

THIS PRINT COVERS CALENDAR ITEM NO. : 10.1

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs and Construction Division

BRIEF DESCRIPTION:

Awarding San Francisco Municipal Transportation Agency Contract No. 1235, Saint Francis Circle Rail Replacement Project, to NTK Construction, Inc., located at 501 Cesar Chavez, Suite 123, San Francisco, CA 94124, in the amount of \$8,939,414 and a term of 270 calendar days.

SUMMARY:

- On September 1, 2009, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted Resolution No. 09-151, authorizing bid call for Contract No. 1235, Saint Francis Circle Rail Replacement Project.
- This project involves the replacement of worn trackwork and related work from West Portal Avenue and 15th Avenue through the Saint Francis Circle intersection, and continuing into the K-Line exclusive right-of-way on Junipero Serra Boulevard to the south and into the M-Line semi-exclusive right-of-way to the west of Junipero Serra Boulevard.
- Three bids were received and opened on October 29, 2009. The Contract Compliance Office has reviewed this calendar item and has confirmed that the contractor has committed to meeting the Small Business Enterprise (SBE) goal of 10 percent.
- Staff recommends awarding Contract No. 1235 to the lowest responsive and responsible bidder, NTK Construction, Inc., in the bid amount of \$8,939,414.
- Federal and local sources are providing funds for the work under this contract.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget & Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO _____ Gigi Pabros

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

The purpose of this calendar item is to award SFMTA Contract No. 1235, Saint Francis Circle Rail Replacement Project, to the lowest responsive and responsible bidder, NTK Construction, Inc., in the amount of \$8,939,414.

GOAL

Contract No. 1235 would assist in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

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

Objective 1.1 – Improve safety and security across all modes of transportation

Objective 1.4 – Improve accessibility across transit services

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

Objective 5.1 – Increase resources available for employees in performing their jobs
(tools, staff hours, etc.)

Objective 5.2 – Improve facilities in which people are working

DESCRIPTION

Background

SFMTA Contract No. 1235, Saint Francis Circle Rail Replacement Project, is identified in the latest San Francisco Municipal Railway Short Range Transit Plan under Infrastructure Program and within the Rail Rehabilitation Program. The goal of the program is to revitalize the deteriorated system to reduce maintenance, improve system reliability, and minimize operational problems.

The locations for replacing the worn trackwork is from West Portal Avenue and 15th Avenue through the Saint Francis Circle intersection, and continuing into the K-Line exclusive right-of-way on Junipero Serra Boulevard to the south and into the M-Line semi-exclusive right-of-way to the west of Junipero Serra Boulevard. The locations designated for rail replacement were identified by the SFMTA Rail Capital Planning Work Committee with input from SFMTA Maintenance. The useful life of tangent rail is usually 30 years and the useful life of curved rail is 25 years. In general, rail needs to be replaced due to a combination of factors, including tight track curvature, soil movement, trackway and street pavement settlement, uneven LRV loadings, frequency of LRV movement, automobile traffic loading, and the strength and hardness of rail.

Scope of Work

The main scope of work for this project consists of replacing existing trackwork, the Overhead Contact System, electrical street lighting, track circuit wiring, Vetag loop, reconstructing ramps and platforms, and repair of pavement.

The time allotted to substantially complete the work is 270 calendar days. Liquidated damages are \$10,000 per day for each and every calendar day of delay in failing to complete the work. Additional liquidated damages are applicable for interruptions to Muni Operations and are described in the contract documents.

Bids and Bid History

The SFMTA Board of Directors adopted Resolution No. 09-151 on September 1, 2009, authorizing bid call for Contract No. 1235.

On October 29, 2009, SFMTA's Capital Programs and Construction Division received and opened three bid proposals, as follows:

	Total Bid
NTK Construction 501 Cesar Chavez Street, Suite 123 San Francisco, CA 94110	\$8,869,354
Stacy & Witbeck/Con-Quest A Joint Venture 1320 Harbor Bay Parkway, Suite 240 Alameda, CA 94502	\$9,780,925
Shimmick Construction 8201 Edgewater Drive #202 Oakland, CA 94621	\$10,225,853
Engineer's Estimate	\$10,958,555

Staff reviewed the three bid proposals and determined that NTK Construction, Inc. is the lowest responsive and responsible bidder. The engineer's estimate for this construction contract was \$10,958,555; the low bid for this work is 18.43% or \$2,019,141 below the engineer's estimate.

The Contract Compliance Office has reviewed the bid proposals and confirmed that NTK will meet the 10 percent Small Business Enterprise (SBE) participation goal established for this contract and will commit to meeting the Non-discrimination Equal Employment Requirements of the contract. NTK is in compliance with Chapter 12B (Equal Benefits Provision) of the San Francisco Administrative Code.

ALTERNATIVES CONSIDERED

The project team held discussions with Maintenance and Operations staff concerning whether the track repair should be done by in-house staff. The preference was to have a contractor replace the worn tracks, because contractors have enough crews with track installation expertise to complete the work within the limited shutdown hours. Staff determined that contracting out was the practical alternative.

FUNDING IMPACT

Funding for the entire project comes from a combination of programmed Federal Transit Administration funds and local funds. All funding for this project has been secured.

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

OTHER APPROVALS RECEIVED OR STILL REQUIRED

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

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

RECOMMENDATION

Staff recommends that the SFMTA award San Francisco Municipal Transportation Agency Contract No. 1235, Saint Francis Circle Rail Replacement Project, to NTK Construction, Inc., in the amount of \$8,939,414 and a term of 270 calendar days.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) Contract No.1235, Saint Francis Circle Rail Replacement Project, is identified in the latest San Francisco Municipal Railway Short Range Transit Plan under the Rail Replacement Program; and,

WHEREAS, The work to be performed under this project will be the replacement of worn trackwork and related work from West Portal Avenue and 15th Avenue through the Saint Francis Circle intersection, and continuing into the K-Line exclusive right-of-way on Junipero Serra Boulevard to the south and into the M-Line semi-exclusive right-of-way to the west of Junipero Serra Boulevard; and,

WHEREAS, On September 1, 2009, the SFMTA Board of Directors adopted Resolution No. 09-151, authorizing bid call for SFMTA Contract No.1235, Saint Francis Circle Rail Replacement Project; and,

WHEREAS, On October 29, 2009, SFMTA received and publicly opened three bid proposals in response to its invitation for bids; and,

WHEREAS, SFMTA determined that NTK Construction, Inc., located at 501 Cesar Chavez Street, Suite 123, San Francisco, CA 94124, is the lowest responsible and responsive bidder, with a total bid amount of \$8,939,414; and,

WHEREAS, Funds for this contract are available and the project is funded by Federal grants (80%) and by local funding sources (20%), including the San Francisco County Transportation Authority; and,

WHEREAS, SFMTA Contract No. 1235 will assist SFMTA in meeting the objectives of Strategic Plan Goal No. 1 (Customer Focus) – to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy; and Goal 5 (SFMTA Workforce) – to provide a flexible, supportive work environment and develop a workforce that takes pride and ownership of the agency’s mission and vision and leads the agency into an evolving, technology-driven future; and,

WHEREAS, The time allowed to substantially complete the work under this contract is 270 calendar days after issuance of the Notice to Proceed; and,

WHEREAS, The Contract Compliance Office has reviewed the bid documents and confirms that NTK Construction, Inc., will meet the 10 percent Small Business Enterprise participation goal established for this contract; now, therefore, be it,

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to award San Francisco Municipal Transportation Agency Contract 1235, Saint Francis Circle Rail Replacement Project with NTK Construction, Inc., as the lowest responsive and responsible bidder, in the amount of \$8,939,414, for a total contract time of 270 calendar days.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2

Saint Francis Circle Rail Replacement Project San Francisco Municipal Transportation Agency Contract No. 1235

Project Budget and Financial Plan

Category	Budget
Conceptual Engineering	\$668,000
Detail Design	\$2,080,000
Construction	
Construction Contract:	\$8,939,414
Construction Support:	\$2,320,000
Operations Support:	\$1,700,000
Contingency	\$2,475,586
Total	\$18,183,000

FINANCIAL PLAN

Project Funding Source	Amount
Federal Grants: FTA	\$14,546,400
Local Grants:	
ABB664 Bridge Toll Funds	\$526,600
Proposition K	\$2,210,000
DPW	\$900,000
Total	\$18,183,000

THIS PRINT COVERS CALENDAR ITEM NO. : 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets—Transportation Engineering

BRIEF DESCRIPTION:

Authorizing the Department of Public Works (DPW) to award DPW Contract No. 1519J: Inner Sunset Traffic Calming and Transit Enhancements Project, to Ghilotti Bros., Inc., 525 Jacoby Street, San Rafael, CA 94901, for a total contract amount not to exceed \$234,149.

SUMMARY:

- On September 15, 2009, the San Francisco Municipal Transportation Agency (SFMTA) issued a bid call for DPW Contract No. 1519J: Inner Sunset Traffic Calming and Transit Enhancements Project, to install curb bulb-outs along Irving Street and a pedestrian island on 7th Avenue.
- The engineer's detailed cost estimate for the work was \$388,700.
- The City received five bids. All bids were below the engineer's estimate.
- The contract work will be funded through the American Recovery and Reinvestment Act of 2009 (ARRA) and Proposition K Sales Tax revenues.
- DPW determined that Ghilotti Bros., Inc. is the lowest responsive and responsible bidder.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Manito Velasco

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

SFMTA staff requests this Board to authorize the Department of Public Works (DPW) to award DPW Contract No. 1519J: Inner Sunset Traffic Calming and Transit Enhancements Project, to Ghilotti Bros., Inc., for a total contract amount not to exceed \$234,149.

GOAL

The SFMTA will further the following goals of the Strategic Plan through the award of this contract:

- Goal 1 – To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy
 - 1.1 Improve safety and security across all modes of transportation
 - 1.3 Reduce emissions as required by the SFMTA Clean Air Plan
 - 1.5 Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, and rideshare)
- Goal 2 – To get customers where they want to go, when they want to be there
 - 2.1 Transit reliability: Improve on-time performance to 85%
 - 2.3 Fulfill bicycle and pedestrian network connectivity
 - 2.4 Reduce congestion through major corridors

DESCRIPTION

Scope of Work

On September 15, 2009, the SFMTA Board approved Resolution No. 09-170, to issue a bid call for DPW Contract No. 1519J: Inner Sunset Traffic Calming and Transit Enhancements Project.

This project is for installation of curb bulb-outs along Irving Street and a pedestrian island on 7th Avenue in San Francisco (the work). The specific locations include the following:

- Curb bulbs at Irving Street and 4th, 5th, 7th, 8th, and 9th Avenues.
- Gateway treatment at 7th Avenue and Moraga Street.

These locations were selected based on input received at several community meetings with residents in the project area. The Work is more specifically described in the “Inner Sunset Traffic Calming and Transit Enhancements Project Contract No. 1519J Project Manual” and the accompanying contract plans and miscellaneous reference drawings (which are voluminous documents and are available for inspection at DPW's Bureau of Engineering, 30 Van Ness Avenue, 5th Floor, San Francisco, California).

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The Work is designed to improve safety for pedestrians by improving visibility, slowing vehicle turns and shortening the curb to curb distance. The work can accomplish these goals without any adverse impacts to transit.

SFMTA staff performed the initial conceptual design for this contract. DPW staff performed the design review and contract preparation. DPW staff will also provide contract advertising and construction management services.

Under guidelines set by Caltrans, which administers the federal funding, the Underutilized Disadvantaged Business Enterprise (UDBE) subcontracting goal for this Contract is 6%.

The project is categorically exempt under the California Environmental Quality Act.

The time allotted for substantial completion of the work is 90 calendar days from the written Notice to Proceed. Liquidated damages are \$1,500 per day for contractor's delay that results in failure to complete the work on time.

Solicitation for Bids and Bid Opening

On September 30, 2009, the City solicited for said Contract through public advertisements in the San Francisco Chronicle and the Small Business Exchange. In addition, the public advertisement was listed until the day of the bid opening on the City's internet website at <http://www.sfgov.org/oca/purchasing>.

