.
  - The level of assessment among and within categories should be based on a statistically valid survey of downtown businesses to estimate transit use by customers and employees. Estimates should be supported by analysis of transit ridership data.

### ***Majority Protest Provision and Importance of Local Business Support***

In our experience local business support is critical to formation of a BID. Although businesses would not have to make an affirmative vote to approve the assessment, the

general intent of BIDs and the majority protest provisions typically cause the local legislative body to seek expression of business support before initiating the formation process:

- ♦ BIDs are specifically designed as a tool for local businesses to play a lead role in crafting solutions to specific problems in their area related to the business environment.
- ♦ The local legislative body must appoint an advisory commission and the commission must make recommendations on the amount of the assessment and use of the assessment revenues.
- ♦ The assessment is subject to a majority protest process at a noticed public hearing. If businesses representing 50 percent or more of the total assessment to be levied protest the assessment then the proceedings must be terminated.
- ♦ The assessment must be levied annually using the same public hearing and majority protest procedures.

### ***Procedure for Billing and Collecting***

A method of billing and collecting the fee is needed that is administratively efficient yet does not rely on the property tax rolls. The City's business license (payroll) tax collection system would be a logical candidate for this purpose. Further investigation is needed to determine the system upgrades that would be necessary to enable collection of an additional fee based on new criteria.

### ***Summary***

A downtown tenant-based BID may be an appropriate revenue option for MTA if (1) there is statutory authority for use of revenues for that purpose, (2) a defensible special benefit and related assessment is established, (3) downtown businesses do not protest the formation, and (4) an efficient method is available to bill and collect the assessment, such as the existing business license tax system.

## **User Fees**

Local governments have broad discretion to impose user fees. User fees require approval only by the local legislative body. Several state statutes address specific user fees such as development impact fees and planning and building permits. We are not aware of any specific statute prohibiting the adoption of a user fee to fund transit services. Indeed the most common user fee for transit service is the fare paid by each passenger. General statutory authority governing the adoption of user fees by local agencies include the following:<sup>6</sup>



Government Code §50076 As used in this article, "special tax" shall not include any fee which does not exceed the reasonable cost of providing the service or regulatory activity for which the fee is charged and which is not levied for general revenue purposes.

Government Code §66016 (a) ... no local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount which exceeds the estimated amount required to provide the service for which the fee or service charge is levied...

Given these statutes and based on our professional experience preparing user fee studies for local government agencies throughout California, we would suggest the following criteria to ensure a technically defensible user fee:

1. Use of the service is voluntary and so therefore is payment of the fee.
2. Fee paid is reasonably related to service cost after deducting other dedicated revenues.
3. Fee revenues are dedicated to funding the service and not levied for general revenue purposes.

Below we discuss the challenges associated with each of these criteria when developing a defensible technical justification for a transit user fee paid by downtown business.

### **Voluntary Use**

After much consideration we could not construct a user fee that would require business participation without contradicting the criterion that payment of a user fee is voluntary. Fundamental to a user fee program is a market transaction voluntarily entered into by a user and the local agency providing the service. As mentioned above user fees are already charged in the form of passenger fares. A fee imposed solely on downtown businesses may not qualify as a user fee because the business paying the fee is not the end user of transit services. Their customers and employees are the end users.

Any approach that would require downtown businesses to pay a fee would be dangerously close to being classified either as a special assessment or a property-related charge. The only special assessment option that would not require an affirmative vote was discussed in the prior section. Any type of property-related charge would require an affirmative vote of property owners under Proposition 218.

One approach that might meet the voluntary criterion and still be effective is a transit voucher program for downtown businesses. Businesses would purchase transit vouchers from MTA and re-sell them at a discount to their customers and employees. Vouchers would provide the holder a discount off the transit regular fare. To be effective the voucher would have to meet the following objectives:

1. **To generate additional revenues to MTA:** The amount of the voucher paid to MTA by the business plus the amount of the discounted fare paid by the voucher holder would have to be greater than the regular fare.

2. **For businesses to participate:** The additional business from customers or benefit to employees would have to justify the net cost (price paid to MTA minus revenues from selling to transit users).
3. **For customers or employees to purchase vouchers from businesses:** The total cost of the fare (cost of voucher plus additional fare paid upon boarding) would have to result in a sufficient discount to justify the time and energy required to make the transaction.

### ***Fee Amount Reasonably Related To Cost***

The voucher program discussed above would result in the fee paid being reasonably related to cost as long as the net cost to the transit user was directly proportional to the number of transit rides allowed by the user.

### ***Fees Dedicated To Funding Service***

This criterion would be relatively easy to achieve because of the demonstrated need by the MTA for additional revenue to fully fund transit services. The additional fee revenues could be used to reduce the level of current transit tax subsidies and/or fund the additional cost of expanding or improving transit services.

### ***Summary***

A user fee may be an effective revenue option if MTA could craft a voucher program that had sufficient incentives for local businesses to subsidize transit services. Given that statutory authority exists for this approach, and that it has not been pursued to date, one can assume that downtown businesses lack sufficient incentives in this regard.

## **Regulatory Fees<sup>7</sup>**

Regulatory fees are imposed to cover the cost of regulating some type of activity. Business license fees and storm water permit fees are types of regulatory fees. Generally a local government's power to impose a fee to support a regulatory program is as broad as its police power to regulate. The following three court cases provide guidance on designing a defensible regulatory fee:

- ♦ The first key precedent setting case regarding a regulatory fee was *Sinclair Paint v. State Board of Equalization*, 15 Cal.4th 866 (1997). The court considered a fee imposed on paint manufacturers and other businesses engaged in the use of lead that contributed or had contributed significantly to environmental contamination. Fee revenues were used by the State to provide evaluation, screening, and medical services to children deemed to be at risk for lead poisoning. The Sinclair Paint Company challenged the fee charging that it was intended to generate revenue for non-regulatory purposes and was therefore a

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<sup>7</sup> Abbott, William W. et al., *Exactions and Impact Fees In California*, Solano Press Books, 2001, pp. 19-20; and Colantuono, Michael G., *City League of California Cities Financial Management Seminar*, Monterey, December 6, 2007, pp. 14-19.

tax. The California Supreme Court decided in favor of the State and upheld the regulatory fee.

- ♦ In *Apartment Association of Los Angeles County, Inc. v. City of Los Angeles*, 24 Cal.4th 830 (2001), the California Supreme Court upheld a fee imposed on landlords to fund housing code enforcement programs. Even though the fee was collected through the property tax rolls the Court decided that the fee was based on the voluntary decision to operate rental housing and therefore was not a property-related fee subject to Proposition 218.
- ♦ In *Pajaro Valley Water Management Agency v. Amrhein*, 150 Cal.App.4th 1364 (2007), the 6<sup>th</sup> District Court of Appeal ruled that a groundwater extraction charge was not a regulatory fee but was a property-related fee subject to Proposition 218. Essentially, the Court ruled that the fee was more similar to a water user charge that funded water supply than to a regulatory charge designed to fund mitigation of a negative environmental impact.

These cases seem to indicate that the following criteria are helpful if not critical to determining that a revenue measure is a regulatory fee:

1. The fee is clearly labeled as a regulatory fee when adopted.
2. The fee is imposed on the activity being regulated providing an incentive to reduce the level of that activity.
3. The fee should not be collected through the property tax roll or imposed as a property lien. The former guards against the fee being labeled as a property-related charge, and the latter guards against the fee being labeled as a special assessment, both of which would make the fee subject to Proposition 218.
4. Fee revenues are solely dedicated to funding the regulatory program such that total fee revenue does not exceed total regulatory program costs.

Below we discuss these issues associated with each of these criteria when developing a defensible technical justification for a regulatory fee paid by downtown business.

### ***Fee Clearly Labeled As A Regulatory Fee***

We suggest that a regulatory fee to fund transit services should be imposed under a program that authorizes regulation of businesses to promote increased transit use. One possibility is for the City to use its constitutional and charter powers to adopt a new regulatory program. The objective of the program would be to reduce air pollution and traffic congestion downtown by promoting transit use.

Another possibility would be to adopt the fee pursuant to a provision of the Congestion Management Program (CMP).<sup>8</sup> The CMP is a state-mandated transportation program administered locally by the San Francisco County Transportation Authority (SFCTA). The CMP includes several provisions that emphasize transit services and mention business participation, including:

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<sup>8</sup> Government Code §§ 65088-65089.



1. The program shall contain...[a] travel demand element that promotes alternative transportation methods, including...transit...[§ 65089(b)]
2. An agency may require an employer to provide...a public transit subsidy in an amount to be determined by the employer...[§ 65089.1(b)]
3. A local jurisdiction shall prepare a deficiency plan when highway or roadway level of service standards are not maintained....The deficiency plan shall include...a list of improvements...such as improved public transit service...[§ 65089.4]

A concern with use of the CMP is that the deficiency plan component would lend itself to a focus only on new or expanded businesses, not on existing business activity. This would limit the revenue generating potential of the fee.

### ***Fee Imposed On Regulated Activity***

Businesses activity would have to be defined as causing the need for regulation to comply with this criterion. To do so would require demonstrating that business causes negative environmental impacts for which transit service is a reasonable mitigation. A technically defensible method to document this nexus would include:

1. Demonstrating a reasonable relationship between the type and amount of business activity and the negative environmental impacts of automobile congestion. The closer the relationship between the specific characteristics of a business and the amount of the fee imposed on the business, the more defensible the regulatory program. Similar to the discussion under "Special Benefit Findings":
  - a. Businesses can be grouped in broad categories and pay fees based on average degree of negative impact for each category. The North American Industry Classification System (NAICS) provides a business categorization method.
  - b. The fee should vary by size of business within each category to reflect relative levels of negative impact. Employment would provide an adequate metric as long as businesses categories reflect differences in customer automobile use as well.
  - c. The level of fee among and within categories should be based on a statistically valid survey of downtown businesses to estimate automobile use by customers and employees.
2. Demonstrating a reasonable relationship between improved transit services and mitigating the negative impacts of automobile congestion. This connection should be documented using (1) estimates of emissions of air pollutants by autos and (2) existing SFCTA transportation monitoring and modeling capabilities.

It may be difficult to argue that a regulatory fee on businesses creates an incentive for business to increase transit usage. Increasing parking fees to fund transit services rather than charging employers may have a more direct and therefore more defensible relationship. However, the fee may only have to be shown to discourage vehicle use to be defensible - an easier path if the fee is directly related to a business' reliance on vehicle traffic for its customers and employees.

## ***Fee Not Imposed Solely Due To Property Ownership***

As discussed above regarding special assessments, a method of collecting the fee is needed that is administratively efficient yet does not rely on the property tax rolls. The City's business license (payroll) tax collection system would be a logical candidate for this purpose. Further investigation is needed to determine the system upgrades that would be necessary to enable collection of an additional fee based on new criteria.

## ***Fee Revenues Dedicated To Funding Regulatory Program***

As with the voucher program discussed above, this criterion would be relatively easy to achieve because of the demonstrated need by the MTA for additional revenue to fully fund transit services. The additional fee revenues could be used to reduce the level of current transit tax subsidies and/or fund the additional cost of expanding or improving transit services.

## ***Summary***

Successful implementation of a regulatory fee to fund transit services would be an innovative use of this revenue option. The CMP statute seems to provide at least a start in this direction. The biggest challenge may be crafting a fee applied to businesses that is an effective method of discouraging vehicle use and/or encouraging transit use.

## **Conclusion**

To summarize this analysis of revenue options to fund downtown transit services:

- ♦ A tenant-based special assessment for transit services could be modeled on the 1989 BID statute. However, the assessment would need to withstand a majority protest for adoption.
- ♦ We estimate that there is insufficient incentive for businesses to subsidize transit services through a voucher program simply because businesses have not seen it in their interest to do so to date. The MTA could conduct a survey of downtown businesses to test this hypothesis.
- ♦ A regulatory fee imposed on downtown businesses to reduce traffic congestion (vehicle use) by subsidizing transit services offers an intriguing option. Unlike the special assessment, this option would not be subject to a majority protest provision.

## **Disclaimer**

All legal opinions expressed in this memorandum are solely based on our professional experience as economic and fiscal consultants to local government agencies in California and not as licensed attorneys.

## APPENDIX A

# City & County of San Francisco HUMAN RIGHTS COMMISSION



## HRC ATTACHMENT 2

### *Requirements for Architecture, Engineering, & Professional Services Contracts For Contracts \$29,000 and over*

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#### **PART I. GENERAL**

##### **1.01 SAN FRANCISCO ADMINISTRATIVE CODE CHAPTERS 12B AND 14B**

- A. To be eligible for this contract award, prime proposers must agree to comply with the Local Business Enterprise (LBE) requirements sanctioned by San Francisco Administrative Code Chapter 12B, Section 12B.4 and Chapter 14B, and its implementing Rules and Regulations. Chapters 12B and 14B are administered and monitored by the San Francisco Human Rights Commission (HRC).
- B. Chapters 12B and 14B and their implementing Rules and Regulations are incorporated by reference herein as though fully set forth and provide that the failure of any proposer or consultant to comply in good faith with these requirements shall be deemed a material breach of contract. Copies of both Chapters 12B and 14B and their implementing rules and regulations are available on the HRC website at [www.sfgov.org](http://www.sfgov.org) then select Agency, select View Complete List, click "H" for Human Rights Commission.
- C. Chapter 14B allows for a ten percent (10%) rating discount for firms and non-profit organizations certified by HRC on Architecture, Engineering, and Professional services contracts. The term "rating discount" hereafter shall be known as "rating bonus" in HRC Attachment 2
- D. *Questions regarding HRC Attachment 2 and accompanying forms for this Professional Services Contract, namely, (08-1037) RFP: Financial Advisor should contact SFMTA's Contract Compliance Office (CCO) at (415) 701-4362, One South Van Ness Ave., 3<sup>rd</sup> Floor, San Francisco, CA 94103.*
- E. In addition, for assistance with LBE Certification or compliance with the Equal Benefits Program, please contact the HRC Main Office at (415) 252-2500 or LBE Certification Unit (415) 252-2537 or (415) 252-2530.
- F. *A twenty (20%) LBE subconsulting participation goal has been established for the total value of goods and/or services procured on this contract. Firms submitting proposals must use their good faith efforts to, where feasible, include LBE subconsultants for work under this proposal.*



## G. Certification Application

### LBE Certification Application

- a. Prime proposers must be certified as LBEs on the proposal due date to qualify for a rating bonus.
- b. Any proposer who is in the process of appealing the Director's denial of certification or revocation of certification for other contracts shall not be considered an LBE.
- c. The Certification Application is available on the HRC website at [www.sfgov.org](http://www.sfgov.org) then select Agency, select View Complete List, click "H" for Human Rights Commission.

## 1.02 SUBMISSION OF HRC FORMS

- A. Unless otherwise authorized by SFMTA's CCO, the prime proposer must submit the following HRC forms in a separate envelope marked "HRC Forms" with the proposal. Failure to complete or submit any of the HRC Forms may cause the proposer to be deemed non-responsive and ineligible for contract award.

Review the specific instructions and requirements on each HRC form.

1. **Form 2A: HRC Contract Participation Form:** Identify LBE subconsultants, vendors, and lower tier subconsultants listed on this form for LBE subconsultant credit. Check the appropriate box under Ratings Bonus.
2. **Form 2B: HRC "Good Faith Outreach" Requirements Form:** Document solicitation of LBE participation. This form must be submitted EVEN IF the LBE subconsultant goal has been met. Attach supporting documentation.
3. **Form 3: HRC Non-Discrimination Affidavit:** Must be signed by Proposer under penalty of perjury.
4. **Form 4: HRC Joint Venture Form:** Submit ONLY if the firms are requesting a rating bonus based on LBE participation in a joint venture partnership.
5. **Form 5: HRC Employment Form:** List the key personnel and responsibilities of the Proposer, Joint Venture partners, and Subconsultants.
6. **HRC 12B-101 Form:** Submit only if the Prime Consultant is not already in compliance with Equal Benefits Requirements. This form is available on the HRC website at [www.sfgov.org](http://www.sfgov.org) then select Agency, select View Complete List, click "H" for Human Rights Commission.

- B. Note the following information:

1. HRC Attachment 2 forms are available on the HRC website at [www.sfgov.org](http://www.sfgov.org) then select Agency, select View Complete List, click "H" for Human Rights Commission.
2. For contracts over \$10 million, the rating bonus is not applicable.
3. Except where the contract awarding authority has obtained a waiver from HRC, any proposal submitted without a completed Form 2A and Form 2B may be deemed non-responsive and rejected.
4. LBE subconsultant goal can only be met with HRC certified LBEs identified on the HRC LBE directory website at [www.sfgov.org](http://www.sfgov.org) then select Agency, select View Complete List, click "H" for Human Rights Commission..

## C. HRC Contract Performance Forms

The following HRC forms are submitted with progress and final payment requests.



Review instructions and specific information requested on each form:

1. **Form 7: HRC Progress Payment Form:** Submit to Contract Awarding Authority and to HRC for each payment request. *Note:* Page 2; column "A" of the form, ALL firms must be continuously listed including lower tier subconsultants for each payment request.
2. **Form 9: HRC Payment Affidavit:** Submit within ten (10) working days to Contract Awarding Authority and HRC following receipt of each progress payment from the Contract Awarding Authority. This form must be submitted EVEN IF there is no subconsultant payment and until completion of the contract.
3. **Form 8: HRC Exit Report and Affidavit:** Submit with Form 7 to Contract Awarding Authority and HRC. Each LBE subconsultant and vendor (including lower tier subconsultants and vendors) must complete this form.
4. **Form 10: HRC Contract Modification Form:** Submit with appropriate documentation when original contract amount increases more than 20%.

Failure to submit any HRC contract performance forms may result in sanctions under Section 14B.11.C including but not limited to withholding or delaying progress and final payments.

### 1.03 "GOOD FAITH OUTREACH" REQUIREMENTS

- A. All proposers shall achieve the LBE goal and undertake good faith outreach as set forth in Section 14B.8(C) of the ordinance to select subconsultants to meet the LBE goal. Proposals that do not meet the LBE goal set under 14B.8(A) of the ordinance will be rejected as non-responsive unless the HRC Director finds that the proposer diligently undertook all the good faith efforts required by the Ordinance and that the failure to meet the goal resulted from an excusable error. The contract awarding authority shall require proposers on the contracts to contact an LBE before listing that LBE as a subconsultant in the proposal. A proposal that fails to comply with this requirement will be rejected as non-responsive.
- B. The proposer must perform the following seven (7) "good faith outreach" requirements:
  - (1) Attending any presolicitation or proposal meetings scheduled by the City to inform all proposers of LBE program requirements for the project for which the contract is awarded;
  - (2) Identifying and selecting subconsulting opportunities to meet LBE goals;
  - (3) Advertising for LBE subconsultants and vendors by posting the opportunity in an accessible location, specified by the City, not less than 10 calendar days before the date the proposals can first be submitted. This applies only if the City gave public notice of the project not less than 15 calendar days prior to the date the proposals can first be submitted;
  - (4) Contacting LBEs certified to perform the identified work;
  - (5) Providing LBEs that have notified the proposers of their interest with adequate information about the plans, specifications, and requirements for the work, provided that the Director may cap the number of contacts required;
  - (6) Negotiating in good faith with LBEs, and not unjustifiably rejecting their bids or proposals; and
  - (7) Advising and assisting interested LBEs to obtain bonds, lines of credit, or insurance required by the City or the Proposer.

*Note:* Proposers are required to document and submit Form 2B and supporting documentation EVEN IF the LBE subconsultant goal has been met.





- C. Each proposer shall document “good faith outreach” and include the documentation with the proposal. Such documentation shall include: (a) the dollar amount of each subconsultant and a statement of the scope of work to be performed under the subcontract; (b) the identification of each subcontract awarded to an LBE; (c) for each subcontract, copies of the subconsultant billing rates submitted. Such documentation shall contain at least the billing rates and a description of the scope of work. If no written billing rates were submitted by some or all of the subconsultants who bid the job, the proposer shall submit a written statement containing (i) the amount of each contract amount; and separately, for each subcontract, a full and complete statement of the reason(s) for selection of the subconsultant. If the reason is based on relative qualifications, the statement must address the particular qualifications at issue. If the reason is the respective billing rates, the statement must state the amounts and describe the similarities and/or dissimilarities in the scope of work covered by the billing rates. Proposers also shall maintain the documentation described in this paragraph for three years following submission of the proposal or completion of the contract, whichever is later.

#### **1.04 NON COMPLIANCE AND SANCTIONS**

##### **A. Non-Compliance with Chapter 14B**

1. A complaint of discrimination or non-compliance concerning LBE participation initiated by any party after contract award will be processed in accordance with Chapter 14B and its implementing rules and regulations.
  - a. If the HRC Director determines that there is cause to believe that a consultant has failed to comply with any of the requirements of the 14B ordinance, HRC rules and regulations, or contract provisions pertaining to LBE participation, the HRC Director shall notify the contract awarding authority and attempt to resolve the non-compliance through conference and conciliation.
  - b. If the non-compliance is not resolved through conference and conciliation, the HRC Director shall conduct an investigation and, where the Director so finds, issue a written Finding of Non-Compliance.
  - c. The Director’s finding shall indicate whether the consultant acted in good faith or whether noncompliance was based on willful or bad faith noncompliance with the requirements of Chapter 14B, HRC rules and regulations, or contract provisions pertaining to LBE participation.

Where the Director finds that the consultant acted in good faith, after affording the consultant notice and an opportunity to be heard, the Director shall recommend that the contract awarding authority take appropriate action. Where the Director finds willful or bad faith noncompliance, the Director shall impose sanctions for each violation of the ordinance, HRC rules and regulations, or contract provisions pertaining to LBE participation, which may include:

- i) reject all proposals;
- ii) declare a proposal non-responsive;
- iii) suspend a contract;
- iv) withhold funds;
- v) assess penalties;
- vi) debarment;
- vii) deny HRC certification;
- viii) revoke HRC certification; or
- ix) pursuant to 14B.7(H)(2), assess liquidated damages in an amount equal to the consultant’s net profit on the contract, 10% of the total amount of the contract or \$1,000, whichever is greatest as determined by HRC.



The Director's determination of non-compliance is subject to appeal pursuant to Rule XV.B(7).

An appeal by a consultant to the Commission shall not stay the Director's findings.

The HRC Director may require such reports, information and documentation from consultants, subconsultants, contract awarding authorities, and heads of departments, divisions, and offices of the City and County as are reasonably necessary to determine compliance with the requirements of Chapter 14B.

**B. Procedure for the Collection of Penalties is as follows:**

1. The HRC Director shall send a written notice to the Controller, the Mayor and to all contract awarding authorities or City and County department officials overseeing any contract with the proposer or consultant that a determination of bad faith non-compliance has been made and that all payments due the proposer or consultant shall be withheld as agreed to by the prime consultant or subconsultant and the City and County.
2. The HRC Director shall transmit a report to the Controller and other applicable City departments to ensure that the liquidated damages are paid to the City.

**PART II. RATING BONUS**

**2.01 APPLICATION**

- A. **Eligibility for the LBE Rating bonus:** Certified local business enterprises (LBEs) and non-profit organizations are eligible for an LBE rating bonus on Architecture, Engineering, or Professional Service contracts that have an estimated cost that exceeds \$10,000.

B. **Application of the Rating bonus:** The following rating bonus will apply to all proposals for Architecture, Engineering, or Professional contracts estimated to cost over \$10,000. The rating bonus shall apply at each stage of the selection process, i.e., qualifications, proposals, and interviews. After Proposers have been scored at each of the stages, the rating bonus will be applied to the scores as follows:

1. 10% for HRC certified LBEs.
  2. 10% for each joint venture, which is composed of only LBEs.
  3. 5% for each joint venture which includes at least 35% (but less than 40%) prime participation by certified LBEs.
  4. A maximum of 7.5% for each joint venture that includes 40% or more in prime participation by certified local LBEs.
  5. The rating bonus will be applied by adding 5%, 7.5%, or 10% (as applicable) to the score of each firm eligible for a bonus for purposes of determining the highest ranked firm.
- C. The Rating Bonus does not apply for contracts estimated by the Contract Awarding Authority to be \$10 million and over.

**2.02 JOINT VENTURE/PRIME ASSOCIATION**

- A. The LBE joint venture partner must be responsible for a clearly defined portion of the work to be performed. The ratings bonus is applied only when the LBE partner has sufficient skill, experience, and financial capacity to perform the portion of the work identified for the LBE. This portion must be set forth in detail separately from the work to be performed by the non-LBE JV partner. The joint venture partners must be of the same or similar discipline in order to be eligible for a rating bonus. The joint venture partners will be jointly responsible for the overall project management, control, and compliance with 14B requirements.



1. The LBE JV partner's work must be assigned a commercially significant dollar value of the prime work and use its own employees and equipment.
  2. Each member of the joint venture partner must perform a “commercially useful function” as that term is defined by Section 14B.2 of the Chapter 14B ordinance. An LBE that relies on the resources and personnel of a non-LBE firm will not be deemed to perform a “commercially useful function.”
  3. Unless permission is granted by the HRC Director for good cause shown, the following actions are prohibited: i) the non-LBE partner performing work for the LBE partner; ii) leasing of equipment or property by the LBE partner from the non-LBE partner; and iii) the hiring of the non-LBE partner’s employees by the LBE partner.
  4. The LBE JV partner must share in the ownership, control, management and administrative responsibilities, risks, and profit of the JV in direct proportion to its stated level of JV participation.
  5. The LBE JV partner must perform work that is commensurate with its experience.
  6. A JV must submit an executed JV agreement and management plan detailing each JV partner’s responsibilities and tasks.
- B. A prime association or partnership is considered the same as a joint venture and will need to comply with all the requirements stated above. Prior to award of the contract, the prime association partners must also meet the following requirements:
1. A prime association must apply to the IRS for a new Federal ID number for that entity.
  2. A new tax registration certificate must be obtained from the City Tax Collectors Office for that entity.
- C. The proposal items to be performed by LBE joint venture partners must be identified separately and all work must be accounted for, including subconsulting work.
- D. The cost of the work to be performed by the LBE JV partners is to be calculated as a percentage of the work to be performed by the joint venture partners. The joint venture should deduct the amount of work to be performed by subconsultants from its total contract amount. This percentage is used to determine whether or not the joint venture is eligible for a rating bonus.

**EXAMPLE:**

Step 1. Calculate total JV partner work:

Total Contract Work	=	100%
Percentage of Total Contract Work Performed by Subconsultants	-	40%
Percentage of Total Contract Work Performed by JV partners	=	60%

\* \* \*

Step 2. Calculate LBE JV partner work:

	A	B	C
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Description of JV Partners' Scopes of Work	JV Partners' Work as a % of the total contract	% of Task by Non-LBE JV Partner	% of Task by LBE JV Partner
TASK 1	5%	3%	2%
TASK 2	20%	11%	9%
TASK 3	25%	12.5%	12.5%
TASK 4	10%	6%	4%
<b>TOTAL JV Partner %</b>	<b>60%</b>	<b>32.5%</b>	<b>27.5%</b>

Step 3. Calculate LBE JV partner work as a percentage of the total JV partner work for the rating bonus.

Total LBE JV %	27.5%	÷	Total JV %	60%	=	45.8%
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The LBE JV partner's participation is 45.8%. The JV is therefore eligible for a 7.5% rating bonus.

### PART III SUBCONSULTANT PARTICIPATION

#### 3.01 SUBCONSULTING GOAL

- A. All proposers shall achieve the LBE subconsulting goal and undertake good faith outreach as set forth in Section 14B.8(C) of the ordinance to select subconsultants to meet the LBE goal. Where there are LBEs available for doing portions of the work normally performed by the proposer with its own staff, the proposer will be expected to make good faith efforts to make portions of such work available for LBEs.

Proposals that do not meet the LBE participation goal set under 14B.8(A) of the ordinance will be rejected as non-responsive unless the HRC Director finds that the proposer diligently undertook all the good faith efforts required by this ordinance and that the failure to meet the goal resulted from an excusable error.

- B. Proposers must identify on Form 2A the particular LBE subconsultants and lower tier subconsultants to be utilized in performing the contract, specifying for each the percentage of participation, the type of work to be performed and such information as the HRC reasonably shall require to determine the responsiveness of the proposal.

The proposer must contact LBE subconsultants prior to listing them. LBEs must be certified with HRC by the proposal due date to receive LBE subconsulting credit. Failure to comply with this requirement will render a proposal non-responsive.

Additionally, subconsultants should not enter into any agreement that limits their ability to be listed or utilized by more than one proposer.

For a directory of certified LBEs, please go to [www.sfgov.org](http://www.sfgov.org) then select Agency, select View Complete List, click "H" for Human Rights Commission.

- C. Any subconsultant who is in the process of appealing the Director's denial of certification or revocation of certification shall not be considered an LBE.
- D. The awarding proposer shall submit performance reports on LBE participation at 30%, 50%, 70%, and 90% completion to the Contracting Awarding Authority and HRC.



E. Determination and calculation of LBE subconsultant participation:

1. The LBE subconsultant shall be listed to perform a specific task, which is described in the RFP or RFQ.
2. If the LBE subconsultant forms a joint venture with a non-LBE subconsultant, the LBE subconsultant joint venture partner will be credited only for its portion of the work, as follows:

*EXAMPLE:*

If the total subcontract amount = \$ 1,000,000 of which  
\$510,000 is the LBE subcontract amount and \$490,000 is the non-LBE subcontract amount,  
then \$510,000 is credited toward the LBE goal.

3. All work done by lower-tier LBE subconsultants will be credited toward meeting the goal.

*EXAMPLE:*

If the total subcontract amount = \$1,000,000,  
of which \$200,000 is the lower-tier LBE subconsultant's portion,  
then \$200,000 is credited toward the LBE goal.

4. The work provided by the LBE subconsultant must be the same or similar type of work performed by the LBE in the normal course of its business.
5. If a Proposer owns or controls more than one business that is HRC certified as an LBE, the proposer will not receive credit if it lists its other firms to meet the LBE subconsulting goal when submitting as a prime. In determining ownership of a business, a business owned by proposer's spouse or domestic partner shall be deemed to be owned by the proposer.
6. It is the responsibility of the proposer to verify the subconsultant's LBE certification status.
7. A certified LBE can only be utilized in the discipline(s) for which it is certified by HRC.
8. The LBE subconsultant must be utilized on the contract to perform a commercially useful function. No credit will be given for a LBE that serves as a pass-through or conduit.
9. An LBE Prime proposer cannot list itself to meet the LBE subconsultant goal.

F. **Substitution, removal, or contract modification of LBE:**

No LBE subconsultant listed on Form 2A shall be substituted, removed from the contract or have its contract, purchase order or other form of agreement modified in any way without prior HRC approval. Additionally, no new subconsultants shall be added without prior HRC approval.

**PART IV EMPLOYMENT NON-DISCRIMINATION AND ECONOMICALLY  
DISADVANTAGED WORKFORCE HIRING PROVISIONS**

**4.01 GENERAL**

As a condition of contract award, Consultants and subconsultants shall comply with the nondiscrimination in employment provisions required by Chapter 12B of the Administrative Code and the hiring of economically disadvantaged persons as required by the City's First Source Hiring Program, Chapter 83 of the Administrative Code.

**4.02 NONDISCRIMINATION PROVISIONS**



Prior to the award of the contract, the consultant must agree that it does and will not, during the time of the contract or any contract amendment, discriminate in the provision of benefits between its employees with spouses and employees with domestic partners.

The consultant and subconsultants on this contract will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status, weight, height, or association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Discrimination on the basis of sex includes sexual harassment as defined in Section 16.9-25(b) of this Code. The Consultant, Contractor or Subconsultant/Subcontractor will take action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to the fact or perception of their race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or AIDS/HIV status. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

**C. Non-Compliance with Chapter 12B Prior to Contract Award**

The consultant and any subconsultants must be in compliance with the nondiscrimination provisions of Chapter 12B, on all existing City contracts prior to award of this contract.

Prior to the award of any City contract, the HRC has the authority to review the consultant's and subconsultant's prior performance to ensure compliance with the nondiscrimination provisions of Chapter 12B.

If the HRC determines that there is cause to believe that a consultant or subconsultant is not in compliance with the nondiscrimination provisions of Chapter 12B, the HRC shall notify the contract awarding authority and attempt to resolve the non-compliance through conciliation.

If the non-compliance cannot be resolved, the HRC shall submit to the consultant or subconsultant and the contract awarding authority a written Finding of Non-compliance.

The HRC shall give the consultant or subconsultant an opportunity to appeal the Finding.

3. The HRC may stay the award of any contract to a consultant where the consultant or any subconsultant is the subject of an investigation by written notice to the contract-awarding agency.

**D. Complaints of Discrimination after Contract Award**

1. A complaint of discrimination in employment initiated by any party after contract award shall be processed in accordance with the HRC Rules of Procedure, adopted pursuant to Chapter 12B of the San Francisco Administrative Code.
2. A finding of discrimination may result in imposition of appropriate sanctions, including:
  - a. There may be deducted from the amount payable to the consultant or subconsultant under this contract a penalty of \$50 for each person for each calendar day the person was discriminated against in violation of the provisions of the contract.
  - b. The contract may be canceled, terminated or suspended in part by the contract awarding authority.
  - c. The consultant, subconsultant or vendor may be determined ineligible to perform work or supply products on any City contract for a period not to exceed two years.

**4.03 TRAINEES – FIRST SOURCE HIRING PROGRAM**

- A. **Trainee Requirements:** Consultants are required to comply with the City's First Source Program, Administrative Code Section 83, which fosters employment opportunities for economically disadvantaged individuals. Consultants are required to notify the First Source Program of all open, entry-level positions and consider all program referrals fairly and equally. In addition the City requires consultants to hire a minimum number of professional service trainees in the area of the consultant's expertise. These hires count toward the First Source Hiring requirements. Trainees may be obtained through the City's One Stop Employment Center, which works with various employment and job training agencies/organizations or other employment referral source.

Number of Trainees

Project Fees	To Be Hired
\$0 – \$499,999	0
\$500,000 – \$899,999	1
\$900,000 – \$1,999,999	2
\$2,000,000 – \$4,999,999	3
\$5,000,000 – \$7,999,999	4
\$8,000,000 – \$10,999,999	5
\$11,000,000 – \$13,999,999	6

(> = \$14M, for each additional \$3 million in consultant fees, add one additional trainee)

1. The trainee must be hired by the prime consultant or by any subconsultant on the project team.
2. No trainee may be counted towards meeting more than one contract goal.
3. A trainee must meet qualifications for enrollment established under the City's First Source Hiring Program as follows:
  - (i) "Qualified" with reference to an economically disadvantaged individual shall mean an individual who meets the minimum bona fide occupational qualifications provided by the prospective employer to the San Francisco Workforce Development System in the job availability notices required by the Program, and
  - (ii) "Economically disadvantaged individual" shall mean an individual who is either: (1) eligible for services under the Workforce Investment Act of 1988 (WIA) (29 U.S.C.A 2801 et seq.), as determined by the San Francisco Private Industry Council; or (2) designated "economically disadvantaged" for the First Source Hiring Administration, as an individual who is at risk of relying upon, or returning to, public assistance.
4. On-the-job Training (to be provided by the consultant): The consultant shall hire the trainee on a full-time basis for at least 12 months or on a part-time basis for 24 months, with prior approval offering him/her on-the-job training which allows the trainee to progress on a career path.
5. A summary of a job description and training for the trainee with the rate of pay should be submitted for approval.
6. The trainee's commitment does not require that he/she is used only on this project, but also on other projects under contract to the Architect, Engineering, or Professional firm, which is appropriate for the trainee's skill development.

**FORM 2A: HRC CONTRACT PARTICIPATION FORM**

**Section 1:** This form must be submitted with the proposal or the proposal may be deemed non-responsive and rejected. Prime Proposer, each Joint Venture Partner, Subconsultants, Vendors, and lower sub tiers must be listed on this form. Only HRC certified LBEs can be used to meet the LBE subconsultant goal.

Be sure to check box for Rating Bonus. If more space is needed, attach additional copies of this form. This form is also completed and submitted for all contract modifications, which exceed the original contract amount by more than 20%.

Contract:	(08-1037) RFP: Financial Advisor	<b>RATING BONUS</b>	
Firm:		<input type="checkbox"/> LBE 10%	<input type="checkbox"/> Joint Venture 7.5%
Contact Person:		<input type="checkbox"/> Joint Venture 5%	<input type="checkbox"/> Joint Venture 10% (LBEs ONLY)
Address:		<input type="checkbox"/> No Rating Bonus Requested	
City/ZIP		LBE Goal 20 %	
Phone			

\*Type: Identify if prime (P), JV partner (J), Subconsultant (S), or Vendor (V)

TYPE *	Firm	PORTION OF WORK (describe scope(s) of work)	% OF WORK	INDICAT E LBE YES/NO	If an LBE, Identify MBE, WBE, or OBE *	% OF LBE SUBWORK
			%			%
			%			%
			%			%
			%			%
		Total % of Work: 100%		Total LBE Subconsulting%		%
	I declare, under penalty of perjury under the laws of the State of California, that I am utilizing the above contractors for the portions of work and amounts as reflected in the Bid Documents for this Contract.					
Owner/Authorized Representative (Signature):						Date:
Print Name and Title:						

\* MBE = Minority Business Enterprise, WBE = Women Business Enterprise, OBE = Other Business Enterprise.  
See HRC website ([http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS\\_1.htm](http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS_1.htm)) for each firm's status.



**Section 2. Prime Proposer, Joint Venture Partners, Subconsultant, and Vendor Information**

Provide information of each firm listed in Section 1 of this form. Firms which have previously worked on City contracts may already have a vendor number. Vendor numbers of LBE firms are located in the HRC LBE website at [www.sfgov.org](http://www.sfgov.org) then select Agency, select View Complete List, click "H" for Human Rights Commission.. Use additional sheets if necessary.

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

**FORM 2B: HRC "GOOD FAITH OUTREACH" REQUIREMENTS FORM**

The Good Faith Outreach" form with the required supporting documentation must be completed and submitted with the proposal EVEN IF the LBE subconsultant goal has been met. (*Chapter 14B Ordinance, Section 14B.8 - Subcontracting - C. "Good Faith Outreach"*).

A proposer who fails to undertake the required "good faith outreach" steps listed below and who fails to submit the documentation of "good faith outreach" shall be declared non-responsive, and the proposal will be rejected. Answering "No" to any of the items below may result in the proposal being deemed non-responsive and rejected.

Attach sheet(s) and respond to each numbered item and submit with this form.

- |   |                              |                             |
|---|------------------------------|-----------------------------|
| 1. Did your firm attend the pre-proposal meeting scheduled by the City to inform all Proposers of LBE program requirements for this contract?   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 2. Did your firm identify and select subconsulting opportunities to meet the LBE goal?  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| a. Has your firm enclosed a list of disciplines and/or services selected?   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| 3. Did your firm advertise, not less than 10 calendar days before the due date of the proposal, in one or more daily or weekly Newspapers, trade association publications, LBE trade oriented publications, trade journals, or other media, such as the Daily Pacific Builder, Daily Construction Service, or the Bid and Contracts Section of the Office of Contract Administration's website? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| a. Has your firm attached a copy of the "Advertisement?"  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| (The requirement of this item 3 only applies if the City gave public notice of the RFP/RFQ not less than 15 calendar days prior to the proposal due date.)  |                              |                             |
| 4. Did your firm obtain from the HRC website <a href="http://www.sfgov.org">www.sfgov.org</a> then select Agency, select View Complete List, click "H" for Human Rights Commission.the list of certified LBEs?  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| Did your firm provide notice of interest in bidding on the contract to the certified LBEs for each identified item (by trade) not less than 10 (ten) calendar days prior to the proposal due date?  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

The number of firms to be notified:

If the HRC list identifies 1-25 available LBEs for the identified item (by trade), your firm must notify all of them.

If the HRC list identifies 26-50 LBEs for the identified item (by trade), your firm must notify 75% of the identified firms.

If the HRC list identifies 51-75 LBEs for the identified item (by trade), your firm must notify 50% of the identified firms.

If the HRC list identifies 76-100 LBEs for the identified item (by trade), your firm must notify 30% of the identified firms.

If the HRC list identifies 101 or more LBEs for the identified item (by trade), your firm must notify 25% of identified firms.



Did your firm contact the required number of LBE firms?

☐ Yes

☐ No

Include documentation to verify the above-contacts:

- If contact was made in writing, has your firm enclosed a copy of the request? ☐ Yes ☐ No
- If contact was made via telephone, has your firm enclose copies of telephone logs? ☐ Yes ☐ No
- 5. Did your firm provide LBEs that have notified you of their interest with adequate information about the plans, specifications, and requirements for the work? ☐ Yes ☐ No
- 6. Did your firm negotiate in good faith with LBEs, and not unjustifiably reject their proposals? ☐ Yes ☐ No
- 7. Did your firm advise and assist interested LBEs to obtain bonds, lines of credit, or insurance required by the City? ☐ Yes ☐ No
- 8. For each discipline and/or service your firm identified for LBE subconsulting outreach:
  - Has your firm enclosed copies of all written bids/proposals submitted, including those from non-LBEs? ☐ Yes ☐ No
  - If oral bids/proposals were received, has your firm included a list of all such bids/proposals, including those from non-LBEs (specify the discipline/service and dollar amounts for each such bid/proposal)? ☐ Yes ☐ No
  - Has your firm included a full and complete statement of the reasons for selection of the subconsultant for that trade? (If the reason is based on relative qualifications, the statement must address the particular qualifications at issue. If the reason is based on the proposal amounts, the statement must include the amounts and describe the similarities and/or dissimilarities in the scope of work covered by the proposals.) ☐ Yes ☐ No

Signature of Owner/Authorized Representative: \_\_\_\_\_

Owner/Authorized Representative (Print) \_\_\_\_\_

Name of Firm (Print) \_\_\_\_\_

Title and Position \_\_\_\_\_

Address, City, ZIP \_\_\_\_\_

E-mail: \_\_\_\_\_

Date: \_\_\_\_\_



**FORM 3: HRC NON-DISCRIMINATION AFFIDAVIT**

1. I will ensure that my firm complies fully with the provisions of Chapter 14B of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
2. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the Human Rights Commission shall be payable to the City and County of San Francisco upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.
3. I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

Signature of Owner/Authorized Representative: \_\_\_\_\_

Owner/Authorized Representative (Print) \_\_\_\_\_

Name of Firm (Print) \_\_\_\_\_

Title and Position \_\_\_\_\_

Address, City, ZIP \_\_\_\_\_

Federal Employer Identification Number (FEIN): \_\_\_\_\_

Date: \_\_\_\_\_



**FORM 4: HRC JOINT VENTURE FORM**

This form must be submitted ONLY if the proposer is requesting a Joint Venture partnership with an LBE firm for the rating bonus. The Joint Venture partners must submit a joint venture agreement and management plan with the proposal. All work must be accounted for including subconsulting work.

**SECTION 1: GENERAL INFORMATION**

1. Name of Contract or Project

2. Name of all JV partners: (Check LBE if applicable)

	LBE <input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>

3. Attach a copy of Joint Venture Agreement and Management plans.

4. The management plan must include the following information:

- Describe in detail how decisions will be made for work distribution and compliance of LBE Joint Venture participation.
- Provide each Joint Venture partner's specific duties and responsibilities (include organizational chart)
- Identify the Location of Joint Venture Office.
- Provide in detail how decision will be made for work distribution to LBE subconsultants and/or vendors.
- Submit copies of bank signature cards with authorized names, titles, and address/city of the bank (required after award of contract.)

5. Calculation of the Rating Bonus. See §2.02D of HRC Attachment 2 for an example.

If the joint venture partners are dividing the work according to a different formula than that described below, please contact HRC staff and describe the arrangement in detail prior to submittal of proposal.

Joint venture partners are encouraged to meet with HRC regarding their joint venture prior to submitting their proposal.

The rating bonus is awarded based on the LBE JV partner tasks calculated as a percentage of the total JV partner tasks.

Step 1. Calculate total JV partner tasks.

Total Contract Tasks	=	100%
Percentage of Total Work to be Performed by Subconsultants	-	%
Percentage of JV partner tasks	=	%



## Step 2. Calculate LBE JV partner tasks:

	A	B	C
Description of JV partner Scopes of Work (Specific details of work)	JV Partners' Work as a % of the total project	% of Task by Non-LBE JV Partner	% of Task by LBE JV Partner
	%	%	%
	%	%	%
	%	%	%
	%	%	%
	%	%	%
TOTAL JV %	%	%	%

## Step 3. Calculate LBE JV partner work as a percentage of the total JV partner work for the rating bonus.

Total LBE JV Partner %		÷	Total JV %		=	%
------------------------	--	---	------------	--	---	---

---

**JOINT VENTURE PARTNERS MUST SIGN THIS FORM**

---

Owner/Authorized Representative (Signature)

---

Owner/Authorized Representative (Signature)

---

Name and Title (Print)

---

Name and Title (Print)

---

Firm Name

---

Firm Name

---

Telephone

---

Date

---

Telephone

---

Date

**FORM 5: HRC EMPLOYMENT FORM**

This form is to be submitted with the proposal.

1. Indicate personnel designated to work on this project for the entire project team (prime proposer, joint venture partners, subconsultants, and vendors).

The employees listed should include all those listed in other sections of the proposal.

NAME OF FIRM	NAME OF EMPLOYEE	PROJECT ROLE	RACE	SEX

Indicate the Number of disadvantaged individuals that will be hired as on -the-job-trainees by the entire project team. See §4.03 of HRC Attachment 2.

a. Estimated Project Fee:		\$	
b. HRC on-the-job training goal:			
c. Number of on-the-job-trainees that will be hired by the project team			
d. If less than HRC goal, explain:			
e. Length of training:		If less than 12 months, explain	

Sign below including each joint venture partner.

---

---

---

Owner/Authorized Representative (Signature)

---

Owner/Authorized Representative (Signature)

---

Name and Title (Print)

---

Name and Title (Print)

---

Firm Name

---

Firm Name

---

Telephone

---

Date

---

Telephone

---

Date

**FORM 7: HRC PROGRESS PAYMENT FORM**

To be completed by Consultant and submitted to the Contract Awarding Authority and HRC with its monthly progress payment application (transmit to the following):

**TRANSMITTAL**

TO: Project Manager/Designee  
Firm: \_\_\_\_\_

COPY TO: HRC Contract Compliance Officer  
Date: \_\_\_\_\_

**SECTION 1. Fill in all the blanks**

Contract Number: \_\_\_\_\_ Contract Name: \_\_\_\_\_  
Reporting Period From: \_\_\_\_\_ To: \_\_\_\_\_ Progress Payment No: \_\_\_\_\_

The information submitted on Sections 1 and 2 of this form must be cumulative for the entire contract as opposed to individual task orders. Additionally, the information submitted on Sections 1 and 2 of this form must be accurate for the progress payment period immediately preceding that of the current payment application attached herewith

1. Amount of Prime Contract:	\$ _____
2. Amount of Amendments and Modifications to Date:	\$ _____
3. Total Contract to Date including Amendments and Modifications (Line 1 + Line 2):	\$ _____
4. Sub-total Amount Invoiced this submittal period: Professional Fees	\$ _____
5. Sub-total Amount Invoiced this submittal period: Reimbursable Expenses	\$ _____
6. Total Amount Invoiced this submittal period (Line 4 + Line 5):	\$ _____
7. Total Amount Paid to Date including Retainage Received:	\$ _____
8. Amount of Progress Payments Requested to Date:	\$ _____
9. Percent Completed (Line 8 ÷ Line 3):	_____ %

Consultant, including each joint venture partner, must sign this form.

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name (Print)

Name (Print)

Title (Print)

Title (Print)

Firm Name

Firm Name

Telephone

Fax

Telephone

Fax

Date

Date





**SECTION 2.** For column "A", list the Prime Consultant, each joint venture partner and ALL subconsultants and vendors including 2<sup>nd</sup> and 3<sup>rd</sup> tier subconsultants. Make copies if more space is needed. Attach copies of all invoices from subconsultants supporting the information tabulated on this form and Consultant's invoice and Contract Payment Authorization for the immediately preceding progress payment period.

*Notes:* 1) ALL firms must be CONTINUOUSLY listed on column “A” regardless if a firm is not requesting payment and

2) Failure to submit all required information may lead to partial withholding of progress or final payment.

Identify LBE Goal of this contract: %

A	B	C	D	E	F	G	H
Name of Firm. List prime consultant, including each JV partner, and all subconsultants including lower tier LBE subconsultants & vendors. Indicate if the firm is an LBE	Service Performed	Amount of Contract or Purchase order at time of Award	Amount of Modifications to Date	Total Amount of Contract or Purchase Order to Date +/- Modifications (C + D) or (C-D)	Amount Invoiced this Reporting Period	Amount of Progress Payments received and Invoiced to Date, including amount invoiced this reporting period (F).	Percent Complete to Date (G÷E)
							%
							%
							%
							%
							%
							%
							%
LBE Sub-Totals							%
Professional Fees							%
Reimbursable							%

CONTRACT TOTALS							%
-----------------	--	--	--	--	--	--	---

**FORM 9: HRC PAYMENT AFFIDAVIT**

Consultant or Joint Venture partners must submit this form to the Contract Awarding Authority and HRC within ten (10) working days following receipt of each progress payment from the Contract Awarding Authority. This form must be submitted EVEN if there is no sub payment of this reporting period and until completion of the contract.

☐ Check box and sign below if there is no sub payment for this reporting period.

TO: Project Manager/Designee

COPY TO: HRC Contract Compliance Officer

Firm: \_\_\_\_\_

Date: \_\_\_\_\_

List the following information for each progress payment received from the Contract Awarding Authority. Use additional sheets to include complete payment information for all subconsultants and vendors (including lower tiers utilized on this Contract. Failure to submit all required information may lead to partial withholding of progress payment.

Contract Number: \_\_\_\_\_ Contract Name: \_\_\_\_\_

Contract Awarding Department: \_\_\_\_\_

Progress Payment No.: \_\_\_\_\_ Period Ending: \_\_\_\_\_

Amount Received: \$ \_\_\_\_\_ Date: \_\_\_\_\_ Warrant/Check No.: \_\_\_\_\_

Subconsultant/Vendor Name	Business Address	Amount Paid	Payment Date	Check Number
		\$		
		\$		
		\$		
		\$		
		\$		
		\$		

*I/We declare, under penalty of perjury under the laws of the State of California that the above information is complete, that the tabulated amounts paid to date are accurate and correct.*

Prime consultant, including each joint venture partner, must sign this form (use additional sheets if necessary)

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Date

\_\_\_\_\_  
Telephone

\_\_\_\_\_  
Date

**FORM 8: HRC EXIT REPORT AND AFFIDAVIT**

**Prime Consultant must complete and sign this form (Sections 1 and 3) for each LBE subconsultant (incl. lower tier LBE subconsultants) and supplier. LBE Subconsultants must complete and sign Section 2 of this form. These forms should be submitted to the Contract Awarding Authority with the final progress payment request.**

TRANSMITTAL

TO: Project Manager/Designee  
FROM: \_\_\_\_\_

COPY: HRC Contract Compliance Officer  
Date: \_\_\_\_\_

---

**SECTION 1.**

Reporting

Date: \_\_\_\_\_

Contract Name: \_\_\_\_\_

Portion of Work  
(Trade): \_\_\_\_\_

Name of LBE: \_\_\_\_\_

Original LBE Contract Amount: \$ \_\_\_\_\_

Change Orders, Amendments, Modifications \$ \_\_\_\_\_

Final LBE Contract Amount: \$ \_\_\_\_\_

Amount of Progress Payments Paid to Date: \$ \_\_\_\_\_

Amount further subbed out to non LBE firms: \$ \_\_\_\_\_

Amount Owning including all Change Orders, Amendments and Modifications \$ \_\_\_\_\_

Explanation by Consultant if the final contract amount for this LBE is less than the original contract amount:

---

**SECTION 2.**

To be signed by the LBE Subconsultant or vendor:

☐ I agree

☐ I disagree

Explanation by LBE if it is in disagreement with the above explanation, or with the information on this form:

---

Owner/Authorized Representative (Signature)	Name and Title (Print)	
Firm Name	Telephone	Date

SECTION 3.

I declare, under penalty of perjury under the laws of the State of California, that the information contained in Section 1 of this form is complete, that the tabulated amounts paid to date are accurate and correct, and that the tabulated amounts owing will be paid within three (3) days after the date of the City's final payment under the Contract.

Owner/Authorized Representative (Signature)	
Name and Title (Print)	
Firm Name	
Telephone	Date

**FORM 10: HRC CONTRACT MODIFICATION FORM**

Consultant or Joint Venture Partners must submit this form with the required supporting documentation when processing the first contract amendment, modification or change order that cumulatively increases the original contract amount by more than 20%, and then for all subsequent requests. (This provision applies only to contracts originally valued at \$29,000 or more).

Name of Project/Contract Title: \_\_\_\_\_

Original Contract Amount: \_\_\_\_\_

Contract Amount as Modified to Date: \_\_\_\_\_

Amount of Current Modification Request: \_\_\_\_\_

**REQUIRED ATTACHMENTS:**

1. Revised Form 2A reflecting the new overall contract amounts for the prime consultant, joint venture partners, subconsultants, and vendors.
2. A list of all prior contract amendments, modifications, supplements and/or change orders leading up to this modification, including those leading up to the amendment which increased the original contract amount by more than 20%.
3. A list of the consultants, joint venture partners, and vendors working on this amendment, modification, or change order with the contract dollars for each individual firm.
4. A brief description of the work to be performed under this amendment, modification, or change order.

---

Owner/Authorized Representative (Signature)

Name (Print)

Title

Firm Name

Telephone

Date

---

Owner/Authorized Representative (Signature)

Name (Print)

Title

Firm Name

Telephone

Date



## Appendix B Standard Forms

The requirements described in this Appendix are separate from those described in Appendix A.

Before SFMTA can award any contract to a contractor, that contractor must file three standard City forms (items 1-3 on the chart). Because many contractors have already completed these forms, and because some informational forms are rarely revised, SFMTA has not included them in the RFP package. Instead, this Appendix describes the forms, where to find them on the Internet, and where to file them. If a contractor cannot get the documents off the Internet, the contractor should e-mail Ashish Patel at [ashish.patel@sfmta.com](mailto:ashish.patel@sfmta.com) and Ashish Patel will fax, mail or e-mail them to the contractor.

If a contractor has already filled out items 1-3 (see note under item 3) on the chart, **the contractor should not do so again unless the contractor's answers have changed**. To find out whether these forms have been submitted, the contractor should call Vendor File Support in the Controller's Office at (415) 554-6702.

If a contractor would like to apply to be certified as a local business enterprise, it must submit item 4. To find out about item 4 and certification, the contractor should call Mr. André Boursse, SFMTA Contract Compliance Office, 1 South Van Ness Avenue, 3rd Floor, San Francisco, CA 94103; phone: 415-701-4362, fax: 415-701-4347. .

Item	Form name and Internet location	Form	Description	Return the form to; For more info
1.	Request for Taxpayer Identification Number and Certification  <a href="http://www.sfgov.org/oca/purchasing/forms.htm">www.sfgov.org/oca/purchasing/forms.htm</a>  <a href="http://www.irs.gov/pub/irs-fill/fw9.pdf">www.irs.gov/pub/irs-fill/fw9.pdf</a>	W-9	The City needs the contractor's taxpayer ID number on this form. If a contractor has already done business with the City, this form is not necessary because the City already has the number.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102  (415) 554-6702
2.	Business Tax Declaration  <a href="http://www.sfgov.org/oca/purchasing/forms.htm">www.sfgov.org/oca/purchasing/forms.htm</a>	P-25	All contractors must sign this form to determine if they must register with the Tax Collector, even if not located in San Francisco. All businesses that qualify as "conducting business in San Francisco" must register with the Tax Collector.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102  (415) 554-6702



## Municipal Transportation Agency



Item	Form name and Internet location	Form	Description	Return the form to; For more info
3.	S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits  <a href="http://www.sfgov.org/oca/purchasing/forms.htm">www.sfgov.org/oca/purchasing/forms.htm</a> –  In Vendor Profile Application	HRC-12B-101	Contractors tell the City if their personnel policies meet the City's requirements for nondiscrimination against protected classes of people, and in the provision of benefits between employees with spouses and employees with domestic partners. Form submission is not complete if it does not include the additional documentation asked for on the form. Other forms may be required, depending on the answers on this form. <b>Contract-by-Contract Compliance status vendors must fill out an additional form for each contract.</b>	André Boursse SFMTA Contract Compliance Office 1 South Van Ness Avenue, 3rd Floor, San Francisco, CA 94103; phone: 415-701-4362, fax: 415-701-4347.
4.	HRC LBE Certification Application  <a href="http://www.sfgov.org/oca/purchasing/forms.htm">www.sfgov.org/oca/purchasing/forms.htm</a> –  In Vendor Profile Application		Local businesses complete this form to be certified by HRC as LBEs. Certified LBEs receive a bid discount pursuant to Chapter 14B when bidding on City contracts. To receive the bid discount, you must be certified by HRC by the proposal due date.	Human Rights Comm. 25 Van Ness, #800 San Francisco, CA 94102-6059 (415) 252-2500

### Where the forms are on the Internet

#### Office of Contract Administration

Homepage: [www.sfgov.org/oca/](http://www.sfgov.org/oca/)

Purchasing forms: Click on “Required Vendor Forms” under the “Information for Vendors and Contractors” banner.

#### Human Rights Commission

HRC's homepage: [www.sfhrc.org](http://www.sfhrc.org)

Equal Benefits forms: Click on “Forms” under the “Equal Benefits” banner near the bottom.

LBE certification form: Click on “Forms” under the “LBE” banner near the bottom





## Appendix C

### ATTESTATION OF COMPLIANCE

*To be completed by all Proposing Firms and All Individual Subcontractors*

(Please check each box, sign this form and submit it with your response.)

Name of Individual Completing this Form: \_\_\_\_\_

The Form is Submitted on Behalf of Firm: \_\_\_\_\_

Name of RFP: **SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY,  
REQUEST FOR PROPOSALS FOR FINANCIAL ADVISOR**

1. I attest that I and all members of the firm listed above will and have complied to date with Section VI. J of the above RFP. ☐ Yes
2. I understand that if my firm or any members of the firm listed above are found to be in violation of the Section VI. J of the above RFP, this will disqualify my firm and any Proposal in which my firm is named from further consideration. ☐ Yes

I have entered required responses to the above questions to the best of my knowledge and belief.

Signature: \_\_\_\_\_

Date \_\_\_\_\_



**Appendix D**  
**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER**  
**RESPONSIBILITY MATTERS**

By signing and submitting its Proposal, the Proposer or proposed subcontractor certifies as follows:

\_\_\_\_\_  
(Proposer or Proposed Subcontractor Business Name)

certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from contracting with any federal, state or local governmental department or agency;
  - b. Have not within a three-year period preceding the date of this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) b. of this certification; and
  - d. Have not within a three-year period preceding the date of this Proposal had one or more public contracts (federal, state, or local) terminated for cause or default.
- (2) Where the firm executing this RFP Appendix D is unable to certify to any of the statements in this certification, such firm shall attach a detailed explanation of facts that prevent such certification.
- (3) The certification in this clause is a material representation on fact relied upon by the San Francisco Municipal Transportation Agency (SFMTA).

As the authorized certifying official, I hereby certify that the above-specified certifications are true.

Business Name: \_\_\_\_\_

\_\_\_\_\_  
Authorized Representative Name (print)

\_\_\_\_\_  
Authorized Representative Title (print)

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Date

**Appendix E**  
**CERTIFICATION REGARDING LOBBYING**

---

(Proposer or Proposed Subcontractor Business Name)

Certifies that it will not and has not paid any person or organization for influencing or attempting to influence a member of the San Francisco Municipal Transportation ("SFMTA") Agency Board of Directors, or an officer or employee of the SFMTA in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in this Request for Proposals. The Proposer or proposed subcontractor submitting this certification shall also disclose the name of any lobbyist registered under Article II of the San Francisco Campaign and Governmental Conduct Code who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals.

This certification is a material representation of fact upon which reliance was placed for the purposes of the SFMTA's evaluation of Proposals and award of a contract pursuant to the Request for Proposals. Submission of this certification is a prerequisite for submitting a Proposal responsive to the Request for Proposals.

Following submission of Proposals with this signed certification, any firm who 1) pays any person or organization for influencing or attempting to influence a member of the San Francisco Municipal Transportation Agency Board of Directors, or an officer or employee of the SFMTA in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in the RFP, 2) fails to disclose the name of any lobbyist registered under Article II of the San Francisco Campaign and Governmental Conduct Code who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals, or 3) pays or agrees to pay to any SFMTA employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the SFMTA any fee or commission, or any other thing of value contingent on the award of a contract, will disqualify any Proposal in which that firm is named as a prime contractor, joint venture partner or subcontractor from the selection process.

By signing and submitting its proposal, the Proposer or proposed subcontractor also certifies to the SFMTA that the Proposer or proposed subcontractor has not paid, nor agreed to pay, and will not pay or agree to pay, any fee or commission, or any other thing of value contingent on the award of a contract to any SFMTA employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the SFMTA. As the authorized certifying official, I hereby certify that the above-specified certifications are true.

Business Name: \_\_\_\_\_

---

Authorized Representative Name (print)

---

Authorized Representative Title (print)

---

Authorized Representative Signature

---

Date

## Appendix F

### Agreement for Professional Services (form P-500)

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

### **Agreement between the City and County of San Francisco and [insert name of contractor] for Financial Advisory Services**

This Agreement is made this **[insert day]** day of **[insert month]**, 20 **[insert year]**, in the City and County of San Francisco, State of California, by and between: **[insert name and address of contractor]**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

#### **Recitals**

WHEREAS, the San Francisco Municipal Transportation Agency ("Department") wishes to enter into an agreement for Financial Advisory Services; and,

WHEREAS, a Request for Proposal for Financial Advisor ("RFP") was issued on **[insert date]**, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number **[insert PSC number]** on **[insert date of Civil Service Commission action]**;

Now, THEREFORE, the parties agree as follows:

#### **1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

## **2. Term of the Agreement**

Subject to Section 1, the term of this Agreement shall be from **[insert beginning date]** to **[insert termination date]**.

## **3. Effective Date of Agreement**

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

## **4. Services Contractor Agrees to Perform**

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

## **5. Compensation**

Compensation shall be made in monthly payments on or before the **[insert day]** day of each month for work, as set forth in Section 4 of this Agreement, that the Executive Director/CEO of the SFMTA, in his or her sole discretion, concludes has been performed as of the **[insert day]** day of the immediately preceding month. In no event shall the amount of this Agreement exceed **[insert whole dollar amount in numbers and words -- no pennies]**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by SFMTA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

## **6. Guaranteed Maximum Costs**

a. 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.

b. 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 Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. 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.

d. 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 Contractor 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 Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor 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 three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. 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. Disallowance**

If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the

disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

## **10. Taxes**

a. 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 Contractor.

b. Contractor 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 Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

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

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

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

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

## **11. Payment Does Not Imply Acceptance of Work**

The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor 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 does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor 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 Contractor. Contractor 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 Contractor. Contractor 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 Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

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

### **a. Independent Contractor**

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

### **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 Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).



A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor 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 Contractor was not an employee.

## **15. Insurance**

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

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

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 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) Professional liability insurance with limits not less than \$1,000,000 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:

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

during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. 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 Contractor hereunder.

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

## **16. Indemnification**

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

a. General Indemnity

To the fullest extent permitted by law, Contractor shall assume the defense of, indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees and costs of investigation), that arise directly or indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Contractor and subconsultant to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

b. Limitations

(1) No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.

(2) The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

(3) The Contractor's indemnification obligations of claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Contractor's negligence or other breach of duty.

c. Copyright Infringement

Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in then performance of Contractor's services under this Agreement.

## **17. Incidental and Consequential Damages**

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

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of \$100.00 per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by the SFMTA.

## **20. Default; Remedies**

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.

(2) Contractor 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 Contractor.

(3) Contractor (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 Contractor or of any substantial part of Contractor'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 Contractor or with respect to any substantial part of Contractor'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 Contractor.

b. 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 Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. 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 Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

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

(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 Contractor'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 Contractor and in which City has or may acquire an interest.

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

(1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor 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 Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor 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 Contractor can establish, to the satisfaction of City, that Contractor 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 Contractor 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 Contractor, 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 Contractor 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 Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor 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**

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

b. Subject to the immediately preceding subsection (a), 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. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other

materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

## **23. Conflict of Interest**

Through its execution of this Agreement, Contractor 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**

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor 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. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

## **25. Notices to the Parties**

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

To City: **[insert name or title of department contact person, name of department, mailing address, e-mail address and fax number]**

To Contractor: **[insert name of contractor, mailing address, e-mail address and fax number]**

Any notice of default must be sent by registered mail.

## **26. Ownership of Results**

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor 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, Contractor 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, Contractor 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 Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor 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, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

## **28. Audit and Inspection of Records**

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not 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**

Contractor 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 Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor 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.

a. Contractor 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 Contractor 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 Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.



b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor 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.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. 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. Local Business Enterprise Utilization; Liquidated Damages**

#### **a. The LBE Ordinance**

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

#### **b. Compliance and Enforcement**

##### **(1) Enforcement**

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand.

Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

## **(2) Subcontracting Goals**

The LBE subcontracting participation goal for this contract is 20%. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor.

Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

## **(3) Subcontract Language Requirements**

Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors.

Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

## **(4) Payment of Subcontractors**

Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its

subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount.

Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

### **34. Nondiscrimination; Penalties**

#### **a. Contractor Shall Not Discriminate**

In the performance of this Agreement, Contractor 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**

Contractor 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 the SFMTA) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

#### **c. 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 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, Contractor 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. Contractor 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, Contractor 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 Contractor and/or deducted from any payments due Contractor.

**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 Contractor 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**

Contractor 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. Contractor agrees that any violation of this prohibition by Contractor, 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 Contractor 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**

Contractor 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. Contractor 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. Contractor 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 Contractor, 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 Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor 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. Contractor 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 Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor 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, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board 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. Contractor 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. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor 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**

a. Contractor 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 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](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor'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 Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor 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 Contractor'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 Contractor.

c. Contractor 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.

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

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

f. Contractor'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 Contractor fails to comply with these requirements. Contractor 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 Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor 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, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor 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.

h. Contractor 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.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but

Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

#### **44. Requiring Health Benefits for Covered Employees**

Contractor 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 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](http://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, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor 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 Contractor 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. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor 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, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor 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 Contractor 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. Contractor 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 Contractor 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 Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor'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. Contractor 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. Contractor 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. Contractor shall keep itself informed of the current requirements of the HCAO.

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

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

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor'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 Contractor 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. Contractor 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 Contractor 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**

Contractor 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**

Contractor 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

(7) That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

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 Contractor 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, Contractor 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. Contractor 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 Contractor 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 Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

### **47. Preservative-treated Wood Containing Arsenic**

Contractor 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. Contractor 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 Contractor 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. Contractor shall cooperate with Department to submit to the 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% (HRC Contract Modification Form).

#### **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 the SFMTA, 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.

#### **53. Compliance with Laws**

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

## **55. Supervision of Minors**

Contractor, and any subcontractors, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Contractor, or any subcontractor, in which he or she would have supervisory or disciplinary power over a minor under his or her care.

If Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3).

If Contractor, or any of its subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Contractor shall comply, and cause its subcontractors to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Contractor shall provide, or cause its subcontractors to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian.

Contractor shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its contract with the subcontractor.

Contractor acknowledges and agrees that failure by Contractor or any of its subcontractors to comply with any provision of this section of the Agreement shall constitute an Event of Default. Contractor further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Agreement, partially or in its entirety, to recover from Contractor any amounts paid under this Agreement, and to withhold any future payments to Contractor. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## **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**

Contractor 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. Contractor agrees that any failure of Contractor 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 Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

## **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.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor'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 Contractor 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 Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

## **59. Food Service Waste Reduction Requirements**

Effective June 1, 2007, Contractor 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, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor 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 Contractor's failure to comply with this provision.

#### **60. Slavery Era Disclosure**

a. Contractor 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 finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor'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. Contractor 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 Contractor from any Contract with the City.

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

#### **61. Dispute Resolution Procedure**

A Dispute Resolution Procedure is attached under the Appendix **[enter the appendix letter]** to address issues that have not been resolved administratively by other departmental remedies.

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

<b>CITY</b>  <b>San Francisco Municipal Transportation Agency</b>  _____ Nathaniel P. Ford, Sr. SFMTA Executive Director/CEO  Approved as to Form:  Dennis J. Herrera City Attorney  By: _____ <b>[insert name of the Deputy City Attorney]</b> Deputy City Attorney	<b>CONTRACTOR</b>  <b>[company name]</b>  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.  _____ <b>[name of authorized representative]</b> <b>[title]</b> <b>[address]</b> <b>[city, state, ZIP]</b>  City vendor number: <b>[vendor number]</b>
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## Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges



## **P-500 Appendix A**

### **Services to be provided by Contractor**

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

##### **A. FINANCIAL PLANNING SERVICES**

###### **1. FINANCIAL PLAN:**

- (a) The Financial Advisor shall consult with SFMTA and City officials, bond counsel, disclosure counsel, underwriter, and rating agencies to develop a Financing Plan which will provide the most economical structure for any given financing. The Financing Plan shall include, but not be limited to, the following:
  - i. A thorough review and analysis of the existing financial resources, cash flows, and legal structure of the SFMTA, as well as all relevant data pertaining to the financing plan.
  - ii. A determination of the amount necessary to be issued.
  - iii. A determination of the structure, which will result in the SFMTA receiving the lowest possible borrowing, cost.
- (b) Financial Advisor will provide guidance on the timing, structure and method of raising capital for proposed transactions in the financial plan.
- (c) Financial Advisor will keep the SFMTA abreast of changing state and federal laws in connection with the SFMTA's financings and will be available to provide assistance and advice on any legislative issues impacting the SFMTA.

###### **2. ANALYZE FUTURE DEBT CAPACITY:**

- (a) Financial Advisor will formulate financial models to help evaluate the viability of various financing strategies to provide the required level of funding over time.

###### **3. IDENTIFY FINANCING ALTERNATIVES:**

- (a) Financial Advisor will develop objective financing plans incorporating a full range of financing alternatives including; pay-as-you-go, revenue bonds, lease financing or special district debt where appropriate.

##### **B. DEBT MANAGEMENT SERVICES**

###### **1. MAINTAIN DEBT POSITION SUMMARY:**

- (a) Following each sale of debt the Financial Advisor will update and maintain schedules for the SFMTA's Outstanding Debt Summary including, but not limited to:
  - i. Updates reflecting outstanding debt
  - ii. Debt capacities
  - iii. Debt service schedules
  - iv. Ratings
  - v. Assessed values
  - vi. Authorized but unissued debt
  - vii. Financial Advisor will maintain copies of all transcripts.

###### **2. DEVELOP AND MONITOR FINANCING SCHEDULE**

- (a) Financial Advisor will prepare a bond sale calendar that clearly identifies the responsibilities of each participant in the transaction.
  - i. SFMTA will have sufficient time for review of all disclosure materials prior to final printing and distribution.

- ii. Financial Advisor we will keep SFMTA staff informed about the progress of the financing and, if necessary, modify the schedule to meet changing circumstances.
- 3. ANALYZE DEBT STRUCTURE ALTERNATIVES:
  - (a) Financial Advisor will analyze the debt structure and provide a determination based on the following three elements:
    - i. Is the proposed amortization schedule well-coordinated with SFMTA's existing liabilities and cash flow;
    - ii. Are the resources pledged to debt redemption sufficient to meet coverage requirements or tax rate parameters; and,
    - iii. Is the proposed maturity schedule designed to attract maximum interest from underwriters and potential investors in the current market.
  - (b) Financial Advisor will provide advice and assistance concerning debt covenants, pledge of revenues, flow of funds, and legal coverage requirements.
  - (c) Financial Advisor will utilize the information from policy review and development to formulate the issue structure and other terms under which the bonds are to be offered addressing the following key issues:
    - i. Maturity Schedule and Pattern of Debt Service-provide advice and assistance in planning debt issue, determining the principal amount of debt to be sold, and develop a maturity schedule for each bond issue.
    - ii. Call Features-Financial Advisor will perform detailed analyses of different call features, analyzing the effects of shorter call dates, smaller call premiums or even non-callable bonds and the potential impact they may have on marketing the bonds and interest rates that would be attained.
    - iii. Credit Enhancement-Financial Advisor will analyze the merits of obtaining credit enhancements for discussion with SFMTA staff.
- 4. DEVELOP FINANCING DOCUMENTS:
  - (a) Financial Advisor will assist in the preparation, review and adoption of all legal documents and for drafting, printing, and distributing all disclosure documents prior to the bond sale.
  - (b) Financial Advisor will coordinate with SFMTA officials, bond counsel, and other team members in the preparation, review and finalization of all bond document preparation activities including:
    - i. Arranging for debt sales advertising in trade journals and periodicals such as the Bond Buyer and making all necessary arrangements for each bond sale with the registrar and trustee.
    - ii. Coordinate the printing and delivery of securities and notify the purchaser of the date and place that payment will be made.
- 5. COORDINATE THE MARKETING OF BONDS:
  - (a) To assist the SFMTA with the timing of proposed issues, Financial Advisor will closely monitor all local, national and international developments and evaluate the potential impact of each event on a new-issue of tax-exempt securities.
  - (b) Financial Advisor will assist the SFMTA in coordinating its offerings with those of other issuers. This effort is designed to focus underwriter interest in the SFMTA's transactions by separating them from other sales. The overall goal is to identify a market in which: interest rates are stable; the supply of tax-exempt securities is light; and there is significant demand from both institutional and retail investors.
  - (c) Working closely with SFMTA staff and bond counsel, Financial Advisor will be actively involved in the review and development of key disclosure materials required to effectively market the SFMTA's issues (including the necessary documents for electronic bidding, if appropriate). These disclosure materials include the preliminary official statement ("POS"), the final official statement ("OS"), and for competitively bid issues, the official bid form and the Notice of Sale.

- (d) For the SFMTA's offerings, Financial Advisor will work closely with SFMTA staff and financing team members to ensure that the POS is in full compliance with SEC guidelines, and industry standards including the guidelines developed by GFOA and MSRB.
  - (e) Assist with securing a line or letter of credit when necessary.
6. **RATING AGENCY CONTACTS:**
- (a) Financial Advisor will develop a presentation and coordinate the introduction of SFMTA as a new issue to the three major rating agencies, Moody's Investors Service, Standard & Poor's Corporation and Fitch Ratings
  - (b) Financial Advisor will determine both credit strengths and weaknesses prior to any presentation of materials to rating analysts based on a clear understanding of the analytical methods utilized by Moody's Investors Service, Standard & Poor's Corporation and Fitch Ratings.
  - (c) Financial Advisor will recommend the rating firms to be used, if necessary, and prepare and present such information as is required to receive rating.
7. **ASSIST WITH THE PRICING OF THE BONDS:**
- (a) Financial Advisor will provide the SFMTA with market information relating to comparable issues in the market, comparisons of takedown levels and important economic data releases.
    - i. Financial Advisor will provide aggressive and informed representation to prospective bidders on behalf of the SFMTA in the pricing of securities.
    - ii. Financial Advisor will assist in the evaluation of competitive bids and actively monitor market conditions to effectively advise the SFMTA as to the most appropriate market timing for its security offerings.
  - (b) Financial Advisor will provide the SFMTA with a Final Pricing Report so that the SFMTA can evaluate the fairness of the pricing of the bonds.
    - i. The Report will be a summary of the bond pricing, final pricing and debt service schedules, orders and allocation of bonds (for negotiated financings), review of market conditions, bond rating reviews, and related news articles.
    - ii. The report will serve as a measure of the fairness of the pricing terms, and also as a comprehensive reference to which the SFMTA may refer in the future.
8. **ASSIST WITH PRECLOSING AND CLOSING:**
- (a) Financial Advisor will work with all parties involved with the closing to prepare a schedule of tasks to be completed prior to closing and identify the party responsible for completing the task. These tasks include completing the final official statement, preparing closing documents, arranging for the transfer of funds and the investment of funds.

## **2. Reports**

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

## **3. Department Liaison**

In performing the services provided for in this Agreement, Contractor's liaison with the SFMTA will be **[insert name of contact person in department]**.

**P-500 Appendix B**  
**Calculation of Charges**

**[List, as applicable:]**

Personnel or Hourly Rate

Flat rate for specified period (e.g., monthly)

Rate for use of Contractor's equipment, if applicable

Rates for faxes (sending only), mileage, etc.

Actual costs for contractor meals, accommodations, long distance and cellular phone charges, postage, vehicle rental, etc., subject to the approval of City.

Any other applicable rates or charges under the Agreement.

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

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Administration

**BRIEF DESCRIPTION:**

Authorizing the Executive Director/CEO or his designee to execute a contract between Claremont Behavioral Services, Inc. and the San Francisco Municipal Transportation Agency (SFMTA) for Employee Assistance, Peer Assistance, and Trauma Response Program services, for a contract amount not to exceed \$1,400,000 and for a term of three years, plus the option for one year at the Agency's sole discretion.

**SUMMARY:**

- Staff requests SFMTA Board approval to execute a contract with Claremont Behavioral Services, Inc., to manage and operate the SFMTA's Employee Assistance, Peer Assistance and Trauma Response Programs.
- These programs provide counseling, substance abuse support, and crisis intervention services to SFMTA employees and their families.
- The SFMTA is required to provide these services under the current Memorandum of Understanding with Local 250-A.
- The estimated value of the proposed services is \$350,000 per year.
- The current contract for these services, provided by Claremont Behavioral Services, Inc. expires on June 30, 2008.
- Staff proposes a new contract term of three years to mirror the term of the Memorandum of Understanding ("MOU") with Local 250-A.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

PREPARING CALENDAR ITEM: \_\_\_\_\_

\_\_\_\_\_

FINANCE: \_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO: \_\_\_\_\_

\_\_\_\_\_

SECRETARY: \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO: \_\_\_\_\_ Jeffery L. Gary

ASSIGNED SFMTAB CALENDAR DATE: \_\_\_\_\_

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### **PURPOSE**

Requesting authority to execute a professional services contract between Claremont Behavior Services, Inc. and San Francisco Municipal Transportation Agency (SFMTA) for Employee Assistance Program (EAP) , Peer Assistance Program (PAP) and Trauma Response Services (TRS).

### **GOAL**

This contract is consistent with the SFMTA 2008 – 2012 Strategic Plan:

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 the evolving, technology-driven future.

5.8 Improve work/life balance of employees

### **DESCRIPTION**

The EAP assists employees in assessing and dealing with problems arising from a variety of personal matters, including family, financial, legal and medical issues. The EAP provides referrals to licensed social workers, clinical psychologists and psychiatrists who provide the actual counseling services.

The PAP provides non-clinical counseling, support and advice to fellow employees regarding access to EAP services, voluntary substance abuse counseling programs and education on the resources available to employees to address work-related or personal issues. The PAP provides initial contact with employees, who then meet with a peer assistant or are referred to professional counseling through the EAP.

The Trauma Response Program provides support and counseling to employees involved in "critical incidents", which are assaults, threats, and serious accidents occurring on duty. The services are provided 24 hours/seven days per week. Counselors contact involved employees within two hours of a critical incident to offer services. Counselors also make follow-up calls within the first 24 to 48 hours following a critical incident. The Trauma Response Program provides counseling sessions with a licensed psychologist following a critical incident. The program also provides fitness for duty assessments to qualify employees involved in critical incidents to return to work.

The Memorandum of Understanding (MOU) between the Transport Workers' Union, Local 250-A, and the SFMTA, required that the Agency provide counseling and crisis intervention services to transit operators.

The SFMTA satisfies those requirements through the Employee Assistance Program, the Peer Assistance Program, and the Trauma Response Program. Starting in 1998, these programs were made available to all employees.

Claremont Behavioral Services, Inc., is currently under contract to provide clinical professionals for counseling services associated with the Employee Assistance Program and Trauma Response Programs, as well as clinical oversight of the Peer Assistance Program, in coordination with the

## **PAGE 3**

SFMTA's Workers' Compensation Program Manager. This contract has been in place since July 1, 2005 and expired on June 30, 2008. Since that time, the SFMTA has used a combination of City and County of San Francisco EAP, employee private health care referrals and SFMTA staff Peer Assistants to provide service. The value of the current contract is \$250,000 per year.

The current proposal includes the provision of conflict resolution training to SFMTA employees.

After a competitive process, which included nationwide solicitation of proposals from known employee assistance program providers, Claremont Behavioral Services, Inc. was determined to be the sole responsible and responsive bidder.

Claremont Behavioral Services, Inc. is a California based provider of employee assistance and trauma response counseling services, based in Alameda, California.

### **ALTERNATIVES CONSIDERED**

Staff has considered the use of the City and County of San Francisco's EAP; however, the City and County of San Francisco's EAP is not staffed adequately to handle the volume and complexity of issues presented by SFMTA employees.

In addition, the City and County program does not have the ability to provide a physician referral network which is a critical component of the EAP.

### **FUNDING IMPACT**

Funding for these services is included in the Fiscal Year budgets for 2008-2009 and 2009-2010.

The services provided include traditional EAP and PAP services and trauma response. Additional services provided under this contract include, conflict management training for front line employees and administrative staff to assist with management of the Peer Assistance Program, plus a cost of living adjustment (COLA) of three percent annually.

These additional services resulted in an increase in the overall fees for the program from \$250,000 annually, to \$312,653 for year one of the contract.

Due to the inclusion of the COLA in the contract, years two through four will be priced as follows:

Total Annual Fees For Year One	\$312,653.29
3% COLA Year Two	\$322,032.89
3% COLA Year Three	\$331,693.88
3% COLA Year Four (option year)	\$341,644.70

The estimated annual value is for an amount not to exceed \$350,000 annually.

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**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

There are no additional approvals required.

The City Attorney's office has reviewed this report.

Claremont Behavioral Services, Inc. has submitted documentation indicating its commitment to exceed the three percent Local Business Enterprise sub-consultant goal established for the contract.

**RECOMMENDATION**

Staff recommends adoption of the attached resolution authorizing the Executive Director/CEO or his designee to execute a contract with Claremont Behavioral Services, Inc. for the management of the Employee Assistance, the Peer Assistance, and the Trauma Response Programs.



SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, Article 32 of the Memorandum of Understanding between the Transport Workers Union, Local 250-A and the San Francisco Municipal Transportation Agency (SFMTA) requires the SFMTA to provide Employee Assistance and Peer Assistance Programs; and,

WHEREAS, Through its Trauma Response Program, the SFMTA provides trauma counseling services to the SFMTA employees involved in serious accidents, as well as employees subjected to assaults and threats, which has reduced absenteeism and workers' compensation costs; and,

WHEREAS, A Request for Proposals was issued on July 31, 2008 for Employee Assistance, Peer Assistance and Trauma Response Services,

WHEREAS, Claremont Behavioral Services was the sole responsive and responsible bidder; now therefore be it

RESOLVED, That the Municipal Transportation Agency Board authorizes the Executive Director/CEO to execute Contract no. PSC-4013-08-09 between Claremont Behavioral Services, Inc. and the San Francisco Municipal Transportation Agency to provide Employee Assistance, Peer Assistance, and Trauma Response Programs for an amount not to exceed \$1,400,000 and for a term of three years with a one-year extension at the Executive Director/CEO's sole discretion.

I hereby certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board at its meeting of \_\_\_\_\_.

\_\_\_\_\_  
Secretary, Municipal Transportation Agency Board of Directors

**City and County of San Francisco  
1 South Van Ness, 7<sup>th</sup> floor  
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco and  
Claremont Behavioral Services, Inc.**

This Agreement is made this 1st day of September, 2008, in the City and County of San Francisco, State of California, by and between: Claremont Behavioral Services, ("Contractor") and the City and County of San Francisco ("City"), a municipal corporation, acting by and through its San Francisco Municipal Transportation Agency ("SFMTA" or Department).

**Recitals**

WHEREAS, the San Francisco Municipal Transportation Agency ("Department") wishes to provide Employee Assistance, Peer Assistance and Trauma Response Program Services and as-needed Conflict Resolution Training; and,

WHEREAS, a Request for Proposal ("RFP") was issued on July 31, 2008, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number PSC-4013-08-09 on September 2, 2008;

**Now, THEREFORE, the parties agree as follows:**

**1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

**THIS SECTION 1 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.**

## **2. Term of the Agreement**

Subject to Section 1, the term of this Agreement shall be from September 1, 2008 to August 31, 2011.

## **3. Effective Date of Agreement**

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

## **4. Services Contractor Agrees to Perform**

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

## **5. Compensation**

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Director of Transportation, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed One Million Four Hundred Thousand Dollars (\$1,400,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the SFMTA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

## **6. Guaranteed Maximum Costs**

a. 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.

b. 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 Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. 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.

d. 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 Contractor 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 Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor 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 three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. 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. Left blank by agreement of the parties.**

## **10. Taxes**

a. 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 Contractor.

b. Contractor 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 Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

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

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

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

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

#### **11. Payment Does Not Imply Acceptance of Work**

The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor 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 Contractor 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 Contractor. Contractor 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 Contractor. Contractor 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 Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

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

##### **a. Independent Contractor**

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and

omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

**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 Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor 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 Contractor was not an employee.