On October 21, 2009, DPW received and publicly opened the following bids for Contract No. 1519J:

- Esquivel Grading & Paving Inc.
918 Ingerson Avenue
San Francisco, CA 94124
Bid Amount: \$326,978

- Ghilotti Bros., Inc.
525 Jacoby Street
San Rafael, CA 94901
Bid Amount: \$234,149

- A. Ruiz Construction Co. and Assoc. Inc.
1601 Cortland Avenue
San Francisco, CA 94110
Bid Amount: \$312,631

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- McGuire & Hester
9009 Railroad Avenue
Oakland, CA 94603
Bid Amount: \$288,520
- Interstate Grading and Paving, Inc.
128 S Maple Avenue
South San Francisco, CA 94080
Bid Amount: \$317,976

As the lowest responsive and responsible bidder, staff recommends award to Ghilotti Bros., Inc. in the amount of \$234,149. This bid is \$154,551 below the engineer's estimate.

In its bid for DPW Contract No. 1519J, Ghilotti Bros., Inc. listed the following subcontractors:

- CMC Construction (San Francisco, CA)
- CJC Trucking (Oakland, CA)

ALTERNATIVES CONSIDERED

Instead of contracting, staff considered performing the work using City forces. However, although DPW staff could perform the Work, they cannot do so within the schedule desired by SFMTA and the community.

Staff concluded that contracting out through the use of the competitive bidding process was the best alternative.

FUNDING IMPACT

The engineer's detailed cost estimate for this contract is in excess of \$388,700.

The Work is funded through Proposition K Sales Tax revenues, a half-cent sales tax approved by San Francisco voters in 2003; and the American Recovery and Reinvestment Act of 2009 (ARRA). The SFCTA has already approved \$317,000 in Proposition K construction funds. The remaining \$343,000 is coming from ARRA funds through the Federal Highway Administration. These ARRA funds are administered by Caltrans.

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OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Contract Compliance Officer from the Human Rights Commission has reviewed this calendar item and has confirmed that Ghilotti Bros., Inc. will meet the UDBE subcontracting goal for this Contract of 6%.

The City Attorney's Office has reviewed this report.

RECOMMENDATION

Staff recommends that the SFMTA Board authorize DPW to award DPW Contract No. 1519J: Inner Sunset Traffic Calming and Transit Enhancements Project, to Ghilotti Bros., Inc., for a total contract amount not to exceed \$234,149.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, SFMTA and Inner Sunset residents have identified locations for traffic calming that are consistent with City guidelines; and,

WHEREAS, Curb bulb-outs and pedestrian islands are designed to improve safety for pedestrians by increasing visibility, slowing vehicle turns and shortening the curb to curb distance, without adversely impacting transit operations; and,

WHEREAS, SFMTA has identified the intersections of Irving Street at 4th, 5th, 7th, 8th, and 9th Avenues for curb bulb-outs and 7th Avenue and Moraga Street for a pedestrian island (the work); and,

WHEREAS, SFMTA proposes to perform the Work under Department of Public Works (DPW) Contract No. 1519J: Inner Sunset Traffic Calming and Transit Enhancements; and,

WHEREAS, The Work will be funded with Proposition K sales tax revenues and the American Recovery and Reinvestment Act of 2009 funds from the Federal Highway Administration, administered by Caltrans; and,

WHEREAS, On September 15, 2009, the SFMTA Board approved Resolution No. 09-170, to authorized DPW to issue a bid call for Contract No. 1519J; and

WHEREAS, The City advertised for bids for DPW Contract No. 1519J and received five bids, which were opened publicly on October 21, 2009; and

WHEREAS, DPW has determined that Ghilotti Bros., Inc. is the lowest responsive and responsible bidder, with a bid of \$234,149; and

WHEREAS, The Contract Compliance Officer from the Human Rights Commission has confirmed that Ghilotti Bros., Inc. will meet the Underutilized Disadvantaged Business Enterprise (UDBE) subcontracting goal of 6%; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Department of Public Works to award DPW Contract No. 1519J: Inner Sunset Traffic Calming and Transit Enhancements to build bulb-outs and a pedestrian island, to Ghilotti Bros., Inc., 525 Jacoby Street, San Rafael, CA 94901, for a total contract amount not to exceed \$234,149.

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

**DPW Contract No. 1519J: Inner Sunset Traffic Calming and Transit Enhancements
Project**

Project Budget and Financial Plan

PROJECT BUDGET

Category	Budget Amount
Construction Contract	\$234,149
Construction Contingency	\$43,300
Construction Support/Grant Support	\$102,000
Traffic Engineering & SFMTA Planning	\$126,000
Reserve	\$154,551
TOTAL (CONSTRUCTION PHASE)	\$660,000

FINANCIAL PLAN

Funding Source	Amount	Percentage
ARRA Funds	\$343,000	52%
Local Half Cent Sales Tax - Proposition K	\$317,000	48%
TOTAL	\$660,000	100%

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets, Transportation Engineering

BRIEF DESCRIPTION: Authorizing the Department of Public Works (DPW) to execute change orders Nos. 5 and 6 to DPW Contract No. 0985J, Traffic Signal Modification Contract 32, in an amount not to exceed \$93,210.59, and for a total contract amount not to exceed \$1,361,215.90.

SUMMARY:

- On April 1, 2008, the SFMTA Board of Directors adopted Resolution No. 08-058, which authorized DPW to award Contract No. 0985J, Traffic Signal Modification Contract 32, to Bay Area Lightworks Incorporated, for a total contract amount not to exceed \$1,209,268.68.
- SFMTA staff requests authorization for DPW to execute Change Order No. 5 for \$21,400.00 to install street lights and conduits and remove abandoned poles AND Change Order No. 6 for \$71,810.59 to reflect the additional amount due as a result of contract bid item quantity changes, for a total amount not to exceed \$93,210.59, and a total contract amount not to exceed \$1,361,215.90.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Geraldine de Leon

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

SFMTA staff requests that the SFMTA Board of Directors authorize the Department of Public Works (DPW) to execute Change Order Nos. 5 and 6 to Department of Public Works Contract No. 0985J: Contract 32 Traffic Signal Modifications, with Bay Area Lightworks Incorporated, 1300 Van Dyke Avenue Suite B, San Francisco, California 94124, for an amount not to exceed \$93,210.59.

GOAL

The SFMTA will further the following goals 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

- 1.1 Improve safety and security across all modes of transportation
- 1.3 Reduce emissions as required by the SFMTA Clean Air Plan
- 1.5 Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, and rideshare)

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

- 2.1 Transit reliability: Improve on-time performance to 85%
- 2.3 Fulfill bicycle and pedestrian network connectivity
- 2.4 Reduce congestion through major corridors

DESCRIPTION

The SFMTA's Sustainable Streets Division, Transportation Engineering section utilizing DPW Contract No. 0985J: Contract 32 Traffic Signal Modification, has modified existing traffic signals at 22 designated intersections located throughout San Francisco (the Work). These intersections are as follows: Hyde Street and Pacific Avenue; Hyde and Washington Streets; Mason Street and Pacific Avenue; Pacific Avenue and Powell Street; O'Farrell and Stockton Streets; Gough, Haight, and Market Streets; Gough and McAllister Streets; Golden Gate Avenue and Pierce Street; Golden Gate Avenue and Gough Street; Eddy and Laguna Streets; Pierce Street and Turk Avenue; Fulton Street and Masonic Avenue; Fulton, Parker, and Shrader Streets; 25th Avenue and Cabrillo Street; Duboce Avenue and Valencia Street; 16th and Harrison Streets; 6th and Bryant Streets; 18th and Dolores Streets; 20th and Folsom Streets; 29th and Dolores Streets; Foerster Street and Monterey Boulevard; and Claremont Boulevard and Portola Drive. The Work is expected to improve safety by providing motorists with better signal visibility and by providing pedestrians with countdown pedestrian signals.

On April 1, 2008, the SFMTA Board of Directors adopted Resolution No. 08-058, which authorized DPW to award Contract No. 0985J, Traffic Signal Modification Contract 32, to Bay Area Lightworks for a total contract amount not to exceed \$1,209,268.68.

The project construction is complete and DPW is in the process of closing out the contract. Six change orders were necessary over the life of the contract. The fifth and sixth change orders will cause the total costs to exceed ten percent of the contract amount. Pursuant to the SFMTA Board of Director's Contracting Policy, change orders that exceed ten percent of the original contract amount in either money or time require approval by the SFMTA Board of Directors.

The cumulative change order costs are as follows:

	Individual Change Order Cost	Cumulative Change Order Total	Percent of Contract Bid	Cumulative Percentage or Contract Bid
Change Order 1	\$18,458.93	\$18,458.93	1.53 %	1.53 %
Change Order 2	\$15,000.00	\$33,458.93	1.24 %	2.77 %
Change Order 3	\$0	\$33,458.93	0.00 %	2.77 %
Change Order 4	\$25,277.70	\$58,736.63	2.09 %	4.86 %
Change Order 5	\$21,400.00	\$80,136.63	1.77 %	6.63 %
Change Order 6	\$71,810.59	\$151,947.22	5.94 %	12.57 %

- Change Order No. 1 addressed unforeseen conditions encountered by the contractor while doing conduit and pole foundation installation work and for additional costs associated with the use of fibrelite pull boxes, which were not part of the original contract bid items. This change order was approved by the SFMTA Executive Director/CEO on August 18, 2008.
- Change Order No. 2 was issued to address routine unforeseen field conditions encountered by the Contractor such as utility conflicts with proposed pole locations. This change order was approved by the SFMTA Executive Director/CEO on February 2, 2009.
- Change Order No. 3 was requested by SFMTA staff to address recent changes in the DPW Contract Manual General Conditions regarding the retention funds held by the City on progress payments. This was a no-cost, no-time extension change order. This change order was approved by the SFMTA Executive Director on February 2, 2009.
- Change Order No. 4 was requested by SFMTA staff to install conduits at Larkin and Turk Streets and at McAllister and Leavenworth Streets ahead of DPW paving contracts. At Larkin and Turk, the conduits were needed to facilitate the installation of pedestrian countdown signals. At McAllister and Leavenworth, the conduits were needed to facilitate installation of additional vehicle signals in order to convert McAllister from one-way to two-way operation at this intersection. This change order was approved by the SFMTA Executive Director on April 1, 2009.

Provided below is a summary of the scope of work and final negotiated costs for requested change orders Nos. 5 and 6.

Change Order No. 5 will cover the removal of 14 signal poles, furnish and install two standard street light poles, and add conduits under the street car tracks at the intersection of Gough, Haight and Market Streets, for an amount not to exceed \$21,400. These three items were not part of the original contract scope.

Change Order No. 6 is requested by SFMTA staff to reflect revised quantities for materials in the contract such as vehicle signals, vehicle signal mountings, pedestrian signals, pedestrian signal mountings, and signal poles, for an amount not to exceed \$71,810.59. The revised material quantities reflect modifications to the original design due to field conditions such as conflicting utilities, poles and signals in poor condition in need of replacement or other additions to improve the design.

Change Orders Nos. 5 and 6 have been negotiated with the contractor and will result in an increase to the contract in the amount of \$93,210.59 with no extension of time.

ALTERNATIVES CONSIDERED

Instead of executing Change Order Nos. 5 and 6, the following alternatives were considered:

- No Build Option – This option was not chosen because the work promotes the safety and customer service aspects of the SFMTA’s goals. In the case of Change Order No. 6, a no-build option would have resulted in very few of the signal modifications being completed. Conduit, pole and signal head quantities deviate as field conditions dictate. It is impractical and costly to anticipate and plan for every deviation, conflict or problem that may occur during construction in the design phase. Some of the poles that were to be reused were in worse condition than expected, resulting in more new poles and related conduit work. Furthermore, changes in agency standards caused some of the changes, such as the decision to install larger signal heads.
- Use of SFMTA staff – The SFMTA Signal Shop could do some of this work. However, it is more cost effective and less disruptive for the contractor to perform the work. As noted above, Change Order No. 6 is an aggregation of the difference between the original bid quantities and final quantities, which means that these were changes in conduit lengths, and quantities of poles, signal heads, pull boxes, and related hardware. It would have been impractical for the SFMTA Signal Shop to implement all the deviation work. Finally, some of the work is beyond the SFMTA Signal Shop’s routine capabilities, such as installing conduit under street car track or furnishing and installing street light poles.

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FUNDING IMPACT

The capital funds for change orders Nos. 5 and 6 (\$93,210.59) for Traffic Signal Modification Contract 32 are from Proposition K half-cent sales tax funds.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No additional approvals are required. The City Attorney's Office has reviewed this calendar item.

The Contract Compliance Officer from the Human Rights Commission established a 20% Local Business Enterprise participation goal for this Contract and has indicated that including Change Order Nos. 5 and 6, the Contractor will be at 18.36% Local Business Enterprise participation. The final amount of work performed by one of the Local Business Enterprise contractors was reduced due to quality control and workmanship issues.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Department of Public Works (DPW) to execute Change Orders Nos. 5 and 6 to DPW Contract No. 0985J, Traffic Signal Modification Contract 32, for a total amount not to exceed \$93,210.59, and for a new contract amount not to exceed \$1,361,215.90.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On April 1, 2008, the SFMTA Board of Directors adopted Resolution No. 08-058, which authorized the Department of Public Works (DPW) to award Contract No. 0985J, Traffic Signal Modification Contract 32, to Bay Area Lightworks Incorporated, 1300 Van Dyke Avenue Suite B, San Francisco, California 94124, for a total contract amount not to exceed \$1,209,268.68; and

WHEREAS, The Executive Director/CEO approved change orders Nos. 1, 2, 3 and 4 to Contract No. 0985J in the total amounts of \$58,736.63; and,

WHEREAS, Removal of poles and installation of street lights and conduits under street car trackway requires Change Order No. 5 to Contract No. 0985J in an amount not to exceed \$21,400; and,

WHEREAS, A resolution of the actual quantity changes for contract bid items requires Change Order No. 6 to Contract No. 0985J in an amount not to exceed \$71,810.59;

WHEREAS, Change Order Nos. 5 and 6 will result in a cumulative change order total equaling 12.57% of the original contract amount;

WHEREAS, Pursuant to the SFMTA Board of Director's Contracting Policy, change orders that exceed ten percent of the original contract amount in either time or money require approval by the SFMTA Board of Directors; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Department of Public Works to execute Change Orders Nos. 5 and 6 to DPW Contract No. 0985J, Traffic Signal Modification Contract 32, for a total amount not to exceed \$93,210.59, and for a total contract amount of \$1,361,215.90.

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

**Department of Public Works Contract No. 0985J: Contract 32 Traffic Signal Modifications
Project Budget and Financial Plan**

PROJECT BUDGET

Category	Budget Amount
DPT Traffic Engineering (Design, Planning & Coordination)	\$210,670.00
DPW Bureau Of Engineering (Detailed Electrical Design)	\$224,902.00
Construction Contract	\$1,209,268.68
Construction Change Orders 1 – 6	\$151,947.22
Other Direct Costs (Electrical Service, 911 Call Boxes, & Cable Car Switches)	\$14,000.00
DPW Bureau of Construction Management & Bureau of Engineering (Contract Preparation, Public Affairs, Construction Engineering)	\$262,500.00
DPT Traffic Engineering & Signal Shop (Construction Support)	\$343,000.00
TOTAL	\$2,416,287.90

FINANCIAL PLAN

Funding Source	Amount	Percentage
Local Half Cent Sales Tax - Proposition K	\$2,416,287.90	100%

THIS PRINT COVERS CALENDAR ITEM NO. : 12

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Office of the ED/CEO

BRIEF DESCRIPTION:

Presentation of the FY10 Q1 Service Standards Scorecard.

SUMMARY:

- Schedule adherence (A1) dropped slightly on a quarter over quarter basis. Performance decreased 74.4 percent in FY09 Q4 to 73.3 percent in FY10 Q1.
- Scheduled service hours delivered (A2) increased from 96.9 percent in FY09 Q4 to 97.7 percent in FY10 Q1.
- With the exception of transit operators and Sustainable Streets shops employees, all groups achieved their unscheduled absence rate (A4) goals in FY10 Q1.
- Traffic and parking control requests addressed within 90 days (A7) decreased from 82 percent in FY09 Q4 to 77 percent in FY10 Q1.
- Percent of color curb applications processed within 30 days (A8) increased from 87 percent in FY09 Q4 to 89 percent in FY10 Q1.
- Systemwide collisions per 100,000 miles (C4) increased slightly, rising from 4.77 in FY09 Q4 to 4.80 in FY10 Q1. However, rail collisions per 100,000 miles fell from 3.55 in FY09 Q4 to 2.76 in FY10 Q1.
- Mail-in residential parking permits processed within 21 days increased from 82 percent in FY09 Q4 to 96 percent in FY10 Q1.

ENCLOSURES:

1. FY10 Q1 Service Standards Scorecard

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

In accordance with Charter Section 8A.103, the San Francisco Municipal Transportation Agency (SFMTA) tracks, monitors and reports on over 35 service standards for system reliability and performance, staffing performance and customer service on a quarterly basis.

Results are presented in the *Service Standards Scorecard*, which highlights results in both graphical and data formats.

GOAL

The Service Standards Program supports a number of the Agency's strategic goals, including:

GOAL 2: System Performance - To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy.

Objective 2.1 Improve transit reliability to meet 85% on-time performance standard.

GOAL 4: Financial Capacity - To ensure financial stability and effective resource utilization.

Objective 4.1 Ensure efficient and effective use of resources.

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

Objective 5.1 Increase resources available for employees in performing their jobs.

Objective 5.3 Improve internal communication and employee satisfaction.

GOAL 6: Information Technology - To improve service and efficiency, the SFMTA must leverage technology.

Objective 6.1 Identify, develop, and deliver the new and enhanced systems and technologies required to support SFMTA's 2012 goals.

DESCRIPTION

Key results for FY010 Q1 (July-September 2009) are as follows:

Schedule adherence (A1) decreased slightly during FY10 Q1, dipping from 74.4 to 73.3 percent.

Ridership weighted schedule adherence during FY10 Q1 was 74.3 percent. 10 of the 35 lines and routes evaluated achieved on-time performance of 80 percent or greater. The goal is 85 percent.

Scheduled service hours delivered (A2) increased from 96.9 percent in FY09 Q4 to 97.7 percent in FY10 Q1. First quarter performance was at the highest level in 22 quarters. Trolley Coach service delivery reached 98.6 percent, surpassing the goal of 98.5 percent.

PAGE 3.

Seven of the nine employee groups evaluated in the Service Standards achieved their unscheduled absence rate (A4) goals for FY10 Q1. The two exceptions were Sustainable Streets' shops employees and transit operators. The absence rate for the shops employees increased from 11.9 percent in FY09 Q4 to 14.6 percent in FY10 Q1. The goal is 10.5 percent. The absence rate for transit operators increased from 14.4 percent to 15.1 percent. The goal is 10.2 percent.

Traffic and parking control requests addressed within 90 days (A7) decreased from 82 percent in FY09 Q4 to 77 percent in FY10 Q1. The goal is 82 percent.

The rate for color curb applications processed within 30 days (A8) increased from 87 percent in FY09 Q4 to 89 percent in FY10 Q1 and continues its significant recovery from prior quarters. The goal is 90 percent.

The Systemwide, bus and rail goals for collisions per 100,000 miles (C4) were all achieved during FY10 Q1. Systemwide collisions per 100,000 miles increased slightly from 4.77 in FY09 Q4 to 4.80 in FY10 Q1 but remained below the goal of 5.90. Bus collisions also increased slightly (from 5.12 in FY09 Q4 to 5.39 in FY10 Q1) but met the goal of 6.15. Rail collisions decreased significantly during the reporting period, falling from 3.55 in FY09 Q4 to 2.76 in FY10 Q1. The goal is 4.50.

Last, the percent of mail-in residential parking permits (C11) processed within 21 days improved markedly during FY10 Q1. Performance increased from 82 percent in FY09 Q4 to 96 percent in FY10 Q1. The goal is 95 percent.

ALTERNATIVES CONSIDERED

Not applicable. Reporting on the achievement of Service Standards is required by Charter.

FUNDING IMPACT

Not applicable.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The CAC will receive the report during its December meeting.

RECOMMENDATION

Receive the report.

THIS PRINT COVERS CALENDAR ITEM NO. : 15

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: ADMINISTRATION, TAXIS AND ACCESSIBLE SERVICES

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute a Paratransit Broker Agreement, Contract No. SFMTA 2008/09-54, with Veolia Transportation, Inc., for a term beginning April 1, 2010 and ending June 30, 2015, with an option for a five-year extension, and in an amount not to exceed \$118,599,710, and authorizing the Executive Director/CEO to submit the Agreement to the San Francisco Board of Supervisors for approval.

SUMMARY:

- For the past 28 years, SFMTA has contracted out paratransit services to a Paratransit Broker, who performs many important functions such as managing subcontracts with paratransit service providers, monitoring service quality, administering client eligibility, managing the sale of fare instruments, and acting on behalf of the Agency as the principal customer service representative for paratransit services.
- The SFMTA advertised a Request for Proposals (RFP) for Paratransit Broker services on June 29, 2009. In an effort to solicit innovative proposals, the RFP delineated two options that proposers could respond to – Option A, the existing model of decentralized Paratransit Broker services, or Option B, which allowed proposers to put forward a new contracting model.
- Five proposals were submitted by four proposers: three Option A responses and two Option B responses.
- A Technical Evaluation Panel reviewed and scored the proposals. An Executive Committee approved the process and recommended that SFMTA staff conduct negotiations with the firm with the highest-ranked proposal – Veolia Transportation, Inc. with its Option A proposal.
- The parties have negotiated an agreement with a term beginning April 1, 2010 and ending June 30, 2015, with an option to extend the agreement for an additional five years. The amount of the Agreement is \$118,599,710, which includes all costs of providing transportation services to paratransit customers. The amount of the Broker's administrative costs over the initial five-year, three-month term is \$18,966,707 (approx 16%).

ENCLOSURES:

1. SFMTAB Resolution
2. Agreement for Paratransit Broker Services

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION BE RETURNED TO Annette Williams

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

To seek SFMTA Board approval to authorize the Executive Director/CEO to execute a Paratransit Broker agreement with Veolia Transportation, Inc. for a term beginning April 1, 2010 and ending June 30, 2015, with a five-year extension option.

GOAL

The Paratransit Broker Agreement helps the SFMTA meet the following goal and objective of the 2008-2012 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 1.4 Improve accessibility across transit service.

DESCRIPTION

For the past 28 years, SFMTA has contracted out paratransit services to a Paratransit Broker who performs many important functions, such as managing subcontracts with paratransit service providers, monitoring service quality, administering client eligibility, managing the sale of fare instruments, and acting on behalf of the SFMTA as the principal customer service representative for paratransit services. The current Paratransit Broker contract began on April 1, 2000 for a five-year period and was extended twice. Amendment No. 4 to the Agreement, executed on December 29, 2004, extended the contract for three years, through March 31, 2008 (SFMTA Board Resolution No. 040-160). On March 28, 2008, the parties executed Amendment 7 to the Agreement, which extended it for an additional two-year period through March 31, 2010 (SFMTA Board Resolution No. 08-011).