**15. Insurance**

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

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

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 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) Professional liability insurance with limits not less than \$1,000,000 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:

Municipal Transportation Agency  
City and County of San Francisco  
1 South Van Ness, 7<sup>th</sup> floor  
San Francisco, California 94102-4685  
Attention: Workers Compensation Manager and Chief Financial Officer

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

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, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. 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 Contractor hereunder.

i. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and

County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

## **16. Indemnification**

**a. Defense and Indemnity.** Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

### **b. Limitations**

(1) No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.

(2) The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

(3) The Contractor's indemnification obligations of claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Contractor's negligence or other breach of duty.

### **c. Copyright Infringement**

Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in then performance of Contractor's services under this Agreement.



## **17. Incidental and Consequential Damages**

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

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of Five Hundred Dollars (\$500.00) per instance of delay beyond timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by Purchasing.

## **20. Default; Remedies**

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.

(2) Contractor 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 Contractor.

(3) Contractor (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 Contractor or of any substantial part of Contractor'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 Contractor or with respect to any

substantial part of Contractor'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 Contractor.

b. 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 Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. 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 Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

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

(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 Contractor'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 Contractor and in which City has or may acquire an interest.

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

(1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor 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 Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor 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 Contractor can establish, to the satisfaction of City, that Contractor 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 Contractor 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 Contractor, 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 Contractor 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 Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor 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**

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

b. Subject to the immediately preceding subsection (a), 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. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

## **23. Conflict of Interest**

Through its execution of this Agreement, Contractor 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**

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor 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. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

## **25. Notices to the Parties**

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

**To City:** Municipal Transportation Agency  
City and County of San Francisco  
1 South Van Ness, 7th floor  
San Francisco, California 94102-4685  
Attention: Jeff Gary, Workers Compensation Manager

**To Contractor:** Claremont Behavioral Service, Inc.  
1050 Marina Village Parkway, Suite 203  
Alameda, California 94501  
800-834-3773 – Fax: 510-337-8833  
Email: tfarris@claremonteap.com  
Attn: Tom Farris, Ph.D.

Any notice of default must be sent by registered mail.

## **26. Ownership of Results**

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared

by Contractor 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, Contractor 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, Contractor 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 Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor 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, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

## **28. Audit and Inspection of Records**

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not 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**

Contractor 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 Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor 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.

a. Contractor 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 Contractor 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 Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor 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.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. 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. Local Business Enterprise Utilization; Liquidated Damages**

#### **a. The LBE Ordinance**

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under

this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

**b. Compliance and Enforcement**

**(1) Enforcement**

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

**(2) Subcontracting Goals**

The LBE subcontracting participation goal for this contract is three (3) percent. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor.

Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

**(3) Subcontract Language Requirements**

Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors.

Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

**(4) Payment of Subcontractors**

Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount.

Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

**34. Nondiscrimination; Penalties**

**a. Contractor Shall Not Discriminate**

In the performance of this Agreement, Contractor 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**

Contractor 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. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**c. 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 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, Contractor 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. Contractor 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, Contractor 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 Contractor and/or deducted from any payments due Contractor.

**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 Contractor 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**

Contractor 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. Contractor agrees that any violation of this prohibition by Contractor, 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 Contractor 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**

Contractor 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. Contractor 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. Contractor 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 Contractor, 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 Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor 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. Contractor 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 Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor 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, Contractor acknowledges that it is familiar with section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board 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. Contractor 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. Contractor further acknowledges that the prohibition on

contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor 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**

a. Contractor 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 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](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor'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 Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor 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 Contractor'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 Contractor.

c. Contractor 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.

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

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

f. Contractor'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 Contractor fails to comply with these requirements. Contractor 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 Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor 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, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor 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.

h. Contractor 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.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

#### **44. Requiring Health Benefits for Covered Employees**

Contractor 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 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](http://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, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor 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 Contractor 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. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor 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, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor 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 Contractor 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. Contractor 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 Contractor 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 Contractor based on the Subcontractor's failure to comply,

provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor'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. Contractor 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. Contractor 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. Contractor shall keep itself informed of the current requirements of the HCAO.

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

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

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor'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 Contractor 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. Contractor 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 Contractor 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**

Contractor 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**

Contractor 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

(7) That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

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 Contractor 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, Contractor 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. Contractor 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 Contractor 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 Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

**47. Preservative-Treated Wood Containing Arsenic**



Contractor 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. Contractor 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 Contractor 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. Contractor shall cooperate with Department to submit to the Director of HRC 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% (HRC Contract Modification Form).

#### **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.

#### **53. Compliance with Laws**

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

## **55. Supervision of Minors**

Contractor, and any subcontractors, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Contractor, or any subcontractor, in which he or she would have supervisory or disciplinary power over a minor under his or her care.

If Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3).

If Contractor, or any of its subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Contractor shall comply, and cause its subcontractors to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Contractor shall provide, or cause its subcontractors to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian.

Contractor shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its contract with the subcontractor.

Contractor acknowledges and agrees that failure by Contractor or any of its subcontractors to comply with any provision of this section of the Agreement shall constitute an Event of Default. Contractor further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Agreement, partially or in its entirety, to recover from Contractor any amounts paid under this Agreement, and to withhold any future payments to Contractor. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## **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**

Contractor 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. Contractor agrees that any failure of Contractor 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 Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

## **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.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor'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 Contractor 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 Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

## **59. Food Service Waste Reduction Requirements**

Effective June 1, 2007, Contractor 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, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor 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 Contractor's failure to comply with this provision.

The remainder of this page is blank.

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

CITY	CONTRACTOR
Approved as to Form:  Dennis J. Herrera City Attorney  By: _____ Robert K. Stone Deputy City Attorney  Approved:  _____ Nathaniel P. Ford, Sr. Executive Director/CEO San Francisco Municipal Transportation Agency  Authorized by: Municipal Transportation Agency Board  Resolution No. _____ Adopted: _____ Attest:  _____ Roberta Boomer Secretary, Municipal Transportation Agency	<b>Claremont Behavioral Services, Inc.</b>  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.  _____ Thomas A. Farris, PhD Chief Operation Officer 1050 Marina Village Parkway, suite 203 Alameda, CA 94501  City vendor number: 40027

**Appendices**

- A: Services to be provided by Contractor  
B: Calculation of Charges

## **Appendix A**

### **Services to be provided by Contractor**

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

Contractor agrees to perform the services as described in the Request for Proposals, issued July 31, 2008 and in its Proposal submitted to the SFMTA. In case of conflict between the RFP, Contractor's Proposal, and this Agreement, this Agreement shall govern. In case of conflict between the RFP and Contractor's Proposal, the RFP shall govern.

#### **2. Reports**

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

#### **3. Department Liaison**

In performing the services provided for in this Agreement, Contractor's liaison with the SFMTA will be Jeffery L. Gary, Workers' Compensation Manager.

## **Appendix B**

### **Calculation of Charges**

The services for this contract will be priced using the “Per Unit Fee Proposal” as contained in the RFP, Page 40, under the section entitled “Fee Proposal”:

Services to be provided:

Fee For Services:

Employee Assistance Program

\$245 Per Visit

EAP Life Management Case Referrals

\$590

Per Case

Peer Assistance Program Oversight

\$2.25 PEPM\*

Trauma Response

\$0.65 PEPM

Conflict Management Training - \$22,000 / year

Administrative Assistant for PAP (salary plus benefits) - \$34,000 / year – To satisfy requirements for the Trainee Program

Annual COLA (Cost of Living Adjustment - 3% of the total billed annually)

(\*PEPM – Per Employee per Month, based on an employee base of 5100 employees\*\*)

\*\*Total number of employees subject to verification by SFMTA Finance

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

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Parking and Traffic

**BRIEF DESCRIPTION:** Requesting the Municipal Transportation Agency Board of Directors authorize the Executive Director/CEO to execute the second amendment to the Red Light Photo Enforcement Agreement between the Municipal Transportation Agency and ACS State and Local Solutions for one year and enter into an equipment lease agreement for expansion of the existing system for the City's Red Light Photo Enforcement Program.

**SUMMARY:**

- Authorizing the Executive Director/CEO to execute the second amendment to the Red Light Photo Enforcement Agreement between the SFMTA and ACS State and Local Solutions (ACS).
- The City entered into the current contract with ACS in 2005 that expires on December 30, 2008. The term of the agreement may be extended up to an additional two years at the option of the City.
- This contract amendment will extend the term of the Agreement for one year, from January 1, 2009 to December 30, 2009. This is the first of two possible one year extensions to the contract.
- An equipment lease attachment is also incorporated into the Agreement specifying the terms for the Contractor's lease of new system equipment for expansion of the existing system.
- This amendment will not result in the contract cost exceeding the original amount of \$9,424,195.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract Amendment/Equipment Lease Attachment

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

PREPARING ITEM \_\_\_\_\_

\_\_\_\_\_

FINANCE \_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO \_\_\_\_\_

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO Tabin Chung

**ASSIGNED SFMTAB CALENDAR DATE:** \_\_\_\_\_



## **PURPOSE**

This contract amendment will authorize the existing Red Light Camera enforcement system to continue uninterrupted through 2009. It also sets forth the terms of the lease agreement for the equipment to be used at each of the system expansion intersections.

## **GOAL**

This program meets and fulfills Goal 1 of the SFMTA Strategic Plan, 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.

The Red Light Camera Program is proven to improve transportation safety by reducing the most severe types of automobile collisions caused by red light running.

## **DESCRIPTION**

### **Background:**

The City and County of San Francisco implemented one of the first Red Light Photo Enforcement programs in the nation. The program automated the issuance of citations to motorists who violate red lights at enforced intersections saving valuable Police resources and dramatically increased traffic and pedestrian safety throughout the City. The program has been very successful with over 120,000 citations issued since the program's inception in 1998.

The current contract with ACS was entered into December 30, 2005 for a three year term that expires on December 30, 2008. The term of this agreement may be extended up to two additional years at the option of the City.

While there is no fiscal impact by this amendment, SFMTA Board approval is required because the term for administration of the expansion intersections will exceed the original contract term by more than 10%.

The contract has been amended once. The first amendment was executed December 1, 2007, and added five wet-film cameras to the City's existing pool enabling the automated enforcement of 32 intersection approaches at any given time. The first amendment has proven to be a very effective first step at expanding enforcement coverage of the existing system. Program efficiency is now higher than ever before.

### **Contract Amendment Number 2:**

This is the second amendment to the original agreement. This amendment will accomplish the following two main issues:

- Extends the contract term from the current expiration date of December 30, 2008 by 12 months to December 30, 2009.
- Incorporates Appendix G (Equipment Lease Attachment) into the agreement that specifies the lease terms for furnishing new digital cameras and equipment by contractor to the City for expansion of the existing system.

### **PAGE 3.**

Contract Term – Extending the contract term by 12 months to allow continued red light enforcement at the high level of efficiency that the program has achieved and continues to operate at. The contract term is not-to-exceed five years consisting of an initial three-year base period with two one-year options to extend. This extension is the first of the two possible one-year extensions.

System Expansion/Lease Agreement – The system is being expanded. This amendment will allow the completion of enforcement equipment to be installed at Ellis/Larkin Streets, Oak/Octavia Streets, and Market/Gough Street. Each location will utilize state of the art 11-megapixel digital cameras capable of photographically documenting a violation and simultaneously recording a 30 second video clip available for review by the Police Department and offender.

While digital cameras and video systems operate much the same way as their wet film counterparts, a major benefit of digital imaging is its reduced level of effort in photo collection/film developing and accelerated processing and distribution of citations. These intersections are expected to be constructed next year.

Digital photography does have an inherent difference from its wet-film counterpart in that the technology evolves rapidly and constantly. For this reason, the proposal to lease rather than purchase the new equipment allows for greater flexibility in upgrading equipment as technological advancements become available.

This contract amendment also sets forth the terms of the lease agreement for the equipment to be used at each of the system expansion intersections. The lease term for the equipment shall be for three years from the date of City's acceptance of each new enforced intersection approach with two one year renewal options. Up to 10 new intersections may be enforced under this contract.

Additional Sections - Standard City requirements regarding Requiring Minimum Compensation for Covered Employees and the Health Care Accountability Ordinance have also been added. These changes have no fiscal impact.

### **Program Success:**

In 1996, San Francisco was one of the first cities in the nation to implement a Red Light Photo Enforcement Program. Since that time, the program has proven to be a valuable tool in reducing red light related collisions by up to 40% at enforced intersections. In addition, the presence of the photo enforcement program in the City has generated a “spill-over” effect of reducing red light related collisions at neighboring intersections not equipped with cameras, indicating that the photo enforcement program is leading to a more widespread behavioral change towards driving safely.

The program has been so successful that now there are nearly 200 jurisdictions operating a Red Light Photo Enforcement Program nationwide.

## **PAGE 4.**

### **ALTERNATIVES CONSIDERED**

The original term of this agreement envisioned a three year base term with two yearly extensions. This represents the first of the two possible yearly extensions.

The only alternative to this recommendation is to not extend the contract and solicit bids from other qualified vendors. However, the City owns the equipment at all existing enforced intersections. Since this equipment is proprietary no other vendor could assume immediate operation of the system without reinstalling their own branded equipment at each of the existing 27 enforced intersections. Retooling each of the enforced intersections with another vendors equipment would likely result in significant downtime and increased costs.

Furthermore, detailed plans to expand the enforcement system have already been completed. With construction of these plans now imminent, it is not reasonable to assume a different vendor could design and construct the expansion substantially faster. More likely, such action would result in further cost and delay.

Therefore, staff finds Contract Amendment No. 2 to be the best way to proceed.

### **FUNDING IMPACT**

Since it's inception in 1996, the Red Light Camera Program has been a very successful, self-funded program. Funding for this program is appropriated on a continuous basis from year to year with any surplus balance carried over to the next year. The program has never been in deficit.

Funds required for the operations, maintenance and construction of new enforced intersections are self-generated through the citations issued by the program.

### **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

No other approvals are required. The Office of Contract Compliance has determined that the 19% DBE goal established for this contract has been maintained to date. This calendar item has been approved by the City Attorney's Office.

### **RECOMMENDATION**

Staff recommends the San Francisco Municipal Transportation Agency Board of Directors authorize the Executive Director/CEO to execute the second amendment to the Red Light Photo Enforcement Agreement between the San Francisco Municipal Transportation Agency and ACS State and Local Solutions for one year and enter into an equipment lease agreement for expansion of the existing system for the City's Red Light Photo Enforcement Program.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, Collisions caused by red light running are among the most severe types of automobile accidents; and

WHEREAS, The Division of Parking and Traffic began the Red Light Photo Enforcement Program in collaboration with the Police Department in 1996 to reduce collisions, property damage, injuries and deaths caused by red light running violations and has issued more than 120,000 citations to date; and

WHEREAS, Collision data shows this program has been very effective at reducing the number of fatalities, injuries, and property damage caused by red light violations and increasing overall traffic safety City-wide since the program began; and,

WHEREAS, The current Red Light Photo Enforcement Program Agreement with ACS State and Local Solutions will expire on December 30, 2008; and,

WHEREAS, The second amendment to the Agreement will extend the contract term by 12 months to December 30, 2009; and

WHEREAS, An equipment lease is also incorporated into the Agreement to specify the lease terms for equipment for new enforcement intersections; and

WHEREAS, The Second Amendment makes other minor changes but does not change the total contract amount; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute the second amendment to the Red Light Photo Enforcement Agreement between the San Francisco Municipal Transportation Agency and ACS State and Local Solutions to extend the term for one year and enter into an equipment lease agreement for expansion of the existing system for the City's Red Light Photo Enforcement Program at no additional cost.

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  
**CITY AND COUNTY OF SAN FRANCISCO**  
**Municipal Transportation Agency**  
**1 South Van Ness Avenue, 7<sup>th</sup> Floor**  
**San Francisco, California 94103-5417**

**Second Amendment**

THIS AMENDMENT (this "Amendment") is dated for convenience as of the 1<sup>st</sup> day of December, 2008, in San Francisco, California, by and between ACS State and Local Solutions ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency (the "Agency").

#### RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the City agree as follows:

**1. Definitions.** The following definitions shall apply to this Amendment:

**a. Agreement.** The term "Agreement" shall mean the Agreement dated December 19, 2005, between Contractor and City, as amended by the First Amendment dated December 1, 2007.

**b. Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

**2. Modifications to the Agreement.** The Agreement is hereby modified as follows:

**a. Section 2.** Section 2 "Term of the Agreement" currently reads as follows:

Subject to Section 1 (Certification of Funds), the term of this Agreement shall be from December 30, 2005 to December 30, 2008.

The term of this Agreement may be extended up to an additional two (2) years upon the option of the City and mutual agreement of the parties both as to the period for any such extension, and the terms and conditions upon which such extension shall be based. The City reserves the right to extend this Agreement after completion of the five-year term of the contract.

Such section is hereby amended in its entirety to read as follows:

**2. Term of the Agreement**

**a. Existing System Intersections**

Subject to Section 1 (Certification of Funds), the term of this Agreement for program administration of Existing System Intersections as specified in Appendix A.I shall be from December 30, 2005 to December 30, 2009.

The term of this Agreement for program administration of Existing System Intersections as specified in Appendix A.I may be extended up to an additional one (1) year upon the option of the City and mutual agreement of the parties both as to the period for any such extension, and the terms and conditions upon which such extension shall be based. The City reserves the right to extend this Agreement after completion of the five-year term of the contract.

**b. Expansion of Existing System**

Subject to Section 1 (Certification of Funds), the term of this Agreement for program administration and lease of system equipment for the Expansion of Existing System as specified in Appendix A.II and Appendix G shall be for three years from the date of the Agency's acceptance of construction and installation of fully functioning system equipment at each new enforced intersections approach provided that such notification occurs on or before December 30, 2009.

The term of this Agreement for program administration and lease of system equipment for the Expansion of Existing System as specified in Appendix A.II and Appendix G may be extended up to an additional two (2) years upon the option of the City and mutual agreement of the parties both as to the period for any such extension, and the terms and conditions upon which such extension shall be based. The City reserves the right to extend this Agreement after completion of the five-year term of the contract.

**b. Section 43.** Section 43 "Requiring Minimum Compensation for Covered Employees" currently reads as follows:

**43. Requiring Minimum Compensation for Covered Employees**

Contractor 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 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 <http://www.sfgov.org/oca/lwlh.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. (a) For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of \$10.77 an hour beginning January 1, 2005 and for the remainder of the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.

b. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

c. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

d. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Department, shall

have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

- (1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
- (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar Contractor from entering into future contracts with the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

e. Contractor 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.

f. Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

h. The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

i. The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

j. Any subcontract entered into by Contractor 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. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor

shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor'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 Contractor.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

Such section is hereby replaced in its entirety to read as follows:

#### **43. Requiring Minimum Compensation for Covered Employees**

a. Contractor 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 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](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor'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 Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor 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 Contractor'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 Contractor.

c. Contractor 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.

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

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

f. Contractor'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 Contractor fails to comply with these requirements. Contractor 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 Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor 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, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor 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.

h. Contractor 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.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

c. **Section 44.** Section 44 "Requiring Health Benefits for Covered Employees" currently reads as follows:

#### **44. Requiring Health Benefits for Covered Employees**

Unless exempt, Contractor 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 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 <http://www.sfgov.org/oca/lwlh.htm>. 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, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor 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 Contractor is a small business as defined in Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor 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, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor 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(f)(1-5). 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 Contractor 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. Contractor 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 Contractor 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 Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor'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. Contractor 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. Contractor shall keep itself informed of the current requirements of the HCAO.

h. Contractor 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.

i. Contractor 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 five business days to respond.

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

k. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor'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 Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

Such section is hereby amended in its entirety to read as follows:

#### **44. Health Care Accountability Ordinance**

Contractor 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 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](http://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, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor 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 Contractor 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. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor 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, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor 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 Contractor 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. Contractor 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 Contractor 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 Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor'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. Contractor 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. Contractor 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. Contractor shall keep itself informed of the current requirements of the HCAO.

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

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

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor'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 Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

**d. Appendix A.** Appendix A "Services to Be Provided by Contractor - Section II, Expansion of Existing System – D. Supply of System Equipment" currently reads as follows:

**D. Supply of System Equipment**

Upon award of the Construction Contract, Contractor shall coordinate with the selected Construction Contractor to provide and deliver all necessary System Equipment for the enforcement at the new intersections in accordance with the contract construction schedule. All System Equipment shall be provided by Contractor and delivered to the City in accordance with construction contract (date and delivery location to be determined as agreed upon by all parties). All System Equipment identified in the PS&E in Section II.B shall be delivered by Contractor. All System Equipment shall meet or exceed each

of the requirements listed in Appendix F – System Requirements for Supplied Equipment and Technical Specifications.

Costs for the supply of System Equipment shall be as specified in Contractor's cost proposal contained in Appendix B, Exhibit 5 – Supply of System Equipment Lease Fees for Future Expansion Locations. The lease term shall be for three years with two optional one-year additional lease terms.

City reserves the right to cancel the lease at any time. In the event City chooses to terminate the lease prior to the expiration of the three year lease term, the City agrees to pay any past-due payments and an early termination fee not to exceed 10% of the remaining lease amount.

Such section is hereby amended in its entirety to read as follows:

**D. Supply of System Equipment**

Upon award of the Construction Contract, Contractor shall coordinate with the selected Construction Contractor to provide and deliver all necessary System Equipment for the enforcement at the new intersections in accordance with the contract construction schedule. All System Equipment shall be provided by Contractor and delivered to the City in accordance with construction contract (date and delivery location to be determined as agreed upon by all parties). All System Equipment identified in the PS&E in Section II.B shall be delivered by Contractor. All System Equipment shall meet or exceed each of the requirements listed in Appendix F – System Requirements for Supplied Equipment and Technical Specifications.

The terms and conditions for the City's lease of system equipment from Contractor shall be in accordance with the Equipment Lease Attachment incorporated herein as Appendix G. Costs for the supply of System Equipment shall be as specified in Contractor's cost proposal contained in Appendix B, Exhibit 5 – Supply of System Equipment Lease Fees for Future Expansion Locations. The lease term shall be for three years with two optional one-year additional lease terms.

The City reserves the right to cancel the lease at any time. In the event the City chooses to terminate the lease prior to the expiration of the three year lease term, the MTA agrees to pay any past-due payments and an early termination fee not to exceed 10% of the remaining lease amount.

**e. Appendix G.** Appendix G "Equipment Lease Attachment" is hereby incorporated into the Agreement. Appendix G is attached to this Amendment as Exhibit 1. In the event of any conflict between Appendix G and the Agreement, Appendix G shall take precedence with respect to any equipment leased pursuant to Appendix G.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after December 31, 2008.

**4. Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

**CITY**

Recommended by:

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Nathaniel P. Ford, Sr.  
Executive Director/CEO  
Municipal Transportation Agency

Approved as to Form:

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
John I. Kennedy  
Deputy City Attorney

Approved:

Municipal Transportation Agency  
Board of Directors  
Resolution No. \_\_\_\_\_

Adopted: \_\_\_\_\_

**CONTRACTOR**

ACS State and Local Solutions

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Norman Dong  
Vice President  
ACS State and Local Solutions  
1800 M Street, NW  
Washington, DC 20036

City vendor number: 68769

## **Appendix G**

### **EQUIPMENT LEASE ATTACHMENT**

This form is an Attachment to the Agreement between the City and County of San Francisco ("City"), acting by and through its Municipal Transportation Agency (the "Agency"), and ACS State and Local Solutions ("Lessor"), dated December 19, 2005. The Equipment to be leased from Lessor is set forth in Appendix B Exhibit 5 to the Agreement ("Equipment"). The terms and conditions of this attachment are referenced in and incorporated into the Agreement between the City and Lessor.

#### **Recitals**

WHEREAS, a Request for Proposal ("RFP") was issued on November 24, 2004 , and the City selected Contractor as the highest qualified scorer pursuant to the RFP;

NOW, THEREFORE, City and Lessor agree as follows:

#### **1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the City's Controller, and any 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.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year in the event funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated, and Lessor's sole remedy shall be repossession of the equipment.

This Section shall control against any and all other provisions of this Agreement.

#### **2. Term of the Agreement**

Subject to Section 1 (Certification of Funds), the term of this Attachment shall be for three years from the date of the Agency's written notification to Contractor to proceed provided that such notification occurs on or before December 30, 2009.

The term of this Attachment may be extended up to an additional two (2) years upon the option of the City and mutual agreement of the parties both as to the period for any such extension, and the terms and conditions upon which such extension shall be based. The City reserves the right to extend this Agreement after completion of the five-year term of the contract.

#### **3. No Automatic Renewal**

Notwithstanding anything to the contrary contained in this Lease (including, without limitation, any terms and conditions of Lessor attached hereto): (a) in no event shall the term of this Lease be longer than the initial term expressly stated in this Lease; (b) any automatic renewal or extension (whether or not conditioned upon any notice or absence thereof from either party) or any similar "evergreen" provision shall be deemed null and void *ab initio*; and (c) the term of this Lease shall not be extended or renewed except by written agreement duly authorized, executed and delivered by City. In the event of any

inconsistency within this Lease relating to the duration of the initial term hereof, the shorter initial term shall govern. If no initial term is stated in this Lease, then the term shall be one year from the date on which the term commences.

#### **4. City's Payment Obligation**

In no event will the City make an advance payment. In the event any payment of any amount of monies is required by any Vendor or Manufacturer prior to acceptance of the Equipment by the City, Lessor is to advance such amounts.

The City will make a good faith effort to pay all invoices within thirty days of billing. In no event will the City pay any late fees or charges for payments made after the 30-day period.

Lessor and the City understand and intend that the obligations of the City to pay Rental Payments hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City.

The City shall pay Rental Payments, exclusively from legally available funds, to Lessor or, in the event of an authorized assignment by Lessor to its assignee, according to the terms of this Agreement, upon presentation of invoices furnished by Lessor in a form acceptable to the Controller. Each invoice must have a unique identifying number. Payments will be made in United States Dollars by warrant drawn on the Treasurer of City and County of San Francisco. Rental Payments shall be in consideration for the City's use of the Equipment during the applicable fiscal year in which such payments are due.

In no event shall the amount of this Agreement exceed two million dollars, four hundred eighty-one thousand, five hundred and seventy dollars. The breakdown of costs associated with this Attachment shall be as set forth in the Agreement, Appendix B, Calculation of Charges, Exhibit 5, Supply of System Equipment Lease Fees for Future Expansion Locations.

#### **5. Guaranteed Maximum Costs**

a. 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.

b. 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 Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. 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.

d. 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.



## **6. Submitting False Claims; Monetary Penalties**

Any contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall also be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim: (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; (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.

## **7. Maintenance**

The Contractor is responsible for general day to day maintenance of the Equipment throughout the term of the Attachment which includes but is not limited to the following tasks.

1. When Contractor services the Camera Units, Contractor shall inspect and test Camera Units and Equipment as necessary, to manufacturers' specifications, and shall complete a Field Technician Service and Inspection Log that is created by Contractor.

2. Contractor shall keep in its files the original Field Technician Service and Inspection Logs for use as evidence as required by the Court.

3. Contractor shall respond to any material malfunction of the Equipment within twenty four (24) hours after the MTA provides written notice regarding a Equipment malfunction to Contractor (Malfunction Notice). Contractor shall inspect the equipment and functionality of the System as a whole and individually at each of the System intersections when collecting film, but not less than on a weekly basis for digitally enforced locations. In the event that Contractor discovers any malfunction or defect, or in the event that Contractor receives a Malfunction Notice, Contractor shall notify the MTA Project Manager within 24 hours and use its best efforts to cause such malfunction or defect to be repaired within 48 hours, and in the event that such malfunction or defect has not been substantially repaired within 48 hours, the Contractor shall notify the MTA Project Manager with a written report identifying the problem, available options on how to correct it, and the Contractor's recommendation on how to proceed. The MTA reserves the right to determine the final course of action in all such cases. Should a defect or malfunction attributable to Contractor negligence or error result in a material loss of citation evidence, the MTA shall have the right to be compensated by Contractor for such loss based on the estimated number of citations lost (based on historical citation rates of the enforced approaches where the loss occurs) due to the malfunction or defect or liquidated damages as specified in Contract Section 19, whichever is less.

4. Contractor shall visit each camera installation at least twice per week to inspect and test the Camera Unit and all connections to verify that it is in proper working order. Contractor shall record and remedy any problems at Contractor's expense.

5. The City shall be responsible for relocating any Equipment that must be moved to meet the needs of the City outside the scope of this work. In this circumstance, the City shall relocate the

Equipment at its sole expense.

6. All repair and maintenance of the Red Light Photo Enforcement System and related equipment shall be the sole responsibility of Contractor, including but not limited to maintaining the casings of the cameras and all other related Equipment in reasonably clean and graffiti-free condition.

7. Contractor shall not open the Traffic Signal Controller Boxes without prior authorization from the MTA and with a MTA representative present.

8. The provision of all necessary electrical, telephone services, DSL, cable, or other broadband services to the Designated Intersection approaches shall be the sole responsibility of Contractor.

9. In the event that images of a quality sufficient for the San Francisco Police Department (SFPD) personnel to identify violations cannot be reasonably obtained without the use of flash units, Contractor shall provide and install such flash units.

10. The Contractor Project Manager (or a reasonable alternate) shall be available to the MTA Project Manager each day, on a reasonable best efforts basis.

11. All electrical connections with MTA equipment and systems are limited to intersection signal outputs and must be optically or otherwise isolated.

12. The Image Processing Unit may be connected to the traffic signal controller to obtain the following:

- a. Contact closure of signal when traffic light enters the amber phase.
- b. Contact closure of signal when traffic light enters the red phase.
- c. Power source (110V AC).

13. Backup power should be provided so that the system clock and other data elements displayed in images are maintained for a minimum of seven (7) days in the event of a main power supply failure.

14. The Contractor shall make all necessary repairs and maintenance of the Equipment, including, but not limited to, maintaining the casings of the cameras and all other equipment in reasonably clean and graffiti-free condition.

15. Contractor shall make available a technician during any construction projects at designated intersections that will have a direct impact and implications on the overall functioning of the Equipment.

## **8. Use, Licenses**

The City will not use or operate the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Lease.

## **9. Delivery of Equipment; Transportation**

It is the responsibility of the Lessor to arrange with the manufacturer and/or vendor for the delivery and installation/construction management of the Equipment. Charges for delivery installation/construction management are the responsibility of the Lessor. The Equipment to be provided under this Lease is to be delivered to a location as designated by the City and installed and made ready for operation.

## **10. Installation**

The Lessor will arrange with the manufacturer and/or vendor to provide construction consultation services to the City's Construction Contractor during the installation of the Equipment at each new enforced intersection approach including preparation of job site, obtaining all permits and licenses, if any, necessary for the installation and operation of the equipment, furnish, assemble and install the Equipment as necessary at the locations as designated by the City. Manufacturer and/or vendor must comply with all State laws and local Ordinances in installing the Equipment.

## **11. Relocation of Equipment**

Lessor agrees that the City may upon reasonable notice to Lessor, relocate the Equipment or any item or items thereof to any location or locations within the geographical boundaries of the City where the City has offices at the City's sole discretion and cost. Prior to any such relocation the City agrees to execute or obtain and to deliver to Lessor such documents which Lessor reasonably requests to protect Lessor's right, title and interest in the Equipment.

## **12. Lessor's Removal and the City's Surrender of the Equipment**

At the end of the lease term or unless sooner terminated, the City agrees to surrender the equipment in as good a condition as when furnished, reasonable wear and tear excepted. Lessor agrees, at Lessor's cost to accept and remove the Equipment as provided in this Lease. Lessor's failure to accept and remove the Equipment shall entitle the City to remove the Equipment and place it in any storage facility in San Francisco at Lessor's sole expense and Lessor shall hold the City free and harmless from any expense or damages of any kind occasioned thereby and arising therefrom.

## **13. Default**

In the event of a default by Lessor under this Lease, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Lease. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Lessor any default by Lessor. Lessor 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 Lessor under this Lease all damages, losses, costs or expenses incurred by City as a result of such default by Lessor.

## **14. Force Majeure**

Lessor shall not be liable for failure to furnish Equipment ready for use on the date specified or to remove in accordance with the terms of this Lease nor shall City be liable for delay in installation or removal when such failures are due to causes beyond the reasonable control of either such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities, and in such event the party under obligations to perform shall perform as soon as such cause is removed.

## **15. The City's Right to Use Other Equipment Simultaneously with the Equipment**

The City does not grant Lessor an exclusive right during the term of this Lease to supply the City with any other equipment. The City reserves the right to lease or purchase similar or different equipment

from any other supplier or lessors which may be used contemporaneously with any item of Equipment leased hereunder.

#### **16. Disclaimer of Warranties**

Lessor hereby assigns to the City for and during the Lease Term, to the extent permitted by law, all Manufacturer's or Vendor's warranties or guaranties, express or implied, issued on or applicable to the Leased Equipment, and Lessor authorizes the City to obtain the customary services furnished in connection with such warranties or guaranties at the City's expense. Lessor authorizes the City, to the extent permitted by law, to enforce in its own name any warranty, representation or other claim enforceable against the manufacturer or vendor. The City acknowledges that the Equipment has been purchased by Lessor on behalf of the City in accordance with the City's specifications.

The City shall look directly to the Manufacturer or Vendor for any warranties or any service for the equipment.

#### **17. Indemnification**

Lessor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Lessor or loss of or damage to property, arising directly or indirectly from Lessor's performance of this Agreement, including, but not limited to, Lessor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except where such loss, damage, injury, liability or claim is the result of active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Lessor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

Lessor shall indemnify and hold City harmless from all loss and liability, including attorney's fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

#### **18. Enjoyment of the Equipment**

Provided that and so long as the City is not in default under this Lease, Lessor hereby covenants to provide the City during the Lease Term with quiet use and enjoyment of the Equipment, and the City shall during the Lease Term peaceably and quietly have and hold and enjoy the equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Lease. Any assignee of Lessor shall not interfere with the City's quiet use and enjoyment during the Lease Term so long as the City is not in default pursuant to this Lease.

## **19. Title to the Equipment**

Title to the Equipment and any and all additions, repairs, replacements or modifications thereto shall be held in the name of Lessor, and the City shall have no right, title or interest in the Equipment or any additions, repairs, replacements or modifications thereto except as expressly set forth in the Lease.

## **20. Liability for Damage to Equipment**

It is understood and agreed that the City is responsible for loss of or damage to any Lessor-owned equipment involved, only as caused by the negligent or wrongful actions of City's officers, agents and employees.

## **21. Insurance**

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

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

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 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.

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 cancellation of policies for any reason, reduction of coverage or nonrenewal of coverages mailed to the following address:

Department of Parking and Traffic  
Red Light Camera Program  
Municipal Transportation Agency  
1 South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, California 94103-5417

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

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, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. 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 Lessor hereunder.

## **22. Provisions Controlling**

Lessor further agrees that in the event of conflicting language between this "Equipment Lease Attachment" and Lessor's printed form, this "Equipment Lease Attachment" shall take precedence.

## **23. Lessor's Default**

Failure or refusal of Lessor to perform or do any act herein required shall constitute a default. In the event of any default, in addition to any other remedy available to the City, this Contract may be terminated by the City upon ten days' written notice. Such termination does not waive any other legal remedies available to the City.

## **24. Taxes**

The City will only pay California sales and use taxes. The Lessor is to add California sales and use taxes to the monthly payment and the tax must be properly identified on each monthly invoice. Any other taxes presently in effect which may be levied upon this Agreement, the transaction, or the Equipment or services delivered pursuant hereto shall be borne by the Lessor. The Lessor will be responsible for all property taxes. In the event any taxes or charges are enacted after the date of execution of this Lease Agreement, those taxes or charges shall be borne as mutually agreed. The Lessor will indemnify and hold City harmless from any fines, penalties or interest thereon imposed during the Lease term or in connection with termination of the lease by any federal, State or local government or taxing authority. The taxes covered by this Section shall only include those attributable to the equipment. Under no circumstances will the City pay any taxes imposed on, based on, or measured by the net income of the Lessor.

## **25. Assignment**

Notwithstanding any other provision in this lease, in no event shall all or any portion of this lease be assigned without the prior written approval of Purchasing and the City Attorney. Furthermore, in no event shall Lessor effect a public offering of certificates of participation, municipal securities or other debt instruments presenting fractionalized interests in this lease. For purposes of this Section, a public offering shall occur when the certificates of participation, municipal securities or other debt instruments are either: (a) offered or sold to more than twenty investors; or, (b) offered or sold in denominations of less than \$10,000.

## **26. Reserved**

## **27. Notices to Parties**

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

To City: Department of Parking & Traffic  
Attn: Red Light Camera Program Manager  
Municipal Transportation Agency  
1 South Van Ness Avenue, 7th Floor  
San Francisco, California 94103-5417  
[Tabin.Chung@sfgov.org](mailto:Tabin.Chung@sfgov.org)  
Fax: 415-701-4737

To Contractor: Contractor State and Local Solutions  
Attn: Red Light Camera Program Manager  
255 California Street, Suite 550  
San Francisco, California 94111  
[James.Davis4@acs-inc.com](mailto:James.Davis4@acs-inc.com)  
Fax: 415-445-0190

Any notice of default must be sent by registered mail.

## **28. Section Headings**

All section headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Lease.

## **29. Waiver**

The waiver by either party of any breach by either party of any term, covenant or conditions hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

## **30. Governing Law**

This Lease shall be governed exclusively by the provisions hereof and by the laws of the State of California.

### **31. Entire Agreement; Modifications**

The Lease, together with the Appendices hereto, constitutes the entire Agreement between the parties and this Lease shall not be modified, amended, altered or changed except in writing as herein provided.

All agreements between the parties are included herein and no promises or statements have been made by either party unless endorsed hereon in writing. No change or waiver of any provisions hereof shall be valid unless made in writing with the consent of both parties and executed in the same manner as this Lease.

Any provision of this Lease found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Lease. Subject to the specific provisions of this Lease, this Lease shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

### **32. Nondiscrimination; Penalties**

#### **a. Lessor Shall Not Discriminate**

In the performance of this Agreement, Contractor 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**

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

#### **c. Nondiscrimination in Benefits**

Lessor 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 or where work is being performed for the City or elsewhere within 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 Section 12B.2(b) of the San Francisco Administrative Code.

#### **d. Condition to Contract**



As a condition to this Agreement, Lessor 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. Lessor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Lessor 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 Lessor and/or deducted from any payments due Lessor.

**33. EIC Forms**

a. Lessor 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 Lessor 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 Lessor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Lessor of the terms of this Agreement. If, within thirty days after Lessor receives written notice of such a breach, Lessor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Lessor 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.

c. Any Subcontract entered into by Lessor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. 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.

**34. 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 Contractor acknowledges and agrees that he or she has read and understood this section.

**35. Tropical Hardwoods 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.

### **36. Limitations on Contributions**

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board 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. Contractor 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. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

### **37. Prohibition on Political Activity with City Funds**

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor 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 contract. Contractor 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 Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this contract, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

### **38. Sunshine Ordinance**

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, responses to RFPs 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's 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.

### **39. Conflict of Interest**

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the 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.

#### **40. Compliance with Laws**

Lessor 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.

#### **41. Protection of Private Information**

Contractor 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. Contractor agrees that any failure of Contractor 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 Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

#### **42. 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.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor'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 Contractor 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 Contractor to comply with this section of this Agreement shall constitute a material breach of this Agreement.

#### **43. Food Service Waste Reduction Requirements**

Effective June 1, 2007, Contractor 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, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$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 Contractor's failure to comply with this provision.

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

**CITY**

Approved by:

\_\_\_\_\_  
Nathaniel P. Ford, Sr.  
Executive Director/CEO  
Municipal Transportation Agency

Approved as to Form:

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
John I. Kennedy  
Deputy City Attorney

Approved:

Municipal Transportation Agency  
Board of Directors  
Resolution No. \_\_\_\_\_

Adopted: \_\_\_\_\_

**CONTRACTOR**

ACS State and Local Solutions

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.

\_\_\_\_\_  
Norman Dong  
Vice President  
ACS State and Local Solutions  
1800 M Street NW  
7<sup>th</sup> Floor  
Washington, DC 20036

City vendor number: 68769

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

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Transportation planning and Development

**BRIEF DESCRIPTION:** Requesting authorization for the Executive Director/CEO to execute Agreement Modification No. 2 to SFMTA Contract no. 4128-06/07, Environmental Review of the Bicycle Plan Projects, with Wilbur Smith Associates, for environmental review services, to add an additional \$347,915 for a total contract amount not to exceed \$823,915, and extend the term through December 31, 2009.

**SUMMARY:**

- At its January 30, 2007 meeting, the SFMTA Board of Directors adopted Resolution No. 07-012, authorizing the Executive Director/CEO to enter into an agreement for environmental review of the Bicycle Plan Projects.
- On March 30, 2007, the SFMTA entered into Contract no. 4128-06/07, Environmental Review of the Bicycle Plan Projects, with Wilbur Smith Associates in an amount not to exceed \$300,000, and for a term through June 30, 2009.
- At its December 4, 2007 meeting, the SFMTA Board of Directors adopted Resolution No. 07-185, endorsing changes to the Bicycle Plan Projects for purposes of environmental review, and approving a revised scope of the environmental review for these Projects.
- At its February 19, 2008 meeting, the SFMTA Board of Directors adopted Resolution No. 08-028, authorizing the Executive Director/CEO to execute Agreement Modification No. 1 to Contract 4128-06/07, Environmental Review of the Bicycle Plan Projects, with Wilbur Smith Associates for an additional \$176,000, for a total contract amount not to exceed \$476,000.
- This item requests SFMTA Board of Directors authorization to execute Agreement Modification No. 2 to SFMTA Contract No. 4128-06/07, Environmental Review of the Bicycle Plan Projects, with Wilbur Smith Associates to extend the term to December 31, 2009 and to increase the contract by \$347,915, for a total contract amount not to exceed \$823,915. Modification No. 2 is necessary to account for an expanded scope of work for environmental review services developed by SFMTA in coordination with the Planning Department's Division of Major Environmental Analysis.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Agreement Modification No. 2

**APPROVALS:**

	<b>DATE</b>
DIRECTOR OF DIVISION	
PREPARING ITEM _____	_____
FINANCE _____	_____
EXECUTIVE DIRECTOR/CEO _____	_____
SECRETARY _____	_____
ADOPTED RESOLUTION BE RETURNED TO <u>Dustin White, 1 SVN, 7<sup>th</sup> Floor</u>	
ASSIGNED SFMTAB CALENDAR DATE: _____	

## **PAGE 2.**

### **PURPOSE**

Requesting authorization for the Executive Director/CEO to execute Agreement Modification No. 2 to SFMTA Contract No. 4128-06/07, Environmental Review of the Bicycle Plan Projects, with Wilbur Smith Associates, for environmental review services, to add an additional \$347,915 for a total contract amount not to exceed \$823,915, and to extend the term through December 31, 2009.

### **GOAL**

The proposed amendment will help further 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 1.5 – Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, and rideshare)
- Initiative 1.5 – Complete bicycle and pedestrian master plan

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

- Objective 2.3 – Fulfill bicycle and pedestrian network connectivity
- Initiative 2.3 – Complete bicycle and pedestrian master plan

### **DESCRIPTION**

At its January 30, 2007 meeting, the SFMTA Board of Directors endorsed the Bicycle Plan Projects for purposes of initiating environmental review, approved a proposed scope of work for the environmental review, and authorized the Executive Director/CEO to approve an agreement to perform environmental review services for the Bicycle Plan Projects. At its December 4, 2007 meeting, the SFMTA Board of Directors endorsed changes to the Bicycle Plan Projects for purposes of environmental review, and approved a revised scope of work for the environmental review.

In March 2007, the SFMTA selected Wilbur Smith Associates as a contractor to provide environmental review services for the Bicycle Plan Projects under SFMTA Contract No. 4128-06/07 at a cost not to exceed \$300,000, and for a term through June 30, 2009. SFMTA staff has been working closely with the contractor and the Planning Department's Division of Major Environmental Analysis on the environmental review of the Bicycle Plan Projects.

At its February 19, 2008 meeting, the SFMTA Board of Directors adopted Resolution No. 08-028, authorizing the Executive Director/CEO to execute Agreement Modification No. 1 to Contract 4128-06/07, Environmental Review of the Bicycle Plan Projects to Wilbur Smith Associates for an additional \$176,000, for a total contract amount not to exceed \$476,000.

Authorization to enter into Agreement Modification No. 2 is requested to account for an expanded scope of work for environmental review services developed by SFMTA in coordination with the Planning Department's Division of Major Environmental Analysis. The scope of the Transportation Impact Study

## **PAGE 3.**

(TIS) has been expanded in coordination with the Planning Department's Division of Major Environmental Analysis to fully and accurately account for all impacts that may result from implementation of the Bicycle Plan Projects. Expanded scope for the TIS includes additional intersections for level of service (LOS) analysis, reorganization of the near-term improvement projects contained within the Bicycle Plan into geographic clusters, comparison of LOS analysis results with recently completed environmental studies, development of methodologies for analyzing various transportation impacts, and additional drafts of the TIS to ensure quality work products. The scope of the Draft Environmental Impact Report (DEIR) has been expanded as a result of changes in scope of the TIS. The scope of work for responding to public comments on the DEIR has been expanded to ensure timely completion of this task.

The City Attorney and the Contract Compliance Officer have reviewed this report.

### **ALTERNATIVES CONSIDERED**

Not Applicable.

### **FUNDING IMPACT**

Funding for this Agreement Modification is provided through the Livable Streets Program budget.

### **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

This Agreement Modification is contingent upon approval of the Civil Service Commission.

### **RECOMMENDATION**

San Francisco Municipal Transportation Agency staff recommends approval of the Modification No. 2 to the Contract No. 4128-06/07, Environmental Review of the Bicycle Plan Projects, with Wilbur Smith Associates, for environmental review services, to add an additional \$347,915 for a total contract amount not to exceed \$823,915, and to extend the term through December 31, 2009.



SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, Environmental review of the Bicycle Plan and specific projects contained within the Bicycle Plan ("Bicycle Plan Projects") is necessary to complete the citywide bicycle route network that will encourage the use of sustainable alternatives to private motor vehicles and provide the public with safe and convenient bicycle access throughout the City; and,

WHEREAS, The San Francisco Municipal Transportation Agency Board of Directors authorized the Executive Director/CEO to approve an agreement to perform environmental review services for the Bicycle Plan Projects on January 30, 2007; and,

WHEREAS, The SFMTA entered into Contract No. 4128-06/07, Environmental Review of the Bicycle Plan Projects, with Wilbur Smith Associates on March 30, 2007, in an amount not to exceed \$300,000, and for a term through June 30, 2009; and,

WHEREAS, The SFMTA Board of Directors authorized the Executive Director/CEO to execute Agreement Modification No. 1 to Contract No. 4128-06/07, Environmental Review of the Bicycle Plan Projects, with Wilbur Smith Associates on February 19, 2008, for an additional \$176,000, for a total contract amount not to exceed \$476,000; and,

WHEREAS, The scope of the environmental review for the Bicycle Plan Projects has expanded under the direction of SFMTA and the San Francisco Planning Department's Division of Major Environmental Analysis since the execution of Agreement Modification No. 1 to Contract No. 4128-06/07; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute Agreement Modification No. 2 to Contract No. 4128-06/07, Environmental Review of the Bicycle Plan Projects with Wilbur Smith Associates to extend the term to December 31, 2009 and to increase the contract by \$347,915, for a total contract amount not to exceed \$823,915.

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

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

**Modification No. 2**

THIS AMENDMENT (this "Amendment") is made as of \_\_\_\_\_, in San Francisco, California, by and between Wilbur Smith Associates ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA")

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to revise certain task descriptions, increase the amount of the contract and to extend the term through December 31, 2009;

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number \_\_\_\_\_ on \_\_\_\_\_;

NOW, THEREFORE, Contractor and the City agree as follows:

**1. Definitions.** The following definitions shall apply to this Amendment:

**a. Agreement.** The term "Agreement" shall mean the Agreement dated March 30, 2007 between Contractor and City, as amended by the:

Modification No. 1, dated February 29, 2008.

**b. Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

**2. Modifications to the Agreement.** The Agreement is hereby modified as follows:

**a.** Section 5 of the Agreement, *Compensation*, is deleted in its entirety and shall be replaced in its entirety with the following:

The breakdown of costs and schedule for payment based on Contractor's completion of contract milestones appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. SFMTA shall make payments to Contractors for completion of tasks listed in Appendix B that the Executive Director/CEO of the SFMTA concludes have been performed in accordance with this Agreement, in his or her sole discretion. In no event shall the amount of this Agreement exceed \$823,915.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from

Contractor and approved by the SFMTA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the SFMTA, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

**b.** Appendix A of the Agreement, *Services to be Provided by Contractor*, subsection (1), *Description of Services*, subsection *Scope of Services*, Task 4 is deleted and replaced in its entirety with the following:

Task 4: Transportation Impact Study – The transportation impact study will address the traffic, transit, parking, pedestrian, bicycles, truck loading and other transportation impacts of a wide variety of bicycle improvement projects included in the Bicycle Plan. The analysis will include evaluations of existing, existing-plus-project, and future cumulative conditions with and without the project. For certain projects likely to have significant transportation impacts, at least two alternatives should be developed and fully analyzed: one alternative which groups options most likely to adversely affect one or more modes (e.g., such as by removal of mixed traffic lanes); and another alternative which groups options less likely to impact other modes such as by relying on parking removals instead of traffic lane removals, changes to sidewalks or alternate routing of bicycle routes. This approach would provide coverage of a wide variety of alternatives and the extent of impacts for each so that decision makers can make choices among options based on full disclosure of likely impacts. Level of service calculations for the PM peak period for the 61 intersections listed below, level of service calculations for the AM peak period for the 8 intersections listed below, and a detailed analysis of impacts on transit operations, truck loading, and parking along the study corridors listed below would be required for this task. Impacts on pedestrians will also be analyzed.

#### INTERSECTIONS FOR PM PEAK PERIOD LEVEL OF SERVICE ANALYSIS

- 2<sup>nd</sup> Street/Brannan Street
- 2<sup>nd</sup> Street/Bryant Street
- 2<sup>nd</sup> Street/Folsom Street
- 2<sup>nd</sup> Street/Harrison Street
- 2<sup>nd</sup> Street/Howard Street
- 2<sup>nd</sup> Street/Townsend Street
- 3<sup>rd</sup> Street/Townsend Street
- 4<sup>th</sup> Street/Harrison Street
- 4<sup>th</sup> Street/Townsend Street

- 5<sup>th</sup> Street/Brannan Street
- 5<sup>th</sup> Street/Bryant Street
- 5<sup>th</sup> Street/Folsom Street
- 5<sup>th</sup> Street/Harrison Street
- 5<sup>th</sup> Street/Howard Street
- 5<sup>th</sup> Street/Market Street
- 5<sup>th</sup> Street/Mission Street
- 6<sup>th</sup> Street/Brannan Street
- 7<sup>th</sup> Avenue/Kirkham Street
- 7<sup>th</sup> Avenue/Lincoln Way
- 7<sup>th</sup> Street/Townsend Street
- 10<sup>th</sup> Street/Brannan Street/Division Street/Potrero Avenue
- 11<sup>th</sup> Street/Bryant Street/Division Street
- 14<sup>th</sup> Street/Church Street/Market Street
- 16<sup>th</sup> Street/Potrero Avenue
- 17<sup>th</sup> Street/Potrero Avenue
- 23<sup>rd</sup> Street/Potrero Avenue
- 48<sup>th</sup> Avenue/Point Lobos Avenue
- Alemany Boulevard/Bayshore Boulevard/Industrial Street
- Alemany Boulevard/Congdon Street/Justin Drive
- Alemany Boulevard/I-280 off-ramp/Putnam Street
- Alemany Boulevard/Ocean Avenue
- Alemany Boulevard/Sickles Avenue
- Bayshore Boulevard/Cortland Avenue
- Bayshore Boulevard/Jerrold Avenue/US 101 off-ramp
- Bayshore Boulevard/Oakdale Avenue
- Broadway/Van Ness Avenue
- Bryant Street/Cesar Chavez Street
- Cesar Chavez Street/Evans Avenue
- Cesar Chavez Street/Guerrero Street
- Cesar Chavez Street/I-280 off-ramp/Pennsylvania Avenue
- Cesar Chavez Street/Illinois Street
- Cesar Chavez Street/Mission Street
- Cesar Chavez Street/South Van Ness Avenue
- Clipper Street/Portola Drive
- Columbus Avenue/North Point Street
- Dewey Boulevard/Laguna Honda Boulevard/Woodside Avenue
- Evelyn Street/Portola Avenue
- Fell Street/Masonic Avenue
- Fowler Street/Portola Avenue
- Fulton Street/Masonic Avenue
- Fremont Street/Howard Street
- Geary Boulevard/Masonic Avenue
- Geneva Avenue/Ocean Avenue/Phelan Avenue
- Illinois Street/Mariposa Street/Terry Francois Boulevard

- Market Street/Octavia Boulevard
- Masonic Avenue/Turk Street
- North Point Street/Polk Street
- North Point Street/The Embarcadero
- North Point Street/Van Ness Avenue
- O'Shaughnessy Boulevard/Portola Drive/Woodside Avenue
- Ocean Avenue/San Jose Avenue

#### INTERSECTIONS FOR AM PEAK PERIOD LEVEL OF SERVICE ANALYSIS

- 14<sup>th</sup> Street/Church Street/Market Street
- Bayshore Boulevard/Jerrold Avenue/US 101 off-ramp
- Cesar Chavez Street/Mission Street
- Fulton Street/Masonic Avenue
- Geneva Avenue/Ocean Avenue/Phelan Avenue
- Market Street/Octavia Boulevard
- Masonic Avenue/Turk Street
- O'Shaughnessy Boulevard/Portola Drive/Woodside Avenue

#### TRANSIT STUDY CORRIDORS

- 2<sup>nd</sup> Street – Market Street to Townsend Street
- 5<sup>th</sup> Street – Market Street to Townsend Street
- Bayshore Boulevard – Cesar Chavez Street to Silver Avenue
- Cesar Chavez Street – Bryant Street to Valencia Street
- Laguna Honda Boulevard/7<sup>th</sup> Avenue – Lincoln Way to Portola Drive
- Masonic Avenue – Fell Street to Geary Boulevard
- McAllister Street – Central Avenue to Market Street
- North Point Street – The Embarcadero to Van Ness Avenue
- Ocean Avenue – Alemany Boulevard to Lee Avenue
- Phelan Avenue – Judson Avenue to Ocean Avenue
- Portola Drive – Corbett Avenue to Junipero Serra Boulevard
- Townsend Street – 8<sup>th</sup> Street to The Embarcadero

#### TRANSIT HOT SPOT CORRIDORS

- Alemany Boulevard – Ellsworth Street to Putnam Street
- Alemany Boulevard/Rousseau Street/Still Street/Bosworth Street – Alemany Boulevard to Diamond Street
- Clipper Street – Grand View Avenue to Portola Drive
- Division Street – 11<sup>th</sup> Street to Potrero Avenue
- Howard Street – The Embarcadero to Fremont Street
- Hunters Point Boulevard/Innes Avenue – Donahue Street to Evans Avenue
- Market Street – Valencia Street to Van Ness Avenue
- Polk Street – Grove Street to Market Street
- San Bruno Avenue – Paul Avenue to Silver Avenue
- Sloat Boulevard (westbound) – 37<sup>th</sup> Avenue to Skyline Boulevard

## LOADING AND PARKING STUDY CORRIDORS

- 2<sup>nd</sup> Street – King Street to Market Street
- 5<sup>th</sup> Street – Market Street to Townsend Street
- 17<sup>th</sup> Street Corridor – Corbett Avenue to Kansas Street
- Cesar Chavez/26<sup>th</sup> Street
  - Sanchez Street to US 101
  - I-280 to US 101
- Glen Park Area
  - Connection between Alemany Boulevard and San Jose Avenue
  - Connection between Monterey Boulevard and San Jose Avenue
- Holloway Avenue – Junipero Serra Boulevard to Varela Avenue
- Illinois Street – 16<sup>th</sup> Street to Islais Creek
- Market Street – Octavia Boulevard to 17<sup>th</sup> Street
- Masonic Avenue – Fell Street to Geary Boulevard
- Polk Street – Market Street to McAllister Street
- Portola Drive – O’Shaughnessy Boulevard to Sloat Boulevard
- Townsend Street – 8<sup>th</sup> Street to The Embarcadero

This task will include the subtasks listed below. The Contractor and SFMTA will be working together to complete these tasks, so each subtask also identifies the party with primary responsibility for that subtask (Contractor or SFMTA).

### Subtasks for Task 4:

- Task 4.1: Bicycle projects implemented since June 7, 2005;
- Task 4.2: Bicycle projects not yet implemented but at or near 100 percent design;
- Task 4.3: South of Market bicycle projects cluster;
- Task 4.4: Southeast quadrant bicycle projects cluster;
- Task 4.5: Twin Peaks Area bicycle projects cluster;
- Task 4.6: 17<sup>th</sup> Street Corridor;
- Task 4.7: Masonic Avenue Corridor;
- Task 4.8: Miscellaneous Routes;
- Task 4.9: Network Improvement Document;
- Task 4.10: Policy Framework; and
- Task 4.11: Consolidated Draft Transportation Impact Study.

Task 4.1: Bicycle Projects Implemented Since June 7, 2005 – The bicycle projects in this group have already been implemented, but need additional environmental review consistent with the November 2006 court order. SFMTA can provide “before” transportation data for comparative purposes. Projects in this group include:

1. 14<sup>th</sup> Street eastbound bike lane, Market to Dolores Streets;
2. Alemany Boulevard bike lanes, San Jose Avenue to Rousseau Street;
3. Market Street bike lanes, Van Ness Avenue to Octavia Boulevard;
4. “The Wiggle” improvements (The “Wiggle” is the flattest route for cyclists traveling from Market Street to the Panhandle Path and Park. It is a group of streets collectively identified by many cyclists as the “Wiggle” due to the numerous turns involved. The

streets included in the “Wiggle” improvements include: Duboce Avenue between Market and Steiner Streets, Haight Street between Pierce and Scott Streets, Pierce Street between Waller and Haight Streets, Scott Street between Haight and Fell Streets, Steiner Street between Duboce Avenue and Waller Street, and Waller Street between Steiner and Pierce Streets.); and

5. Various shared roadway marking (“sharrow”) projects.

Deliverable: Administrative draft of Transportation Impact Study summarizing the environmental impacts of the above projects.

Responsible party for work for sub-task deliverable:

- Initial survey: SFMTA
- Gather traffic volumes: SFMTA
- Project future traffic volumes: Contractor
- As necessary, gather parking or transit data: SFMTA
- Create new traffic model or modify existing model: Contractor
- Provide design details of projects to Contractor: SFMTA
- Quantify traffic study results: Contractor
- If project is on transit route, determine effects on transit performance, especially if lane removal is required: Contractor
- If project removes parking, determine effect on local parking conditions: SFMTA and Contractor
- Present results in tabular, diagrammatic, and narrative form as appropriate to be used in Transportation Impact Study of EIR: Contractor

Task 4.2: Outlying Bicycle Projects Not Yet Implemented But At Or Near 100 Percent Design – The projects in this group have been evaluated for projected transportation impacts, but need additional environmental review consistent with the November 2006 court order. The intersection level of service and other impacts of each of these projects will be evaluated. In most cases, SFMTA has already performed transportation impact evaluations for these projects, using Synchro software for existing and existing-plus-project but not cumulative conditions. The results of these evaluations will need to be analyzed using Traffix software. Projects in this group include:

1. 7<sup>th</sup> Avenue, bike lanes between Lawton Street and Judah Street, lane redesign/shared roadway markings from Judah Street to Lincoln Way (need to add 7<sup>th</sup> Avenue between Lincoln Way and Kirkham Street to Bike Route Network);
2. 7<sup>th</sup> Avenue at Lincoln Way intersection improvements;
3. 16<sup>th</sup> Street bike lanes, 3<sup>rd</sup> Street to Terry Francois Boulevard;
4. 23<sup>rd</sup> Street bike lanes, Kansas Street to Potrero Avenue (also listed in Task 4.4);
5. Alemany Boulevard bike lanes, Rousseau Street to Bayshore Boulevard (also listed in Task 4.4);
6. Beale Street southbound bike lane, Folsom Street to Bryant Street (will need to add to Bike Route Network, also listed in Task 4.3);
7. Broadway Tunnel signage improvements;
8. Cargo Way bike lanes, Jennings Street to 3rd Street;

9. Claremont Boulevard bike lanes, Portola Drive to Dewey Boulevard (also listed in Task 4.5);
10. Clipper Street bike lanes, Portola Drive to Douglass Street (also listed in Task 4.5);
11. Glen Park area bike lanes
  - Connection between Alemany Boulevard and San Jose Avenue via Arlington, Bosworth, Lyell, Milton, Rousseau, and Still Streets,
  - Connection between Monterey Boulevard and San Jose Avenue via Monterey Boulevard and San Jose Avenue ramps(also listed in Task 4.4);
12. Howard Street westbound bike lane, The Embarcadero to Fremont Street (also listed in Task 4.3);
13. Howard Street westbound bike lane, short extension at 9<sup>th</sup> Street;
14. Illinois Street bike lanes, 16<sup>th</sup> Street to Cargo Way;
15. John F. Kennedy Drive bike lanes, Kezar Drive to Transverse Drive;
16. John Muir Drive bike lanes, Lake Merced Blvd to Skyline Boulevard;
17. Kansas Street bike lanes, 26<sup>th</sup> Street to 23<sup>rd</sup> Street (also listed in Task 4.4);
18. Kirkham Street bike lanes, 6<sup>th</sup> Avenue to Great Highway;
19. Laguna Honda Boulevard bike lanes, Woodside Avenue to Portola Drive (also listed in Task 4.5);
20. McAllister Street bike lanes, Market Street to Masonic Avenue;
21. McCoppin Street westbound bike lane, Gough Street to Valencia Street;
22. McCoppin Street bike path, Market to Valencia Streets;
23. Mississippi Street bike lanes, Mariposa Street to 16<sup>th</sup> Street;
24. North Point Street bike lanes, Van Ness Avenue to The Embarcadero;
25. Ocean Avenue bike lanes, Alemany Boulevard to Lee Avenue;
26. Otis Street westbound bike lane, South Van Ness Avenue to Gough Street;
27. Portola Drive bike lanes, O'Shaughnessy Blvd to Corbett Avenue (also listed in Task 4.5);
28. Potrero Avenue and Bayshore Boulevard bike lanes, 25<sup>th</sup> Street to Cesar Chavez Street(also listed in Task 4.4);
29. San Bruno Avenue bike lanes, Paul Avenue to Silver Avenue (also listed in Task 4.4); and
30. Sloat Boulevard bike lanes, The Great Highway to Skyline Boulevard.

**Deliverable:** Administrative draft of Transportation Impact Study (TIS) summarizing the environmental impacts of the Task 4.2 projects (excluding those listed in clusters below, which will have their own TIS completed).

**Responsible party for work for sub-task deliverable:**

- Initial survey: SFMTA
- Gather traffic volumes: Contractor
- Project future traffic volumes: Contractor
- As necessary, gather parking or transit data: Contractor
- Create new traffic model or modify existing model: Contractor
- Determine proposed design(s) of project – note if lane and/or parking removal is necessary: SFMTA
- Quantify traffic study results: Contractor



- If project is on transit route, determine effects on transit performance, especially if lane removal is required: Contractor
- If project removes parking, determine effect on local parking conditions: SFMTA and Contractor
- Present results in tabular, diagrammatic, and narrative form as appropriate to be used in Transportation Impact Study of EIR: Contractor

Task 4.3: South Of Market Bicycle Projects Cluster – Projects in this group have been put together because of their geographic proximity and the need to evaluate their combined impacts. An initial review of 2<sup>nd</sup> Street, 5<sup>th</sup> Street and Townsend Street began in 2004, but the effort has not been completed. Projects in this group include:

1. 2<sup>nd</sup> Street bike lanes, Market Street to King Street;
2. 5th Street bike lanes, Market Street to Townsend Street;
3. Beale Street southbound bike lane, Folsom Street to Bryant Street (will need to add to Bike Route Network, also listed in Task 4.2);
4. Fremont Street southbound bike lane, Folsom Street to Harrison Street (will need to add to Bike Route Network);
5. Howard Street westbound bike lane, The Embarcadero to Fremont Street (also listed in Task 4.2); and
6. Townsend Street bike lanes, The Embarcadero to 8th Street.

Deliverable: Administrative draft of Transportation Impact Study summarizing the combined environmental impacts of the above projects.

Responsible party for work for sub-task deliverable:

- Initial survey: Contractor
- Gather traffic volumes: Contractor
- Project future traffic volumes: Contractor
- As necessary, gather parking or transit data: Contractor
- Create new traffic model or modify existing model: Contractor
- Determine proposed design(s) of project – note if lane and/or parking removal is necessary: SFMTA
- Quantify traffic study results: Contractor
- If project is on transit route, determine effects on transit performance, especially if lane removal is required: Contractor
- If project removes parking, determine effect on local parking conditions: Contractor
- Present results in tabular, diagrammatic, and narrative form as appropriate to be used in Transportation Impact Study of EIR: Contractor

Task 4.4: Southeast Quadrant Bicycle Projects Cluster – Similar to Task 4.3, these projects are to be reviewed together due to their geographic proximity and the need to evaluate their combined impacts. Projects in this group include:

1. 23<sup>rd</sup> Street bike lanes, Kansas Street to Potrero Avenue (also listed in Task 4.2);

2. Alemany Boulevard bike lanes, Rousseau Street to Bayshore Boulevard (also listed in Task 4.2);
3. Bayshore Boulevard bike lanes, Cesar Chavez Street to Silver Avenue;
4. Cesar Chavez/26<sup>th</sup> Streets corridor bike lanes, US 101 to Sanchez Street;
5. Cesar Chavez Street bike lanes, US 101 to I-280;
6. Glen Park area bike lanes
  - Connection between Alemany Boulevard and San Jose Avenue via Arlington, Bosworth, Lyell, Milton, Rousseau, and Still Streets,
  - Connection between Monterey Boulevard and San Jose Avenue via Monterey Boulevard and San Jose Avenue ramps (also listed in Task 4.2);
7. Kansas Street bike lanes, 26<sup>th</sup> Street to 23<sup>rd</sup> Street (also listed in Task 4.2);
8. Potrero Avenue and Bayshore Boulevard bike lanes, 25<sup>th</sup> Street to Cesar Chavez Street (also listed in Task 4.2); and
9. San Bruno Avenue bike lanes, Paul Avenue to Silver Avenue (also listed in Task 4.2).

**Deliverable:** Administrative draft of Transportation Impact Study summarizing the combined environmental impacts of the above projects.

**Responsible party for work for sub-task deliverable:**

- Initial survey: Contractor
- Gather traffic volumes: Contractor
- Project future traffic volumes: Contractor
- As necessary, gather parking or transit data: Contractor
- Create new traffic model or modify existing model: Contractor
- Determine proposed design(s) of project – note if lane and/or parking removal is necessary: SFMTA
- Quantify traffic study results: Contractor
- If project is on transit route, determine effects on transit performance, especially if lane removal is required: Contractor
- If project removes parking, determine effect on local parking conditions: Contractor
- Present results in tabular, diagrammatic, and narrative form as appropriate to be used in Transportation Impact Study of EIR: Contractor

**Task 4.5: Twin Peaks Area Bicycle Projects Cluster** – Similar to Tasks 4.3 and 4.4, these projects are to be reviewed together due to their geographic proximity and the need to evaluate their combined impacts. Projects in this group include:

1. Claremont Boulevard bike lanes, Portola Drive to Dewey Boulevard; (also listed in Task 4.2);
2. Clipper Street bike lanes, Portola Drive to Douglass Street (also listed in Task 4.2);
3. Laguna Honda Boulevard bike lanes, Plaza to Woodside Avenue;
4. Laguna Honda Boulevard bike lanes, Woodside Avenue to Portola Drive (also listed in Task 4.2);
5. Portola Drive bike lanes, Corbett Avenue to O'Shaughnessy Boulevard (also listed in Task 4.2); and
6. Portola Drive bike lanes, O'Shaughnessy Boulevard to Sloat Boulevard.

Deliverable: Administrative draft of Transportation Impact Study summarizing the combined environmental impacts of the above projects.

Responsible party for work for sub-task deliverable:

- Initial survey: Contractor
- Gather traffic volumes: Contractor
- Project future traffic volumes: Contractor
- As necessary, gather parking or transit data: Contractor
- Create new traffic model or modify existing model: Contractor
- Determine proposed design(s) of project – note if lane and/or parking removal is necessary: SFMTA
- Quantify traffic study results: Contractor
- If project is on transit route, determine effects on transit performance, especially if lane removal is required: Contractor
- If project removes parking, determine effect on local parking conditions: SFMTA and Contractor
- Present results in tabular, diagrammatic, and narrative form as appropriate to be used in Transportation Impact Study of EIR: Contractor

Task 4.6: 17<sup>th</sup> Street Corridor – The 17<sup>th</sup> Street bicycle corridor between Kansas Street and Corbett Avenue is a stand-alone project that requires detailed environmental review for project level clearance. This corridor also includes Potrero Avenue between 17<sup>th</sup> Street and Division Street and a connection to the 16<sup>th</sup> Street BART Station via 16<sup>th</sup> Street and either Hoff Street or Valencia Street.

Deliverable: Administrative draft of Transportation Impact Study summarizing the combined environmental impacts of the above project.

Responsible party for work for sub-task deliverable:

- Initial survey: Contractor
- Gather traffic volumes: Contractor
- Project future traffic volumes: Contractor
- As necessary, gather parking or transit data: Contractor
- Create new traffic model or modify existing model: Contractor
- Determine proposed design(s) of project – note if lane and/or parking removal is necessary: SFMTA
- Quantify traffic study results: Contractor
- Determine effect on local parking conditions: Contractor
- Present results in tabular, diagrammatic, and narrative form as appropriate to be used in Transportation Impact Study of EIR: Contractor

Task 4.7: Masonic Avenue Corridor – The Masonic Avenue bicycle corridor between Fell Street and Geary Boulevard is a stand-alone project that requires detailed environmental review for project level clearance.

Deliverable: Administrative draft of Transportation Impact Study summarizing the environmental impacts of the above project.

Responsible party for work for sub-task deliverable:

- Initial survey: Contractor
- Gather traffic volumes: Contractor
- Project future traffic volumes: Contractor
- As necessary, gather parking or transit data: Contractor
- Create new traffic model or modify existing model: Contractor
- Determine proposed design(s) of project – note if lane and/or parking removal is necessary: SFMTA
- Quantify traffic study results: Contractor
- Determine effects on transit performance: Contractor
- Determine effect on local parking conditions: Contractor
- Present results in tabular, diagrammatic, and narrative form as appropriate to be used in Transportation Impact Study of EIR: Contractor

Task 4.8: Miscellaneous Routes – The projects in this group are less developed than projects listed in Task 4.2 but have been identified as projects that could be implemented in the foreseeable future. They need project level environmental review consistent with the November 2006 court order, with the intersection level of service and other impacts of each of these projects to be evaluated. Projects in this group include:

1. 19<sup>th</sup> Avenue mixed-use path, Buckingham Way to Holloway Avenue;
2. Broadway bike lanes, Polk Street to Webster Street;
3. Buckingham Way bike lanes, 19th Avenue to 20th Avenue;
4. Division Street bike lanes, 9th Street to 11th Street;
5. Fell Street and Masonic Avenue intersection improvements;
6. Great Highway and Point Lobos Avenue bike lanes, Cabrillo Street to El Camino del Mar;
7. Holloway Avenue bike lanes, Junipero Serra Boulevard to Varela Avenue;
8. Innes Avenue bike lanes, Donahue Street to Hunters Point Boulevard;
9. Market Street bike lanes, Octavia Boulevard to 17th Street;
10. Market Street at Valencia Street intersection improvements;
11. Page and Stanyan Streets intersection traffic signal improvements;
12. Phelan Avenue bike lanes, Ocean Avenue to Judson Avenue;
13. Polk Street northbound contraflow bike lane, Market Street to McAllister Street;
14. Sagamore Street and Sickles Avenue bike lanes, Brotherhood Way to Alemany Boulevard; and
15. Scott Street northbound left-turn bike lane, Oak Street to Fell Street.

Deliverable: Administrative draft of Transportation Impact Study summarizing the environmental impacts of the above projects.

Responsible party for work for sub-task deliverable:

- Initial survey: Contractor
- Gather traffic volumes: Contractor
- Project future traffic volumes: Contractor
- As necessary, gather parking or transit data: Contractor
- Create new traffic model or modify existing model: Contractor
- Determine proposed design(s) of project – note if lane and/or parking removal is necessary: SFMTA
- Quantify traffic study results: Contractor
- If project is on transit route, determine effects on transit performance, especially if lane removal is required: Contractor
- If project removes parking, determine effect on local parking conditions: Contractor
- Present results in tabular, diagrammatic, and narrative form as appropriate to be used in Transportation Impact Study of EIR: Contractor

Task 4.9: Network Improvement Document – This task will include programmatic environmental review of the Bicycle Plan Network Improvement Document.

Deliverable: Administrative draft report summarizing the environmental impacts of the Bicycle Plan Network Improvement Document.

Task 4.10: Policy Framework – This task will include programmatic environmental review of the Bicycle Plan Policy Framework, which includes policies on Bicycle Parking, Transit and Bridge Access, Education, Enforcement and Safety, Promotion and Design Guidelines.

Deliverable: Administrative draft report summarizing the environmental impacts of the Bicycle Plan Policy Framework.

Task 4.11: Consolidated Draft Transportation Impact Study – This task will include providing MEA a Consolidated Draft Transportation Impact Study for the entire Bicycle Plan, which includes all of the action items contained in the Bicycle Plan and the specific projects listed in Task 4, organized and analyzed by geographic clusters, as defined by MEA. The Contractor's analysis shall include evaluations of existing, existing-plus-project, and future cumulative conditions with and without the project.

Deliverables:

- Prototype Cluster for Consolidated Transportation Impact Study for Bicycle Plan;
- Administrative Draft 1 Consolidated Transportation Impact Study for Bicycle Plan;
- Administrative Draft 2 Consolidated Transportation Impact Study for Bicycle Plan;
- Administrative Draft 3 Consolidated Transportation Impact Study for Bicycle Plan; and
- Draft Consolidated Transportation Impact Study for Bicycle Plan.

Task 4.12: Final Consolidated Transportation Impact Study – This task will include providing MEA, for approval, a Final Consolidated Transportation Impact Study for the entire Bicycle Plan. The Contractor shall be responsible for comparing draft level of service analysis results for consistency with recently completed environmental studies, as defined by MEA. The Contractor shall be responsible for developing methodologies for analyzing various

transportation impacts, under the direction of MEA. The contractor shall be responsible for modifying analyses of transportation impacts that result from changes to specific projects listed in Task 4, as defined by SFMTA.

Deliverable:

- Final Consolidated Transportation Impact Study for Bicycle Plan, approved by MEA.

c. Appendix A of the Agreement, *Services to be Provided by Contractor*, subsection (1), *Description of Services*, subsection *Scope of Services*, Task 5 is deleted and replaced in its entirety with the following:

Task 5: Draft EIR – Contractor shall prepare a preliminary administrative draft EIR summarizing the findings of the Transportation Impact Study and other environmental analyses of project impacts. It is anticipated that non-transportation impacts may include air quality and noise. MEA and SFMTA shall have at least ten working days to review the preliminary administrative draft EIR, and the Contractor shall have ten working days to revise the preliminary administrative draft. Contractor shall prepare a revised administrative draft relying on the same time deadlines as the preliminary administrative draft. The revised administrative draft will respond to City review of the preliminary administrative draft EIR, including the transportation, noise, and air quality topics. Contractor shall prepare a final administrative draft EIR. If staff comments require expansion of the transportation scope, or detailed analysis of EIR topics in addition to noise and air quality, Contractor shall propose an amendment to this scope of work and related budget. Contractor also shall prepare and be responsible for the distribution of a public draft EIR and a Notice of Availability. This task shall include attending at least one public hearing on the Draft EIR and retention of court recorder services for this public hearing before the Planning Commission.

Subtasks for Task 5:

Task 5.1: Administrative draft EIR;  
Task 5.2: Public draft EIR; and  
Task 5.3: Public review.

Deliverables:

- Preliminary administrative draft EIR;
- Revised administrative draft EIR;
- Final administrative draft EIR;
- Public draft EIR (200 copies); and
- Notice of Availability (200 copies).

Task 5.1: Administrative Draft EIR – Contractor shall prepare preliminary administrative draft EIR (after completion of the Transportation Impact Study) summarizing the findings of the Transportation Impact Study and other environmental analyses of project impacts. It is anticipated that non-transportation impacts may include air quality and noise. Contractor shall prepare a revised administrative draft EIR and a final administrative draft EIR.

Deliverables:

- Preliminary administrative draft EIR;
- Revised administrative draft EIR; and
- Final administrative draft EIR.

Task 5.2: Public Draft EIR – Contractor shall prepare and be responsible for the distribution of a public draft EIR and a Notice of Availability.

Deliverables:

- Public draft EIR (200 copies); and
- Notice of Availability (200 copies).

Task 5.3: Public Review – This task shall include attending at least one public hearing on the public draft EIR and retention of court recorder services for this public hearing before the Planning Commission.

**d.** Appendix A of the Agreement, *Services to be Provided by Contractor*, subsection (1), *Description of Services*, subsection *Scope of Services*, Task 6 is deleted and replaced in its entirety with the following:

Task 6: Response to Comments – Following the public comment period, the Contractor shall prepare the preliminary administrative draft response to comments. Contractor shall group all similar comments that may be addressed by a single response into a single "distinct comment" for the purpose of Task 6. To prepare the preliminary administrative draft response to comments, the Contractor shall be responsible for directing and managing the garnering of responses from City staff and all members of Contractor team. MEA and SFMTA shall have at least ten working days to review the preliminary administrative draft of Response to Comments, and Contractor shall have ten working days to revise the preliminary administrative draft of the Response to Comments. Contractor shall prepare a revised administrative draft Response to Comments relying on the same time deadlines as the preliminary administrative draft. Contractor shall prepare a final administrative draft Response to Comments. Contractor shall distribute the final Response to Comments in accordance with CEQA regulations.

Deliverables:

- Preliminary administrative draft Response to Comments;
- Revised administrative draft Response to Comments;
- Final administrative draft Response to Comments; and
- Final Response to Comments (200 copies).

**e.** Appendix B of the Agreement, *Calculation of Charges*, is deleted and shall be replaced in its entirety with the following:

City will make payments to Contractor for contract tasks completed according to the requirements of this Agreement, in the following amounts:

<b>TASK NUMBER(S)</b>	<b>PAYMENT UPON COMPLETION OF TASK</b>
1, 2 & 3	\$74,000
4.1 & 4.2	\$45,000
4.3 – 4.7	\$60,000
4.8 – 4.10	\$24,000
4.11	\$102,000
4.12	\$203,980
5.1	\$115,935
5.2	\$44,000
5.3, 6.1 & 6.2	\$110,000
7, 8 & 9	\$45,000
<b>TOTAL</b>	<b>\$823,915</b>

**f. Food Service Waste Reduction Requirements.** Section 59 is hereby added to the Agreement, as follows:

**59. Food Service Waste Reduction Requirements**

Effective June 1, 2007, Contractor 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, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor 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 Contractor's failure to comply with this provision.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Modification No. 2.

**4. Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.



IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY	CONTRACTOR
<b>San Francisco Municipal Transportation Agency</b>	<b>Wilbur Smith Associates</b>
<hr/>	<hr/>
Nathaniel P. Ford, Sr. Executive Director/CEO	Authorized Signature
Approved as to Form:	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.
Dennis J. Herrera City Attorney	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.
By: <hr/>	William E. Hurrell Regional Vice President Wilbur Smith Associates 201 Mission Street, Suite 1450 San Francisco, CA 94105
Christiane Hayashi Deputy City Attorney	
AUTHORIZED BY:	
MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS	
Resolution No: <hr/>	<u>(415) 495-6201</u> Phone Number
Adopted: <hr/>	<u>57-0405950</u> Federal Employer ID Number
Attest: <hr/>	<u>91562</u> City Vendor Number
Roberta Boomer, Secretary to the SFMTA Board of Directors	

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

**MUNICIPAL TRANSPORTATION AGENCY  
City and County of San Francisco**

**DIVISION:** Muni Operations

**BRIEF DESCRIPTION:**

Authorizing the acceptance of Contract No. MR-1057-R, Muni Metro System: Replacement of Emergency Batteries and Charger Systems at Embarcadero and Van Ness Stations with Ingalls Power Products; approving Contract Modification No. 1 – Final, extending the contract duration by 287 days and increasing the contract amount by \$26,355.93 to a final contract amount of \$168,543.93; authorizing the release of final payment in the amount of \$52,945.08 to the contractor; and approving closeout of the contract.

**SUMMARY:**

- On April 19, 2005 the Municipal Transportation Agency Board of Directors adopted Resolution No. 05-060 authorizing the Director of Transportation to reject the one non-responsive bid received for MR-1057 and either re-advertise for bid call or negotiate an agreement for the work with a responsible contractor pursuant to San Francisco Administrative Code Section 65.23(C).
- The Director of Transportation authorized negotiation of an agreement with Ingalls Power Products in the amount of \$142,188.00.
- The Notice to Proceed was issued on August 29, 2005.
- The work under this contract was substantially completed on September 9, 2006.
- The Contractor has completed the punch list items and submitted the final as-built drawings
- Contract Modification No. 1 determines the final contract amount of \$168,543.93, an increase of \$26,355.93 to the original contract amount.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Budget and Financial Plan
3. Contract Modification No.1 (Final)

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION  
PREPARING ITEM

\_\_\_\_\_

\_\_\_\_\_

FINANCE

\_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO

\_\_\_\_\_

\_\_\_\_\_

SECRETARY

\_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION  
BE RETURNED TO

Rosa Rankin, 700 Pennsylvania

**ASSIGNED SFMTAB CALENDAR DATE:** \_\_\_\_\_

## **PAGE 2.**

### **PURPOSE:**

The purpose of the contract was to replace the existing battery, banks, racks, and accessories at the Embarcadero and Van Ness Stations. The batteries were installed as part of the original signal system in the 1970's and had reached the end of their useful life.

### **GOAL:**

This project meets the following goals and objectives of the 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."

Goal 5: MTA 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 the evolving, technology-driven future

Objective 5.2, "Improve Facilities in Which People Are Working."

### **DESCRIPTION:**

The scope of work for this Contract was to replace the existing emergency batteries and chargers for the Muni Metro's Signal System at the Embarcadero and Van Ness stations. This included providing all labor, materials, equipment, design and engineering to replace the existing battery banks, racks, and accessories, and furnish and install a brand new, turn-key battery and charger system, complete with all required appurtenances, in relay rooms at those stations.

On April 19, 2005 the Municipal Transportation Agency Board of Directors adopted Resolution No. 05-060, authorizing the Director of Transportation to reject the one non-responsive bid received for MR-1057, Muni Metro System: Replacement of Emergency Batteries and Charger Systems at Embarcadero and Van Ness Stations and either re-advertise for bid call or negotiate an agreement for the work with a responsible contractor pursuant to San Francisco Administrative Code Section 6.23(C).

The Director of Transportation authorized negotiation of Contract No. MR-1057-R with Ingalls Power Products for an amount of \$142,188.00. The contract was certified under a declaration of emergency issued by the Chairman of the Board of Directors.

Muni issued the Notice to Proceed with the work on August 29, 2005. The original contract duration was 90 calendar days.

In order to maintain the available clearance space between the new batteries and the existing relay racks, in September 2005, Muni requested the contractor to change the specified batteries for the Van Ness Station only from the Absoltve IIP module 6-90A11 to two strings of the smaller 6-50A13 module and the furnishing and installation of battery temperature probes, cables and conduits at both Van Ness and Embarcadero stations. All other requirements of the specifications remained the same.

**PAGE 3.**

**DESCRIPTION:**

Contract Modification No. 1 – Final adds \$26,355.93 for additional work, approves the final contract amount of \$168,543.93, extends the contract duration by 287 calendar days, and accepts the work under the Contract as complete. The reasons for the time extension of 287 days are explained in the following chart:

Number of Days	Description
42	a change in the specified batteries for Van Ness Station,
42	furnishing and installation of battery temperature probes, cables and conduits at both Van Ness and Embarcadero stations
113	Contractor's Supplier delivered the wrong type of receptacle for the emergency generator. The receptacle is not a standard product of the supplier and required special fabrication as well as discussion between the designer, contractor and supplier. During this period the contractor demobilized as a result of the delay in manufacturing the receptacle; and remobilized his work force when the receptacle was delivered by the vendor. The receptacle is not a standard production item and was specifically manufactured for this project
90	The delay in closing out the contract was caused by the contractor's failure to submit certified payrolls in the appropriate format. During the course of the contract Ingalls Power Products was purchased by Exide Technologies. Payroll functions were performed by Exide for the last several months of the contract. Exide failed to submit proper certified payroll documents. The corrected certified payrolls were eventually prepared and have been submitted by the Contractor and SFMTA verified that all employees have been paid prevailing wages.