In anticipation of the expiration of the contract term, the SFMTA advertised a Request for Proposals for Paratransit Broker services on June 29, 2009. Proposals were due on September 15, 2009. In an effort to solicit innovative proposals, the RFP delineated two options that proposers could respond to – Option A, the existing model of decentralized Paratransit Broker services, or Option B, which allowed proposers to propose a new contracting model. There are many types of paratransit brokerage contracting models. The current SF Paratransit decentralized model has been in place since 1981 and it is characterized by a paratransit broker that performs the eligibility and customer service functions, and contracts with van and taxi companies to provide the actual service. The paratransit customer calls the van or taxi company directly to arrange for transportation and the Paratransit Broker oversees service quality, but does not take reservations or schedule trips. Alternately, in a centralized model, the broker would take reservations and schedule trips, and in a turn-key system the broker would also provide the transportation service. Proposers could submit an Option A, and Option B or both Option A and Option B proposals.

In response to the RFP, the following four proposers submitted a total of five proposals -- three Option A proposals and two Option B proposals:

1. First Transit: Option A

2. MV Transportation: Option A
3. Veolia Transportation: Option A and Option B
4. Mobility Plus Transportation: Option B

PAGE 3.

SFMTA staff developed a detailed Proposal Evaluation Plan, which was approved by SFMTA Senior Management. The Proposal Evaluation Plan provided a framework to evaluate proposals submitted and clearly delineated the roles and responsibilities of both the Technical Evaluation Panel (TEP) and the Executive Committee (EC).

The TEP was comprised of three SFMTA representatives (from Planning, Operations and Accessible Services), two members of the Paratransit Coordinating Council, one representative from Aging Services, and one Transit Accessibility Professional from a regional transit agency. TEP members were chosen for their expertise, including experience with paratransit brokerage programs, knowledge of the transportation needs of persons with disabilities and seniors, expertise in transit operations and transit planning, and familiarity with the SF Paratransit Program. An effort was made to include people with disabilities on the panel and to reflect the diversity of the San Francisco community served.

The EC was comprised of four voting members from SFMTA's upper management, and the following non-voting members: legal advisor, Contract Compliance representative, Contracts and Procurements representative and the TEP Facilitator.

WRITTEN PROPOSAL REVIEW

The TEP reviewed each proposal and met on October 1, 2009, when the members discussed the strengths and weaknesses for each proposal. At the end of the October 1 meeting, TEP members individually scored each written proposal. SFMTA Contracts and Procurement staff reviewed these scores in conjunction with Contract Compliance staff, and short listed the proposals based on the TEP scores. A report was prepared for the EC. The EC reviewed the report, the resulting scores and the shortlist recommendations resulting from the first TEP meeting. The EC endorsed the process and recommended moving forward with the next step in the process (the Oral Presentation/Interview process).

ORAL PRESENTATIONS AND INTERVIEWS

Interviews were held on October 8, 2009 with the following firms that had short-listed proposals:

1. First Transit: Option A
2. MV Transportation: Option A
3. Veolia Transportation: Option A and Option B

After each interview, the TEP discussed the proposal's strengths and weaknesses and came to consensus on each item recorded, although only a simple majority was required. At the end of the interviews TEP members individually re-scored each proposal, taking into consideration the

written proposals and all information received by the panel during the oral presentations. Although the individual TEP scores differed, all TEP members had the same relative ranking for each proposal.

Veolia Transportation's Option A proposal, ranked highest by each TEP member, had a significant number of strengths noted by the TEP, including:

- Deep, broad experience in paratransit operations and with paratransit brokerages
- Understanding of San Francisco multi-modal systems and knowledge of local San Francisco customer base

PAGE 4.

- Staff descriptions / organizational structure / reporting channels are clear
- Demonstrated knowledge of FTA procurement guidelines
- Experienced, professional and respected staff
- General manager's depth of knowledge of ADA regulations is extraordinary
- Has established and documented strong working relationships with the taxi industry in San Francisco

Veolia Transportation, the incumbent Paratransit Broker, has consistently maintained a high level of customer satisfaction throughout its current contract term. The 2008 Paratransit Customer Satisfaction Survey indicated an 87% satisfaction level with the services provided by the SF Paratransit Broker, and 93% of those surveyed rated the quality of the paratransit trip as excellent or good.

EXECUTIVE COMMITTEE REVIEW AND NEGOTIATIONS

A final Evaluation Summary Report (ESR) was prepared for the EC, documenting the evaluation process. The EC approved the ESR and recommended that the Negotiation Team enter into contract negotiation talks with the firm with the highest ranked proposal, which was the Option A proposal submitted by Veolia Transportation.

Staff negotiated an agreement with Veolia Transportation consisting of a comprehensive scope of work, and costs of services to be performed. The agreement is based upon a standard professional services contract modified to include several additional provisions unique to the paratransit program, such as a lease of City-owned vehicles, the provision of advance payments for community-based van subcontractors, and an Incentive/Disincentive plan.

The total contract amount over the five-year period is \$118,599,710, of which \$18,966,707 (16% of the total) is to be allocated for Broker administrative costs, the remainder is for transportation costs. A cost plus fixed fee schedule has been negotiated with not to exceed amounts for Broker administrative costs on an annual basis.

NEW CONTRACT DESCRIPTION

The new Agreement includes nearly all of the current scope of work, such as tasks associated with eligibility determinations, customer service, overseeing the implementation and ongoing monitoring of the taxi debit card system, the subcontracting and monitoring of van and taxi services, and reporting and record keeping.

In addition, the proposed Agreement includes new tasks in the scope of work, such as the procurement of mobile data computers (MDCs) and the implementation of the Shopping Shuttle, which will help to improve the quality of the SF Paratransit program and expand services. Both of these new tasks are funded through federal grants (New Freedom and Lifeline Transportation).

The Paratransit Broker will be procuring and deploying MDCs with global positioning system (GPS) capability on 120 SF Paratransit vans to allow remote, interactive connectivity to the SF Paratransit's management, routing and scheduling system at the Paratransit Broker's office, as well as satellite vehicle location capability. The GPS system will be used to increase the tracking and monitoring of paratransit vans. This system will create electronic communications between paratransit vehicles and dispatchers through state-of-the-art software by allowing almost instantaneous recording of trip data (e.g., actual pick up times, drop-off times, fare collection information, etc.) thereby improving customer service, improving on-time reliability, providing more accurate reporting, and increasing efficiency in handling "where's my ride" phone calls.

PAGE 5.

The Shopping Shuttle will provide group shopping trips and escort services twice a month to seniors and persons with disabilities who live in targeted public housing buildings and neighborhoods that have limited grocery shopping opportunities (fewer stores and less direct transit to stores than in other neighborhoods). This service is designed to help meet the need expressed by many seniors and persons with disabilities for safe, reliable and accessible transportation for grocery shopping. This service responds directly to patron concerns raised at multiple Muni fixed route service change outreach meetings.

Through the current Agreement, the SFMTA leases vans purchased with federal grants to the Broker for sublease to the van providers. The SFMTA receives lease payments from the providers for the vans, which serve to reduce expenditures. This program will continue in the new Agreement. The SFMTA will be replacing all 60 vans during the term of the Agreement.

ALTERNATIVES CONSIDERED

Accessible Services staff, through the annual Proposition J analysis, has explored providing paratransit services in-house, both brokerage services and actual transportation services. It is approximately 35% more expensive to provide these services in-house as opposed to contracting out.

FUNDING IMPACT

Operating funds required for the paratransit contract are budgeted in the Accessible Services budget. SFMTA also receives funding for paratransit services from the Federal Transit Administration and the San Francisco County Transportation Agency.

The term of the contract will be April 1, 2010 through June 30, 2015, with an Option for a five-year extension.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Paratransit Broker contract will be presented to the Board of Supervisors for final approval.

Veolia Transportation, Inc., the prime consultant, has demonstrated their commitment to achieve the Small Business Enterprise (SBE) participation goal established for the contract.

The contract has been reviewed by Contract Compliance and the City Attorney.

RECOMMENDATION

Staff recommends that the SFMTA Board authorize the Executive Director/CEO to execute Contract No. SFMTA 2008/09-54 with Veolia Transportation, Inc. for a five-year term ending June 30, 2015, with an optional five-year extension.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, For the past 28 years, the San Francisco Municipal Transportation Agency (SFMTA) has contracted out paratransit services to a Paratransit Broker who in turn manages subcontracts with paratransit service providers, monitors service quality, administers client eligibility, manages the sale of fare instruments; and acts on behalf of the SFMTA as the principal customer service representative for paratransit services; and,

WHEREAS, The current Paratransit Broker contract began on April 1, 2000 for a five-year period and was amended to extend the term to March 31, 2010; and,

WHEREAS, SFMTA issued a Request for Proposals (RFP) to solicit proposals for the new contract period beginning April 1, 2010 and ending June 30, 2015, with an optional five-year extension; the RFP allowed the proposers to submit an Option A proposal (for the traditional SFMTA de-centralized brokerage model) and/or an Option B proposal (a different brokerage structure, to be selected by the proposer); and,

WHEREAS, SFMTA received five proposals from four firms; and

WHEREAS, An evaluation process was conducted by a Technical Evaluation Panel (TEP) composed of SFMTA Planning, Operations and Accessible Services staff, as well as paratransit customers and professionals, and reviewed by an Executive Committee (EC) consisting of SFMTA upper management; and

WHEREAS, The TEP first evaluated and scored the written proposals, and recommended inviting three firms, with four proposals for oral presentations, which recommendation was approved by the EC; and

WHEREAS, The TEP re-evaluated and scored the short-listed proposers, and unanimously rated the Option A proposal from Veolia Transportation, Inc. (Veolia) highest; the EC reviewed the process and authorized the SFMTA to enter into negotiations with Veolia; and

WHEREAS, SFMTA staff has successfully negotiated an agreement with Veolia, for an amount not to exceed \$118,599,710 over the initial term of the agreement; now, therefore, be it

RESOLVED, That the Executive Director/CEO to execute the Contract No. SFMTA 2009/09-54, Paratransit Broker Agreement, with Veolia Transportation, Inc., for paratransit broker services in an amount not to exceed \$118,599,710, for a five-year term ending June 30, 2015, with an optional five-year extension; and be it

FURTHER RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO to submit the Agreement to the Board of Supervisors for approval.

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

PARATRANSIT BROKER AGREEMENT
BETWEEN THE
CITY AND COUNTY OF SAN FRANCISCO
AND
VEOLIA TRANSPORTATION SERVICES, INC.

Contract No. SFMTA 2008/09-54

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PARATRANSIT BROKER AGREEMENT

City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

Agreement between the City and County of San Francisco and

Veolia Transportation Services, Inc.

This Agreement is made this 1st day of April, 2010, in the City and County of San Francisco, State of California, by and between: Veolia Transportation Services, Inc., a Maryland Corporation (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its San Francisco Municipal Transportation Agency (“SFMTA”).

Recitals

- A.** The SFMTA wishes to hire the services of a paratransit broker to administer the City's Paratransit Program.
- B.** A Request for Proposals (“RFP”) was issued on June 29, 2009, and City selected Contractor as the highest qualified scorer pursuant to the RFP.
- C.** Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract.

Now, THEREFORE, the parties agree as follows:

Definitions

5310 Vehicles. Wheelchair accessible vehicles purchased with federal grant funds received by non-profit agencies for transportation of persons with disabilities and seniors.

Active User. A paratransit Customer who has conducted at least one transaction with the SF Paratransit Program (e.g. purchased ride tickets, scheduled a ride, etc.) during the previous twelve months.

Administrative Expenses. All of Broker's anticipated and authorized costs and expenses that are included in a Budget approved pursuant to this Agreement, including but not limited to capital expenses (other than costs to procure the MDCs) to be paid out by Broker, personnel and administrative expenses.

Agreement; Contract. This Paratransit Broker Agreement and all referenced Exhibits, which are incorporated by reference as though fully set forth herein.

Americans with Disabilities Act; ADA. The Americans With Disabilities Act of 1990.

Appeals Panel. The body that is convened to hear appeals of paratransit eligibility determination decisions. The Appeals Panel is comprised of three members, who typically include one representative of paratransit Riders, a transit property representative, and a medical professional.

Broker; Paratransit Broker. The Contractor selected to provide paratransit Services pursuant to this Agreement.

Broker's Office. The office where the Broker conducts its administrative operations, located at 68 12th Street, San Francisco, CA 94103

Budget. Documentation of anticipated expenses for an upcoming fiscal year to be prepared by Broker and approved by City, to include estimates of Operating Expenses.

Contractor. Veolia Transportation Services, Inc., also doing business under this Agreement as San Francisco (SF) Paratransit.

Customer; Rider. A person within the Service Area who meets all Program eligibility requirements and who requests paratransit services from Contractor.

Customer Database. The local database to be maintained by Contractor on Trapeze Pass software which manages eligibility, interfaces with the debit card software system, and which uploads Customer eligibility status to the MTC's Regional Eligibility Database.

Effective Date. The date when the Controller of the City and County of San Francisco has certified that available funds have been set aside for payment of services to be rendered under the Agreement and the Contractor has been so notified in writing by the SFMTA.

Executive Director/CEO. The Executive Director and Chief Executive Officer of the Municipal Transportation Agency.

Fare Media. Fare payment methods and technologies for paratransit service, such as SF Access ride tickets or the paratransit taxi debit card.

Fiscal Year. July 1 through June 30.

FTA-Defined Reportable Incident: A "Reportable Incident" involving a transit vehicle or that occurs on transit-controlled property, as defined in the Transit Glossary of the National Transit Database., located at the following internet address:
<http://www.ntdprogram.gov/ntdprogram/Glossary.htm>.

Group Van. A mode of service in the SF Paratransit program which provides pre-scheduled transportation services to groups of ADA-certified Riders to a single location, such as an adult day health care program or a work site.

Holidays. New Years' Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving, and Christmas Day.

Inter-County Paratransit Service. Direct regional paratransit service available for paratransit Customers through agreements with the East Bay Paratransit Consortium and Golden Gate Bridge, Highway and Transportation District.

In Taxi Equipment (ITE). Hardware installed in San Francisco taxi cabs that will accept the paratransit debit card as a form of payment.

Management Fee. The fee established in Section 5.3 of the Agreement.

Manager. The Manager of the SFMTA's Accessible Services Program or his or her designee.

Mobile Data Computers (MDC). Portable, on-board computers, which will be mounted in SF Paratransit vans for the purpose of providing a direct interactive communications link to the software systems of the Broker and/or Provider.

Modes. The different means of providing Paratransit Services, including Taxi, Group Van, SF Access, and Shop-n-Roll Shuttle.

Muni. The San Francisco Municipal Railway, the public transportation system of the City and County of San Francisco, under the jurisdiction of the SFMTA.

Municipal Transportation Agency; SFMTA. The Municipal Transportation Agency, an agency of the City and County of San Francisco established by San Francisco Charter Article VIIIA.

Metropolitan Transportation Commission; MTC. The nine-county San Francisco Bay Area regional transportation planning agency.

Operating Expenses. Anticipated and authorized service operating costs and expenses, including but not limited to payments to subcontractors.

Paratransit Debit Card System; PDCS. An account-based application that will allow taxi Riders to use a debit card to pay the fare. The PDCS system will use a magnetically striped card with the Rider's name, a unique identification number and photograph that will identify the Rider and automatically process authorization, payment and reconciliation of the paratransit fare through specialized debit card reading equipment to be installed in taxis.

Paratransit Grievance Committee. A committee to be established by the Broker for the

purpose of hearing Customers' grievances.

Paratransit Plus Program. A program for persons who do not qualify for Services under the eligibility criteria of the ADA, but have demonstrated a high level of difficulty using Muni bus and light rail services.

Proposal. The Proposal submitted by Broker in response to the Request for Proposals.

Ramped Taxi. Taxis with ramps that are accessible by persons using wheelchairs.

Regional Eligibility Database; RED. Regional Database used by all Bay Area agencies providing paratransit services for the purpose of tracking eligibility status for Bay Area paratransit riders.

Request for Proposals; RFP. The Request for Proposals issued by City on June 29, 2009.

San Francisco Paratransit Coordinating Council, PCC. Muni's community advisory body for paratransit services in San Francisco, comprised of paratransit consumers, van and taxi providers and social service representatives. The PCC was established in the late 1970's to advise Muni on matters of paratransit and accessibility, and to advocate for the needs and views of the elderly and disabled community regarding Muni's paratransit services.

Service Area. The area within which Contractor must provide the Services required by this Agreement, which includes the area within the geographic boundaries of the City and County of San Francisco, Treasure Island. In San Mateo County the Service Area includes any location within a ¾ mile corridor on either side of an operating MUNI route within the portion of northern San Mateo County that is bounded on the south by School Street, and which includes the Daly City BART station, Westlake Shopping Center, and Top of the Hill, Daly City, and transfer points to San Mateo County's RediWheels service, including but not limited to the Stonestown Shopping Center on 9th Avenue, Daly City. The Service Area also includes the Marin Headlands on Sundays and the following holidays: New Years' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.

Service Costs. Costs of the transportation services by all Modes providing paratransit service.

Service Standards. Specific, measurable standards that stipulate the level of service quality that paratransit Riders can expect from the Paratransit Broker and the Transportation Service Providers.

Services. The Paratransit Broker services to be provided under this Agreement for the purpose of managing the subsidized accessible van and taxi transportation access to Riders in the Service Area.

SF Access. Pre-scheduled ADA van service (formerly called ADA Access and Lift Van) currently provided pursuant to an agreement between the Contractor and Mobility Plus Transportation (MPT).

SF Paratransit Program; Program. The City and County of San Francisco's program to provide paratransit transportation services to eligible Riders in San Francisco as a component of Muni's accessible fixed route diesel coach, trolley coach, light rail, and historic streetcar services, in accordance with all applicable Service Standards.

Shop-n-Roll Shuttle; Shopping Shuttle. A grocery shopping service for seniors and persons with disabilities provided as one of the Services in the Paratransit Program.

Software. The Software licensed to the City under the Software License Agreement between Trapeze Software Group, Inc. and the City, dated October 31, 2008.

Subscription Service. A paratransit service for qualifying trips to and from fixed point destinations at the same time(s) and day(s) of the week for a period of at least 30 days.

Taxi. A motor-vehicle-for-hire licensed as a taxicab by the San Francisco Police Department and governed by the SFMTA.

Transportation Service Providers; Providers. Subcontractors to the Paratransit Broker that provide van and taxi transportation services for the Paratransit Program.

I. 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.

II. Term of the Agreement.

Subject to Section 1, the term of this Agreement shall be from April 1, 2010 to June 30, 2015. SFMTA may, in its sole discretion, exercise an option to extend the Agreement for an additional five- (5-) year period, through June 30, 2020.

III. 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 with a Notice to Proceed (NTP).

IV. Services Contractor Agrees to Perform.

The Contractor agrees to perform the services provided for in Appendix A, "Scope of Work," attached hereto and incorporated by reference as though fully set forth herein, which services and tasks are subject to review and approval, as required, by the SFMTA.

V. Compensation and Reimbursement of Operating Expenses.

A. **Amount of Contract.** Compensation under this Agreement shall be based on a costs plus fixed fee structure, in accordance with the annual approved budgets, as described above. In no event shall the amount of this Agreement exceed One Hundred Eighteen Million, Five Hundred Ninety-Nine Thousand, Seven Hundred Ten Dollars (\$118,599,710), including the Management Fee, for the entire term of the Agreement. Further breakdown of Administrative Expenses and Management Fees associated with this Agreement is listed in Appendix B.

B. **Payment.** Reimbursement of Broker's Administrative Expenses and payment of the monthly Management Fee shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 4 of this Agreement, that the Manager, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month.

City shall reimburse Contractor for Service Costs on a monthly basis based on estimated expenditures of subcontractors for the work. Contractor shall derive these estimates from the prior month's actual Service Costs. The Contractor will reconcile the actual Service Costs with the estimated Service Costs and will adjust the next month's invoice as appropriate.

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. City shall make payment to Contractor at the address specified in the Section entitled "Notices to the Parties."

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.

C. **Management Fee.** Broker shall be paid a Management Fee of \$674,277 under this Agreement (as set forth in Appendix B), pursuant to Broker's Proposal, provided that (a) Broker is not in default under this Agreement, or (b) an event has not occurred that, with the giving or notice or the passage of time, would constitute a default. The Management Fee shall be paid on a monthly basis: the Management Fee for the first three months of the Agreement shall be paid in three equal monthly installments; the Management Fee for each year thereafter shall be paid in 12 equal monthly installments. Should the Effective Date or the date of termination or expiration of this Agreement occur on any day other than the first day of a calendar month, the Management Fee for that particular month shall be prorated based on a 30-day month.

D. **Reimbursement of Administrative Expenses** Broker shall be entitled to reimbursement from the City for all Administrative Expenses properly incurred and paid by Broker in the performance of Broker's duties hereunder and as specified in the approved Budget

in accordance with Section 5.6, subject to all City approvals required under this Agreement. City's obligation to reimburse Broker for wages, salaries or benefits is limited to reimbursement for time that employees of Broker are actually working for the benefit of City.

E. . Limitations on Payment of Fees. The City's obligation for payment of Management Fees incurred by the Broker in the performance of this Agreement shall not exceed the amount listed in the line item in the Budget for such fee. This Fee schedule for the duration of the contract will be negotiated for all contract years at the time the contract is approved. The City's obligation for payment and reimbursement of Administrative Expenses incurred by the Broker in the performance of this Agreement shall not exceed the total amount of the Administrative Budget for that year. If expenses for an individual line item in the Budget are expected to exceed the amount for that line item by more than five percent (5%) prior approval must be sought from the Manager. The City's obligation for payment of Management Fees and reimbursement for Administrative Operating Expenses in the aggregate shall not exceed the total approved Budget for these items without written approval by the SFMTA.

F. Budget Approval. Contractor shall submit its budget for each fiscal year, commencing July 1 and ending each following June 30 no later than the preceding January 15. SFMTA shall review, modify and approve the budget no later than May 31 following the submittal. The budget will consist of an Administrative Budget including the pre-negotiated Management Fee and a Service Budget for transportation provider operating expenses per mode. Approval of each budget shall be subject to available funding for the applicable fiscal year. The City is not authorized to make payments for any Administrative Expense for which funds have not been authorized under the approved Budget, except as expressly authorized by this Agreement.

G. Cost Principles. The Contractor acknowledges it is familiar with the provisions of Office of Management and Budget (OMB) Circular A-87, Cost Principles For State, Local, and Indian Tribal Governments; that it understands the City does not intend to pay the Contractor for costs under this Agreement which are not reimbursable to City from its funding agencies in accordance with Circular A-87; and that all payments under this Agreement are subject to audit and adjustment.

VI. Guaranteed Maximum Costs.

The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the 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. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

VII. 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."

VIII. 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.

IX. 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.

X. Taxes.

A. Obligation of Contractor. 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. Possessory Interest Taxes. 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.

XI. 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.

XII. 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.

XIII. 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.

XIV. 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.

XV. 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 \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
3. Commercial Automobile Liability Insurance with limits not less than \$2,000,000 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, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

B. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

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. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the

payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

D. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

E. 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.

F. 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.

G. 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.

H. 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.

I. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

J. 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.

XVI. Security Deposits.

A. Performance Bond.

1. **Amount of Bond.** Contractor agrees that within five Days after notification from the SFMTA that all required City agencies have approved this Agreement, Contractor will deliver to the City a performance bond, which may be renewable annually, in the amount of \$4,500,000 to guarantee Contractor's performance obligations under this Agreement. If Contractor fails to deliver the initial performance bond within five Days, or fails to notify City annually of the renewal of the bond within five Days before each anniversary of the Effective Date, City will be entitled to cancel this Agreement. Contractor shall maintain the performance bond during the term of this Agreement. In the event this Agreement is assigned, as provided for in Section 31, City will return or release the performance bond not later than the effective date of the assignment, provided that the assignee has delivered to City an equivalent performance bond,

as determined by City. In the event that the City exercises its option to extend this Agreement as provided in Section 2, then the performance bond must be re-issued in the amount of \$5,000,000 for the duration of the extension of the term of this Agreement. Notwithstanding anything to the contrary herein, in no event shall Surety's aggregate liability exceed the penal sum of the applicable bond amount; provided, however, that this limitation shall not affect Contractor's liability under this Agreement.