Substantial completion for the contract was declared on September 9, 2006. The Contractor has satisfactorily completed all punch-list work. The Emergency Batteries and Charger Systems are in operation and are being maintained by the Muni Signal Shop. The project was completed successfully without any interruption of service to the general public.

**ALTERNATIVES CONSIDERED:**

The only alternative considered was to not replace the existing signal battery system. Given the age of the existing system the alternative was rejected because a system failure would result in the lack of a signal system in the Market Street subway.

**FUNDING IMPACT:**

Funding was from the San Francisco Transportation Authority.

**PAGE 4.**

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The Contract Compliance Office has reviewed and approved this contract modification and verified that the contractor has met the established goal of 15%.

The City Attorney has reviewed this calendar item.

**RECOMMENDATION**

Staff requests that the SFMTA Board of Directors accept Municipal Transportation Agency Contract No. MR-1057-R, Muni Metro System: Replacement of Emergency Batteries and Charger Systems at Embarcadero and Van Ness Stations; approve Contract Modification No. 1 – Final, extending the contract duration by 287 days and increasing the contract amount by \$26,355.93 to a final contract amount of \$168,543.93; authorize the release of final payment in the amount of \$52,945.08 to the contractor; and approve closeout of the contract.

MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS  
CITY AND COUNTY OF SAN FRANCISCO

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

WHEREAS, The Municipal Transportation Agency (MTA) Board of Directors adopted Resolution No. 05-060 on April 19, 2005, authorizing the Director to reject the one non-responsive bid received for MR-1057 and to either re-advertise for bid call or negotiate an agreement for the work with a responsible contractor pursuant to San Francisco Administrative Code Section 6.23(C); and,

WHEREAS, The Director of Transportation authorized staff to negotiate an agreement with Ingalls Power Products; and,

WHEREAS, An agreement was certified by the Controller on August 4, 2005 with Ingalls Power Products in the amount of \$142,188.00 under a declaration of Emergency issued by the Chairman of the MTA Board of Directors; and,

WHEREAS, MTA issued the Notice to Proceed for the work on August 29, 2005; and,

WHEREAS, The work under this Contract was substantially completed on September 9, 2006, and the Contractor has completed all remaining work under the Contract; and,

WHEREAS, The final Contract Modification No. 1 will increase the approved contract amount by \$26,355.93, to a final contract amount of \$168,543.93 and extend the contract term by 287 calendar days; now, therefore be it,

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors accepts the work performed under Municipal Transportation Agency Contract MR-1057-R, Muni Metro System: Replacement of Emergency Batteries and Charger Systems at Embarcadero and Van Ness Stations with Ingalls Power Products; approves Contract Modification No. 1, which increases the contract amount by \$26,355.93 to a final contract amount of \$168,543.93; approves an extension of time of 287 calendar days; authorizes final payment in the amount of \$52,945.08 to the contractor; and approves the closeout of the contract.

I certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of \_\_\_\_\_.

\_\_\_\_\_  
Secretary, Municipal Transportation Agency Board

## ENCLOSURE 2

Municipal Transportation Agency Contract MR-1057-R  
Muni Metro System: Replacement of Emergency Batteries and  
Charger Systems at Embarcadero and Van Ness Stations

### PROJECT BUDGET

Category	Amount
Engineering, Inspection & Project Management	\$ 35,000.00
Construction Contract	\$200,000.00
Other Direct Costs	\$ 34,000.00
Total Base Budget	\$269,000.00

### FINANCIAL PLAN

Category	Amount	Percentage
Transportation Authority CPT 534	\$269,000.00	100%
Total Base	\$269,000.00	100%

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### CONTRACT MODIFICATION NO. 1

Municipal Transportation Agency Contract No. MR-1057-R  
Muni Metro System: Replacement of Emergency  
Batteries and Charger Systems at Embarcadero and  
Van Ness Stations

Contractor: Ingalls Power Products  
A Division of Excide Technologies  
P.O. Box 8335  
Emeryville, CA 94662-0035

The Contract is hereby modified as follows:

Description	Quantity	Unit	Amount
Additional Battery			
Additional costs for battery and freight	1	ea	\$ 5,642.00
Additional labor to install battery	1	ea	\$ 4,725.00
Additional Materials	1	lot	\$ 1,857.53
Total			\$ 12,224.53
Labor			
Additional Labor to install temperature probe and rigid conduit for probe – Embarcadero	1	Ea	\$ 2,252.50
Material	1	Lot	\$ 383.16
Additional Labor to install temperature probe and rigid conduit for probe – Van Ness	1	Ea	\$ 1,887.50
Material	1	Lot	\$ 492.24
Total			\$ 5,015.40
Tools			
Fluke model #337 AC-DC clamp-on meter	2	427.00	\$ 854.00
Fluke model #1R476 meter holster	2	28.00	\$ 56.00
Fluke model #4C867 meter	1	413.00	\$ 413.00
Alber Cellcorder CL300 with 2-3 hour demo	1	7473.00	\$ 7,473.00
Approximate Freight for tools	1	Ea	\$ 320.00
Total			\$ 9,116.00
Total amount of the Contract Modification Increase			\$ 26,355.93
Previous total of Contract			\$142,188.00
Revised Total Amount			\$168,543.93

This Modification is made in accordance with Section 75 of the Contract General Provisions.

Except as provided herein all previous terms and conditions of the Contract remain unchanged.

The City's payment of the costs for the Additional Work above is a full and complete settlement of any and all costs incurred by the contractor for labor and material costs (and mark-up associated with those costs) in its direct performance of the Additional Work.

The impacts of the Additional Work to the Contract are not known at this time. Contractor reserves the right to submit a certified claim for all impacts under Section 98.B of the General Provisions.



**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Transportation Planning and Development

**BRIEF DESCRIPTION:**

Requesting authorization to award San Francisco Municipal Transportation Agency Contract CS-149, Professional Program Management and Construction Management Services for the Central Subway Project, to Central Subway Partnership, a joint venture of AECOM USA, Inc. and EPC Consultants for an amount not to exceed \$147,375,171 for a term not to exceed five years with an option to extend the term an additional five years.

**SUMMARY:**

- The selected Consultant will provide necessary professional program management and construction management services during the design and construction of the Central Subway Project.
- SFMTA Board of Directors adopted Resolution No. 08-030 on February 19, 2008 authorizing the Executive Director/CEO to issue a Request for Proposal (RFP), receive proposals, select the highest ranking proposal, and negotiate a contract for an amount not to exceed \$82,000,000, and for a term not to exceed five years with an option to extend the term for an additional five years.
- SFMTA advertised the RFP on March 17, 2008 and completed the contract negotiations with the highest ranked firm in November 2008.
- The base contract for completion of the program management and construction management within the initial five year term is \$85,139,092.
- Options to provide additional services have been negotiated to an amount not to exceed \$62,236,079.
- All work to be performed and certified by the Controllers' Office under this contract will be authorized by the SFMTA through the issuance of annual work plans and task orders.

**ENCLOSURES:**

1. SFMTA Board of Directors Resolution
2. Project Budget & Financial Plan
3. List of Subcontractors
4. Contract Agreement

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION  
PREPARING ITEM

\_\_\_\_\_

\_\_\_\_\_

FINANCE

\_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO

\_\_\_\_\_

\_\_\_\_\_

SECRETARY

\_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION  
BE RETURNED TO

Contracting Section  
Ann: Gigi Pabros  
1 South Van Ness, 3rd Floor  
San Francisco, CA 94103

**ASSIGNED SFMTAB CALENDAR DATE:** \_\_\_\_\_

**PURPOSE**

Requesting authorization to award San Francisco Municipal Transportation Agency Contract CS-149, Professional Program Management and Construction Management Services for the Central Subway Project, to Central Subway Partnership, a joint venture of AECOM USA, Inc. and EPC Consultants for an amount not to exceed \$147,375,171 for a term not to exceed five years with an option to extend the term an additional five years.

**GOAL**

The proposed Contract No. CS-149 will help further 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 1.3 Reduce emissions as required by SFMTA Clean Air Plan
  - Objective 1.4 Improve accessibility across transit service
  - Objective 1.5 Increase percentage of trip using more sustainable modes
- Goal 2 – System Performance: To get customers where they want to go, when they want to be there
  - Objective 2.2 Ensure efficient transit connectivity and span of service
  - Objective 2.4 Reduce congestion through major corridors
- 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
  - Objective 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits
  - Objective 3.3 Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life
  - Objective 3.4 Enhance proactive participation and cooperatively strive for improved regional transportation
- Goal 4 – Financial Capacity: To ensure financial stability and effective resource utilization
  - Objective 4.2 Ensure efficient and effective use of resources

**DESCRIPTION**

**Background:**

San Francisco Municipal Transportation Agency's (SFMTA) 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 Phase 2, Central Subway 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 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 will serve both the mobility needs of existing land uses (with 56,000 riders projected for 2016) and future development (with 78,000 riders projected for 2030).

## PAGE 3

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.

Critical populations will be well served by the Project, bringing improved service to low-income, minority and no-car households, decreasing travel time and improving reliability. Over half of the benefits for those who use the Central Subway are expected to accrue to low-income people, who comprise 19% of the total households along the Third Street alignment. The 2000 census shows that 54% of the households along the entire corridor do not have access to a vehicle, and within the Central Subway portion of the alignment, 68% of the households are transit-dependent.

The Final Environmental Impact Statement/Final Environment Impact Report (Final EIS/EIR) for the two-phase Project was completed and published in November 1998. The City Planning Commission certified the FEIS/FEIR on December 3, 1998. On January 19, 1999, the Public Transportation Commission approved Resolution No. 99-009, 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 FEIR and Mitigation Monitoring Report. The Federal Transit Administration (FTA) issued a Record of Decision (ROD) for the Initial Operating Segment (IOS) of the Project (the Third Street LRT Phase 1) on March 16, 1999, under the National Environmental Protection Act (NEPA), and authorized the SFMTA to enter into final design for the initial operating segment (IOS) in the early half of 2000.

The SFMTA Board of Directors adopted Resolution No. 02-144 on November 19, 2002, which authorized the Director of Transportation to execute Contract No. CS-138 with the joint venture of Parsons Brinckerhoff Quade & Douglas and PGH Wong for professional engineering and other support services for the Central Subway segment of the Project ("PB/Wong Agreement"), in an amount not to exceed \$29,800,000. The Board of Supervisors adopted Resolution No. 03-58 on January 27, 2003, which authorized the Director of Transportation to execute the PB/Wong Agreement. The PB/Wong Agreement included services to prepare a SEIS/SEIR for the Project.

The San Francisco Municipal Transportation Agency Board of Directors, adopted Resolution No. 05-087 on June 7, 2005, selecting the Fourth Street alignment as the Locally Preferred Alternative for the Central Subway phase of the Project. This alternative was carried through the SEIS/SEIR and the federal New Starts funding process.

The Draft Supplemental EIS/EIR was issued on October 17, 2007, for a 55-day public review period. During the public comment period, a series of three publicized community meetings were held in the Chinatown, Union Square and South of Market areas to provide information to the public about the Draft SEIS/SEIR released for public review. These informational meetings were well attended and the public was provided with opportunities to view renderings and talk with project staff about the Project and the environmental process. The San Francisco Planning Department conducted a public hearing on the Supplemental EIS/EIR on November 15, 2007.

The public comment period was closed on December 10, 2007. SFMTA received 39 comment letters, and 23 people, representing 20 organizations, provided comments at the Planning Commission public hearing held on November 15, 2007. At the public hearing, 19 speakers expressed support for the Project and one

opposed the Project. Of those responding during the public comment period, five (including the Recreation and Parks Department) expressed support specifically for Alternative 3B.

The San Francisco Municipal Transportation Agency Board of Directors, adopted Resolution No. 08-029 on February 19, 2008 selecting the Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street, as the Locally Preferred Alternative, authorizing the Executive Director/CEO to carry forward this selection in the Final SEIS/SEIR.

The San Francisco Planning Commission adopted Motion No. M-17668 on August 7, 2008 certifying completion of the Central Subway Final SEIR. The Planning Commission certified the SEIR as accurate, adequate and objective, reflecting the independent judgment of the Planning Commission.

The San Francisco Municipal Transportation Agency Board of Directors, adopted Resolution No. 08-150 on August 19, 2008 adopting Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street and a construction variant to extend the tunnel another 2,000 feet north of Jackson Street, the CEQA Findings and Statement of Overriding Considerations for the SEIS/SEIR and the Mitigation Monitoring and Reporting Plan.

Environmental appeals were filed and heard by the Board of Supervisors on September 16, 2008. The Board of Supervisors voted unanimously to uphold the Environmental findings.

The Notice of Determination was filed on September 18, 2008 and the 30-day legal challenge period has expired without any legal challenges being filed. The notice for the Final SEIR appeared in the Federal Register on October 3, 2008 and the 30-day waiting period has elapsed.

The FTA is anticipated to issue a ROD for the Central Subway phase in November 2008.

**Current Status:**

The Central Subway design consists of 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 being proposed in order to reduce the amount of surface disruption during construction, to allow for 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 is currently completing the preliminary engineering work. Construction is scheduled to begin in 2010. The start of revenue operation is scheduled for 2016.

**Purpose and Scope of Contract:**

The anticipated complexity of the Central Subway, including tunneling and/or cut-and-cover construction, in proximity to sensitive urban structures and facilities, poses significant coordination, management, design and construction challenges to the city. The city does not have the specialized expertise or staff resources to perform all services necessary for a project of this size and intricacy. Given the substantial capital investment in the Central Subway and the target project completion schedule of 2016, it is in the best interest of the agency to engage a qualified consultant with specific experience and expertise in transit tunnel program management, construction management, and other professional services for the execution of the Central Subway phase of the Third Street Project.

The purpose of this contract is to secure program management, construction management and other services during design and construction. Services include the following:

- overall program management
- implementation of a program management/ implementation plan;
- planning and environmental coordination that will oversee and track the mitigation monitoring reporting plan;
- establishment of a master funding plan/schedule and maintenance of current and projected cash requirements;
- implementation of control strategies to manage risks, and risk management strategies for claims avoidance;
- assistance in right-of-way activities and implementation of a plan for any tenant and/or business relocations;
- regulatory and interagency coordination to secure local, regional, state and federal approvals;
- assistance in securing agreements with City departments;
- community relations/ public outreach management;
- oversight of the final design team, including organizing independent technical design review of design packages;
- conducting peer reviews, value engineering and energy efficiency reviews;
- preconstruction management to assess market conditions, assess the potential bidder pool, prepare independent contractor cost estimates, conduct constructability reviews, assist in the bidding process and analyze bids;
- construction management, including implementation of the construction management plan, development of a construction management procedures manual and safety manual, administering contracts, monitoring progress and quality of construction, developing community relations/ public outreach events to address construction impacts to public, reviewing contractor schedules, reviewing/ developing material and/or equipment testing, and assisting with safety and security system certification program;
- Quality assurance/ quality control program procedures and oversight.

The contract proposes an initial term of five years for program management and construction management, which coincides with the completion of final design, bidding and awarding of construction contracts, and the beginning of initial construction contracts. The Agency may elect to extend the contract for a second term of up to five years for continued program management, construction management and close-out services, which will include oversight of all construction contracts and revenue service start-up.

For this contract, the prime consultant, the consultant's key personnel and all architectural/engineering sub-consultants will be precluded from participating in any subsequent RFPs for final design, project controls, construction and procurement services for the Central Subway Project.

**Selection Process:**

SFMTA Board of Directors adopted Resolution No. 08-030 on February 19, 2008 authorizing the Executive Director/CEO to issue a Request for Proposal (RFP), receive proposals, select the highest ranking proposal, and negotiate a contract for an amount not to exceed \$82,000,000, and for a term not to exceed five years with an option to extend the term for an additional five years.

The RFP was advertised on March 17, 2008 and two proposals were submitted on June 6, 2008 in response to the advertisement. The two proposals were submitted by the Central Subway Partnership (CSP), a joint venture of DMJM Harris (which has since changed its name to AECOM USA, Inc.) and EPC Consultants, and a joint venture of Parsons and Hatch Mott McDonald. Proposals were evaluated by a technical selection committee comprised of members from various SFMTA divisions, City Departments and BART. CSP was selected as the highest ranked proposer.

Negotiations have been underway since mid October. The negotiations have focused on ensuring that the SFMTA and City are obtaining cost-effective program management and construction management services that will help ensure that the public receives a quality transit system, on time and within budget. The consultant team had provided a proposed budget that responded to their understanding of the level of effort necessary to satisfy the scope provided by SFMTA. During negotiations, it became apparent that there were certain tasks that required support from the consultant that was greater than originally anticipated. These augmented tasks included:

- Community Outreach Program – extended to include support during construction and start-up, and augmented during final design to provide proactive outreach and heightened community communications.
- Systems Integration - Operations Support in Systems Integration and Startup to assure that system operability goals are addressed throughout the project delivery process and are reflected in the delivery of a seamless transit system on opening day.
- Construction Management - additional support in the areas of training, testing, inspection, and commissioning to ensure quality delivery of a world class project.
- FTA “New Starts” Program Support – expertise in FTA reporting and financial requirements to be responsive to federal requirements.
- Enhanced Risk Assessment and Mitigation Program – implementation of proactive budget contingency and schedule float allowance procedures in accordance with FTA requirements.
- Tenant Relocation Support Services – augmented to assure availability of right of way and consistency with Federal relocation requirements.
- Additional Agency Coordination – focused collaboration with the Mayor’s Office of Economic and Work Force Development.
- Safety - addition of a full-time safety officer during Final Design and Construction Phases.

As a result of these negotiations and enhanced task descriptions, the negotiated contract budget amount exceeded the amount originally estimated and included in the Board’s authorization to advertise, issue an RFP, evaluate proposals and enter negotiations. SFMTA management concludes that the award of the contract to Central Subway Partnership and approval of negotiated scope and fee will support SFMTA goals and objectives in the delivery of the Central Subway Project by: maintaining customer focus, enhancing proactive community participation, fostering a high standard of performance and quality, and ensuring efficient and effective use of public resources.

SFMTA successfully negotiated a contract with the Consultant in November 2008 for a total amount of \$147,375,171. The base contract for completion of the program management and construction management within the initial five year term is \$85,139,092. Options to provide additional services have been negotiated to an amount not to exceed \$62,236,079.

The work breakdown (hours and Year of Expenditure (YOE) Cost) is as follows:

Title	Phase 1 Base 2009-2014 Base		Phase 2 Base 2014-2017 Base		Phase 1 Options 2009-2014 Optional	
	Hours	\$ YOE Cost	Hours	\$ YOE Cost	Hours	\$ YOE Cost
1-1 Program Management	50,362	\$8,021,682	31,646	\$6,012,451	0	\$0
1-2 Planning/Environmental	0	\$0	0	\$0	1,816	\$365,223
1-3 Financial Management	13,930	\$2,302,005	8,756	\$2,045,820	0	\$0
1-4 Risk Management	14,340	\$2,380,240	9,308	\$1,928,644	318	\$58,796
1-5 Right of Way Acquisitions/Tenant Relocations	5,684	\$854,335	0	\$0	0	\$0
1-6 Regulatory/Interagency Coordination	11,180	\$1,785,074	0	\$0	0	\$0
1-7 Community Outreach	33,350	\$5,084,767	20,080	\$3,454,660	12,232	\$1,252,915
1-8 Design Management	12,988	\$2,894,444	0	\$0	0	\$0
1-9 Pre-Construction	3,046	\$817,014	0	\$0	0	\$0
1-10 Construction Management	186,042	\$28,680,351	123,250	\$22,002,456	0	\$0
1-11 Start-up, Testing and Commissioning	0	\$0	7,718	\$2,105,864	5,960	\$1,814,591
1-12 Quality Assurance/Quality Control	8,630	\$1,964,878	6,175	\$1,677,748	7,760	\$1,382,832
1-13 Document Management & Administrative Support	23,390	\$2,975,773	15,522	\$3,235,536	0	\$0
1-14 Systems Configuration Management	2,400	\$841,536	3,632	\$916,821	0	\$0
1-15 Systems Project Integration	21,390	\$3,622,884	15,180	\$3,522,011	11,831	\$3,994,605
1-16 Sustainability	0	\$0	0	\$0	1,304	\$264,405
1-17 Project Controls	9,159	\$2,100,376	2,600	\$786,708	0	\$0
1-18 New Starts Report	1,724	\$318,965	0	\$0	2,877	\$538,355
Direct Labor Costs:	397,616	<b>\$64,644,324</b>	243,867	<b>\$47,688,720</b>	44,098	<b>\$9,671,722</b>
Fixed Fees		<b>\$5,494,768</b>		<b>\$4,053,541</b>		<b>\$822,096</b>
Other Direct Costs (Reimbursable Expenses)		<b>\$15,000,000</b>				
Total:	397,616	<b>\$85,139,092</b>	243,867	<b>\$51,742,261</b>	44,098	<b>\$10,493,818</b>

Optional professional services identified under this agreement include planning, community outreach, construction management, start-up, testing and commissioning, and systems project integration.

All work to be performed and certified by the Controllers' Office under this contract will be authorized by the SFMTA through the issuance of Annual Work Plans and task orders to be approved by the Executive Director/CEO.

Optional work has been established to provide professional program and construction management support for the duration of the Central Subway Program delivery. Optional services beyond the scope identified during the Phase 1 base list of services shall be authorized upon the approval of the Executive Director/CEO.

A list of Sub-consultants performing work under this contract is represented in Enclosure 3.

Copy of the Consultant Agreement including Exhibit A, Scope of Services, are attached as Enclosure 4. Other exhibits are not attached hereto but are available at the SFMTA Board Secretary's office for review.

## **PAGE 8**

The Contract Compliance Office has established a 30% SBE goal for this contract and has approved this calendar item.

Due to the amount of the contract, the Board of Supervisors must also approve the contract. The City Attorney will sign the contract as to form after the Board of Supervisors has approved it.

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

### **ALTERNATIVES CONSIDERED**

The City does not have the specialized expertise or staff resources to perform all services necessary for a project of this size and complexity. Given the substantial capital investment in the Central Subway and the target project completion schedule of 2016, it is in the best interest of the SFMTA to engage a qualified consultant with specific experience and expertise in transit tunnel program management, construction management, and other professional services for the execution of the Central Subway phase of the Third Street Project.

### **FUNDING IMPACT**

Consultant services, under this contract, are funded from federal, state and local sources.

The Project Budget & Financial Plan is set forth in Enclosure 2.

### **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

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

### **RECOMMENDATION**

Staff recommends that the San Francisco Municipal Transportation Agency Board of Directors authorize the Executive Director to execute Contract CS-149, Professional Program Management and Construction Management Services for the Central Subway, with Central Subway Partnership for an amount not to exceed \$147,375,171 for a term not to exceed five years with an option to extend the term for an additional five 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 two-phase Third Street Light Rail Project (the "Project") was completed in November 1998; and,

WHEREAS, The Public Transportation Commission adopted 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 1.75-mile Central Subway ("Central Subway Project") is Phase 2 of the Third Street Light Rail Transit Project; and,

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted Resolution No 05-087 on November 19, 2002, which authorized the Director of Transportation to execute Contract No. CS-138 with Parsons Brinkerhoff Quade and Douglas and PGH Wong (PB/Wong) for Professional Engineering and other support services for the Central Subway; and,

WHEREAS, The SFMTA Board of Directors adopted Resolution No 02-144 on June 7, 2005, which selected the Fourth Street alignment as the Locally Preferred Alternative for the Central Subway Project, which alternative will be carried through the Supplemental Environmental Impact Statement/Environmental Impact Report ("SEIS/SEIR") and the federal New Starts Process; and,

WHEREAS, The SFMTA Board of Directors adopted Resolution No. 08-029 on February 19, 2008 selecting the Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street, as the Locally Preferred Alternative; and,

WHEREAS, The SFMTA Board of Directors adopted Resolution No. 08-030 on February 19, 2008 authorizing the Executive Director/CEO to issue a Request for Proposal (RFP) for Contract No. CS-149 for Professional Program Management and Construction Management Services for the Central Subway Project, receive proposals, select the highest ranking proposal, and negotiate a contract for an amount not to exceed \$82,000,000, and for a term not to exceed five years with an option to extend the term for an additional five years; and,

WHEREAS, The San Francisco Planning Commission adopted Motion No. M-17668 on August 7, 2008 certifying completion of the Central Subway Final Supplemental Environmental Impact Report; and,

WHEREAS, The Executive Director/CEO shall inform the SFMTA Board of Directors when the Agency exercises an option under the Agreement; and,

WHEREAS, The SFMTA Board of Directors, adopted Resolution No. 08-150 on August 19, 2008 adopting Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street and a construction variant to extend the tunnel another 2,000 feet north of Jackson Street, the CEQA Findings and Statement of Overriding Considerations for the SEIS/SEIR and the Mitigation Monitoring and Reporting Plan; and,

WHEREAS, The anticipated complexity of the Central Subway Project, in proximity to sensitive urban structures and facilities, poses significant coordination, management, design and construction challenges to the City; and,

WHEREAS, The City does not have the specialized expertise or staff resources to design and manage a project of this size and intricacy; and,

WHEREAS, The SFMTA conducted a competitive selection process, and Central Subway Partners' proposal was the highest ranked of two responsible and responsive proposers; and,

WHEREAS, Staff and Central Subway Partners have engaged in a lengthy and detailed contract negotiation to determine the costs and resources necessary to provide the Central Subway Project comprehensive program management and construction management services; and,

WHEREAS, The final scope of consultant services will be set out in annual work plans and task orders, to be approved by the ED/CEO or his designee; and,

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

WHEREAS, The Contract will assist SFMTA in meeting the objectives of Goal No. 1 of the Strategic Plan -- to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy; Goal No. 2 -- to improve transit reliability; Goal No. 3 --to improve economic vitality through improved regional transportation; and Goal No. 4 -- 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 execute, subject to resolution of any protests, in a form substantially similar to that provided to this body, Contract CS-149, Professional Program Management and Construction Management Services for Central Subway, Third Street Light Rail Project Phase 2, with Central Subway Partnership for an amount not to exceed \$147,375,171 for all base contract work with options, for a term not to exceed five years with an option to extend the term for an additional five years; options to be exercised by the Agency by the approval of the Executive Director/CEO; and be it

FURTHER RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors requests that the Board of Supervisors approve Contract CS-149, Professional Program Management and Construction Management Services for Central Subway, Third Street Light Rail Project Phase 2, with Central Subway Partnership for an amount not to exceed \$147,375,171 for all base contract work with options, for a term not to exceed five years with an option to extend the term for an additional five years; options to be exercised by the Agency by the approval of the Executive Director/CEO.

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 CS-149

<b>Cost (\$Millions)</b>	<b>Amount</b>
Conceptual and Preliminary Engineering	43.41
Program Management & Construction Management	110.66
Final Design	89.39
Construction Contracts	934.42
Vehicles	28.34
Contingency	97.54
<b>Total Central Subway Expense</b>	<b>\$ 1,303.76</b>

<b>Funding (\$Millions)</b>	<b>Amount</b>
Federal 5309 New Starts <sup>1</sup>	762.20
State RTIP Grant	88.20
CMAQ	4.00
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	126.00
Option Parking Revenue	69.36
<b>Total Central Subway Funding</b>	<b>\$ 1,303.76</b>

<sup>1.</sup> New Starts funding to be determined after FTA issues approval to enter Final Design

ENCLOSURE 3  
THIRD STREET LIGHT RAIL PROJECT  
CENTRAL SUBWAY  
LIST OF SUBCONTRACTORS

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

**and**

**Central Subway Partners, a Joint Venture between  
AECOM USA and EPC Consulting**

**for Program Management and Construction Management  
Services for  
the San Francisco Municipal Transit Agency  
Central Subway Project**



**Agreement between the City and County of San Francisco and  
Central Subway Partners, a Joint Venture between  
AECOM USA and EPC Consultants  
for Program Management and Construction Management Services for  
the San Francisco Municipal Transportation Agency Central Subway Project**

This Agreement, dated for convenience as December 16, 2008, in the City and County of San Francisco, State of California, by and between: Central Subway Partners ("Consultant" or "Consultants"), a joint venture between AECOM USA, Inc. and EPC Consultants, Inc. and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

**Recitals**

**A.** The SFMTA wishes to obtain services from a qualified consulting firm capable of providing Program Management and Construction Management Services for the Central Subway Project, Phase 2 of the SFMTA Third Street Light Rail Project ("the Project").

**B.** A Request for Proposals was issued on March 17, 2008 ("the RFP"), and the SFMTA selected Consultant as the highest qualified proposer pursuant to the RFP.

**C.** Consultant represents and warrants that it is qualified to perform the services required by the SFMTA as set forth under this Contract.

**D.** Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number \_\_\_\_\_ on \_\_\_\_\_.

**Now, THEREFORE, the parties agree as follows:**

**I. DEFINITIONS**

1. Additional Services or Additional Work means work or services outside the Scope of Services under this Agreement as set out in this Agreement, its included appendices, the RFP, and the Consultant's Proposal.
2. Agreement or Contract means to this Agreement for Program Management and Construction Management Services and all referenced Exhibits to this Agreement.
3. Annual Work Plan means the Scope of Work agreed between the Parties that Consultant shall perform within a contract year.
4. Appendix or Exhibit means a document or set of documents attached to this Agreement and incorporated thereto by reference.
5. Award means authorization by resolution of the SFMTA Board of Directors for its staff to execute the Contract with the selected proposer, and approval of the Contract by the San Francisco Board of Supervisors.
6. Base Contract Services means that Work performed in Phase One, as described in Appendix A that is not Optional Services.
7. Branch Office means a geographically distinct place of business or subsidiary office of a firm that has a key role on the project team.

8. CCO means the Contract Compliance Office of the SFMTA, the part of the Agency responsible for enforcing City ordinances concerning SBE participation and prevailing wage requirements.
9. City means the City and County of San Francisco.
10. Controller means the Controller of the City and County of San Francisco.
11. Central Subway Project (CSP) or Project means the planning, design and construction of the Central Subway Project, Phase 2 of the SFMTA Third Street Light Rail Project.
12. Configuration Management System means 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.
13. Construction Management means
14. Consultant or Contractor means Central Subway Partners, a joint venture between AECOM, Inc. and EPC Consulting, Inc.
15. Contract Compliance Office (CCO) means the SFMTA office that administers compliance with federal regulations governing Disadvantaged Business Enterprises/Equal Employment and Non-Discrimination Programs, in addition to the Small Business Enterprise Program, and the City's Human Rights Commission's Local Business Enterprise/Non-Discrimination Program. The Contract Compliance reference number for this RFP is CCO No. 08-993.
16. Contract Manager (CM) means the SFMTA Manager responsible for overseeing administration of the Contract, to include review and approval of invoices, review and approval of all contractual actions and Contract interpretation.
17. Days means working days of the City and County of San Francisco (unless otherwise indicated). The use of the term "days," "working days" or "business days". .
18. Discipline means the area of primary technical capabilities of Key Personnel, as evidenced by academic degrees, professional registration, certification, and/or extensive experience.
19. Executive Director/CEO means the Executive Director/CEO of the SFMTA, also known as the City's Director of Transportation.
20. Federal Transit Administration (FTA) means an operating agency of the U.S. Department of Transportation, which is a funding agency of the CPS.
21. Fixed Fee means the fee paid to Consultant that is Consultant's profits and shall also cover any costs or expenses borne by Consultant that are not otherwise compensable under this Agreement.
22. Key Team Members or Key Personnel means those participants on the Project who are instrumental to the success of Project or otherwise contribute in a substantive, measurable way to the Project's development. Key Team Members may be Consultant personnel or City personnel. Consultant's Key Team Members are listed in Section 15.5.
23. Milestones means a description of Work to be accomplished by date certain, as set out in a Task Order or Annual Work Plan.
24. Municipal Transportation Agency ("SFMTA" or "Agency") means the agency of the City that is created by section 8A of the Charter of the City and County of San Francisco that operates the City's public transit service, the Municipal Railway ("Muni").

25. Notice to Proceed (NTP) means a letter from the SFMTA advising the Consultant of the day when Work is to commence on the Project or a phase of the Project.
26. Optional Services means that Work that the SFMTA may or may not direct Consultant to perform in Phase One of the Project and the whole of the Work of Phase Two of the Project.
27. Party means an entity bound by this Agreement.
28. Parties means all entities bound by this Agreement.
29. Phase One means the first five years of the Agreement after NTP, in which final design and the creation of construction contract bid packages and other activities are performed as described in Appendix A.
30. Phase Two means the optional second five period of the Agreement, commencing upon notice from the SFMTA, in which construction of the CSP and other activities are performed as described in Appendix A.
31. Program or Project means the Third Street Light Rail Project, Phase 2, Central Subway.
32. Program Management/Implementation Plan means
33. Progress Payment Form means the form stating Work performed that Consultant shall submit with a request for payment or other invoice.
34. Proposal means the Consultant's written response to the RFP submitted to the SFMTA on or about June 6, 2008.
35. Request for Proposals (RFP) means the Request for Proposals for Program Management/Construction Management Services, issued by the SFMTA on or about March 17, 2008.
36. Request for Services means a request from the SFMTA to Consultant for a Work Proposal for services to be performed under an Annual Work Plan or Task Order.
37. Salary Burden means the costs of payroll taxes and employee benefits, such as health and dental care insurance, retirement and pension, that are provided to employees in addition to wages.
38. San Francisco Bay Area means 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.
39. Scope of Services or Work means the services, tasks, and deliverables that the Consultant will provide to the SFMTA under this Agreement, including Base Contract Work and Optional Services, pursuant to Annual Work Plan(s) and/or Task Order(s).
40. Small Business Enterprise or SBE means 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").
41. Subconsultant means any firm under contract to the Consultant to provide services to the CSP.
42. Task Order means a written directive from the SFMTA to perform specified Work.

43. Work Product means all reports, studies, data, specifications, design criteria, graphs, tape recordings, pictures, memoranda, letters, computer-generated data, calculations, estimates, summaries and such other information and materials as may have been accumulated or generated by the Consultant or its subconsultants, in connection with the Work performed under this Agreement, whether completed or in process.
44. Work Proposal means a detailed description of Work to be included in an Annual Work Plan or Task Order prepared by the Consultant in response to a Request for Services from the SFMTA.

## **II. TERM OF THE AGREEMENT**

1. **Phase One - Initial Term;** Subject to Section 44, the initial Term of this Agreement shall be five (5) years commencing from the date of NTP, which period shall be Phase One of the Project.
2. **Phase Two - Option Period.** At the sole discretion of the SFMTA, and subject to Section 44. of this Agreement, the Agency may exercise an option to extend this Agreement for up to an additional five (5) years, to perform Optional Services, which period shall be Phase Two of the Project.
3. **Effective Date.** This Agreement shall become effective when the City has notified the Consultant that the City Controller has certified the availability of funds for this Agreement.

## **III. SERVICES TO BE PROVIDED BY CONSULTANT**

4. **General Orientation and Scope of Agreement.** The City engages Consultant to perform, under the terms and conditions in this Agreement, professional services related to the Program Management and Construction Management of the Central Subway Project, as those services are described in the Request for Proposals, the Proposal as required under this Agreement, and as described in Annual Work Plans and Task Orders effected under this Agreement.

The categories of Project Management and Construction Management services Consultant shall provide to the City for the Project under Annual Work Plans and/or Task Orders are generally described in Appendix A, "Scope of Services." Each general task and general work assignment is identified in Appendix A by a general task number, with negotiated hours and costs for completion listed. The categories of Work Consultant is to perform described in Appendix A are necessarily general and are not exclusive. As directed by the SFMTA, Consultant shall perform all work reasonably related and necessary to the Project Management and (if assigned) to Construction Management of the CSP. The Parties' failure to list a particular task or area of work within Appendix A does not mean that such work is Extra Work for which Consultant shall be entitled to additional compensation or is work that otherwise is excluded from the Consultant's responsibilities, to the extent that such unidentified task(s) or area(s) of work are referenced in the RFP, the Proposal or within the construction industry are commonly included in or reasonably related to program management and/or construction management of public light rail transit and/or tunneling projects.

5. **Project Phases and Work Options.** The CSP will be designed and constructed in two phases. Work in Phase One primarily concerns completion of conceptual and preliminary engineering, final design, and drafting and bidding of construction contracts, and commencement of early construction activities. Services to be performed by Consultant under Phase One are the Base Work of this Agreement; all other services are options to be exercised at the sole discretion of the SFMTA. Phase Two primarily concerns construction of the CSP, including the right-of-way, tracks, tunnels, power and control systems, platforms and stations, and system testing and revenue service start-up. Services to be performed under Phase Two work are optional: the SFMTA in its sole discretion may exercise said option and

direct Consultant to perform Construction Management Services in Phase 2; the Agency may conduct a competitive selection process to engage another professional construction manager under a separate contract; or, the City may perform those services itself or have no such services performed.

6. **Annual Work Plans.** All Work performed under this Agreement will be authorized through the issuance of Annual Work Plans, Task Orders or a combination of those documents. The procedure for developing Annual Work Plans and Task Orders and obtaining authorization to proceed with the Work will comply with the following:
  - 6.1. The SFMTA will prepare a Request for Services, signed by the Program Manager, which shall include a detailed description of the scope of required services, including specific deliverables and expected time(s) for completion for each deliverable.
  - 6.2. Consultant shall respond by preparing and submitting within 30 days of receipt of the Request for Services a detailed Work Proposal, which shall include:
    - 6.2.1. A description by task and subtask of the Work to be performed and the means and methods to perform it;
    - 6.2.2. Milestones for completion of each deliverable;
    - 6.2.3. A list of Consultant and subconsultant personnel assigned to each part of the work. For staff not already included in Consultant's Proposal, Consultant shall include a brief justification of why such personnel are qualified to perform the work and a statement of their individual qualifications and experience;
    - 6.2.4. A cost estimate for each task or subtask showing:
      - Breakdown of estimated hours and direct salaries by individual for each activity required to complete all tasks and subtasks;
      - Overhead, including Salary Burden costs;
      - Estimated out-of-pocket expenses;
      - Fixed Fee proportionate to the value of but not exceeding 8.5 percent of the value of total direct salaries and overhead, including Salary Burden, of each task or subtask; total value of all Fixed Fees not to exceed the value set out in Section 25, below..
  - 6.3. The SFMTA and Consultant will then negotiate a final written description of services staff assignments, deliverables, schedule requirements, and budget for all tasks and subtasks included in the Annual Work Plan or Task Order.
  - 6.4. Before beginning work on any task under an Annual Work Plan or Task Order, the Annual Work Plan or Task Order, including the scope of services, schedule requirements, and budget must be signed by both Parties' authorized representatives and the SFMTA must issue Notice to Proceed to the Consultant to begin work.
  - 6.5. The SFMTA may direct Consultant to make changes in the Annual Work Plan at any time in its sole discretion. The SFMTA, acting through its Central Subway Program Manager, shall have the authority to direct Consultant to discontinue, perform further, or provide additional resources to the performance of any task or subtask included in an Annual Work Plan or Task Order and to direct Consultant to amend an Annual Work Plan to those ends.
7. **Priority of Documents.** All requirements of the RFP and the representations made in the Proposal that are not in conflict with provisions of this Agreement are incorporated by reference and made an integral part of this Agreement as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement, the RFP or the Proposal, this Agreement shall control. Where the RFP or the Proposal refers to services not otherwise mentioned in this Agreement, the RFP or Proposal shall control. A Task Order or Annual

Work Plan shall control as to any matter not specifically addressed in the Agreement, RFP or Proposal.

8. **Time is of the Essence.** Consultant agrees that time is of the essence with respect to the performance of all provisions of this Agreement and with respect to all Project schedules in which a definite time for performance by Consultant and Consultant's subconsultants is specified; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace period provided for in this Agreement. The Parties acknowledge that delay is one of the greatest causes of waste and increased expense in any construction project. Consultant shall act diligently in anticipating and performing its required tasks in a manner so as to not unreasonably delay the prosecution of any services or work with respect to the Project. Notwithstanding anything in this Agreement, Consultant, including Consultant's subconsultants, shall not be responsible hereunder for any delay, default or non-performance of this Agreement, if and to the extent that such delay, default or nonperformance is due to an act of God, natural disaster, strike, national emergency, government action or other action or reason rendering Consultant's timely performance beyond its reasonable control. To the extent that Consultant becomes aware of such uncontrollable forces that could or will impact the SFMTA, Consultant shall use all reasonable effort to mitigate the harm or damages that the CSP might incur by such uncontrollable forces.
9. **Additional Work.**
  - 9.1. If the Consultant considers any work or services to be outside the Scope of Services as established by this Agreement, the RFP and the Proposal, the Consultant shall notify the SFMTA's Contract Manager in writing within five (5) working days of discovering such extra work or services. Neither Consultant nor any subconsultant shall be reimbursed for out-of-scope work performed without first obtaining approval of SFMTA's Contract Manager in accordance with the procedures set forth below.
  - 9.2. If the City desires the Consultant to perform Work additional to the Scope of Services or if the Consultant discovers any work to be out-of-scope and necessary to the Project, the following shall apply:
    - 9.2.1. The Consultant shall prepare and submit a proposal for the task to the SFMTA Project Manager showing:
      - A detailed description by subtask of the work to be performed and the means and methods that will be used to perform it;
      - Milestones for completion for each subtask and deliverables at each milestone;
      - Personnel and the subconsultants assigned to each part of the work along with a justification as to why such personnel are qualified to perform the work;
      - A detailed cost estimate for each subtask showing:
        - Estimated hours and Direct Salaries by employee;
        - Overhead costs of Consultant and subconsultants;
        - Proposed Fixed Fee;
        - Reasonable out-of-pocket expenses.
    - 9.2.2. The City will review the proposal and promptly negotiate with the Consultant the cost and time to perform the additional work.
    - 9.2.3. Upon completion of negotiation, the City will direct the Consultant in writing to proceed with the additional work after obtaining appropriate City approvals, memorialized in a Task Order.

9.2.4. In the event that City and Consultant cannot reach agreement on the terms of any additional Task Order, City may either cancel the Task Order and have the work accomplished through other available sources, or City may direct the Consultant to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances may the Consultant refuse to undertake a City-ordered task that the Consultant is qualified to perform. The City and the Consultant shall continue to negotiate any outstanding terms under provisions of Section 106 of this Agreement while the additional Task Order is being performed. The City shall not deny the Consultant reasonable compensation work performed under an approved Task Order.

9.3. If the Consultant proceeds to do work that it perceives to be outside the Scope of Services without first obtaining City's written approval in accordance with the above procedures, regardless of the amount or value of the work, the City shall have no obligation to reimburse Consultant for the work thus performed. Eagerness to respond to the City's comments or concerns, expediency, schedule constraints will not be acceptable reasons to proceed with out-of scope work without City's prior written approval.

9.4. The following shall not be considered out-of-scope work, but shall be considered incidental to the "Scope of Services" outlined in Exhibit A, and Consultant shall receive no additional compensation for performing said work:

9.4.1. All work required to comply with local, State and federal codes, regulations and standards, as interpreted by local, State or federal agencies having approval or sign-off authority for the CSP, as such codes, regulations and standards may be amended during the Term of this Agreement..

9.4.2. All work related to addressing review comments and/or incorporating appropriate review comments into deliverable documents.

9.4.3. Unless specifically stated in Exhibit A as excluded from the "Scope of Services," all implied work required to complete the technical portion of the Work that is consistent with the intent of the requirements of this Agreement, the RFP and the Proposal, are included in the Scope of Services and are essential to achieve the purposes of this Agreement.

9.4.4. All work required to correct deficiencies and errors, including work related to resubmittals of work products that are reasonably determined by the City to be incomplete or inadequate.

## **10. Standard of Performance.**

Consultant shall perform all of its services on a best efforts basis, in accordance with generally accepted standards of professional practice in the program management and construction management of projects of similar size and complexity in the San Francisco Bay Area.

The Parties agree that Consultant is responsible for its own work and that of its subconsultants. The City recognizes that while Consultant provides program and construction management of others such as the City's architects, designers, engineers, construction managers, construction contractors, vendors, and suppliers, those other parties remain responsible for their work and services, and Consultant, by performing its services, does not assume or take responsibility for such other parties' work or services.

## **11. Program Direction.**

11.1. The work to be performed by Consultant under this Agreement shall be subject to the Program Direction of the SFMTA. As used in this Agreement, the term "Program Direction" shall include but not be limited to the following:

- Directions to Consultant, which shift work emphasis between tasks, require pursuit, redirection, modification or termination of certain activities, or otherwise provide information and program guidance to Consultant in order to accomplish the services described in Appendix A or in an applicable Annual Work Plan or Task Order.
- Review and, where required, approve, disapprove, accept or refuse submittals or other product prepared by Consultant in the performance of its services.
- Assign or reassign staff to perform particular tasks.

11.2. The SFMTA may in its sole discretion require Consultant to amend an Annual Work Plan or Task Order. The SFMTA in its sole discretion may elect to eliminate tasks, not exercise tasks, and not exercise any option under this Agreement, including but not limited to any of the tasks or Optional Services under Phase One and any of the tasks under Phase Two, which is itself a contract option to the SFMTA. The SFMTA's elimination of tasks or decision not to exercise one, any number or all options under this Agreement shall not constitute constructive or actual termination or abandonment of the Agreement.

11.3. Consultant acknowledges and agrees that it shall direct any request for clarification or other communication concerning Program Direction first to the SFMTA's Central Subway Program Director.

12. **Reports.** Consultant 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.

### 13. Department Liaison

In performing the services provided for in this Agreement, Consultant's liaison with the SFMTA will be:

John Funghi  
Central Subway Program Manager  
San Francisco Municipal Transportation Agency  
821 Howard Street  
San Francisco, CA 94103  
tel: 415-701-4299  
fax: 415-701-5222

### 14. Qualified Personnel.

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Consultant or its subconsultants. Consultant's personnel and subconsultants shall comply with the licensing requirements of the State of California in their respective Disciplines. Consultant shall comply with City's reasonable requests regarding assignment of personnel as provided in Section 17.4, but Consultant must supervise all personnel, including those assigned or reassigned at City's request.

### 15. Subcontracting

15.1. **Approval of City.** Consultant is permitted to subcontract portions of the services to be performed under this Agreement only after the prior written approval by the City. Consultant shall be responsible for its subconsultants throughout the course of the Work to be performed under this Agreement. Execution of this Agreement shall constitute



approval of the firms and individuals listed in Exhibit D "Directory of Subconsultants," to this Agreement as subconsultants on this Project.

15.2. **Substitutions of Subconsultants.** Substitutions may be made for any subconsultants listed in Exhibit D, "Directory of Subconsultants," for: (i) failure to perform to a reasonable level of professional competence; (ii) inability to provide sufficient staff to meet the Project requirements and schedules; or (iii) unwillingness to negotiate reasonable contract terms or compensation. Consultant may only substitute subconsultants with the prior written approval of the SFMTA Contract Manager.

15.3. **Additions of Subconsultants.** The City reserves the right to request subconsultants with specific expertise to be added to Consultant's team to provide services under this Agreement if the City determines that specific expertise is lacking in personnel assigned to the CSP..

15.4. **SBE Firms.** If Consultant wishes to substitute a subconsultant that is a SBE, the Consultant must make good faith efforts to use another SBE as a substitute. The Consultant shall notify SFMTA in writing of any request to substitute a SBE subconsultant (or supplier) and provide the CCO with any documentation requested to support the substitution. The CCO must approve the request in writing in order for the substitution to be valid.

16. **Designated Key Team Members.** Work under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant.

16.1. **Consultant's Project Manager.** The Consultant agrees to commit and assign Emilio B. Cruz, Vice President, EPC Consultants, Inc. as Consultant's Project Manager to direct Consultant's Work and to serve as the single official contact and spokesperson on behalf of the Consultant in all matters related to the Project for the entire duration of Phase One, including any Optional Services, and if the SFMTA exercises the option to extend the Agreement, through Phase Two as well. The Consultant's Project Manager must have his/her permanent office for this Project located within the San Francisco Bay Area for the entire assigned duration of the Project.

16.2. **Consultant's Key Team Members.** The Consultant further agrees that the following Key Team Members shall be committed and assigned to work on the Project to the level required by SFMTA for the Term of the Agreement, including Phase Two , and shall also be staffed at the local Consultant offices within the San Francisco Bay Area for that entire period:

- Geoff Fosbrook
- Mark Latch
- Emilio B. Cruz
- Nancy Whelan
- Robert Rocco
- Victor Romero
- Dane Hudson
- Amr Elmeged
- Carolyn Hayward
- Guy Hollins
- Tammy Chan

Consultant shall advise SFMTA immediately any time one of the Key Team Members is assigned to another project or severs employment from Consultant's constituent members or

subconsultant , or otherwise deviates from his or her committed role or time on the Project. SFMTA will require Consultant to provide a corrective action plan for such deviations. All Key Team Members shall work full time for the Project, unless otherwise authorized by the SFMTA, which shall not unreasonably withhold such authorization as long as the Project is not thereby delayed or otherwise harmed.

#### **17. Substitutions of Key Team Members.**

- 17.1. Substitutions of Key Team Members will not be allowed except for extenuating circumstances, such as illness or departure from the firm, or with the City's prior approval, which approval will not be unreasonably withheld as long as such substitution will not delay or otherwise harm the Project, which shall be determined by the SFMTA in its sole discretion. If it is necessary to substitute a Key Team Member, the Consultant shall propose a replacement in writing to the Senior Director of Transportation Planning and Development for approval.
- 17.2. The Consultant shall replace any Key Team Member departing from the Project or departing from his/her assigned role in the Project with an individual of comparable experience on a non-temporary basis within thirty (30) calendar days of the departure of the Key Team Member. Consultant's failure to replace a Key Team Member shall be cause for the City to suspend invoice payments. Furthermore, the Consultant shall not be relieved of its obligation for full performance of the Scope of Services as a result of any unfilled position. The Consultant shall be held fully responsible for any inefficiencies, schedule delays or cost overruns resulting in whole or in part from any Key Team Member departing from the Project or departing from his/her assigned role in the Project before the end of the committed duration.
- 17.3. Consultant shall bear any additional costs incurred in substituting personnel. Such costs include relocation expenses, expenses related to recruiting and hiring, training and learning on the job. Consultant acknowledges that the SFMTA's selection of Consultant's selection and the negotiated amount of Consultant's Fixed Fee were based, in part, on the expertise and experience Consultant's proposed Key Team Members as submitted in the Proposal.. The Consultant acknowledges and agrees that the replacement of Key Team Members during the course of the Project would be extremely disruptive and damaging to the City, the cost of which is difficult, if not impossible, to calculate. The Consultant, therefore, shall pay to the City a charge of Two Hundred Thousand Dollars (\$200,000) for the first Key Team Member whom the Consultant replaces without written approval by the City. For each additional Key Team Member whom the Consultant replaces without written approval by the City, the Consultant shall pay to the City a charge of Three Hundred Thousand Dollars (\$300,000). Said charges shall not be considered or act as a penalty, but shall be liquidated damages to the City to compensate the City for the additional costs and inefficiencies to the Central Subway Project that the Parties agree will necessarily arise from the unauthorized departure of a Key Team Member of the Consultant. Said liquidated damages shall be paid in addition to any refund of employee relocation costs due the SFMTA under Section 41 of this Agreement and may be deducted from any amounts owing the Consultant.
- 17.4. The SFMTA reserves the right to require Consultant to replace or reassign any personnel assigned by Consultant to the Project. Should the City require Consultant to replace or reassign any of its personnel so that said persons are no longer working on the Project, the liquidated damages provisions of this section and the refund of relocation expenses set out in Section 41 of this Agreement shall not apply.

**18. Current Workload and Available Resources.** The Consultant covenants that its current workload and the workload of its subconsultants will not affect the commencement and the progress of the Work under this Agreement. The Consultant shall have all the necessary professional, technical and support personnel, including those of the subconsultants,

available, ready and mobilized to perform Work within two (2) weeks of the receipt of NTP. In addition, the Consultant shall make good faith efforts to have all contracts signed with subconsultants within three (3) weeks of NTP. Consultant shall provide copies of said subcontracts to the SFMTA upon request.

19. **Information and Data.** The Consultant shall request in writing any information and data it will require from the Agency for its Work. The Consultant shall identify the timing and priority for which this information and data will be required in its draft Program Management/Implementation Plan. The Consultant and Agency shall reach agreement as to the availability and delivery time for this information and data prior to finalizing the Plan.
20. **Evaluation of Consultant's Performance.** The Consultant shall meet with SFMTA on a quarterly basis to evaluate Consultant's performance under the Contract with respect to the following:
  - a. Consultant's adherence to this Agreement
  - b. Quality of performance of Key Team Members and other staff assigned to the Project
  - c. Quality of performance of subcontractors
  - d. Management of authorized budget for each Task
  - e. Adherence to agreed schedule
  - f. Quality of deliverables
  - g. Monitoring, reporting and updating of progress of assigned work
  - h. Timeliness in resolving issues, including issues arising from performance evaluations
  - i. Working relationship between Consultant's team and other agencies

Should the Agency be dissatisfied with more than two of the above categories of Consultant performance in the same evaluation, Agency will render a negative evaluation on the Consultant's performance for that quarter. In such cases, the Consultant shall be required to formulate and deliver to the Agency within five (5) working days a corrective action and schedule plan to be followed by the Consultant with results reported to Agency monthly until the problem areas have been resolved or otherwise improved to the SFMTA's satisfaction..

21. **Transmittal of Work Product.** When requested by Agency's Program Manager, and after completion of each task and subtask, the Consultant shall transmit to Agency all Work Product (duplicates and originals) produced or accumulated in the course of its and its subconsultant's work on this Agreement. The Consultant's Project Manager and Key Team Members shall have thoroughly reviewed and approved all Work Product and signed off as such prior to transmitting them to Agency. Consultant shall retain one copy of all Work Product for its records.
22. **Reproduction of Work Product.** The Consultant shall arrange and provide for all printing (or other required reproduction) of Work Product.
23. **Agency's Responsibilities Regarding Submittals.** The Agency will review and comment on Consultant's submittals generally within four weeks of submittal. The Agency and Consultant will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the Program Management/Implementation Plan, and in Annual Work Plans and Task Orders. The Agency's review and comments of Consultant submittals shall in no way relieve the Consultant of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the Agency relieve the Consultant of its independent responsibility to provide submittals and deliverables in full compliance with local, State and federal codes, regulations and standards.

If Consultant considers certain Agency review comments or directives, either written or oral, to require work efforts not included in the approved Program Management/Implementation Plan, the Consultant shall provide Agency with either a written request for clarification of intended work or a proposal to proceed with additional work within five (5) working days of discovering the perceived extra work, in strict accordance with procedures in Section 9 (Additional Work) of this Agreement.

#### **IV. COMPENSATION**

24. **Amount.** Compensation under this Agreement shall be based on a Cost-Plus-Fixed Fee payment basis within an amount not to exceed or a Fixed Lump-Sum payment basis, or a combination thereof, as set out in this Agreement.
- 24.1. For the full performance and completion of the Base Contract Services, the City agrees to pay the Consultant and the Consultant agrees to receive from the City an amount not to exceed Eighty Five Million One Hundred Thirty-Nine Thousand Ninety Two Dollars (\$85,139,092).
- 24.2. For the full performance and completion of the Optional Services during Phase One, the City agrees to pay the Consultant and the Consultant agrees to receive from the City an amount not to exceed Ten Million Four Hundred Ninety Three Thousand Eight Hundred Eighteen Dollars (\$10,493,818).
- 24.3. For the full performance and completion of the Phase Two Contract Services, the entirety of which are Optional Services, the City agrees to pay the Consultant and the Consultant agrees to receive from the City an amount not to exceed Fifty One Million Seven Hundred Forty Two Thousand Two Hundred Sixty One Dollars (\$51,742,261).
- 24.4. The total amount of compensation under this Agreement, including all Base Contract and Optional Services, shall not exceed One Hundred Forty Seven Million Three Hundred Seventy Five Thousand One Hundred Seventy One Dollars (\$147,375,171). All amounts listed above include all Fixed Fees, costs reimbursements, and profits. The detailed breakdown of compensation is set out in Appendix E to this Agreement.
25. **Fixed Fee.**
- 25.1. For Work included in approved Task Orders and Annual Work Plans, the Agency shall pay the Consultant a Fixed Fee for performing the Work under this Agreement. Payment of the full Fixed Fee as set out in this Section 25 requires that the Consultant fully perform all Work assigned to it under this Agreement in compliance with the standards of performance described herein.
- 25.2. The Fixed Fee to be paid Consultant included in the amounts listed in Section 24.1, above, for Base Contract Services performed in Phase One shall not exceed: Five Million Four Hundred Ninety Four Thousand Seven Hundred Sixty Eight Dollars (\$5,494,768) for all Phase One Base Work.
- 25.3. The Fixed Fee to Consultant included in the amounts listed in Section 24.2, above, shall not exceed: Eight Hundred Twenty-Two Thousand Ninety Six Dollars (\$822,096) for all Optional Work performed in Phase One.
- 25.4. The Fixed Fee to Consultant included in the amounts listed in Section 24.3, above, for performance of Work in Phase Two shall not exceed: Four Million Fifty-Three Thousand Five Hundred Forty One Dollars (\$4,053,541).
- 25.5. If the Scope of Services of any Phase or other portion of the Project is reduced, that reduction shall be memorialized in an amendment to the relevant Task Order or Annual Work Plan and the Fixed Fee for that Work shall be reduced, as negotiated by the Parties, but such reduction shall not be less than the proportional value of the reduced work, as measured by the value of that Work set out in Appendices A and E to this Agreement.. If

the Scope of Services is increased, then the Parties will negotiate an appropriate Fixed Fee for the Additional Services .

26. **Amounts Inclusive.** The amounts set out in Sections 24 and 25, above, and in Appendix E are inclusive of all direct labor costs, other direct costs, indirect costs and Fixed Fees for all Work performed under this Agreement. Said amounts shall include all Work provided on a cost reimbursable plus Fixed Fee basis or on an agreed lump sum price basis.

**27. Actual Compensation.**

Actual compensation under this Agreement shall be determined in approved Task Orders and/or Annual Work Plans. Consultant acknowledges and agrees that, depending on the nature of the task, the SFMTA may compensate Consultant either on a lump sum basis or cost-plus-fixed-fee basis within a stated amount (amount not to exceed). The SFMTA shall in its sole authority determine the pricing method for each Task Order or Annual Work Plan or portion thereof. Consultant shall inform the SFMTA's Program Manager when total expenditures for all approved Annual Work Plans or Task Orders exceed eighty percent of the maximum compensation under this Agreement.

28. **Method of Computing Compensation – Lump Sum.** Compensation will be paid in accordance with the cost breakdown in Appendix E, and shall not exceed the amount shown for each subtask or task. Compensation for lump-sum Work shall be as negotiated by the Parties as memorialized in an approved Task Order or Annual Work Plan. The City shall make monthly progress payments for Lump Sum Work proportionate to the percentage of tasks completed where the time to complete all Lump Sum Work under the relevant Task Order or Annual Work Plan exceeds one month.

29. **Method of Computing Compensation – Cost Plus Fixed Fee.** The City will reimburse Consultant for only those expenses that are allowed under the principles set out in the Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments" and as specifically authorized therein. Compensation for cost-plus-fixed-fee items will be computed as follows:

- 29.1. Actual direct salaries paid by Consultant and subconsultants as shown in Appendix E;
  - 29.2. Overhead of Consultant and subconsultants as shown in Appendix E, and as described below in section 31..
  - 29.3. Actual costs or prices of approved out-of-pocket expenses for the Consultant and subconsultants at any tier, net of any discounts, rebates, refunds, or other items of value received by Consultant or any of its subconsultants that have the effect of reducing the cost or price actually incurred. Compensation for materials and expenses shall be at direct cost, without any mark-ups.
  - 29.4. Consultant shall not "mark-up" or request additional compensation for work performed by subconsultants.
  - 29.5. Costs for which Consultant seeks compensation must be (a) necessary in order to accomplish the work under an accepted Annual Work Plan or Task Order, and (b) be reasonable for the services performed.
  - 29.6. A Fixed Fee invoiced as a proportionate share of the total Fixed Fee for the task.
  - 29.7. All compensation due to Consultant for all Work performed under this Agreement shall be computed in conformance with Appendix E attached hereto.
30. **Salary Rates.** Compensation under this Agreement will be based on the overhead and direct salary rates as shown on the Schedule of Rates attached as Appendix E. The direct salary rates in Exhibit E 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 five percent (5%). 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. Any individual salary adjustments above five percent (5%) for which the SFMTA would incur additional costs must be approved by the

SFMTA's Program Manager in advance. The Consultant shall not submit requests to the SFMTA asking for salary adjustments for the same individual more than once within any 12-month period. Rate increases requiring SFMTA approval shall apply only to Work performed after the SFMTA's approval of the increased rates..

31. **Overhead Rates - Provisional Rates and Annual Audit.** The rates set out in this Section 31 are "team Composite Rates" applicable to the Consultant as well as all subconsultants.

Composite Field Overhead rates are applicable to all Consultant and subconsultant personnel working full time at the CSP field office for more than six months continuously. Because these employees are not working out of their own offices and are not receiving office support in their day to day activities, the hours billed for them do not qualify for the Home Office Overhead rate. The Field Overhead rate is reduced as consideration for the support those personnel receive from SFMTA. The purpose of the Field Overhead Rate is to reimburse the consultant for the Salary Burden and home office support provided to the field employees.

Composite Home Office Overhead rates are applicable to all other personnel who provide non-continuous or part time services to the project.

The following Provisional overhead rates shall apply to this Agreement in the first year:

- a. Field Overhead Rate: 120%
- b. Home Office Overhead Rate: 145%

The above rates are provisional and shall apply only for one year following NTP. Commencing within 90 days after the first anniversary of NTP, the City will audit Consultant's and subconsultants' books and records to determine the actual rates of compensation due. Based on the audited rates, the City shall then pay to Consultant or Consultant shall refund to the SFMTA any difference between amounts paid and amounts actually owed. The audited rates shall then be used as provisional rates for one the following year, until again reset by the City's audit of Consultant's books and records, which will commence each year within 90 days of the anniversary of NTP.

32. **Transfer of Unused Funds.** Consultant may request City's approval to transfer unused funds from one subtask to another subtask within the same main task to cover the unexpected shortfall of another subtask provided that the need for additional funds to complete the subtask is not due to Consultant's poor management or planning. Consultant may request City's approval to transfer unused funds from one task(s) to other tasks to cover the unexpected shortfall of the other Tasks, provided that (1) the task(s) from which the funds are transferred out of (including all subtasks within the task(s)) is at least ninety-five percent (95%) complete; (2) the funds are no longer necessary for the original task(s) for which the funds were allotted; and (3) the main reason for the task(s) requiring additional funds is not due to Consultant's poor management or planning. Such request must be made in writing to the SFMTA Project Manager at least 15 calendar days in advance of the need to transfer funds across subtasks. City's approval of subtask or task amount changes will not be unreasonably withheld. City's approval shall be by the SFMTA Program Manager.
33. **Non-Reimbursable Expenses.** Consultant shall be compensated only for those authorized expenses identified in Appendix E and that are authorized under Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments.". Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Consultant and subconsultant personnel entertainment or personal expenses of any kind will not be reimbursable under this Contract. Office and field supplies/equipment expenses will also not be reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for this Project. Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis as listed in Appendix E will also not be reimbursable by the SFMTA under this Contract.

34. **Prepayment.** Unless the SFMTA Program Manager gives specific written authorization, Consultant shall not submit invoices and the City shall not pay or otherwise reimburse Consultant for costs of any kind that the Consultant has not actually incurred and paid prior to date of invoice.
35. **Refunds, Rebates and Credits.** Consultant shall assign to the City any refunds, rebates or credits accruing the Consultant that are allocable to costs for which the Consultant has paid or has otherwise reimbursed the Consultant or for which the Consultant will submit an invoice.
36. **Use of Public Transportation.** San Francisco is a transit-first city, and the SFMTA encourages Consultant and subconsultants to use public transit in the performance of its services to the maximum extent possible. The SFMTA will closely review the Consultant's requests for reimbursement of travel expenses. Travel from and to airports must be by public transit to the maximum extent possible. Taxicabs, and hired vans and cars are not considered public transit. The City reserves the right to refuse to reimburse travel expenses that are not in accord with these policies.

### **37. Payment**

**37.1. General.** No charges shall be incurred under this Agreement nor shall any payments become due to Consultant until reports, services, or both, required under this Agreement are received from Consultant and approved by the SFMTA as being in accordance with this Agreement. City may withhold payment to Consultant in any instance in which Consultant has failed or refused to satisfy any material obligation provided for under this Agreement. If the evidence of production, the quality of the work, or relationship of labor and costs expended are not consistent with the budgets and the schedules for an assigned task, the Consultant shall justify to the Agency's Project Manager the time and expenses invoiced. The Project Manager will review the justification offered and adjust the monthly payment as deemed necessary. These requirements shall also apply to Work by subconsultants. No invoice shall be rendered if the total Work done under this Agreement since the last invoice amounts to less than Fifteen Hundred Dollars (\$1,500), except that an invoice may be submitted if three (3) months have elapsed since the last invoice was submitted. No more than one invoice shall be submitted in a month.

#### **37.2. Invoices.**

**37.2.1. Form of Invoice.** Invoices furnished by Consultant under this Agreement must be in a form acceptable to the City Controller. The Consultant shall submit invoices in quadruplicate for all allowable charges incurred in the performance of the Agreement. Each invoice must contain the following information:

- Contract Number
- Annual Work Plan or Task Order Number
- Name, position, hourly rate and hours worked of employee(s) whose labor is invoiced
- Description of the work performed or services rendered
- Cost by employee and other direct costs
- Subconsultant costs supported by invoice itemization in the same format as described here
- Fixed-Fee for current invoice period and amount of Fixed Fee paid as of date of invoice
- Total costs
- SBE utilization report (MTA Form 6)
- Certified payroll records substantiating all labor charges for Consultant and all subconsultants shown on the invoice

**37.2.2. Progress Payment Form.** The Controller is not authorized to pay invoices submitted by Consultant prior to Consultant's submission of the SFMTA Progress Payment Form. If the Progress Payment Form is not submitted with Consultant's invoice, the Controller will notify the SFMTA and Consultant of the omission. If Consultant's failure to provide the SFMTA Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold twenty percent (20%) of the payment due pursuant to that invoice until the SFMTA Progress Payment Form is provided.

**38. Documentation for Payment.** Invoices shall be submitted together with the Monthly Progress Reports, Monthly Cost Control Report and Monthly Update Schedule, the contents of which are defined herein, and shall be submitted by the 21st day of each month for work performed in the preceding month. The Monthly Cost Control Report shall include the current completed percentages for each task and subtask, the current estimated labor hours and cost for each Discipline to complete each of the tasks, an itemized breakdown of dollars and hours by employee and by subtask for all Consultant and subconsultant charges for the month being invoiced (accounting for a minimum of 28 calendar days of the month), and an itemized breakdown of out-of-pocket expenses by task incurred since the previous billing, along with copies of bills of materials and expenses incurred, and certified payroll records. Failure to submit a complete Monthly Cost Control Report, Monthly Updated Schedule and Monthly Progress Report by the due date shall constitute cause for suspension of invoice payments.

In addition to the above, the Agency's Program Manager may, prior to authorization for payment of invoices, require delivery of either a complete or partial set of current work products as evidence of the status of the Consultant's work.

**39. Payment of Invoices.**

**39.1. Monthly Payments.** Compensation shall be made in monthly payments on or before the last day of each month for Work, as set forth in an Annual Work Plan or Task Order, that the Executive Director/CEO of the SFMTA or his designee, in his sole discretion, concludes has been performed as of the last day of the immediately preceding month in accordance with the Scope of Services attached to this Agreement as Appendix A and applicable Annual Work Plans and Task Orders. City shall make payment to Consultant at the address specified in the section entitled "Notices to the Parties." All amounts paid by City to Consultant shall be subject to audit by City.

**39.2. Final Payment.** Upon receipt of the final invoice for the completion of all required Scope of Services, and after services have been certified by Agency's Program Manager as having been satisfactorily performed and upon completion of audit to correct provisional rates and determine actual overhead costs, City shall promptly, but in no event later than ninety (90) calendar days after the receipt of the last invoice, pay Consultant the balance of any allowable costs incurred in the performance of Work under this Agreement. Final payment shall not be due unless and until Consultant provides the City with a release discharging the City from any future claims from Consultant arising out of the Agreement.

**39.3. No Interest on Late Payments.** In no event shall City be liable for interest or late charges for any late payments.

**39.4. Payment of Subconsultants.** Following City's payment of an invoice, Consultant has ten (10) days to file an affidavit using SFMTA's payment affidavit form verifying that all subconsultants have been paid and specifying the amount.

**40. Guaranteed Maximum Costs**

**40.1.** The City's obligation hereunder shall not at any time exceed the amount certified by the City Controller for the purpose and period stated in such certification.

**40.2.** 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 Consultant for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

40.3. 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 City Controller.

40.4. The City 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.

#### **41. Travel and Relocation Costs.**

41.1. Subject to the SFMTA's Program Manager's prior written approval, the City shall compensate Consultant for Consultant's and subconsultants' employee travel relocation, and living expenses, which shall be all inclusive of all costs of travel, lodging, food, and all other relocation and living expenses, in accordance with the schedule set out in this section. Consultant must identify the employee(s) for whose expenses Consultant will seek payment and obtain the City's approval before said employee(s) travel and or relocation date(s). Compensation for travel and relocation costs is limited to Consultant and subconsultant employees whose permanent residence is outside the nine counties of the Bay Area and San Joaquin and Stanislaus counties. For audit purposes, Consultant shall retain such records sufficient to establish the employee's presence in the Bay Area for the relevant period.

41.2. The City will compensate Consultant for employee travel and relocation costs as follows:

41.2.1. For each qualified employee who will reside in the San Francisco Bay Area for less than 90 days, the City shall pay Consultant the current applicable federal Government Services Agency (GSA) per diem and travel expenses as full compensation for the travel, lodging and other living expenses of that employee. Contractor shall retain receipts for audit purposes.

41.2.2. For each qualified employee who will reside in the San Francisco Bay Area for more than 90 days but less than one year, the City shall pay Consultant a lump sum fixed amount of \$3,000 per month for each month that said employee is relocated to the San Francisco Bay Area as full compensation for the travel, relocation and living expenses of that employee.

41.2.3. For each qualified employee who will reside in the San Francisco Bay Area commutatively for more than one year but less than three years, the City shall pay Consultant a lump sum fixed amount of \$50,000 as full compensation for the travel, relocation and living expenses of that employee. Should a relocated employee be reassigned or otherwise leave the Project, Consultant shall reimburse to the Agency said employee's relocation payment in proportion to the time that employee was scheduled to work on the Project.

41.2.4. For each qualified employee who will reside in the San Francisco Bay Area commutatively for more than three years, the City shall pay Consultant a flat sum of \$75,000 as full compensation for the travel, relocation and living expenses of that employee. Should a relocated employee be reassigned or otherwise leave the Project, Consultant shall reimburse to the Agency said employee's relocation payment in proportion to the time that employee was scheduled to work on the Project.

#### **42. Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code sections 6.80 to 6.83 and section 21.35, any Consultant or subconsultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A Consultant or

subconsultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A Consultant or subconsultant will be deemed to have submitted a false claim to the City if the Consultant or subconsultant: (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.

#### **43. Disallowance**

If Consultant claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Consultant 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 Consultant under this Agreement or any other Agreement.

Any Compensation or reimbursement received by Consultant under this Agreement does not constitute a final decision or waiver of decision by the City as to whether said payment meets the terms and requirements of this Agreement. If following audit or other review, the City determines that the Consultant and/or subconsultants is not entitled to certain compensation requested or received, the City shall notify the Consultant stating the reasons therefore.

Completion of the CSP or any portion of Consultant's Work will not alter Consultant's or a subconsultant's obligations to return any funds due the SFMTA as a result of later refunds, corrections, or other transactions, nor alter the SFMTA or its funding agencies' rights to disallow or otherwise not recognize costs on the basis a later audit or other review.

### **V. GENERAL PROVISIONS.**

#### **44. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the City Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION 44 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

#### **45. Taxes**

- 45.1. **Obligation of Consultant.** 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 Consultant.
- 45.2. **Possessory Interest.** Consultant 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 Consultant to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:
- 45.2.1. Consultant, on behalf of itself and any permitted successors and assigns, recognizes and understands that Consultant, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
  - 45.2.2. Consultant, 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. Consultant 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.
  - 45.2.3. Consultant, 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). Consultant accordingly agrees on behalf of it 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.
  - 45.2.4. Consultant 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.
  - 45.2.5. Consultant shall provide a San Francisco Business Tax Registration to the SFMTA in order for the City to certify this Agreement.

#### **46. Payment Does Not Imply Acceptance of Work**

The granting of any payment by City, or the receipt thereof by Consultant, shall in no way lessen the liability of Consultant to replace unsatisfactory Work, although the unsatisfactory character of such Work, may not have been apparent or detected at the time such payment was made. Work that does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced or reperformed by Consultant without delay.

#### **47. Equipment**

- 47.1. **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 Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to Consultant by City. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless the City from and against any and

all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to Consultant, its employees, the City's employees, or third parties, or to property belonging to any of the above.

- 47.2. **Ownership of Equipment.** Any equipment vehicles, computer programs (software licenses and media), and the like, purchased by the Consultant or its subconsultants in connection with services to be performed under this Agreement shall become property of and will be transmitted to the SFMTA at the conclusion of the Consultant's services under the Agreement.

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

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

- 48.2. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Consultant'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 Consultant performs Work under this Agreement.

- 48.3. Any claim by any agent, subcontractor or employee of Consultant that alleges or seeks to establish employment status with the City shall come under the defense and indemnification provisions of this Agreement, but shall not be limited by any cap or other limit of liability provided by this Agreement.

49. **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 Consultant 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 Consultant 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 Consultant for City, upon notification of such fact by City, Consultant shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Consultant under this Agreement (again, offsetting any amounts already paid by Consultant 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, Consultant shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Consultant is an employee for any other purpose, then Consultant 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 Consultant was not an employee.

50. **Insurance.** Without in any way limiting Consultant's liability pursuant to the "Indemnification" section of this Agreement, Consultant must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:
- 50.1. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident injury or illness; and
  - 50.2. 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
  - 50.3. 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.
  - 50.4. Professional liability insurance as follows:  
From the effective date of this Agreement, each partner of the joint association constituting the Consultant shall maintain professional liability insurance coverage with limits not less than Ten Million Dollars (\$10,000,000) each claim/annual aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement. Such insurance shall be maintained a claim reporting period for a period not less than four (4) years following completion of services.

**51. Requirements of Insurance Policies.**

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

- 51.1. Name as Additional Insured the City and County of San Francisco, its Officers and Employees.
  - 51.2. 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.
  - 51.3. Each partner of the Central Subway Partners joint venture partnership shall ensure and does warrant that each partner's Professional Liability (Errors and Omissions) Insurance policy does not contain any provision excluding coverage for its services performed as part of the joint venture partnership. All insurance policies and certificates shall carry such endorsements, which shall be provided to the City.
52. **Notice.** 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 via courier or U.S. Mail, first class, to the following persons:

Carter R. Rohan, R.A.  
Senior Director of Transportation Planning and Development  
San Francisco Municipal Transportation Agency  
1 South Van Ness, 7th floor  
San Francisco, CA 94103

Shahnam Farhangi  
Manager of Contract and Quality Management  
San Francisco Municipal Transportation Agency  
1 South Van Ness, 3<sup>rd</sup> floor  
San Francisco, CA 94103

53. **Claims-Made Form.** Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this

Agreement and, without lapse, for a period of four 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.

54. **General Annual Aggregate Limit.** 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 are included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
55. **Lapse of Insurance.** 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.
56. **Proof of Insurance.** Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized or approved to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.
57. **No Decrease of Liability.** Approval of the insurance by City shall not relieve or decrease the liability of Consultant hereunder.
58. **Subconsultant Insurance.** If a subconsultant will be used to complete any portion of this agreement, the Consultant shall ensure that the subconsultant shall provide all necessary insurance (as determined by Consultant) and shall name the City and County of San Francisco, its officers, and employees and the Consultant listed as additional insureds.

## 59. Indemnification

- 59.1. **General Indemnity.** To the fullest extent permitted by law, Consultant shall assume the defense of, indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Consultant or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, reasonable attorney's fees and costs of investigation), that arise directly or indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Consultant and subconsultant to the Consultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.
- 59.2. **Limitations**
- 59.2.1. No insurance policy covering Consultant's performance under this Agreement shall operate to limit the Consultant's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.
- 59.2.2. Consultant assumes no liability whatsoever for the negligence or willful misconduct of any Indemnitee or the consultants or contractors of any Indemnitee that are not a party to this Agreement.
- 59.2.3. Consultant's indemnification obligations of claims involving "Professional Liability" (claims involving negligent acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Consultant's negligence or other breach of duty.

60. **Intellectual Property Infringement** Consultant 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 then performance of Consultant's services under this Agreement.

61. **Joint and Several Liability.** Notwithstanding the joint venture status of Consultant or other separate legal status of the Consultant from its owner partners, DMJM Harris/AECOM and EPC Consultants, as the owners of the Consultant, shall remain jointly and severally liable for the performance, errors and omissions of Consultant.

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

**63. Liability of City**

City's payment obligations under this Agreement shall be limited to the payment of the compensation for Work performed for the City in accordance with the payment provisions set out in Section \_\_\_\_ of this Agreement and the Appendices to this Agreement referenced therein. 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.

64. **Default; Remedies.** Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

64.1. Consultant fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 42, 45, 49-60, 62, 74, 79, 86, 102, 108-109..

64.2. Consultant 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 Consultant.

64.3. Consultant (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 Consultant or of any substantial part of Consultant's property or (e) takes action for the purpose of any of the foregoing.

64.4. A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Consultant or with respect to any substantial part of Consultant'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 Consultant.

65. **Remedies.** 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 Consultant any Event of Default; Consultant 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

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

66. **No Preclusion of Remedies.** 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.

**67. Termination for Convenience**

- 67.1. **Exercise of Option to Terminate for Convenience.** 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 Consultant written notice of termination. The notice shall specify the date on which termination shall become effective.

- 67.2. **Duties of Consultant Upon Notice of Termination.** Upon receipt of the notice, Consultant shall commence and perform, with diligence, all actions necessary on the part of Consultant to effect the termination of this Agreement on the date specified by City and to minimize the liability of Consultant 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:

67.2.1. Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

67.2.2. Not placing any further orders or subcontracts for materials, services, equipment or other items.

67.2.3. Terminating all existing orders and subcontracts.

67.2.4. At City's direction, assigning to City any or all of Consultant'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.

67.2.5. Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

67.2.6. Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

67.2.7. 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 Consultant and in which City has or may acquire an interest.

68. **Invoice for Service Performed.** Within 30 days after the specified termination date, Consultant shall submit to City an invoice, which shall set forth each of the following as a separate line item:

- 68.1. A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (i), provided that Consultant can establish, to the satisfaction of City, that Consultant 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 five percent (5%) of such cost.

- 68.2. The reasonable cost to Consultant of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

- 68.3. A deduction for the cost of materials to be retained by Consultant, 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.



- 68.4. Expenses directly attributable to termination which the Consultant is not otherwise compensated, such as the cost to dispose of, or buy out commitments for, trailers, office space, computers, motor vehicles, cell phones and blackberry-like devices.
69. **Non-Recoverable Costs.** In no event shall City be liable for costs incurred by Consultant or any of its subconsultants after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding section 68. 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, or any other expense which is not reasonable or authorized under such attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, section 68.
70. **Deductions.** In arriving at the amount due to Consultant under this Section, City may deduct: (i) all payments previously made by City for work or other services covered by Consultant's final invoice; (ii) any claim which City may have against Consultant in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (D); and (iv) 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.
71. **Survival of Payment Obligation.** City's payment obligation for Work performed in accordance with this Agreement shall survive termination of this Agreement.
72. **Rights and Duties Upon Termination or Expiration**
- 72.1. **Survival of Provisions.** This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 42-43, 45-64, 74, 76-78, 97-101, 17-109, 111..
- 72.2. **Duties Upon Termination.** Subject to the immediately preceding subsection (A), 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. Consultant 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.
73. **Conflict of Interest**

Through its execution of this Agreement, Consultant 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. Consultant further acknowledges that it is aware of requirements of California Government Code section 1090 and of the requirements concerning the filing of Statements of Economic Interest, California Fair Political Practices Commission Form 700, under the requirements of California Government Code section 7300 et seq. and the San Francisco Campaign and Governmental Code section 3.1-102, and that Consultant shall ensure that its employees and subconsultants are aware of those requirements and comply with them.

Consultant agrees that neither it nor any corporation, joint venture or partnership in which it has an interest shall submit a proposal for final design work or bid for construction work on the Central Subway Project. Consultant further agrees that it shall not consult with or otherwise provide advice or information concerning the Central Subway Project to any potential proposers or bidders on the Central Subway Project, except as may be specifically authorized by the SFMTA.

#### **74. Proprietary or Confidential Information of City**

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

#### **75. Notices to the Parties**

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

To SFMTA:     Carter R. Rohan, R.A.  
Senior Director of Transportation Planning and Development  
San Francisco Municipal Transportation Agency  
1 South Van Ness, 7<sup>th</sup> floor  
San Francisco, CA 94103  
Tel: 415-701-4282  
Fax: 415-701-4300

Shahnam Farhangi  
Manager of Contract and Quality Management  
San Francisco Municipal Transportation Agency  
1 South Van Ness, 3<sup>rd</sup> floor  
San Francisco, CA 94103  
Tel: 415-701-4284  
Fax: 415-701-4300

To Consultant:     Geoffrey A. Fosbrook  
Senior Vice-President  
DMJM Harris-AECOM a Joint Venture Partner in Central Subway  
Partners  
605 Third Avenue  
New York, NY 10158  
Tel: 212-973-2998  
Fax: 212-697-2229

Emilio B. Cruz  
Vice President  
EPC Consultants, Inc., a Joint Venture Partner in Central Subway Partners  
655 Davis Street

San Francisco, California 94111  
Tel: 415-675-7580  
Fax: 415-675-7586

Any notice of default must be sent by registered mail.

#### **76. Ownership of Work Product**

Any interest of Consultant or its Subconsultants, in its Work Product shall become the property of and will be transmitted to City. However, Consultant may retain and use copies for reference and as documentation of its experience and capabilities.

#### **77. Works for Hire**

If, in connection with services performed under this Agreement, Consultant or its subconsultants 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 Consultant or its subconsultants under this Agreement are not works for hire under U.S. law, Consultant 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, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.

#### **78. Audit and Inspection of Records**

- 78.1. **Access to Records.** Consultant agrees to maintain and make available to the City accurate books and accounting records relative to its activities under this Agreement. Consultant will permit the 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 reimbursable expenses and additional services provided on an hourly basis, whether funded in whole or in part under this Agreement.
- 78.2. **Maintenance of Records.** Consultant shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later.
- 78.3. **Audit of Subconsultants.** Consultant shall include the provisions of this Section 28 in all sub-agreements between Consultant and its subconsultants giving the City the same rights against the subconsultants. Cancelled checks of payments to subconsultants must be maintained by Consultant and made available to the City upon request.
- 78.4. **Audit.** The City may initiate an audit under this Agreement by written notice, upon not fewer than seven (7) calendar days.
- 78.5. **Rights of State or Federal Agencies.** 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.

#### **79. Assignment**

The services to be performed by Consultant are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Consultant unless first approved by City by written instrument executed and approved as required by SFMTA policy and City ordinance. Consultant and the partners of any joint venture or association that constitute the Consultant or any of the Consultant's subconsultants may incorporate or change their business names, and such actions shall not be considered an assignment for purposes of this Agreement provided such incorporation or name change does not

decrease that entity's obligation or liability under this Agreement. This Agreement shall be binding upon the City and the Consultant and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any funds due or to become due there under may be assigned by the Consultant without the prior written consent and approval of the City.

## **80. 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.

## **81. 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.

- 81.1. Provision of Forms to Eligible Employees.** Consultant 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 Consultant 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 Consultant; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.
- 81.2. Failure to Comply.** Failure to comply with any requirement contained in subparagraph (A) of this Section shall constitute a material breach by Consultant of the terms of this Agreement. If, within 30 days after Consultant receives written notice of such a breach, Consultant fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Consultant 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.
- 81.3. Application to Subconsultants.** Any subcontract entered into by Consultant shall require the subconsultant to comply, as to the subconsultant's Eligible Employees, with each of the terms of this section.
- 81.4. Terms.** 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.

## **82. Small Business Enterprise Program.**

- 82.1. General.** The SFMTA is committed to a Small Business Enterprise Program ("SBE Program") for the participation of SBEs in contracting opportunities. In addition, the Consultant must comply with all applicable federal regulations regarding Disadvantaged Business Enterprise (DBE) participation, as set out in Title 49, Part 26 of the Code of Federal Regulations (49 CFR Part 26), with respect to DBEs performing work under this Agreement. More information on federal DBE requirements can be found on the internet at: <http://www.fta.dot.gov/library/admin/BPPM/ch7.html>.
- 82.2. Compliance with SBE Program.** Consultant shall comply with the SBE provisions contained in the attached Exhibit C, which are incorporated by reference as though fully set forth herein, including, but not limited to, achieving and maintaining the SBE goal set for the total dollar amount awarded for the services to be performed under this Agreement. Failure of Consultant to comply with any of these requirements shall be deemed a material breach of this Agreement.