2. **Sureties.** Bonding entities on the performance bond must be legally authorized to engage in the business of furnishing performance bonds in the State of California. All bonding entities must be satisfactory to City. During the period covered by the Agreement, if any of the sureties upon the bond become insolvent or, in the opinion of the City, unable to pay promptly the amount of such bond to the extent to which the surety might be liable, Contractor, within 30 Days after notice given by the City to Contractor, must by supplemental bond or otherwise, substitute another and sufficient surety approved by City in place of the surety becoming insolvent or unable to pay. If Contractor fails within such 30 Day period to substitute another and sufficient surety, City may deem Contractor to be in default in the performance of its obligations hereunder and upon the said bond. The City, in addition to any and all other remedies, may terminate the Agreement or bring any proper suit or proceeding against moneys then due or which thereafter may become due to Contractor under the Agreement. The amount for which the surety will have justified on the bond and the moneys so deducted will be held by SFMTA as collateral for the performance of the conditions of the bond.

B. Letter of Credit.

1. **Requirements.** As an alternative to the performance bond requirement provided in Section 16.1, within five Days after receiving notification of approval of the Agreement, Contractor shall provide to City and maintain, throughout the term of this Agreement or until all of its obligations under the Agreement have been completely performed, whichever is later, a confirmed, clean, irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation, in the amount of \$4,500,000. The letter of credit must have an original term of one year, with automatic renewals of the full \$4,500,000 amount throughout the initial term of the Agreement. If the City exercises the option to extend the term, the letter of credit shall be increased to \$5,000,000, to be renewed annually throughout the remainder of the extension of the term. If Contractor fails to deliver the letter of credit as required, City will be entitled to cancel this Agreement. The letter of credit must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the bank signed by the Executive Director/CEO on behalf of the City and County of San Francisco.

2. **Financial Institution.** The letter of credit must be issued on a form and issued by a financial institution acceptable to the City in its sole discretion, which financial institution must (a) be a bank or trust company doing business and having an office in the City and County of San Francisco, (b) have a combined capital and surplus of at least \$25,000,000, and (c) be subject to supervision or examination by federal or state authority and with at least a Moody's A rating.

3. **Extensions of Agreement.** Should the City exercise the option to extend the Agreement as provided in Section 2, Contractor shall increase the letter of credit to \$5,000,000 for the term of the extension and throughout the performance of Contractor's obligations under the Agreement.

4. **Demand on Letter of Credit.** The letter of credit will constitute a security deposit guaranteeing faithful performance by Contractor of all terms, covenants, and conditions of this Agreement, including all monetary obligations set forth herein. If Contractor

defaults with respect to any provision of this Agreement, SFMTA may make a demand under the letter of credit for all or any portion thereof to compensate City for any loss or damage that they may have incurred by reason of Contractor's default, negligence, breach or dishonesty. Such loss or damage may include without limitation any damage to or restoration of City property or property that is required to be constructed, maintained or repaired pursuant to this Agreement, payments to City, and claims for liquidated damages; provided, however, that City will present its written demand to said bank for payment under said letter of credit only after City first has made its demand for payment directly to Contractor, and five full Days have elapsed without Contractor having made payment to City. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the letter of credit those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the services described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of the letter of credit is so used or applied by City, Contractor, within 10 business days after written demand by City, shall reinstate the letter of credit to its original amount; Contractor's failure to do so will be a material breach of this Agreement.

5. **Expiration or Termination.** The letter of credit must provide for 60 Days notice to City in the event of non-extension of the letter of credit; in that event, Contractor shall replace the letter of credit at least 10 business Days prior to its expiration. In the event the City receives notice from the issuer of the letter of credit that the letter of credit will be terminated, not renewed or will otherwise be allowed to expire for any reason during the period from the commencement of the term of this Agreement to 90 Days after the expiration or termination of this Agreement, or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs last, and Contractor fails to provide the City with a replacement letter of credit (in a form and issued by a financial institution acceptable to the City) within 10 Days following the City's receipt of such notice, such occurrence shall be an event of default, and, in addition to any other remedies the City may have due to such default (including the right to terminate this Agreement), the City shall be entitled to draw down the entire amount of the letter of credit (or any portion thereof) and hold such funds in an account with the City Treasurer in the form of cash guarantying Contractor's obligations under this Agreement under the terms of this Section 16.2. In such event, the cash shall accrue interest to the Contractor at a rate equal to the average yield of Treasury Notes with one-year maturity, as determined by the Treasurer. In the event the letter of credit is converted into cash pursuant to this paragraph, upon termination of this Agreement, Contractor shall be entitled to a full refund of the cash (less any demands made thereon by the City) within 90 Days of the termination date, including interest accrued through the termination date.

6. **Return of Letter of Credit.** The letter of credit will be returned within 90 Days after the end of the term of this Agreement, as defined in Section 2, provided that Contractor has faithfully performed throughout the life of the Agreement, Contractor has completed its obligations under the Agreement, there are no pending claims involving Contractor's performance under the Agreement and no outstanding disagreement about any material aspect of the provisions of this Agreement. In the event this Agreement is assigned, as provided for in Section 31, City will return or release the letter of credit not later than the effective date of the assignment, provided that the assignee has delivered to the City an equivalent letter of credit, as determined by City.

7. **Excessive Demand.** If City receives any payments from the aforementioned bank under the letter of credit by reason of having made a wrongful or excessive demand for payment, City will return to Contractor the amount by which City's total receipts from Contractor and from the bank under the letter of credit exceeds the amount to which City is

C. **Fidelity Bond** As a condition precedent to the formation of this Agreement, Contractor, at its own expense, shall have obtained and delivered to City an undivided or blanket fidelity bond in an amount of not less than \$300,000, covering all officials, employees and agents handling or having access to funds received or disbursed by Contractor under this Agreement or who are authorized to sign or countersign checks. Said bond or bonds shall also provide that thirty (30) days prior written notice of cancellation or material change of said bond or bonds shall be delivered to the SFMTA.

XVII. 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.

XVIII. 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.

XIX. 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.

XX. Incentives/Disincentives.

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 of this Agreement, are delayed beyond the scheduled milestones and timelines as provided in Appendix A (or as they may be adjusted by the SFMTA for reasons beyond the Contractor's control) or do not meet the goals as described in Appendix A and Appendix F, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the disincentive payments set forth in Appendix F are not a penalty, but are a reasonable estimate of the loss that City will incur based on the failure to comply with the listed objective, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the disincentive payments 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 complete the objective as described unless the SFMTA agrees to any change in the objective.

Further, in the event that Contractor meets or exceeds the goals as set forth in Appendix F, SFMTA will pay Contractor incentives as set forth in Appendix F. **Total incentives paid per year shall not exceed \$50,000.**

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

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.

XXII. 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 at least 60 days' 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, leases, subcontracts, and employees.

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.

XXIII. Rights and Duties upon Termination or Expiration.

A. **Cooperation.** In the event of termination of this Agreement for any reason, Contractor shall cooperate fully in any transition of the contract to a new contractor.

B. **Survival.** This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8. Submitting false claims
9. Disallowance
10. Taxes
11. Payment does not imply acceptance of work
13. Responsibility for equipment
14. Independent Contractor; Payment of Taxes and Other Expenses
15. Insurance
16. Indemnification
17. Incidental and Consequential Damages
18. Liability of City
24. Proprietary or confidential information of City
26. Ownership of Results
27. Works for Hire
28. Audit and Inspection of Records
48. Modification of Agreement.
49. Administrative Remedy for Agreement Interpretation.
50. Agreement Made in California; Venue
51. Construction
52. Entire Agreement
56. Severability
57. Protection of private information

C. Subject to the immediately preceding paragraphs, 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.

XXIV. 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.

XXV. 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.

XXVI. Notices to the Parties.

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

To City: San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, California 94103-1267
Attention: Annette Williams
email: annette.williams@sfmta.com
Fax: 415-701-4728

To Contractor: Veolia Transportation Services, Inc.
Mark L. Joseph
CEO & Vice Chairman
720 E. Butterfield Road, Suite 300
Lombard, IL 60148-5601
Fax: 630-495-1302

With a copy to: General Manager
Veolia Transportation Services, Inc.
68 12th Street, Suite 100
San Francisco, CA 94103-1297
Fax: 415-351-3136
marc.soto@veoliatrpsortation.com

Any notice of default must be sent by registered mail.

XXVII. 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.

XXVIII. Works for Hire.

A. **General.** 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.

B. SFMTA Trademarks and Service Marks.

1. **License.** Contractor is licensed to use SFMTA's or Muni's name (SFMTA, Muni, SF Muni; San Francisco Municipal Railway) and the Muni "worm" logo (collectively, "SFMTA Property") on Contractor's "SF Paratransit" website in connection with its management of the Paratransit Program for City.

2. **Limitations of License.** SFMTA Property shall not be used in conjunction with any other licensed name, character, symbol, design, likeness or literary or artistic material, unless any such use is expressly permitted in writing by SFMTA. Contractor shall not alter SFMTA Property, as used on Contractor's Web site, in any way, including size, proportion, colors, or elements, without approval from SFMTA.

3. **Promotions or Advertising.** Contractor shall obtain City's approval for any text used in conjunction with this license on Contractor's website or in any promotional or advertising media produced by Contractor. SFMTA shall provide text, as requested by Contractor, and shall update the text regarding SFMTA's services when required.

4. **Link to SFMTA Web Site.** On Contractor's Website, there shall be a direct link to the SFMTA home page (<http://www.sfmta.com>). The text to accompany this link shall state as follows (unless otherwise updated by SFMTA): "For information about public transit (Muni) in San Francisco, visit the San Francisco Municipal Transportation Agency website or call 415-673-6864." The link shall have the following qualities:

a. The link may be a text link or a graphics link using only a MUNI logo supplied by MUNI and displayed in accordance with this Agreement.

b. The text or logo link to the SFMTA Web site must not require auxiliary client-side technology (e.g. cookies, JavaScript, Flash, Java, etc.) in order to work.

c. The text or logo link to the SFMTA Web site shall be "stand alone; in other words, it shall not be imbedded in an item (*i.e.*, product) description.

d. The text or logo link to the SFMTA Web site shall not put the SFMTA site in frames.

e. There must not be a link to a URL containing "/home" or any page within that directory.

f. If a logo link is used, the IMG tag for that logo must include an ALT attribute containing "SFMTA" or "SF Muni" or "Visit SFMTA" or "Visit SF Muni" or "Link to SFMTA" or "Link to Muni".

5. **Link to Contractor's Web Site.** SFMTA will provide a link on its web page to Contractor's website. Contractor shall provide SFMTA with the specific URL for the appropriate page on its website.

C. Trapeze Software License Agreement

1. **Authorized User.** Contractor shall be an Authorized User under the Software License Agreement between Trapeze Software Group, Inc., and the City and County of San Francisco, dated October 31, 2008, and shall be subject to the terms and conditions of said Software Agreement as they apply to an Authorized User. The Software Agreement is attached as Appendix C to this Agreement and incorporated by reference as though fully set forth.

2. **Form 1.** Contractor agrees to execute Form 1 to the Software Agreement and submit it to Trapeze Software Group, Inc. prior to its use of the Software.

XXIX. 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.

XXX. 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.

XXXI. 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.

XXXII. 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.

XXXIII. 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. 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. 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. 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. 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.

XXXIV. Small Business Enterprise Program/Subcontractors.

Contractor agrees to comply with the requirements of the Small Business Enterprise (SBE) Program described in Appendix E and incorporated into this Agreement. No substitutions of SBE subcontractors shall be made at any time without the written approval of the Manager of the SFMTA Contract Compliance Office. In the event that an SBE subcontractor is unable to perform successfully and is to be replaced, the Contractor shall make good faith efforts to replace the original SBE subcontractor with another SBE subcontractor.