82.3. **SBE Goal.** The goal for SBE participation is 30 percent of the total dollar amount awarded for the services to be performed under this Agreement.

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

### 83. **Nondiscrimination; Penalties**

83.1. **Consultant Shall Not Discriminate.** In the performance of this Agreement, Consultant agrees not to discriminate against any employee, City and County employee working with such Consultant or subconsultant, applicant for employment with such Consultant or subconsultant, 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.

83.2. **Subcontracts.** Consultant 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 the SFMTA) and shall require all subconsultants to comply with such provisions. Consultant's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

83.3. **Nondiscrimination in Benefits.** Consultant 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.

83.4. **Condition to Contract.** As a condition to this Agreement, Consultant 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.

83.5. **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. Consultant 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, Consultant understands that pursuant to §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 Consultant and/or deducted from any payments due Consultant.

### 84. **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 Consultant acknowledges and agrees that he or she has read and understood this section.

#### **85. Tropical Hardwood and Virgin Redwood Ban**

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges its 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.

#### **86. Drug-Free Workplace Policy**

Consultant 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. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns will be deemed a material breach of this Agreement.

#### **87. Resource Conservation**

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

#### **88. Compliance with Americans with Disabilities Act**

Consultant 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 Consultant, must be accessible to the disabled public. Consultant 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. Consultant 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 Consultant, its employees, agents or assigns will constitute a material breach of this Agreement.

#### **89. Sunshine Ordinance**

In accordance with San Francisco Administrative Code §67.24(e), contracts, Consultants’ 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.

#### **90. Public Access to Meetings and Records**

If the Consultant 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, Consultant shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Consultant 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. Consultant 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 Consultant acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Consultant 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.

#### **91. Limitations on Contributions**

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (A) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (B) a candidate for the office held by such individual, or (C) 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. Contractor 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. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

#### **92. Requiring Minimum Compensation for Covered Employees**

- 92.1. Contractor 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 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](http://www.sfgov.org/olse/mco). A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.
- 92.2. The MCO requires Contractor to pay Contractor'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 Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor 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 Contractor'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 Contractor.
- 92.3. Contractor 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.

- 92.4. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.
- 92.5. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor
- 92.6. Contractor'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 Contractor fails to comply with these requirements. Contractor 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 Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.
- 92.7. Contractor 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, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor 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.
- 92.8. Contractor 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.
- 92.9. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

### **93. Requiring Health Benefits for Covered Employees**

Contractor 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 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](http://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.

- 93.1. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.
- 93.2. Notwithstanding the above, if the Contractor 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.
- 93.3. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor 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, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor 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.

- 93.4. Any Subcontract entered into by Contractor 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. Contractor 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 Contractor 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 Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.
- 93.5. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor'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.
- 93.6. Contractor 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.
- 93.7. Contractor 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.
- 93.8. Contractor shall keep itself informed of the current requirements of the HCAO.
- 93.9. Contractor 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.
- 93.10. Contractor 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.
- 93.11. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
- 93.12. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- 93.13. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor'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 Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

#### **94. First Source Hiring Program**

- 94.1. **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. Consultant 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.

94.2. **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 Contractor 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:

94.2.1. 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.

94.2.2. 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.

94.2.3. 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.

94.2.4. 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.

- 94.2.5. 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.
- 94.2.6. Set the term of the requirements.
- 94.2.7. Set appropriate enforcement and sanctioning standards consistent with this Chapter.
- 94.2.8. 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.
- 94.2.9. Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.
- 94.3. **Hiring Decisions.** Consultant shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.
- 94.4. **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.
- 94.5. **Liquidated Damages.** 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. Contractor agrees:
- 94.5.1. To be liable to the City for liquidated damages as provided in this section;
- 94.5.2. 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;
- 94.5.3. 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.
- 94.5.4. 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;

94.5.5. 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:

- 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
- 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;

94.6. 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

94.7. That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

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

## **95. Prohibition of Political Activity with City Funds**

In accordance with San Francisco Administrative Code Chapter 12.G, Consultant 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. Consultant 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 Consultant violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (A) terminate this Agreement, and (B) prohibit Consultant from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Consultant's use of profit as a violation of this section.

## **96. Preservative-treated Wood Containing Arsenic**

Consultant 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. Consultant 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 Consultant 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.

#### **97. 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 as required by the terms of this Agreement or as otherwise required by law.

#### **98. 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, including but not limited to the Dispute Resolution Procedures set out in the Agreement, or resort to any other legal remedy, be referred to the SFMTA's Executive Director/CEO (or his designee), for final administrative interpretation of the Agreement.

#### **99. 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.

#### **100. Construction of Agreement**

All paragraph captions are for reference only and shall not be considered in construing this Agreement. This Agreement is the result of and memorializes a negotiated contract between the Parties, each of which is experienced and knowledgeable in professional services contracting for public works program and construction management, and each of which was represented by and had the assistance of legal counsel of its choosing. No rule of construction in which an ambiguity in a contract is construed against the drafter shall be applied to interpret this Agreement or the Parties' intentions thereto.

#### **101. Entire Agreement**

This Agreement and its listed Appendices constitute an integrated document that sets forth the entire agreement between the parties as to the matters addressed therein, and the provisions of this Agreement and its listed Appendices supersede all other oral or written provisions, drafts of the Agreement. This contract may be modified only as provided in Section 97, above.

#### **102. Compliance with Laws.**

Consultant 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.

#### **103. Federal Contract Requirements and Applicable Law**

The provisions contained in "FTA Requirements for Personal Services Contracts," attached as Exhibit I are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence. The City and County of San Francisco is a chartered City and County with home rule powers under the Constitution of the State of California. The terms of this Agreement are governed by California Law and the ordinances and Charter of the City and County of San Francisco. Except as expressly provided for in this Agreement, the Federal Acquisition Regulations shall not apply to this Agreement, except as provide guidance as to compensable costs and overhead.

#### **104. 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 San Francisco City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subconsultants of Consultant, will be paid unless the provider received advance written approval from the City Attorney.

#### **105. Prompt Payment of Subconsultants**

**105.1. Progress Payments.** In accordance with SFMTA's SBE Program, no later than three (3) working days from the date of Consultant's receipt of progress payments by the City, the Consultant shall pay any subconsultants for work that has been satisfactorily performed by said subconsultants, unless the Consultant notifies the CCO Director in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between the Consultant and the subconsultant. Within five (5) working days of such payment, Consultant shall provide City with a declaration under penalty of perjury that it has promptly paid such subconsultants for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

**105.2. Retention.** Consultant may withhold retention from subconsultants if City withholds retention from Consultant. Should retention be withheld from Consultant, within thirty (30) days of City's payment of retention to Consultant for satisfactory completion of all work required of a subconsultant, Consultant shall release any retention withheld to the subconsultant. Satisfactory completion shall mean when all the tasks called for in the subcontract with subconsultant have been accomplished and documented as required by City. Within forty (40) days of satisfactory completion of all work required of the subconsultant, Consultant should release any retention withheld to the subconsultant.

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

#### **106. Disputes**

**106.1. Notice of Dispute.** For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved Party shall furnish the other Party with a notice of dispute within fifteen (15) days of the determination of the dispute. The Party receiving a notice of dispute shall submit a written reply with fourteen (14) days of delivery of the notice. The notice and response shall contain the following: (i) a statement of the Party's position and a summary of the arguments supporting that position, and (ii) any evidence supporting the Party's position.

**106.2. Resolution of Disputes.** Disputes arising in the performance of this Agreement that are not resolved by negotiation between the SFMTA Liaison and Consultant's shall be decided in writing by the SFMTA Manager of Project Management. The decision shall be administratively final and conclusive unless within ten (10) days from the date of such decision, the Consultant mails or otherwise furnishes a written appeal to the Senior Director of Transportation Planning and Development, or his/her designee. In connection with such an appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Senior Director of Transportation Planning and Development shall be administratively final and conclusive. This section applies to all disputes unless a specific provision of this Agreement provides that the SFMTA Program Director's decision as to a particular dispute is final.

**106.3. No Cessation of Work.** Pending final resolution of a dispute hereunder, the Consultant shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the SFMTA Liaison.

**106.4. Alternative Dispute Resolution.** If agreed to by both Parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

**106.5. Claims for Additional Compensation.** For disputes involving a claim for additional compensation, parties involved shall attempt to resolve such disputes expediently and in good faith so as not to impact the performance or schedule of the Project. Under no circumstances shall the Consultant or its sub-consultants stop work due to an unresolved dispute.

**106.6. Disputes among Consultant Partners.** The resolution of any contractual disputes related to Consultant's Joint Venture or Association partners (if any) shall be the sole responsibility of the Consultant. Each party of the Joint Venture or Association shall resolve all such disputes within thirty (30) calendar days of when the dispute first surfaced so as not to impact Consultant's performance of the Contract or otherwise delay the Project. Any such disputes which impact the Project and which are left unresolved for more than one month shall be cause for the City to withhold and/or reduce invoice payments to the Consultant's Joint Venture or Association firms until the dispute is resolved.

**107. 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.

**108. Protection of Private Information**

Contractor 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. Contractor agrees that any failure of Contractor 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 Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

**109. 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.**

**Consultant shall remove all graffiti from any real property owned or leased by Consultant in the City and County of San Francisco within forty eight (48) hours of the earlier of Consultant'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 Consultant 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 Consultant to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

**110. Food Service Waste Reduction Requirements**

Contractor 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, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor 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 Contractor's failure to comply with this provision.

**111. No Third Party Beneficiary.** This Agreement is intended for the sole benefit of the City and the Consultant, and is not intended to create any third-party rights or benefits.

**112. Included Appendices.** The following appendices or exhibits to this Agreement are incorporated by reference as if fully set out herein.

- A: Scope of Services/Scope of Work
- B: SBE Forms
- C: Small Business Enterprise (SBE) Program
- D: Directory of Subconsultants
- E: Cost Breakdown/Schedule of Charges
- F: Other Direct Costs
- G: Organization Charts
- H.1. Gantt Charts
- H.2. Cost and Resource Summary.
- I. FTA Requirements for Personal Services Contracts

**113. Signatories Authorized.** By signing below, each signatory warrants that he or she is authorized to execute this Agreement and thereby bind the Party he or she represents.

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



CITY

City and County of San Francisco  
Municipal Transportation Agency

By \_\_\_\_\_  
NATHANIEL P. FORD, SR.  
Executive Director/CEO

SFMTA Board of Directors  
Resolution No.  
Adopted:  
Attest:

\_\_\_\_\_  
Roberta Boomer, Secretary  
SFMTA Board of Directors

Approved as to Form:

Dennis J. Herrera  
City Attorney

By \_\_\_\_\_  
Robert K. Stone  
Deputy City Attorney

CONSULTANT

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

Consultant has read and understands 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.

GEOFFREY A. FOSBROOK  
Senior Vice-President  
DMJM Harris-AECOM a Joint Venture  
Partner in Central Subway Partners  
605 Third Avenue  
New York, NY 10158

EMILIO B. CRUZ  
Vice President  
EPC Consultants, Inc., a Joint Venture  
Partner in Central Subway Partners  
655 Davis Street  
San Francisco, California 94111

Central Subway Partners City Vendor No.  
Address  
City, State, ZIP  
Phone Number  
Federal Employer ID Number

**As directed by the SFMTA, Consultant shall provide the Agency the Work and professional services described below, as those services are more particularly described in Annual Work Plans and Task Orders**

## **PHASE 1 BASE SCOPE**

### **1-1 PROGRAM MANAGEMENT**

#### **1-1.01 General PM**

In support of implementation of T-Third LRT Project, Phase 2 Central Subway Project (CSP), Consultant shall provide a PM/CM Team Leader, assisted as-needed by the Team Director. Manage the day-to-day functions of the Central Subway Partnership staff. Coordinate with and support the SFMTA CSP Program Manager and coordinate and manage the work efforts of additional consultants hired by the SFMTA and City staff for the implementation of the CSP.

#### **Special Services**

Under the General PM budget, provide special services and studies as directed by the SFMTA CSP Program Manager to include:

- Additional Value Engineering
- Additional Safety Hazard Analysis
- Additional Board of Consultant Reviews
- Revised Renderings, Simulations, and Presentation Models
- Additional ADA analyses
- Additional Operating Scenarios Analyses
- Additional Environmental Hazardous Investigation Studies
- Additional Specialty Cost Engineering
- Additional Request for Proposal development
- Additional support required to progress design and/or construction.

Deliverables: Program management services; studies, analyses, and reports, as directed by SFMTA

#### **1-1.02 Project Management Plan**

Adopt, maintain, periodically update, and implement the SFMTA's Project Management Plan (PMP) to reflect current plan for bringing the CSP into revenue service, and respond to FTA comments. The PMP shall be a comprehensive manual describing non-discipline specific procedures and processes to be used by all CSP participants. Conduct training and follow-up as needed to ensure that all CSP participants understand and conduct their work on the CSP in compliance with the PMP. Update the PMP to include requirements for construction management, dispute resolution process, and as required support program delivery.

Deliverables: Updated Project Management Plan in accordance with FTA approval and training.

### **1-1.03 Develop and update contract package strategy**

Review, evaluate and refine construction bid documents and contract packages. As the CSP program advances, reevaluate and amend the contract bid packages as necessary to reflect changes in CSP design, scope, and schedule.

Deliverables: Updated contract packaging plan

### **1-1.04 Collect, analyze, track, monitor and report monthly progress**

Collect and analyze data, track trends, monitor conditions and develop information on the progress of the CSP and will present that information in clear and concise monthly progress reports.

Deliverables: Monthly progress reports

### **1-1.05 Participate in/conduct bi-weekly CSP progress meetings**

Conduct and participate in bi-weekly CSP progress meetings. Consultant shall keep minutes of progress meetings and develop and maintain an issues/action log to track the progress and record the completion of action items.

Deliverables: Progress meeting agendas; Progress meeting minutes; Issues/action logs and updates.

### **1-1.06 Participate in/conduct CSP presentations**

Participate in and/or conduct CSP presentations as directed by SFMTA CSP Program Manager.

Deliverables: Presentation materials; participation in presentations.

### **1-1.07 Provide contract compliance and contract administration support**

Provide support for contract compliance and contract administration of the CSP.

Deliverables: Contract documentation; SBE contract status reporting and records.

## **1-3 FINANCIAL MANAGEMENT**

### **1-3.01 Develop and oversee a master funding plan/schedule for the Program**

#### **1-3.01.A Master funding plan implementation**

Review and provide comments on existing SFMTA master funding plan. facilitate amendments to, , update and implement the master funding plan. Consultant shall assist the SFMTA in securing committed funds to implement the CSP.

Deliverables: Master Funding Plan update; Input to monthly reporting; Prepare, process and administer all documentation for SFMTA approval; Requests for programming and allocations.

#### **1-3.01.B Additional funding support and reporting**

Analyze and report on potential new or enhanced sources of funds as CSP costs and revenues change over time. Identify, make recommendations, and assist the SFMTA in obtaining alternative or supplementary funding sources as required to support CSP delivery. Consultant shall provide the SFMTA administrative and planning assistance in amending the TIP to reflect changes in the CSP financial plan and schedule. assist the SFMTA in drafting submittals to MTC to properly reflect the CSP in Resolution 3434 and the Regional Transportation Plan; assist the SFMTA in drafting and submitting periodic reports required for grants funding, including but not limited to including but not limited to Prop K annual reports.

Deliverables: Report analyzing potential new funding sources and amounts , and application deadlines and requirements; TIP amendment submittals and reports; Submittals for Resolution 3434 and RTP updates; Periodic grant reporting submittals.

### **1-3.02 Support establishment of a program cost accounting structure**

Review and comment on the CSP cost accounting process, procedures and systems to ensure consistency with funding agency requirements and management objectives for cost reporting. Assist SFMTA in conducting regular financial analyses of the CSP.

Deliverables: Financial plan model scenario updates and outputs

### **1-3.03 Develop and implement financing strategies; Coordinate track and secure Program funding.**

#### **1-3.03.A Assist SFMTA in conducting regular financial analysis of the CSP**

Conduct ongoing (quarterly) analyses of CSP financial requirements. Coordinate and track program funding.

Update CSP financial plan prepared for the SEIS/SEIR phase and build on the work prepared during preliminary engineering. Perform financial analysis to include total cost and subsidy requirements of the CSP, on a cash flow basis, including both capital and operating funding. Update prior estimates of potential federal funding, including STP, CMAQ, and NHS. Update potential State and local funding available to the CSP, including existing and new sources such as sales taxes, gasoline taxes, transit revenue, State and local bonds.

Assess potential private sector and innovative funding sources and methods including but not limited to State infrastructure bank and other credit enhancement programs, tapered local match, joint development, special benefit districts, or tax increment financing, direct private sector contributions, alternative procurement methods, cross-border leasing, and Certificates of Participation, . Coordinate financial plan with land use/joint development activities.

Prepare estimates of the potential yield from the sources referenced above, and identify types and rates of taxes or fees needed to satisfy the funding requirements of the CSP. Consultant shall identify and provide estimates (quantify) of unfunded portions of the CSP (“unfunded gaps”, if any, and develop a plan for funding those activities or work.

Analyze the SFMTA’s financial capacity to successfully build and operate the CSP, and assist the Agency in drafting and submitting capital and operating financial plans to the FTA.

Deliverables: Financial analyses and reports, funding plans and models, assistance with ; Updated Financial Plan that meets applicable FTA Guidance for Transit Financial Plans.

#### **1-3.03.B Identify non-traditional financing alternatives**

Analyze SFMTA capital funding cash flows and determine if bridge financing is needed and how bridge financing needs could be met. Analyze potential opportunities for joint development revenue, and analyze potential long term debt financing using committed revenue streams, such as parking revenues.

Deliverables: Research report (“white Paper”)on joint development opportunities for the CSP; Research report (“White Paper”)on options for bridge financing; Detailed analysis of potential debt financing; description of options for issuing debt; debt service schedules. Provide assistance to SFMTA in implementing project financing alternatives.

#### **1-3.04 Analyze, prepare, and maintain current and projected cash flow requirements**

Consultant shall ensure that committed revenues included in the finance plan are allocated by the funding agencies and made available to the CSP in a timely fashion. Consultant shall assist SFMTA staff in acquiring available state and regional funds . Consultant shall assist the SFMTA identifying alternative sources of revenue for the CSP, including bridge toll revenues, state RTIP and TCRP grants, funding available from state bond fund proceeds, sales tax revenues targeted to transportation and parking revenue. Consultant shall evaluate potential new revenues in the context of the agency-wide financial plan.

Consultant shall identify opportunities to move funding between projects to optimize the timing of revenue for capital projects while maintaining full funding for SFMTA transit operations.

Deliverables: Updated monthly CSP cash flow reports

## **1-4 RISK MANAGEMENT**

### **1-4.01 Perform risk analysis and prepare risk management plan/ risk mitigation plan**

Review and update the existing CSP risk management program, and provide support to FTA risk management workshops led by PMOC. Conduct internal CSP team risk workshops. Review and confirm contracting strategy to reduce risk factors and incorporate same into the risk register.

Deliverables: Risk management plan update; contracting strategy review, Risk workshop support.

### **1-4.02 Maintain and update risk contingency management tracking system and mitigation plan**

Maintain and update the CSP risk management plan and risk register; maintain and update risk management strategy for avoidance of design and construction contract claims. Consultant shall develop data for statistical analyses of program cost estimates and schedules, and management of cost and schedule contingencies.

Conduct risk assessments to determine the lowest risk contracting and construction methods to complete the CSP, and to identify and assess risks that could delay or impose additional costs on the Project. Evaluate risk exposure geotechnical and built environmental conditions (such as utilities and buildings), construction methods, and contract delivery methods. Work with FTA Risk Assessment Consultant as needed, and analyze risks in accordance with FTA Risk guidance and identify appropriate risk allocation.

Analyze and present risk assessments and proposed mitigation strategies in workshops and in meetings with the Project Manager.

Deliverables: Monthly risk register updates; quarterly review and updates to risk management plan as appropriate. Effective management of cost and schedule contingencies to implement CSP within approved budget and schedule.

## **1-5 REAL ESTATE**

### **1-5.01 Real estate acquisition (including permanent and temporary easements)**

Review and adopt the RAMP and reconcile the RAMP with the CSP master schedule; produce legal descriptions and plats of properties to be acquired ; environmental site assessment; prepare right of way certifications; obtain FTA concurrence; assist in negotiations with property owners; support SFMTA in eminent domain proceedings as required.

Deliverables: RAMP update, as necessary to match CSP master schedule; conduct property appraisals; obtain legal descriptions and plat maps; conduct environmental site assessments; right of way certifications; provide support for property acquisition negotiations and eminent domain proceedings.

### **1-5.02 Encroachments and rights of entry**

Assist the City in obtaining rights of entry and use from property owners for placement of vibration monitors and other equipment, as necessary; assist in negotiations with property owners for easements and other access rights; relocate facilities and assist in obtaining permanent access to subsurface basements as required for program construction; obtain temporary construction easements.

Deliverables: Rights of entry and rights of use; temporary construction easements.

### **1-5.03 Relocation Services**

produce a FTA approved tenant and business relocation plan; conduct site surveys; identify possible relocation sites; assist in negotiation of relocation compensation package and obtain FTA concurrence; manage relocations; assist in eviction process if necessary.

Deliverables: Relocation plan; site surveys; proposed relocation packages; management of relocations; support for evictions.

## **1-6 INTERAGENCY COORDINATION**

### **1-6.01 Assist in coordinating with regulatory agencies and other stakeholders**

develop an interagency coordination plan to be approved by SFMTA; establish and implement a technical advisory committee that will meet quarterly; develop protocols for interagency communications

Deliverables: interagency coordination plan and communication protocol

### **1-6.02 Assist in securing required local, regional, state and federal permits**

As directed by the Program Manager, Consultant shall assist or take the lead in obtaining all necessary permits, including but not limited to street use, surface mounted utilities, excavation, sidewalk, tree removal, sidewalk encroachment, grade crossings, traffic, demolition, building permits, occupancy, OSHA Tunnel Permit Requirements, sidewalk legislation.

Deliverables: CSP permits

### **1-6.03 Manage and implement relocation of utilities**

manage and implement relocation of utilities and facilities in sub-sidewalk basements.

Deliverables: Timely relocation of utilities and other facilities as needed to implement CSP within approved schedule and budget.

### **1-6.04 Technical assistance in securing agreements and MOUs**

Identify requirements for third party agreements and memoranda of understanding with third parties. Provide assistance in negotiating and executing agreements to support CSP scope, cost, and schedule objectives.

Deliverables: Executed third party agreements and memoranda of understanding

## **1-7 COMMUNITY / PUBLIC OUTREACH**

### **1-7.01 Develop and manage community and public master outreach plan**

Develop management and communication protocols, including written public information policies and procedures to be approved by SFMTA, produce weekly summaries of stakeholder/community outreach and business assistance activities, facilitate weekly coordination meetings with SFMTA, provide Monthly Project Status Reports, and develop a Crisis Communication Plan.

In conjunction with SFMTA, work with the Community Advisory Group (CAG) formed during Preliminary Engineering to enhance the CSP's public involvement and image and provide outreach and develop community support for CSP using the tools, approaches, and media found to be effective during Preliminary Engineering.

Publish periodic newsletters and bulletins focused on decision points on CSP issues; update and maintain a Core Project Mailing List.

Assist the SFMTA in updating the CSP website, and will monitor toll-free CSP information hotline the construction hotline. Respond to community concerns and complaints, and maintain records of comments and responses.

Deliverables: Community and public outreach plan; weekly stakeholder/community outreach summaries; monthly outreach status reports; website updates; Development of information brochures, project newsletters, facts sheets, and other public information materials, all in English, Chinese and Spanish.

### **1-7.02 Provide public affairs coordinator / outreach teams to interact with community**

Provide public affairs coordinators, staffing, and logistics for CAG meetings, presentations to policy boards and neighborhood-focused meetings on technical issues to resolve items related to new CSP changes that may occur during design and construction.

Maintain contacts and conduct outreach to property owners along the CSP Alignment, including merchants, and provide constant updates and assurance to these owners on potential construction impacts to their buildings/properties due to implementation of this CSP.

Conduct public meetings to obtain community input at major design development milestones. Conduct quarterly construction status meetings. Prepare presentations and participate, as requested by SFMTA, in meetings sponsored by community, business, and neighborhood stakeholders.

Provide public notices regarding maintenance of traffic and Access Plan changes prior to major construction activities. Prepare individual Traffic Management Strategy Reports. Provide up to date information for emergency responder access, commercial vehicle access, pedestrian, handicapped and bicycle access and safety, and parking. Communicate traffic and transit detours and reroutes to local media.

Deliverables: Provide community outreach personnel; facilitate key stakeholder briefings and presentations; Facilitate public meetings at key design milestones and on quarterly basis during construction; provide staffing and logistical support for public hearings, including but not limited to: preparation and placement of hearing notices in all appropriate languages. Identify and secure appropriate venues for meetings that have appropriate parking, lighting, security, insurance, audio and translation equipment; Securing court reporter when necessary; Provide brochures and informational materials, sign-in sheets, public comment forms, and public notices regarding traffic and transit changes, all in English, Chinese and Spanish.

## **1-8 DESIGN OVERSIGHT**

### **1-8.01 Design oversight**

Provide supervision and oversight of final design. Assemble, review, and adopt design deliverables and evaluate for conformance to CSP scope, schedule and budget. Review the current design documents, recommend updates as necessary, and adopt as a guide for delivery of CSP.

Oversee, monitor and make recommendations to ensure timely progress of design.

Deliverables: Review and adopt preliminary engineering and final design deliverables. Input to monthly progress reporting. Coordinate review and approval of design documents as needed to effectively implement CSP.

### **1-8.02 Manage the engineering change control process in accordance with the CSP management plan**

Implement design comment data base and use data base to track design review comments, final designer responses to comments, and verification of comment resolution .

Manage the Engineering Change Control Process (ECCP) process. Maintain basis of design documentation to record and provide a single resource for CSP scope, approach, and criteria decisions implemented by SFMTA.

Deliverables: Current basis of design documentation. Design comment database. Effective control of engineering and construction changes.

### **1-8.03 Manage technical design reviews of design submittals**

Conduct incremental design reviews to validate design assumptions against program definition, to provide the earliest opportunity for comment, and to assess work progress against the master schedule.

Establish a design review process consistent with PMP and SFMTA requirements; Develop requirements for workshops to ensure that design submissions are fully understood, and develop an effective comment/review process; Develop a consistent and effective interdisciplinary review process for use by all consultants; Verify design compliance with the basis of design and the program criteria document through use of a design criteria conformance checklist. Tabulate all review comments and follow-up on comments with reviewers.

Deliverables: Comment review database and follow up. Conduct design review and resolution workshops, as necessary.

## **1-8.07 Resolution of Design Challenges**

Provide ongoing technical review and expertise to resolve design issues and challenges during design and construction.

Deliverables: As needed technical expertise during design and construction.

## **1-9 PRECONSTRUCTION MANAGEMENT**

### **1-9.01 Review/prepare construction methodologies**

Evaluate proposed construction methodologies as developed during preliminary engineering and final design. Make recommendations for refinement or modification of construction approach, as appropriate, for approval by SFMTA.

Deliverables: Report on proposed construction methodologies

### **1-9.02 Industry outreach to the heavy construction and systems contractors market**

Develop, review, and update written recommendations that the SFMTA can increase interest and competition among potential bidders on construction packages and conduct outreach to industry to increase bidder pool.

Deliverables: Conduct industry outreach to increase bidder pool.

### **1-9.03 Conduct constructability reviews**

Produce report on constructability reviews with recommendations for approval by the SFMTA.

Deliverables: Constructability report(s), identification of construction constraints, i.e. holiday moratoria, business disruptions and major event planning, i.e. Moscone Center. Comment review database and follow up. Conduct review and resolution workshops, as necessary.

### **1-9.04 Prepare procurement documents**

Assist SFMTA and final designer(s) in preparing construction bid packages and other procurement documents, including assembling / coordinating drawings and specifications prepared by final designers. Provide input and assistance into development of contract specifications in CSI format Division 0 and Division 1.

Deliverables: Comprehensive CSI format Division 0 and Division 1 document with supplemental conditions and special conditions. Assembly of documents needed for procurement package.

### **1-9.05 Bid and award assistance**

Assist City staff in conducting prebid conference. Coordinate responses to bidders' questions. Assist in tabulating and analyzing bids. Identify any bid inconsistencies to validate responsiveness of bids. Make recommendation to SFMTA on lowest responsive and responsible bidder. Assist in finalizing construction contract awards.

Deliverables: Prebid conference agendas and minutes; Comment review database and follow up; Final document containing all responses to bidders' questions; Bid tabulation.

### **1-9.06 Construction Management Plan (CMP)**

Produce and maintain Construction Management Plan, including construction management procedures, in accordance with SFMTA/FTA requirements. The CMP shall be a comprehensive manual on construction management procedures and processes to be used by all CSP participants. Conduct training and follow-up as needed to ensure that all CSP participants understand and conduct their work on the CSP in compliance with the CMP.

Deliverables: Current CMP effectively used by CSP participants.

### **Develop staffing plans and budgets for administration of each construction contract**

Prepare detailed staffing plans, including roles and responsibilities for construction management team assigned to each construction contract. Identify respective assignments of CSP and City staff.



Deliverables: construction management staffing plans

#### **1-9.07 Develop a training program for all CM staff**

Prepare training program for all construction management staff, including consultant and city staff.

Deliverables: CM training program and materials .

#### **1-9.08 Develop testing, training, and commissioning program for each contract**

Assist final designer(s) in defining testing and training program and requirements for operations and maintenance and manuals and spare parts to be incorporated into IFB technical specifications, including materials, components, and systems, and advanced commissioning requirements for each construction contract. Review requirements in contract document to ensure completeness.

Deliverables: Testing, commissioning and training plan and construction contract specifications on testing, training, and operations and maintenance manuals, spare parts, training and commissioning for each contract.

#### **1-9.09 Develop construction materials testing program**

Consultant shall assist the final designer(s) in defining a materials testing program and materials testing requirements to be incorporated into IFB technical specifications for each construction contract.

Deliverables: Materials testing plan and construction contract specifications on testing for each contract.

### **1-10 CONSTRUCTION MANAGEMENT**

#### **1-10.01 General Construction Management**

Consultant shall provide programmatic construction management leadership, coordination and quality control.

Deliverables: Construction management services

#### **1-10.02 Implement a training program for all City and Proposed construction management staff**

As directed by the SFMTA, Consultant shall design and implement a construction management training program for all CSP staff to be conducted throughout the construction phase of the CSP. .

Deliverables: CM training

#### **1-10.03 Manage technical design services to facilitate in-progress construction work**

Consultant shall manage, coordinate and provide oversight of design services during construction.

Deliverables: Oversight, coordination and management of design services during construction to facilitate construction work.

#### **1-10.04 Assist in developing/implementing mitigation measures to minimize impacts to local businesses and residents during construction**

Consultant shall develop and implement a traffic control plan, and coordinate implementation of that plan to mitigate impacts to local businesses and residents generally during construction and during unplanned events.

Deliverable: Develop traffic control and construction impact mitigation measures as necessary.

#### **1-10.05 Provide claims avoidance management and partnering process for contractors, assist in resolution of contract claims as directed by SFMTA**

Provide claims avoidance management for the CSP. Work with the CSP team (including construction contractors) to establish issue and contract claims resolution process. Perform contract change order analysis, resolution and negotiation as directed by SFMTA.

Deliverables: Dispute avoidance / mitigation guidelines; Issue resolution process; Contract change order analysis, resolution and record of negotiations.

## **1-10.06 Implement the materials testing program**

Produce reports on contractor's compliance with materials testing requirements. Review and comment on the contractors' testing plans and submittals. Manage on-site tests and witness factory tests as directed by the SFMTA. Perform quality assurance and validation tests.

Deliverables: Develop materials testing plans and reporting procedures. Review contractor materials testing submittals Report on results of materials testing by independent laboratories.

## **1-10.07 Provide environmental health and safety management and oversight for the contractor's compliance with environmental health and safety regulations and requirements**

Review and monitor contractor compliance with environmental health and safety requirements. Draft and submit Report to the Program Manager regarding contractor's compliance with environmental and safety regulations.

Deliverables: Environmental health and safety management, including hazardous material monitoring for both underground and above ground work; produce health and safety compliance reports.

## **1-10.08 PROVIDE ON-SITE CONSTRUCTION MANAGEMENT SERVICES FOR TUNNEL CONSTRUCTION**

### **1-10.08.A Provide Construction Manager Services for Tunnel Construction**

Conduct pre-construction activities, including partnering, as necessary.

Coordinate all construction activities with SFMTA.

Schedule, attend and direct weekly on-site progress meetings with contractors and SFMTA to review construction progress/issues.

Validate contractor construction schedules.

Perform regular analyses of contractor work plans and actual work progress against baseline Critical Path Method (CPM) schedule and identify issues. Update the CSP Master Schedule to reflect actual construction progress.

Assist in development of potential efficiencies and workarounds using CPM schedule, as required.

Evaluate contractors' plans for procurement of long lead-time items, including but not limited to special equipment, materials, permits, or third party agreements.

Review and comment on contractor work plans and schedule for conformity with CSP schedules.

Review and respond to Requests-For-Information and submittals in a timely fashion.

Manage and monitor exceptions activities from submittals, test reports, inspections, non-compliance reports, and meetings.

Review contractors' monthly payment invoices against total earned value of work completed. Resolve any conflicts or discrepancies prior to submittal to SFMTA for payment.

Prepare scope of work, justification analysis for SFMTA proposed contract changes in advance of issuing contract changes to contractor(s).

Administer the evaluation and negotiation of change orders and participate with SFMTA in the negotiation of change orders, cost and schedule changes with contractors.

Verify that construction contractors maintain true and accurate 'as-built' drawings and specifications through out construction.

Conduct final inspection prior to contract acceptance, notify the SFMTA of the inspection, and administer acceptance procedures.

Supervise, mentor and train CM staff, including City provided staff

Deliverables: Minutes of pre-construction conference; Records of partnering meeting(s); Maintain an Issues/Action Log of bi-weekly meetings; Monitor a three-week look-ahead schedule of contractor's proposed activities; Issue a report with comments on the validity of the contractor's plans for long lead-time items with any recommended changes; Maintain a record and log of Requests-for-Information and submittals and responses; Report routinely on trends of non-compliance; Provide recommendation for

contractor payment by SFMTA; Produce contract modification packages, including all supporting documents, in accordance with SFMTA CSP management plan; Conduct periodic visits and audit of contractors' as-built drawings and records keeping as specified in the contract documents; Provide final inspection and report; Provide contract acceptance report.

**1-10.08.B Provide Resident Engineer Services for Tunnel Construction**

Provide resident engineering in support of construction manager activities and services.

Deliverables: see 1-10.08.A

**1-10.08.C Provide Office Engineering Services for Tunnel Construction**

Manage the submission of samples, shop drawings, and operations and maintenance manuals. Provide construction contract administration and office engineering. Review and approve submissions as applicable. Track status of all submittals.

Compile closeout program documents, including contract documents, test reports and testing and commissioning documentation, manuals and warranties.

Deliverables: Review contractor submittals; Maintain submittal logs; Maintain Construction contract and change order records; Collect, compile, maintain all as-built records and closeout documents and produce a complete set of program closeout documents; Coordinate with operations and maintenance to ensure that accuracy and completeness of product manuals and warranty documents.

**1-10.08.D Provide Inspection Services for Tunnel Construction**

Monitor contractors designated by SFMTA to ensure compliance with applicable specifications, /standards, codes, regulations and requirements.

Monitor the construction work and construction site for compliance with safety standards

Provide technical, full-time, on-site inspection of the progress and quality of the construction work performed. Produce daily inspection reports for all disciplines of work performed. Provide mentoring and training to additional inspectors to be provided by City.

Deliverables: Produce and input a daily log of inspected field work; Produce and input daily inspection records; provide training.

**1-10.08.E Provide Document Control Services for Tunnel Construction**

Consultant shall design and implement a document control system for tunnel construction to maintain construction contract documents and records, including but not limited to contracts, contract modifications, correspondence, claims, contractor requests for information and designer responses.

Deliverables: Construction record document control system

**1-10.09 PROVIDE ON-SITE CONSTRUCTION MANAGEMENT SERVICES FOR UTILITIES CONSTRUCTION**

**1-10.09.A Provide Construction Manager Services for Utilities Construction**

See description of services under 1-10.8.A

**1-10.09.B Provide Resident Engineer Services for Utilities Construction**

To be provided by City.

**1-10.09.C Provide Office Engineering Services for Utilities Construction**

To be provided by City.

**1-10.09.D Provide Inspection Services for Utilities Construction**

To be provided by City.

**1-10.09.E Provide Document Control Services for Utilities Construction**

See description of services under 1-10.8.E

**1-10.10 PROVIDE ON-SITE CONSTRUCTION MANAGEMENT SERVICES FOR MOSCONE STATION CONSTRUCTION**

**1-10.10.A Provide Construction Manager Services for Moscone Station Construction**

See description of services under 1-10.8.A

**1-10.10.B Provide Resident Engineer Services for Moscone Station Construction**

See description of services under 1-10.8.B

**1-10.10.C Provide Office Engineering Services for Moscone Station Construction**

See description of services under 1-10.8.C

**1-10.10.D Provide Inspection Services for Moscone Station Construction**

See description of services under 1-10.8.D. Work in coordination with City-provided inspectors.

**1-10.10.E Provide Document Control Services for Moscone Station Construction**

See description of services under 1-10.8.E

**1-10.11 PROVIDE ON-SITE CONSTRUCTION MANAGEMENT SERVICES FOR UNION SQUARE/MARKET STATION CONSTRUCTION**

**1-10.11.A Provide Construction Manager Services for Union Square/Market Station Construction**

See description of services under 1-10.8.A

**1-10.11.B Provide Resident Engineer Services for Union Square/Market Station Construction**

See description of services under 1-10.8.B

**1-10.11.C Provide Office Engineering Services for Union Square/Market Station Construction**

See description of services under 1-10.8.C

**1-10.11.D Provide Inspection Services for Union Square/Market Station Construction**

See description of services under 1-10.8.D. Work in coordination with City-provided inspectors.

**1-10.11.E Provide Document Control Services for Union Square/Market Station Construction**

See description of services under 1-10.8.E

**1-10.12 PROVIDE ON-SITE CONSTRUCTION MANAGEMENT SERVICES FOR CHINATOWN STATION CONSTRUCTION**

**1-10.12.A Provide Construction Manager Services for Chinatown Station Construction**

See description of services under 1-10.8.A

**1-10.12.B Provide Resident Engineer Services for Chinatown Station Construction**

See description of services under 1-10.8.B

**1-10.12.C Provide Office Engineering Services for Chinatown Station Construction**

See description of services under 1-10.7.C

**1-10.12.D Provide Inspection Services for Chinatown Station Construction**

See description of services under 1-10.8.D. Work in coordination with City-provided inspectors.

**1-10.12.E Provide Document Control Services for Chinatown Station Construction**

See description of services under 1-10.8.E

**1-10.13 PROVIDE ON-SITE CONSTRUCTION MANAGEMENT SERVICES FOR SURFACE, TRACK WORK, SYSTEMS CONSTRUCTION**

**1-10.13.A Provide Construction Manager Services for Surface, Track work, Systems Construction**

See description of services under 1-10.8.A

**1-10.13.B Provide Resident Engineer Services for Surface, Track work, Systems Construction**

See description of services under 1-10.8.B

**1-10.13.C Provide Office Engineering Services for Surface, Track work, Systems Construction**

To be provided by City.

**1-10.13.D Provide Inspection Services for Surface, Track work, Systems Construction**

To be provided by City.

**1-10.13.E Provide Document Control Services for Surface, Track work, Systems Construction**

See description of services under 1-10.8.E

**1-10.14 Coordinate delivery and procurement of City-furnished materials and equipment**

To be provided by City.

**1-10.16 Safety Officer**

Consultant shall provide a program safety officer who shall perform site safety and security inspections and audits during construction. The safety officer shall also provide safety and security training to CM teams, including instruction as required responses to safety or security hazards.

Deliverables: Effective site safety and security inspections and training. .

**1-12 QUALITY ASSURANCE / QUALITY CONTROL**

**1-12.01 Provide oversight of QA/QC program**

Evaluate final designer(s)' and contractors' proposed QC plan for compliance with SFMTA procedures and PMP. Review and recommend approval to SFMTA of each firm's quality plan for use on the program.

Establish QA/QC process consistent with the PMP, SFMTA QA plan and SFMTA requirements; Develop requirements for workshops to ensure that design submissions are fully understood, and develop an effective comment/review process; Develop a consistent and effective interdisciplinary review process for use by all consultants; Review and approve each contractor's quality plan to ensure effective quality control and ensure that testing requirements are implemented. Develop a CSP-specific training program in accordance with the QA plan. Provide QA/QC training to CSP participants.

Distribute training materials. Monitor training by contractors to SFMTA operations and maintenance personnel. Review training requirements in contract document to ensure completeness. Work with document control staff to ensure a complete inventory of all training materials.

Deliverables: Effective QA/QC Program for CSP; Review and approval of design team, consultant, and contractor QA/QC plans; Quality training documentation.

**1-12.02 Implement QA program for design and QA/QC program for construction**

Review and update SFMTA QA/QC procedures and adopt as QA/QC plan for PM/CM team

Deliverable: Updated QA/QC Program adopted and implemented for CSP.

### **1-12.03      Maintain quality records**

Maintain quality records in accordance with QA/QC Program requirements.

Deliverable: A complete set of required QA/QC records/documentation

### **1-12.04      Gather and track quality assurance audit/surveillance**

Implement a program-wide surveillance and audit program. Conduct quality surveillances as necessary. Perform quality assurance audits as necessary to ascertain the effectiveness of each consultant's and subconsultant's quality processes as well as each contractor's and supplier's adherence to the plan.

Implement a program-wide corrective and preventive action system to ensure that all design-phase and construction-phase quality issues are addressed.

Deliverables: Quality surveillance reports; Quality audit reports, Corrective action reports.

## **1-13    DOCUMENT MANAGEMENT AND ADMINISTRATION SUPPORT**

### **1-13.01      Assist with the implementation of document control procedures**

Review, update and assist in the development of a set of document control procedures tailored to the CSP; Implement and maintain the compliance of the procedures throughout the life of the CSP.

Deliverable: A document control system that is in compliance to the established PMP procedures.

### **1-13.02      Provide administrative support**

Receive process, electronically distribute, file, and retrieve all incoming and outgoing correspondence (including submittals, transmittals, and requests for information), reference documents, controlled documents, drawings, CD submissions, reports, and other documents related to the program. Provide administrative document services as required by SFMTA.

Deliverable: Program wide document control support

### **1-13.05      Provide support to the SFMTA Contract Compliance Office**

Assist SFMTA and other City agencies in ensuring contract labor compliance. Implement electronic reporting system for certified payroll. Provide other support services as required.

Deliverables: Complete and accurate labor compliance records

## **1-14    SYSTEMS CONFIGURATION MANAGEMENT**

### **1-14.01      Develop and implement a systems configuration management system and procedure**

Develop and implement configuration management plan to define baseline program documents and to ensure proper control of design and construction changes in accordance with program procedures. Ensure that as-built documents reflect final configuration.

Deliverables: Configuration management plan and procedures, system architecture structure and definition, configuration states for construction, configuration test matrices (for linkage to test and approvals).

## **1-15    PROJECT INTEGRATION**

### **1-15.01      Management of Project Interfaces**

Integrate the components of the Third Street Light Rail Line to the CSP to ensure that, in combination, the various design packages and disciplines achieve overall CSP technical and operational objectives. Develop tools to manage CSP interfaces. Validate interface of all subsystems with the related subsystems. Verify all civil, electrical, mechanical, architectural and other interfaces to ensure there are no conflicts or gaps within and between contract packages. Document interfaces in a matrix that logs responsibility, control, and influence for each interface. Provide guidance to the SFMTA and designers on strategies to tie the existing legacy and propriety systems to the CSP.

Deliverables: Project interface management process and procedures, Interface matrix and definitions; Interface conflict / resolution tracking reports; System architecture visualization/schematic, Inventory of CSP assets/elements.

#### **1-15.02 Safety and Security Certification and Oversight**

Support safety and security certification process through design and construction. Prepare Safety and Security Checklists as needed to fully certify Safety and Security compliance of CSP. Verify and document the compliance with safety-related checklists, plans and procedures at the completion of each bid package and contract. Implement the Hazard management process for the CSP and resolve all safety hazards.

Deliverables: Safety and security compliance documentation as it is completed.

#### **1-15.03 RAMS and Performance Analysis**

Provide system-level Reliability, Availability, Maintainability, and Safety (RAMS) and performance analysis as directed by the SFMTA CSP Program Manager to evaluate the design from an operations and maintenance perspective.

Review CSP design submittals to evaluate system-level Reliability, Availability, Maintainability, and Safety (RAMS) and against operational performance objectives.

Deliverables: System performance metrics, system performance baseline

#### **1-15.04 Requirements Management**

Develop and maintain requirements database based on requirements defined by final designer as a tool in development of design specifications.

Deliverables: Requirements database (fully populated).

#### **1-15.05 Roles and Responsibilities**

Obtain buy-in from the and operations and maintenance teams, taking into account how Central Subway will change each team's roles and responsibilities. Develop visualization tools as directed by the SFMTA CSP Program Manager to facilitate Muni operations and maintenance reviews. Where SOP changes are needed, establish roles and responsibilities. Obtain buy-in on operational objectives.

Deliverables: Standard Operating Procedures, roles and responsibility matrix, defined operational objectives, visualization tools.

#### **1-15.06 Operations Plan Update**

Update CSP Operations Plan as directed by the SFMTA CSP Program Manager. Analyze and confirm both normal and contingency train operations scenarios based on the track alignment, crossovers, and systems design incorporated in design documents. Update the Operations Plan developed during preliminary engineering.

Perform computer simulations of train operations, including VISSIM. Confirm that the selected vehicle performance, traction power, automatic train control system, and alignment will function to satisfy the operational goals of the CSP. Identify response time for recovery of failure scenarios. Identify system aspects which require modification to achieve operational goals. Finalize evaluation of fleet size.

Deliverables: Draft Operations Plan Update

### **1-17 PROGRAM CONTROLS**

#### **1-17.01 Develop and Implement a Program Controls System**

Develop and implement Program Controls to monitor and trend program scope, schedule and cost. Work with the SFMTA and any consultants that the SFMTA hires to evaluate the needs of the organization and the program and make a recommendation for software to include in a comprehensive controls system. Evaluate CM software recommendations.

Deliverables: Implementation of Program Controls System; provide software recommendations.

## **1-17.02      Develop and manage Program Master Schedule**

Review the existing schedule and develop and implement a Program Master Schedule to be approved by SFMTA. Incorporate into the Master Schedule all required FTA milestones and activities for design, procurement, construction, start-up and commissioning activities. Incorporate design and construction contract CPM schedules into Master Schedule. Provide monthly status updates of schedules.

Deliverables: Updated Program Master Schedule. Monthly status updates of schedules.

## **1-17.03      Provide cost estimating services to support CSP requirements**

Prepare refined Baseline Construction Cost Estimate. Update the Baseline Construction Cost Estimate to reflect input from SFMTA and other stakeholders, refined CSP definition, and changes in the CSP scope. The detailed estimate will identify direct and indirect costs, profit, escalation, and CSP contingency. Estimate format and organization will be modified to follow a standard schedule of values bid item list in SFMTA's standard format. Review and evaluate designer Preliminary Engineering cost estimates. Provide detailed cost estimates of 60% and 90% design deliverables and final bid package for each construction contract.

Deliverables: Reconciliation of design team's preliminary engineering cost estimate, Detailed cost estimates of 60% and 90% design deliverables and final bid package for each construction contract. Ten-percentile estimate as required for the FTA; Independent program cost estimate; Comments on designer cost estimates.

## **1-17.04      Specialty Estimating**

Provide as needed specialty estimating services in support of review, evaluation, and update of Baseline Construction Cost Estimate.

Deliverables: Specialized estimating services as requested by SFMTA.

## **1-18      FTA NEW STARTS SUPPORT**

### **1-18.01.B      Update of SFMTA Financial Model**

Update the current SFMTA financial analysis model as needed. Populate the model with current information regarding level of service, unit and operations and maintenance costs, fare revenues, other operating revenues, operating grant funding, capital improvement program, CS capital costs, capital grant funding, and other capital revenue sources. Update inflation, interest projections and financial plan.

Deliverable: updated SFMTA model.

### **1-18.02      Entry Into Final Design**

Assist in the preparation and submission of SFMTA's the request to the FTA for authority to begin Final Design.

Deliverables: Completed checklist to begin Final Design; FTA concurrence on the completed Final Design submittal.

### **1-18.03      Letter of No Prejudice**

Prepare for SFMTA's submission to the FTA a Letter of No Prejudice (LONP) to allow for construction activities to proceed prior to receipt of the Full Funding Grant Agreement (FFGA). Prepare written request, including sufficient information and justification to support proposed construction activities. Respond to additional requests for information as required by the FTA to support, review and approval of LONP.

Deliverables: LONP, including supporting documentation, for SFMTA execution and submission to FTA. Additional documentation as requested by FTA.

### **1-18.04      Full Funding Grant Agreement**

Support the SFMTA in working with the FTA to secure a Full Funding Grant Agreement. Prepare FFGA application to FTA including assembly and/or update of required documentation.



Coordinate with PMOC in its development of the Central Subway spot report. Review draft FFGA terms and conditions with technical staff and legal counsel; Meet with FTA and other appropriate staff in support of FFGA.

Deliverables: Application and supporting documentation for Full Funding Grant Agreement application; FTA New Starts checklist; Draft terms and conditions for FFGA

## **PHASE 1 OPTIONAL SCOPE**

### **CONSULTANT SHALL PROVIDE THE FOLLOWING OPTIONAL SERVICES AT THE DIRECTION OF THE SFMTA:**

#### **1-2 PLANNING AND ENVIRONMENTAL COORDINATION**

##### **1-2.01 Coordinate with City Planning and SFMTA Planning Departments**

Develop transit-oriented development guidelines for CSP. Coordinate rezoning efforts around transit stations. Coordinate master plan referral.

Deliverables: Transit Oriented Development (TOD) design guidelines; rezoning coordination; master plan referral coordination.

##### **1-2.02 Coordinate and implement SFMTA environmental mitigations**

###### **1-2.02.A Mitigation monitoring and reporting**

Provide as-needed mitigation monitoring. Prepare quarterly mitigation monitoring status reports for SFMTA Board and FTA acceptance. Ensure that environmental commitments defined in FEIS/R and Record of Decision are reflected in the final design and in construction operations.

Deliverables: mitigation monitoring status reports

###### **1-2.02.B Construction environmental oversight program (CEOP)**

Develop Construction Environmental Oversight Program (CEOP) that identifies the necessary engineering and scientific staff, methods, materials, practices, and procedures to monitor compliance with the applicable regulations, guidelines, permits, and program-related agreements. Obtain concurrence from SFMTA on proposed MMRP implementation approach.

The CEOP will address training, reporting, and corrective action processes. It will also include a construction environmental auditing protocol that reflects pending ISO 14001 and other applicable regulatory, permit, and engineering considerations.

Deliverables: Construction Environmental Oversight Program

#### **1-4 RISK MANAGEMENT**

##### **1-4.03 Provide technical assistance in developing and evaluating options for alternate program insurance provisions**

Evaluate means that SFMTA may control and assign risks to reduce insurance premiums; prepare reports as directed on insurance and risk reduction programs; Provide ongoing support to support implemented alternate insurance programs, as needed.

Deliverables: input to risk register; alternate insurance program reporting

#### **1-7 COMMUNITY / PUBLIC OUTREACH**

##### **1-7.02 Provide public affairs coordinator / outreach teams to interact with community**

###### **1-7.02.A Outreach database**

Create a database management and email system to automate the primary tasks for outreach and business/job opportunities efforts. The system will offer a simplified email process for contacting the stakeholders, such as for notice of upcoming meetings, job training classes, or small business contracting opportunities.

Deliverables: public outreach database and email system

### **1-7.02.B New CSP web site**

Revamp and improve CSP web site.

Deliverables: New /revamped CSP website

### **1-7.03 SBE Outreach**

#### **1-7.03.B Small business training and development**

Establish small business training programs through local schools to help them market themselves, prepare bids and proposals, estimate work, prepare invoices, manage cash, apply for loans, and manage their businesses. Provide assistance to small businesses with paperwork and applications required for registration with the City and State.

Deliverables: SBE business training programs; SBE registration support.

#### **1-7.03.C Working capital fund**

Work with local banks to establish a working capital fund specifically for CSP contractors and suppliers. This program will allow small businesses to draw on the fund as a line of credit to expand their ability to do business. Organize small business forums with local banks, including presentations on small business loan opportunities and how to apply for them. Work with local banks and the prime contractors to establish a revolving working capital fund that will make low interest loans available to any small business that secures a contract on the CSP.

Deliverables: Coordination with local banks to establish and implement working capital fund

### **1-11 START-UP, TESTING AND COMMISSIONING AND PRE-REVENUE ACTIVITIES**

#### **1-11.02 Identify activities, issues and milestones necessary to achieve initial revenue service**

Prepare Rail Activation Plan to include tests of CSP operating as a complete system. Define an integrated test plan that includes TPSS, OCS, SCADA, train control, train-to-wayside communications, LRT vehicles, PA system, VMS system, and CCTV system. Prepare integrated training plan based on Muni needs.

Deliverables: Rail activation plan (including procedures, test, exercises, approvals and training), acceptance plan, test program and schedule (including integration test, readiness drills, pre-revenue service tests), approvals schedule, fall-back planning and mitigation plans, training plan, procedures and schedule.

### **1-12 QUALITY ASSURANCE / QUALITY CONTROL**

#### **1-12.01 Provide oversight of QA/QC program**

Provide additional QA/QC support staff during construction to support 1-12.01 base scope activities.

Deliverables: Supplemental staff for QA/QC oversight.

#### **1-12.02 Implement QA program for design and QA/QC program for construction**

Provide additional QA/QC support staff during construction to support 1-12.02 base scope activities.

Deliverables: Supplemental staff for QA/QC implementation.

#### **1-12.03 Maintain quality records**

Provide additional QA/QC support staff during construction to support 1-12.03 base scope activities.

Deliverables: Supplemental staff for quality records management.

#### **1-12.04 Gather and track quality assurance audit/surveillance**

Provide additional QA/QC support staff during construction to support 1-12.04 base scope activities.

Deliverables: Supplemental staff for QA/QC audits and surveillance.

## **1-15 PROJECT INTEGRATION**

### **1-15.03 RAMS and Performance Analysis**

Provide system-level Reliability, Availability, Maintainability, and Safety (RAMS) and performance analyses to evaluate the final design from an operations and maintenance perspective. Perform reliability assessment, failure modes analysis, and system-level modeling of performance using railway modeling tools such as OpenTrac.

Deliverables: operations modeling at key design and construction milestones.

### **1-15.04 Requirements Management**

Perform requirements management to document and relate the configuration of the system architecture at each stage of Central Subway migration and upon completion and acceptance – in both full and degraded states. Maintain requirements database as a tool for design consultants in development of design specifications.

Deliverables: Requirements management process and procedures, requirements database (fully populated), requirements hierarchy and relationships, requirements definition including interfaces, requirements compliance tracking, requirements, acceptance.

## **1-16 SUSTAINABILITY**

### **1-16.01 Define sustainability objectives and develop implementation policy and plan**

Identify team management and client sustainability advocates to work with the Project sustainability officer. Define detailed sustainability objectives agreed by client, design team and stakeholders with specific targets. Develop a high level and overarching Sustainability Policy that reflects the goals and is publicly available. Identify teams to lead on each sustainability topic with responsibility for delivery.

Develop and maintain a Sustainability Framework that identifies opportunities for energy and water efficiency, material and resource conservation, indoor environmental quality, site management, bio-diversity, operations and maintenance for program design elements.

Deliverables: Publicly available Sustainability Policy; Sustainability Framework Plan;

### **1-16.02 Implement sustainable elements in project design**

Evaluate sustainable design elements at each design milestone to determine continued design approach and design preferences. Facilitate client and design team integrated work sessions to ensure that opportunities to incorporate sustainable elements into the Central Subway program are defined at each of the key design phase milestones that will achieve the defined sustainability goals of the CSP. Coordinate with the SFMTA to meet the letter and intent of the City's Environment Code. Consider a full range of alternatives in order to select products and procedures that minimize harm and maximize the protection of public health and natural resources. Consider options that will reduce energy and water use, construction waste, and automobile trips and for increase green power supply.

Assist SFMTA in incorporating sustainable design elements into the SCP so that the Project may be eligible for federal and state funding made available for projects that reduce greenhouse gas emissions. Monitor achievement of sustainability elements via the Framework Plan and goals throughout construction and start up.

Deliverables: Written evaluations at each design and construction milestone.

## **1-18 FTA NEW STARTS SUPPORT**

### **1-18.01 FTA New Starts Report Submittal**

Assembly of documents and supporting narratives to support FTA New Starts Report and narratives within the FFGA.

## **1-18.01.A FTA Travel Forecast Template**

Prepare FTA Travel Forecast Template update to include:

- Special FTA Travel Time Credit.
- Special Markets Analysis.
- Regional Travel Transfers Analysis.
- Service Plan/ Capacity Analysis.

Deliverables: FTA New Starts and FFGA Travel Forecast Template and supporting documentation and analysis.

### **PHASE 2 BASE SCOPE**

#### **2-1 PROGRAM MANAGEMENT**

##### **2-1.01 General Program Management**

In support of implementation of T-Third LRT Project, Phase 2 Central Subway Project (CSP), provide PM/CM Team Leader, assisted as needed by the Team Director. Manage the day-to-day functions of the Central Subway Partnership staff. Coordinate with and support the SFMTA CSP Program Manager and coordinate and manage the work efforts of additional consultants hired by the SFMTA and City staff for the implementation of the CSP.

##### **Special Services**

Special services and studies directed by the SFMTA CSP Program Manager to include:

- Additional Value Engineering
- Additional Safety Hazard Analysis
- Additional Board of Consultant Reviews
- Revised Renderings, Simulations, and Presentation Models
- Additional ADA analyses
- Additional Operating Scenarios Analyses
- Additional Environmental Hazardous Investigation Studies
- Additional Specialty Cost Engineering
- Additional Request for Proposal development
- Additional support required to progress design, construction and/or Rail Activation.

Deliverables: Program management services, studies, analyses, and reports, as directed by SFMTA

##### **2-1.02 Project Management Plan**

Update, maintain and implement Project Management Plan (PMP) periodically to reflect current plan for bringing the Project into revenue service and in response to FTA comments. The PMP shall be an all encompassing manual on non-discipline specific procedures and processes to be used by all CSP participants. Conduct training and follow-up as needed to ensure that all CSP participants understand and

conduct their work on the CSP in compliance with the PMP. Update the PMP to include requirements for construction management, dispute resolution process, and as required support program delivery.  
Deliverables: Updated Project Management Plan in accordance with FTA approval.

#### **2-1.04 Collect, analyze, track, monitor and report monthly progress**

Collect and analyze data, track trends, monitor conditions and develop information which will be used in the generation of clear and concise monthly progress reports.

Deliverables: Monthly progress reports

#### **2-1.05 Participate in/conduct bi-weekly CSP progress meetings**

Conduct / participate in conduct bi-weekly CSP progress meetings, including the development and maintenance of an issues/action log

Deliverables: Progress meeting agendas; Progress meeting minutes; Issues/action logs and updates.

#### **2-1.06 Participate in/conduct project presentations**

Participate in or conduct project presentations as directed by SFMTA CSP Program Manager.

Deliverables: Presentation materials; participation in presentations.

#### **2-1.07 Provide contract compliance and contract administration support**

Provide support for contract compliance and contract administration of the CSP.

Deliverables: Contract documentation; contract status reporting and records.

### **2-3 FINANCIAL MANAGEMENT**

#### **2-3.01 Develop and oversee a master funding plan/schedule for the Program**

##### **2-3.01.A Master funding plan implementation**

Oversee, update and implement master funding plan; Assist SFMTA in securing committed funds to implement CSP.

Deliverables: Master Funding Plan update; Input to monthly reporting; Prepare, process and administer all documentation for SFMTA approval; Requests for programming and allocations.

##### **2-3.01.B Additional funding support and reporting**

Analyze potential new or enhanced sources of funds as CSP costs and revenues change over time. Identify and pursue alternative or supplementary funding sources as required to support CSP delivery. Support SFMTA in amending the TIP to reflect changes in financial plan and schedule; Support SFMTA in submittals to MTC to properly reflect the CSP in Resolution 3434 and the Regional Transportation Plan; Support SFMTA on periodic reports required of grants, including but not limited to the Prop K annual report.

Deliverables: Analysis of potential new sources, potential amounts for the CSP, timing, and requirements to obtain new funding; TIP amendment submittals; Submittals for Resolution 3434 and RTP updates; Periodic grant reporting submittals

#### **2-3.03 Develop and implement financing strategies; Coordinate track and secure Program funding.**

##### **2-3.03.A Assist SFMTA in conducting regular financial analysis of the CSP**

Conduct ongoing (quarterly) analyses of CSP financial requirements. Coordinate and track program funding.

Update CSP financial plan prepared for the SEIS/SEIR phase and build on the work prepared during preliminary engineering. Perform financial analysis to include total cost and subsidy requirements of the CSP, on a cash flow basis, including both capital and operating funding. Update prior estimates of potential federal funding, including STP, CMAQ, and NHS. Update potential state and local funding available to the

CSP including existing and new sources (including but not limited to sales taxes, gasoline taxes, revenue, special bonding authority, .).

Assess potential private sector and innovative funding sources and methods (including but not limited to infrastructure bank and other credit enhancement programs, tapered local match, joint development, special benefit districts, or tax increment financing, direct private sector contributions, alternative procurement methods, cross-border leasing, Certificates of Participation, .). Coordinate financial plan with land use/joint development activities.

Prepare estimates of the potential yield from these sources, and the rates of tax or fee needed to satisfy the funding requirements of the CSP. Estimate remaining “unfunded gaps”, if any, and develop a plan for filling the gaps.

Perform financial capacity analysis of San Francisco MTA to successfully build and operate the CSP.

Provide assistance in submitting financial plan materials to FTA

Deliverables: Financial plan model scenario updates and outputs; input to SFMTA grant applications;

Updated Financial Plan prepared per applicable FTA Guidance for Transit Financial Plans.

### **2-3.03.B Identify non-traditional financing alternatives**

Analyze cash flows and determine if bridge financing is needed and how bridge financing needs could be met. Analyze potential for joint development revenue. Analyze potential long term debt financing using committed revenue streams such as parking revenues.

Deliverables: White paper on joint development opportunities for the CSP; White paper on options for bridge financing; Detailed analysis of potential debt financing; description of options for issuing debt; debt service schedules. Assistance to SFMTA implementing finance alternatives.

### **2-3.04 Analyze, prepare, and maintain current and projected cash flow requirements**

Ensure that committed revenues included in the finance plan are allocated by the funding agencies and made available in a timely fashion. Work with SFMTA staff to ensure that the available state and regional funds are acquired. Provide support to SFMTA to identify alternative sources of revenue, including bridge toll revenues, state RTIP and TCRP grants, funding available from state bond fund proceeds, sales tax revenues targeted to transportation and parking revenue.

Evaluate potential new revenues in the context of the agency-wide financial plan. Seek opportunities to move funding between projects to optimize the timing of revenue for capital projects while maintaining full funding for SFMTA transit operations.

Deliverables: Updated monthly CSP cash flows

## **2-4 RISK MANAGEMENT**

### **2-4.01 Perform risk analysis and prepare risk management plan/ risk mitigation plan**

Review and update existing risk management program. Support FTA risk management workshops led by PMOC. Conduct internal team risk workshops; Review and confirm contracting strategy and incorporate into risk register.

Deliverables: Risk management plan update; Risk workshop support.

### **2-4.02 Maintain and update risk contingency management tracking system and mitigation plan**

Provide ongoing maintenance / update of risk management plan and risk register; maintain and update risk management strategy for avoidance of design and construction claims. Support the development of data that allow statistical analysis of program cost estimates and schedules and manage cost and schedule contingency.

Conduct Risk Assessments. Carry out risk identification, assessment, and allocation in conjunction with the contracting strategy selection and risk assessments. Consider in evaluation of risk exposure the geotechnical and built environmental conditions (utilities, buildings), construction methods, and contract

delivery method. Develop risk identification and assessment. Work with FTA Risk Assessment Consultant as needed. Analyze risks in accordance with FTA Risk guidance and identify appropriate risk allocation. Review risks and proposed mitigation strategies in workshops.

Deliverables: Monthly risk register updates; quarterly review and updates to risk management plan as appropriate. Effective management of cost and schedule contingencies to implement CSP within approved budget and schedule.

## **2-7 COMMUNITY / PUBLIC OUTREACH**

### **2-7.01 Develop and manage community and public master outreach plan**

Implementation of outreach management and communication protocols, including written public information policies and procedures approved by SFMTA, weekly summaries of stakeholder/community outreach and business assistance activities, weekly coordination meetings with SFMTA, Monthly Project Status Reports.

In conjunction with SFMTA, continue working with the Community Advisory Group (CAG) formed during Preliminary Engineering to enhance the CSP's public involvement and champion the CSP. The campaign will continue to use the tools, approaches, and media found to be effective during Preliminary Engineering. Publish periodic newsletters and bulletins geared to decision points on CSP issues. Update and maintain Core Project Mailing List. Assist in providing updated information on the CSP website. Monitor toll-free CSP information hotline. Monitor construction hotline. Respond to community concerns and complaints. Maintain record of comments and responses.

Coordinate SBE and Jobs programs with Mayor's office of economic and workforce development (MOEWD) in their implementation of small business outreach, workforce analysis, small business training and development, and working capital fund, as applicable.

Deliverables: weekly stakeholder/community outreach summaries; monthly outreach status reports; website updates; Development of collateral materials (English, Chinese and Spanish); Project fact sheets (English, Chinese and Spanish); Project newsletters and bulletins (English, Chinese and Spanish)

### **2-7.02 Provide public affairs coordinator / outreach teams to interact with community**

Provide public affairs coordinators, staffing and logistics for CAG meetings, presentations to policy boards and neighborhood-focused meetings on technical issues to resolve items related to new CSP changes that may occur during design and construction.

Continue contacts with property owners along the alignment, including merchants, and provide constant updates and assurance to these owners on potential construction impacts to their buildings/properties due to implementation of this CSP.

Conduct public meetings to obtain community input at major design development milestones. Conduct quarterly construction status meetings. Prepare presentations and participate, as requested by SFMTA, in meetings sponsored by community, business, and neighborhood stakeholders.

Provide public notices regarding maintenance of traffic and Access Plan changes prior to major construction activities. Prepare individual Traffic Management Strategy Reports. Provide up to date information for emergency responder access, commercial vehicle access, pedestrian, handicapped and bicycle access and safety, and parking. Communicate traffic and transit detours and reroutes to local media.

Deliverables: Community outreach personnel; Key stakeholder briefings and presentations; Public meetings at key design milestones and on quarterly basis during construction; Staffing and logistics for public hearings, including but not limited to: Preparation and placement of hearing notices in all appropriate languages; Identification and reservation of appropriate venues; Ensuring appropriate parking, lighting, security, insurance, audio and translation equipment; Securing court reporter when necessary; Hand-outs (English, Chinese and Spanish); Sign-in and comment forms (English, Chinese and Spanish); Public notices regarding traffic and transit changes.

## **2-7.03 Pre-Revenue and Post Revenue Outreach**

Provide community outreach support in support of pre-revenue operations and following initiation of revenue service.

Deliverables: outreach support during pre-revenue operations and following the initiation of revenue service

## **2-10 CONSTRUCTION MANAGEMENT**

### **CONSULTANT SHALL PROVIDE THE FOLLOWING OPTIONAL SERVICES AT THE DIRECTION OF THE SFMTA:**

#### **2-10.01 General Construction Management**

Provide programmatic construction management leadership, coordination and quality control.

Deliverables: construction management services

#### **2-10.02 Implement a training program for all City and Proposed construction management staff**

Implement training program for all CSP staff based on ongoing basis.

Deliverables: CM training

#### **2-10.03 Manage technical design services to facilitate in-progress construction work**

Manage and provide oversight of design services during construction.

Deliverables: Oversight and management of design services during construction to facilitate construction work.

#### **2-10.04 Assist in developing/implementing mitigation measures to minimize impacts to local businesses and residents during construction**

Coordinate construction activities and traffic changes with outreach team for unplanned events.

Deliverable: Develop mitigation measures as necessary.

#### **2-10.05 Provide claims avoidance management and partnering process for contractor, assist in resolution of claims as directed by SFMTA**

Provide claims avoidance management for the program (maybe part of the CM plan). Work with the program team (including construction contractors) to establish issue resolution process. Perform change analysis, resolution and negotiation as directed by SFMTA.

Deliverables: Dispute avoidance / mitigation guidelines; Issue resolution process; Change analysis, resolution and record of negotiations.

#### **2-10.06 Implement the materials testing program**

Produce reports on contractor's compliance with materials testing requirements. Review and comment on the contractors' testing plans and submittals. Manage on-site tests and witness factory tests as directed by the SFMTA. Perform quality assurance and validation tests.

Deliverables: Review of submittals on testing and providing reports on contractors' testing. Materials testing plans and reports. Results of independent materials testing.

#### **2-10.07 Provide environmental health and safety management and oversight for the contractor's compliance with environmental health and safety regulations and requirements**

Review and monitor contractor compliance with contractual environmental health and safety requirements.

Produce routine reports on contractor's compliance with environmental regulations.

Deliverables: Environmental health and safety management including the required hazardous material monitoring for both underground and above ground work; compliance reports.



**2-10.10 PROVIDE ON-SITE CONSTRUCTION MANAGEMENT SERVICES FOR MOSCONE STATION CONSTRUCTION**

**2-10.10.A Provide Construction Manager Services for Moscone Station Construction**

See description of services under 1-10.8.A

**2-10.10.B Provide Resident Engineer Services for Moscone Station Construction**

See description of services under 1-10.8.B

**2-10.10.C Provide Office Engineering Services for Moscone Station Construction**

To be provided by City.

**2-10.10.D Provide Inspection Services for Moscone Station Construction**

See description of services under 1-10.8.C. Work in coordination with City-provided inspectors.

**2-10.10.E Provide Document Control Services for Moscone Station Construction**

See description of services under 1-10.8.C

**2-10.11 PROVIDE ON-SITE CONSTRUCTION MANAGEMENT SERVICES FOR UNION SQUARE/MARKET STATION CONSTRUCTION**

**2-10.11.A Provide Construction Manager Services for Union Square/Market Station Construction**

See description of services under 1-10.8.A

**2-10.11.B Provide Resident Engineer Services for Union Square/Market Station Construction**

See description of services under 1-10.8.B

**2-10.11.C Provide Office Engineering Services for Union Square/Market Station Construction**

To be provided by City.

**2-10.11.D Provide Inspection Services for Union Square/Market Station Construction**

See description of services under 1-10.8.D. Work in coordination with City-provided inspectors.

**2-10.11.E Provide Document Control Services for Union Square/Market Station Construction**

See description of services under 1-10.8.E

**2-10.12 PROVIDE ON-SITE CONSTRUCTION MANAGEMENT SERVICES FOR CHINATOWN STATION CONSTRUCTION**

**2-10.12.A Provide Construction Manager Services for Chinatown Station Construction**

See description of services under 1-10.8.A

**2-10.12.B Provide Resident Engineer Services for Chinatown Station Construction**

See description of services under 1-10.8.B

**2-10.12.C Provide Office Engineering Services for Chinatown Station Construction**

To be provided by City.

**2-10.12.D Provide Inspection Services for Chinatown Station Construction**

See description of services under 1-10.8.D. Work in coordination with City-provided inspectors.

**2-10.12.E Provide Document Control Services for Chinatown Station Construction**

See description of services under 1-10.8.E

**2-10.13 PROVIDE ON-SITE CONSTRUCTION MANAGEMENT SERVICES FOR SURFACE, TRACK WORK, SYSTEMS CONSTRUCTION**

**2-10.13.A Provide Construction Manager Services for Surface, Track work, Systems Construction**

See description of services under 1-10.8.A

**2-10.13.B Provide Resident Engineer Services for Surface, Track work, Systems Construction**

To be provided by City.

**2-10.13.C Provide Office Engineering Services for Surface, Track work, Systems Construction**

To be provided by City.

**2-10.13.D Provide Inspection Services for Surface, Track work, Systems Construction**

See description of services under 1-10.8.D. Work in coordination with City-provided inspectors.

**2-10.13.E Provide Document Control Services for Surface, Track work, Systems Construction**

See description of services under 1-10.8.E

**2-10.14 Coordinate delivery and procurement of City-furnished materials and equipment**

To be provided by City.

**2-10.15 Implement testing and commissioning program**

Review requirements in contract documents to ensure completeness. Produce reports on contractor's compliance with testing and commissioning requirements. Review and comment on the contractors' testing and commissioning plans and submittals. Manage on-site systems, operational and functional tests. Witness factory tests as directed by the SFMTA. Complete documentation for each contract required for the safety and security certification under CPUC General Order 164D. Verify and document the compliance with safety and security-related checklists, plans and procedures.

Validate training programs. Monitor training by contractors to SFMTA operations and maintenance personnel. Prepare Certificates of Compliance for each certifiable element upon satisfactory completion and issue the Final Safety and Security Verification Certification Report. Review with SFMTA staff to ensure the compliance to agency requirements.

Deliverables: Review of submittals on testing, training, and commissioning and providing reports on contractors' testing and commissioning. Testing and commissioning plans and reports. Certificates of Compliance. Documentation required for the safety and security certification under CPUC General Order 164D.

**2-10.16 Safety Officer**

Provide program safety officer and safety and security inspections and audits during construction. Provide safety and security training to CM teams, including required response if safety or security hazards are identified.

Deliverables: Effective Central Subway program construction safety and security.

**2-10.17 Resolution of Design Challenges**

Provide ongoing technical review and expertise to resolve design issues and challenges during construction.

Deliverables: As needed technical expertise during construction.

## **2-11 START-UP, TESTING AND COMMISSIONING AND PRE-REVENUE ACTIVITIES**

### **2-11.01 Participate in start-up meetings**

Mobilize rail activation team as directed by the SFMTA CSP Program Manager during construction to act as an extension of the SFMTA staff. Participate in / conduct regular start up meetings as directed by the SFMTA CSP Program Manager.

Deliverables: Rail activation team definition, team roles and responsibilities, meeting schedule, meeting agendas, meeting facilitation, meeting minutes, action tracking and prioritization, definition of rail activation metrics, facilitation of rail activation activities, tracking of rail activation progress (against metrics).

### **2-11.02 Identify activities, issues and milestones necessary to achieve initial revenue service**

Prepare rail activation Plan as directed by the SFMTA CSP Program Manager to include tests of CSP operating as a complete system. Define an integrated test plan that includes TPSS, OCS, SCADA, train control, train-to-wayside communications, LRT vehicles, PA system, VMS system, and CCTV system. Prepare integrated training plan based on Muni needs.

Deliverables: Rail activation plan (including procedures, test, exercises, approvals and training), acceptance plan, test program and schedule (including integration test, readiness drills, pre-revenue service tests), approvals schedule, fall-back planning and mitigation plans, training plan, procedures and schedule. Resolution of pre-revenue and revenue service issues.

### **2-11.03 Manage/assist in identifying and completing rail activation activities**

Support SFMTA in developing and updating operating rules, maintenance practices, special instructions, and Standard Operating Procedures to reflect the requirements of the Central Subway as well as any additional requirements of other City and government agencies. Prepare an integrated training plan based on contractor training programs and the requirements of each of the Central Subway migration stages. Develop training support tools, such as a one-page summary sheet for operations and maintenance information relating to the system architecture, summaries of degraded modes and/or action plans for specific failure scenarios.

Coordinate a multi-phased test program to prove technical compliance and the ability to operate in full and degraded modes. Manage the training program to ensure that staff are ready to operate the system. Ensure operational performance as the extended system commences operation. Support SFMTA in resolving issues affecting new service. Support SFMTA in completing all activities and work required for safety and security certification of rail operations.

Deliverables: Rail Activation plan and management (exercises, approvals and training), including documentation, configuration, witness, results tracking, validation; readiness metrics, readiness risk assessment, operational drills, training coordination and management, training tracking, approvals witnessing, agency business process review and impact assessment; and test procedures and plan; Training plan, training schedule, training scheduling and management, training metrics, training metrics monitoring, training facilitation (including attendance feedback), training oversight, contingency planning. All documentation required to implement revenue operations.

### **2-11.04 Define, develop, approve and manage testing and testing program for Track and Systems contract**

Review requirements in contract document to ensure completeness. Define test procedures in support of integration of components, subsystems and system. Implement test program, including factory and integration testing, review and/or prepare startup test plan/system cutover plan and procedures. Validate and monitor training by contractors to SFMTA operations and maintenance personnel.

Review and comment on the contractors' system cutover submittal and coordinate with SFMTA personnel in the system cutover.

Support SFMTA in performing systems integration tests to verify functionality of individual systems and subsystems, compatibility of equipment and/or facilities supplied by more than one contractor, adequacy of operating procedures developed for use under normal, abnormal, and emergency conditions, appropriate training of and operations and maintenance personnel.

Support SFMTA in completing testing and documentation required for the final safety certification under CPUC General Order 164D. Verify and document the compliance with safety and security-related checklists, plans and procedures.

Deliverables: Testing, training and commissioning plans and reports. Test, training and approvals schedule monitoring, contingency planning, training fall-back. Reviewed testing, training, and commissioning submittals. Certificates of Compliance. Documentation required for the safety and security certification under CPUC General Order 164D.

## **2-12 QUALITY ASSURANCE / QUALITY CONTROL**

### **2-12.01 Provide oversight of QA/QC program**

Evaluate final designer(s)' and contractors' proposed QC plans for compliance with SFMTA procedures and PMP. Review and recommend approval to SFMTA of each firm's quality plan for use on the program.

Establish QA/QC process consistent with the PMP, SFMTA QA plan and SFMTA requirements; Develop requirements for workshops to ensure that design submissions are fully understood, and develop an effective comment/review process; Develop a consistent and effective interdisciplinary review process for use by all consultants; Review and approve each contractor's quality plan to ensure effective quality control and ensure that testing requirements are implemented. Develop a CSP-specific training program in accordance with the QA plan. Provide QA/QC training to CSP participants.

Distribute training materials. Monitor training by contractors to SFMTA operations and maintenance personnel. Review training requirements in contract document to ensure completeness. Work with document control staff to ensure a complete inventory of all training materials.

Deliverables: Effective QA/QC for CSP; Review and approval of design team, consultant, and contractor QA/QC plans; Quality training documentation.

### **2-12.02 Implement QA program for design and QA/QC program for construction**

Review and update SFMTA QA/QC procedures and adopt as QA/QC plan for PM/CM team

Deliverable: Updated QA/QC Program adopted and implemented for CSP

### **2-12.03 Maintain quality records**

Maintain quality records in accordance with QA/QC Program requirements.

Deliverable: A complete set of required QA/QC records/documentation

### **2-12.04 Gather and track quality assurance audit/surveillance**

Implement a program-wide surveillance and audit program. Conduct quality surveillances as necessary.

Perform quality assurance audits as necessary to ascertain the effectiveness of each consultant's and subconsultant's quality processes as well as each contractor's and supplier's adherence to the plan.

Implement a program-wide corrective and preventive action system to ensure that all design-phase and construction-phase issues are addressed.

Deliverables: Quality surveillance reports; Quality audit reports, Corrective action reports.

## **2-13 DOCUMENT MANAGEMENT AND ADMINISTRATION SUPPORT**

### **2-13.01 Assist with the implementation of document control procedures**

Review, update and assist in the development of a set of document control procedures tailored to this program; Implement and maintain the compliance of the procedures throughout the life of the program.

Deliverable: A document control system that is in compliance to the established PMP procedures.

## **2-13.02 Provide administrative support**

Receive process, electronically distribute, file, and retrieve all incoming and outgoing correspondence (including submittals, transmittals, and requests for information), reference documents, controlled documents, drawings, CD submissions, reports, and other documents related to the program. Provide services as required by SFMTA.

Deliverable: Program wide document control support

## **2-13.05 Provide support to the SFMTA Contract Compliance Office**

Assist SFMTA in ensuring contract labor compliance. Implement electronic reporting system for certified payroll. Provide other support services as required.

Deliverables: Complete and accurate labor compliance records

## **2-14 SYSTEMS CONFIGURATION MANAGEMENT**

### **2-14.01 Develop and implement a systems configuration management system and procedure**

Develop and implement configuration management plan to define baseline program documents and to ensure proper control of design and construction changes in accordance with program procedures. Control the technical, administrative, functional, and physical baselines to preclude unauthorized changes to the baseline documents. Provide clear audit trail for changes. Provide timely dissemination and control of baseline documents. Ensure that as-built documents reflect final configuration.

Deliverables: Configuration management plan and procedures, system architecture structure and definition, configuration states for construction, configuration test matrices (for linkage to test and approvals).

## **2-15 CSP INTEGRATION**

### **2-15.01 Management of Project Interfaces**

Integrate the components of the new extension to ensure that, in combination, the various design packages and disciplines to avoid conflicts and achieve overall CSP technical and operational objectives. Maintain requirements database as a tool for design consultants in development of design specifications. Validate interface of all subsystems with the related subsystems. Verify all interfaces to ensure there are no conflicts or gaps within and between contract packages. Document all civil, electrical, mechanical, architectural and other interfaces in a matrix that logs responsibility, control, and influence for each interface. Provide guidance to the SFMTA and designers on strategies to tie the existing legacy and propriety systems to the new system.

Deliverables: Project interface management; Interface matrix and definitions; Interface conflict / resolution tracking reports; System architecture visualization/schematic, Inventory of CSP assets/elements.

### **2-15.02 Safety and Security Certification and Oversight**

Support safety and security certification process through design and construction. Prepare Safety and Security Checklists for Design as needed to fully certify Safety and Security compliance of CSP. Verify and document the compliance with safety-related checklists, plans and procedures at the completion of each bid package, contract, pre-revenue operations and rail activation. Implement the Hazard management process for the CSP and resolve all safety hazards.

Deliverables: Safety and security compliance documentation as it is completed.

### **2-15.03 RAMS and Performance Analysis**

Provide system-level Reliability, Availability, Maintainability, and Safety (RAMS) and performance analysis to evaluate the design from an operations and maintenance perspective. Perform reliability assessment, failure modes analysis, and system-level modeling of performance using railway modeling tools such as OpenTrac.

Review CSP design submittals to evaluate system-level Reliability, Availability, Maintainability, and Safety (RAMS) and against operational performance objectives.

Deliverables: System performance metrics, system performance baseline, system performance models and predictions, performance issues management and tracking; operations modeling at key design and construction milestones.

#### **2-15.04 Requirements Management**

Perform requirements management to document and relate the configuration of the system architecture at each stage of Central Subway migration and upon completion and acceptance – in both full and degraded states. Maintain requirements database as a tool for design consultants in development of design specifications.

Deliverables: Requirements management process and procedures, requirements database (fully populated), requirements hierarchy and relationships, requirements definition including interfaces, requirements compliance tracking, requirements, acceptance.

#### **2-15.05 Roles and Responsibilities**

Obtain buy-in from the and operations and maintenance teams, taking into account how Central Subway will change each team's roles and responsibilities. Develop visualization tools as directed by the SFMTA CSP Program Manager to facilitate Muni operations and maintenance reviews. Where SOP changes are needed, establish roles and responsibilities. Obtain buy-in on operational procedures.

Deliverables: SOPs, roles and responsibility matrix, defined operational objectives, visualization tools.

#### **2-15.06 Operations Plan Update**

Update CSP Operations Plan as directed by the SFMTA CSP Program Manager. Analyze and confirm both normal and contingency train operations scenarios based on the track alignment, crossovers, and systems design.

Perform computer simulations of train operations to reflect the final alignment and single preferred alternative. Confirm that the selected vehicle performance, traction power, automatic train control system, and alignment will function to satisfy the operational goals established during conceptual and preliminary engineering. Identify response time for recovery of failure scenarios. Identify system aspects which require modification to achieve operational goals of the CSP. Finalize evaluation of fleet size.

Obtain buy-in from the and operations and maintenance teams, taking into account how Central Subway will change each team's roles and responsibilities. Where SOP changes are needed, establish roles and responsibilities. Obtain buy-in on operational objectives.

Deliverables: Operations Plan Update – Final

### **2-17.0 PROGRAM CONTROLS**

#### **2-17.04 Specialty Estimating**

Provide as needed specialty estimating services in support of review, evaluation, and update of Baseline Construction Cost Estimate.

Deliverables: Specialized estimating services as requested by SFMTA.