XXXV. 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.

XXXVI. 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.

XXXVII. 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.

XXXVIII. 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.

XXXIX. 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.

XL. 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.

XLI. 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.

XLII. Left Blank by Agreement of the Parties

XLIII. 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 the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. 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.

XLIV. 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. 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. All SF Access and Group Van contractors shall pay SFMTA-funded paratransit drivers a minimum wage as required by the City's Minimum Compensation Ordinance for the first 90 days of service and/or completion of the driver training requirements, whichever comes first. Currently the hourly wage required by the Minimum Compensation Ordinance is \$11.54 (\$11.03 per hour for non-profit entities). After that period, paratransit provider subcontractors shall pay SFMTA-funded SF Access drivers not less than \$14.80 per hour and Group Van drivers not less than \$12.97 per hour. These minimum wages shall increase on a yearly basis based on cost of living adjustments received by the contractors. All cost of living adjustments received by subcontractors shall be passed on to all SFMTA-funded paratransit drivers with at least a proportional wage adjustment.

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 the SFMTA 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 the SFMTA to exceed \$25,000 in the fiscal year.

XLV. Left Blank by Agreement of Parties (HCAO)

XLVI. 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

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.

XLVII. 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.

XLVIII. 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.

XLIX. 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 the SFMTA to submit to the SFMTA Contract Compliance Office any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

L. 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.

LI. 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.

LII. Construction.

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

LIII. Entire Agreement.

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

LIV. 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.

LV. 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.

LVI. Left blank by agreement of the parties.

LVII. 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.

LVIII. 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.

LIX. 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.

LX. 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.

LXI. U.S. DOT Provisions.

The provisions contained in the FTA Requirements for Personal Services Contracts in Appendix D 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.

LXII. Cooperative Drafting.

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

LXIII. Lease of Vehicles.

A. **City as Lessor.** City has procured the following Vehicles and leased them to the Contractor, who in turn has subleased the Vehicles to van Transportation Service Providers for the terms indicated on Table 1 below (the "Subleases").

1. **2006 Purchase.** Through an intergovernmental procurement agreement with the State of California, City purchased from El Dorado Bus Sales, Inc., seventeen (17) modified paratransit vans (the "vans"), at a cost of \$1,007,179, and exercised an option to purchase three (3) additional vans at a cost of \$177,738.

2. **2008 Purchase.** Through an intergovernmental procurement agreement with the State of California, City purchased from Bus West twenty-four (24) modified 22' paratransit vans (the "Type II vans"), and five modified 25' paratransit vans (the "Type III vans"). The City also purchased five minivans (the "minivans") from El Dorado Bus Sales, Inc. The total cost of these vehicles did not exceed \$2,055,000. Through a separate procurement agreement with San Mateo County Transit District, the SFMTA purchased from El Dorado Bus Sales, Inc., six (6) Type II vans at a cost of approximately \$445,800.

Table 1: Subleases of City-Owned Vehicles

Vehicle Year	# of Vehicles	Manufacturer	Vehicle Type	Sublease Term
2006	20	El Dorado	Type II van	September 5, 2006, - March 31, 2011
2008 (a)	6	El Dorado	Type II van	August 15, 2008, - March 31, 2011
2008 (b)	5	El Dorado	Minivan	September 18, 2008 - March 31, 2010
2008 (c)	14	Bus West	Type II van	October 10, 2008, - March 31, 2010
2008 (d)	10	Bus West	Type II van	January 1, 2009, through March 31, 2010
2008 (e)	5	Bus West	Type III van	March 1, 2009, - March 31, 2010

B. Extension of Subleases. Contractor shall extend the Subleases, as required, through the end of the contracts with the Transportation Service Providers.

C. Future Procurements of Vehicles. As the vans and the minivans reach or exceed the end of their useful lives (approximately four years), the City intends to procure replacement vehicles and lease them to Contractor, under the terms and conditions set forth in this Section 63. City expects the value of the replacement vehicles to approximate the value of the vans and the minivans, subject to cost of living adjustments. The lease of such replacement vehicles, including the terms of lease payments, shall be effected by an amendment to this Agreement executed by the Executive Director/CEO without the necessity of further approvals unless the value of the replacement vehicles exceeds the value of the vehicles being replaced by an amount above the contracting authority of the Executive Director/CEO.

D. Conditions Precedent to Possession of Vans. Contractor shall not be entitled to possession of the vans until Contractor has delivered to City the following:

1. Verification of Business Automobile Liability Insurance covering all vans, in accordance with the terms provided in this Lease and in Section 15 of Agreement; and

2. A fully executed copy of Contractor's assumption of the sublease with each San Francisco van Transportation Service Provider that will be operating the vans.

E. Sublease by Contractor (Van Agreements). Unless otherwise agreed to by City, Contractor shall sublease the vans throughout the term of this Lease to those van

Transportation Service Providers participating in the Program. At a minimum, the subleases shall include (a) a regular maintenance and repair program for the vehicles; (b) reporting requirements for ADA van trips; (c) insurance and indemnification, as provided in this Lease Agreement; (d) a provision for a discounted cost for trips in lieu of sublease payments; and (e) incentives to enhance the quality of service to paratransit customers.

The terms of each sublease are subject to approval by City prior to execution of the sublease between Contractor and its subcontractor or subcontractors. If any subcontractor violates, in a material respect, any provision of its subcontract governing use of the vans, Contractor, with approval of City, shall terminate that sublease. In that event, Contractor, with approval of City, shall transfer use of the vans to another sublessee that is not in violation of any material provisions of its sublease.

F. Lease Payments.

1. Amount of Lease Payment.

a. 2006 Purchase. Lease payments or cost per trip discount shall be determined by negotiations with the selected van service providers, but in no event shall the lease payments be less than \$1,111 per vehicle per month, for the term of this Lease.

b. 2008 Purchase. Lease payments or cost per trip discount shall be determined by negotiations with the selected van service providers, but in no event shall the monthly lease payments for the term of the Lease be less than \$1,000 for each Type II vehicle, \$1,100 for each Type III vehicle, and \$900 for each minivan.

2. Procedure. Contractor's Lease payments shall be made concurrently with its monthly invoices, as provided in Section 5.2 of Agreement. Payments shall be made on a monthly basis and shall commence with the first regular invoice from Contractor to City after thirty (30) days after the effective date of this Amendment. Along with its payment, Contractor shall submit a monthly report detailing, for the van program, the number of passenger trips (one passenger/one way); and the number of trips credited to the Paratransit Program, as represented by the Lease payment, whether attributed to the van program or other paratransit taxi service. In the event Contractor is unable for any reason to make a monthly payment in full through a credit of no-cost trips, Contractor shall make said payment or portion thereof not represented by such a credit in cash collected from the sublessees to the extent that said amount is reasonably collectable, or deducted from amounts payable by Contractor to sublessees.

G. Obligations of Contractor. With respect to lease of the vans, Contractor shall:

1. Include language in each sublease requiring the sublessee to maintain and repair the vans in safe and reliable condition. Contractor shall conduct an independent inspection of the vehicles annually, in addition to oversight by SFMTA Fleet Maintenance staff.

2. Include language in each sublease requiring the vans to be operated in a safe manner consistent with all applicable provisions of Federal, State and local laws.

3. Report to City within thirty (30) days any occurrence that will prevent compliance with this section (*e.g.*, accident rendering the vehicle inoperative, mechanical deterioration to the extent that repair is infeasible).

4. Include language in each sublease requiring that the van service providers, at their own cost, properly maintain and repair the vehicles.

5. Include language in each sublease that requires each sublessee, unless otherwise authorized by the City in writing, within five (5) days after termination of this Lease Agreement, to deliver the vans in good working condition and in good repair to City or City's authorized representative at a location to be designated by City.

6. Contractor shall take commercially reasonable steps to monitor and compel each sublessee's compliance with all sublease requirements.

H. **Use of Vans.** The vans shall be used solely for transporting qualified paratransit passengers as defined by Federal regulations and SFMTA-approved criteria.

I. **Audit; Inspection of Records.** In order to ensure compliance with this and other provisions of this Lease, City reserves the right to inspect and audit records maintained by Contractor and van service provider sublessees in the performance of this Lease. These records include, but are not limited to, dispatch reports and other records of communications between van service providers and paratransit patrons. Contractor shall include language in each sublease requiring van service provider sublessees to allow inspection and auditing by City or its agents during normal business hours, and to maintain all records generated in the performance of this Lease and the Paratransit Program for a period of at least three (3) years after the end of the Lease term. Any violation of the provisions of this Section will be considered a material breach of the Lease and/or sublease and subject Contractor or sublessee to all remedies for breach available under law, including, but not limited to, termination of the Agreement. Contractor and its sublessees shall also permit any State or Federal agency having jurisdiction over the vehicles or City's compliance with the Paratransit Program to inspect and audit records, as provided in this section.

J. **Insurance.** During the full term of the Lease, Contractor shall require all van service providers operating the vans to maintain the following insurance on the vehicles:

1. Business Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-owned and Hired auto coverage, as applicable, and including physical damage coverages of comprehensive and collision for the actual value of the vehicle at the time of loss, with loss payable to City.

2. Contractor or its sublessees shall be responsible for payment of any insurance deductibles.

3. Contractor shall ensure that its Business Automobile Liability Insurance required under Section 15 of this Agreement includes coverage insuring both Contractor's and City's interest in the vans.

K. **Insolvency.** The vans shall be immediately returned to the possession of City upon the bankruptcy, reorganization (within the meaning of the Bankruptcy Code), dissolution or liquidation of Contractor or its sublessee(s).

L. **Transfer of Vehicle.** Except as provided in Section 63.4 of Agreement with respect to the sublease of the vans to a subcontractor or subcontractors approved by City, Contractor shall not transfer or otherwise dispose of the vans during the pendency of this Lease without the written approval of the Executive Director/CEO or his or her designee.

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

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <p>Nathaniel P. Ford, Sr. Executive Director/CEO</p>	<p>CONTRACTOR</p> <p>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.</p>
<p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By:</p> <hr/> <p>Robin M. Reitzes Deputy City Attorney</p>	<p>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.</p> <hr/> <p>Mark L. Joseph CEO & Vice Chairman Veolia Transportation Services, Inc. 720 E. Butterfield Road, Suite 300 Lombard, IL 60148-5601</p> <p>City vendor number:</p>
<p>AUTHORIZED BY:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest:</p>	<p>San Francisco Board of Supervisors</p> <p>Resolution No. _____</p> <p>Adopted: _____</p> <p>Attest:</p> <hr/> <p>Clerk of the Board</p>

<hr/> <p>Roberta Boomer, Secretary to the SFMTA Board of Directors</p>	
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Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C. Software Agreement
- D. FTA Provisions
- E. SBE Provisions
- F. Incentive/Disincentive Plan

Appendix A
Paratransit Broker Agreement
Scope of Work
All tasks are continuous unless specified

SECTION I: ELIGIBILITY

Task Number	Eligibility-Related Activities	Tasks
1.	Administer an ADA-compliant user certification and recertification process for SFMTA and Department of Aging and Adult Services programs. This process shall include, but not be limited to, the following tasks.	<ul style="list-style-type: none"> a. Provide application forms and other program materials upon request to all prospective applicants of paratransit services. b. Evaluate applicants for eligibility within 21 days of receipt of completed application. c. If the eligibility determination is not made within 21 days, provide service based upon presumptive eligibility status until determination is made. d. In accordance with past statistical data, utilize second level assessments for a minimum of 90% of new applicants during the eligibility determination process. A minimum of 50% of those second level assessments must be in-person interviews. e. Process recertification applications as necessary to ensure that all ADA-eligible individuals undergo the recertification process once every three years. f. In accordance with past statistical data, utilize second level assessments for a minimum of 30% of applicants applying for recertification. g. Mail written documentation of ADA eligibility to consumers within 21st day of receipt of completed application h. Ensure that eligibility process is compatible with SFMTA policies and procedures governing the SF Paratransit Program.
2	Provide information to applicants during the eligibility process.	<ul style="list-style-type: none"> a. Establish and provide a list of community resources, to include at least 10 neighborhood-based agencies that are available to provide information and assistance to applicants completing applications b. Provide written notification to the applicant throughout the process such as: <ul style="list-style-type: none"> i. Acknowledgement of receipt of application after the applicant's basic information has been entered into the Broker Customer Management database; ii. Letter notification of a 2nd level assessment, if required; iii. A letter advising the applicant to schedule an in-person interview appointment, if necessary. iv. Once final determination is made, a registration packet with the Rider's Guide and a photo ID appointment letter or an "application denied" letter c. Provide telephone and in-person information to applicants

Task Number	Eligibility-Related Activities	Tasks
		<p>regarding the eligibility process</p> <p>d. Hold information sessions upon request at community locations, for applicants or social service Providers. Session to include an overview of the eligibility process, a question and answer session and assistance with completing forms</p>
3	Provide a first-time and ongoing training program for eligibility analysts.	<p>a. Provide training program for eligibility analysts.</p> <p>b. Provide ongoing refresher training on all aspects of eligibility determination, including current research in medical conditions as they relate to functional ability.</p>
4	Administer and staff an ADA-compliant eligibility appeals process.	<p>a. Conduct a management-level administrative review of the appeal.</p> <p>b. Provide appeals hearing within 30 days of request.</p> <p>c. Inform applicants of their right to an appeals hearing after a determination regarding eligibility is made.</p> <p>d. Recruit qualified medical and/or licensed professionals, fixed route representatives and consumers to serve as appeal panel members.</p> <p>e. Provide a comprehensive and ongoing training program for appeal panel members to ensure a sufficient number of trained consumer appeals panel members (at least 8 active participants) Provide option to appellants for a language interpreter, providing, at a minimum, translation in Russian, Spanish, Cantonese, and Mandarin (and make a good faith effort to provide translation for other languages as requested). Provide transportation to/from appeals hearing site</p> <p>f. Prepare appropriate information for all appeal panel members and conduct hearing under approved procedures</p> <p>g. Within 30 days of hearing, provide written notification to appellant of appeal panel's decision, citing specific bases for eligibility determination,</p>
5	Register certified persons as active users of the program.	<p>a. Maintain a current Customer Database (see Section III.1)</p> <p>b. Issue a photo ID card to registered SF Access and Taxi Customers that includes eligible category of service, conditions on the Customer's eligibility, and the eligibility expiration date. For paratransit Taxi Customers, their debit card is also their photo identification card.</p>
6	Determine changes in eligibility.	<p>a. Re-assess or revoke the eligibility of any Customer who Broker determines to be ineligible due to information on the application that is false, inaccurate, or that has changed sufficiently to warrant a change in eligibility with due process for an appeal.</p>
7	Administer and conduct eligibility certification for	<p>a. Distribute Shopping Shuttle registration forms to seniors and</p>

Task Number	Eligibility-Related Activities	Tasks
	Shopping Shuttle participants.	<p>people with disabilities living in target neighborhoods or public housing sites.</p> <ul style="list-style-type: none"> b. Review registration forms and assess eligibility based on policy guidelines. c. Track name, address, date of birth, and eligibility category in the Broker's Customer Management Database. d. Monitor service quality. e. Ensure that program rules are adhered to by Customers and Providers. f. Develop and produce outreach materials. g. Conduct outreach at community-based organizations in target neighborhoods. h. In conjunction with Providers, coordinate weekly ride schedules to ensure that at least seven riders are signed up for each scheduled trip.
8	Offer applicants the ability to participate in the Paratransit Plus program when they do not meet ADA-eligibility criteria but have demonstrated a high level of difficulty using regular bus and light rail service.	<ul style="list-style-type: none"> a. Develop updated eligibility guidelines in conjunction with SFMTA staff (within 90 days of Effective Date) b. Determine eligibility according to established guidelines c. Monitor program and provide ongoing statistical reports as requested by SFMTA
9	Process requests by visitors to San Francisco to use ADA paratransit services.	<ul style="list-style-type: none"> a. Process requests within two working days or sooner, by: <ul style="list-style-type: none"> i. confirming visitor's ADA status via phone or letter; or ii. registering individual on local and regional databases; or iii. providing information on fixed route and paratransit services; or iv. providing fare information for those individuals wishing to purchase tickets in advance or v. Providing service through established day-ahead reservations protocol directly with SF Access contractor.

SECTION II: CUSTOMER SERVICE/OUTREACH

Task Number	Customer Service/Outreach-related Activities	Tasks
<p>1.</p>	<p>Serve as the principal Customer service representative for SF Paratransit Customers, and be available to Customers who visit the Broker’s Office, or who seek information by telephone, mail or the internet.</p>	<ul style="list-style-type: none"> a. Maintain an ADA-accessible office open to the public for paratransit-related business. b. Be available to customers in person and by telephone at least between 9:00 a.m. and 4:45 p.m. c. Customer information services shall be accessible via TTY or other comparable telecommunications access method. d. Provide a Customer service representative to answer the main phone line on a daily average of 98% of the 465 minutes during each business day. e. Answer in person at least 80% of all phone calls in 45 seconds or less, including TTY calls. Average call hold time during a business day may not exceed 60 seconds. All TTY calls must be transferred to an answering machine if not answered by a person within one minute. f. Respond to TTY and voicemail messages by the following business day at the latest. g. Assist customers to visit the Broker's Office within 15 minutes of their arrival. h. Provide professional, courteous, Customer service at all times. i. Provide written, telephone and in-person Customer services in English, Chinese, Russian, and Spanish. j. Provide American Sign Language interpretation or real-time captioning at the Broker's Office if a Customer gives at least 72 hours notice of the request for such accommodations.
<p>2</p>	<p>Track Customers who request accessible formats and provide informational materials to each Customer in a format that is accessible.</p>	<ul style="list-style-type: none"> a. Maintain accessibility information for each Customer in the Paratransit Broker Customer management database. b. Provide primary written information, such as eligibility forms, in the specific accessible format requested by each Customer.
<p>3</p>	<p>Educate prospective users of paratransit services to increase the awareness of ADA paratransit services within the community, with particular attention to underserved</p>	<ul style="list-style-type: none"> a. Provide 20 information sessions/workshops annually to community-based agencies to assure awareness and understanding of the SF Paratransit Program. b. Maintain documentation of all such workshops with

Task Number	Customer Service/Outreach-related Activities	Tasks
	populations (e.g., persons with limited English-speaking ability) within the community of potential ADA-eligible users.	<p>records of attendance and all instructional materials provided to attendees.</p> <ul style="list-style-type: none"> c. Update and maintain the SF Paratransit website (www.sfparatransit.com) to provide information about the SF Paratransit Program (see Section III: Information Technology). The SF Paratransit website should include application forms, Taxi service increase request forms, Riders' Guides, a method to submit complaints or commendations, an electronic payment mechanism, fare information, and other relevant policies and information. The website should be updated as necessary to provide up-to-date information d. Develop an annual newsletter for consumers, providing paratransit service summaries, news, and information, to be disseminated to paratransit Customers and Group Van agencies. e. Ensure that outreach efforts include seniors and persons with disabilities, including those who do not speak English. Provide mailing services for at least three announcements to paratransit consumers annually as requested by SFMTA. f. Distribute <i>Community in Motion</i> video to appropriate community-based organizations and the public library; make the video available to applicants and potential applicants.
4	Staff public meetings and working groups on paratransit service issues to ensure community input in problem-solving to improve programs and services.	<ul style="list-style-type: none"> a. Staff the three modal subcommittees of the PCC Executive Committee -- the Taxi/Ramped Taxi Subcommittee, the Group Van Subcommittee and the SF Access Subcommittee b. In conjunction with the Chair of each Subcommittee, develop the agendas, take minutes, and mail the agenda packets. Provide meeting materials in accessible formats as requested. c. Prepare reports and analysis materials as needed for PCC related meetings d. Staff workgroup meetings, as required, to include members of the PCC and community stakeholders.
5	Maintain a consumer relations program to solicit ongoing feedback regarding Broker performance (also see Section VIII: SERVICE).	<ul style="list-style-type: none"> a. Provide information (in Riders' Guides and Broker newsletters) about the responsibilities of the service Providers, Broker, and Customers, acceptable standards of paratransit service and how to make complaints/commendations.

Task Number	Customer Service/Outreach-related Activities	Tasks
		<ul style="list-style-type: none"> b. Process Customer complaints and commendations. c. Maintain a database of Customer complaints and commendations that can be sorted by Mode, Customer, driver, date and general subject matter category d. Provide a Broker service quality staff person to work directly with the Provider's staff to address on-going concerns or issues as needed. e. Budget each year for an independent Customer satisfaction survey annually to measure and track Customer satisfaction with Paratransit Broker services and with Providers. f. Provide postage pre-paid Customer comment cards available on paratransit vans and in the lobby of the Broker's Office. g. Track Customer comment card responses. h. Analyze complaint trends i. Oversee the "Secret Rider" program, which allows SF Access and Ramped Taxi Customers to provide anonymous feedback: <ul style="list-style-type: none"> i. Recruit at least five Customers for the "Secret Rider" program on an on-going basis ii. Analyze Secret Rider report data and provide reports to the PCC quarterly.
6	Provide effective ongoing liaison services with community-based advocacy agencies that represent seniors and persons with disabilities.	<ul style="list-style-type: none"> a. Maintain direct communication links and designated contacts at community-based advocacy agencies such as Independent Living Resource Center, Lighthouse for the Blind, Senior Action Network, etc. to ensure an ongoing dialogue of consumer issues and awareness of new programs b. Hold problem-solving meetings, on a formal and informal basis, to ensure that Broker is responsive to issues as they arise
7	Administer a Paratransit Grievance Committee for Customers to submit grievances against Transportation Service Providers for on-going, unresolved complaints.	<ul style="list-style-type: none"> a. As needed, convene a Grievance Committee to mediate an acceptable solution to a Customer grievance b. As needed, address social service agencies' concerns regarding individual passengers or specific Providers

Task Number	Customer Service/Outreach-related Activities	Tasks
8	Provide travel training using certified travel trainers to encourage persons with disabilities to use the Muni system by increasing public transit skills and comfort level.	<ul style="list-style-type: none"> a. Conduct outreach to appropriate agencies to identify suitable candidates for travel training b. Offer travel training to individuals who applied for paratransit services and were determined ineligible c. Travel trainers will conduct individual and group training sessions, which will include taking at least one transit trip, provision of basic transit policy and operational information, instructions on how to read a Muni map, instructions on how to obtain accessible Muni information; as well as training in how to ride Muni by identifying stops, embarking, paying fare, using priority seating, grabbing rails, requesting stops, and disembarking. d. Maintain documentation of all travel training sessions with records of attendance and all instructional materials provided to attendees.
9	Sell paratransit Fare Media to Customers.	<ul style="list-style-type: none"> a. Make available Fare Media for purchase during business hours at the Broker's Office. b. Make Fare Media sales information available on the internet c. Implement a website capable of receiving secure Fare Media payments. d. Accept cash and personal checks with valid ID card as proof of identity. e. Broker Office staff shall be trained in procedures to accept payments when electronic cash registers or Contractor's computer systems are not operational. f. Administer and conduct eligibility certification and fare subsidy disbursements from donated private funds for the Helping Wheels Fund Fare Assistance Program. g. Maintain a separate corporate account for the Helping Wheels Fund. SFMTA must approve disbursements from this account. h. Monitor Helping Wheels Fund and provide statistical reports as requested by SFMTA.
10	Suspension of service	<ul style="list-style-type: none"> a. Document any basis for suspension of paratransit services to any Customer and issue a warning notice

Task Number	Customer Service/Outreach-related Activities	Tasks
		<p>to Customers in advance of any suspension (except for life threatening activities) in accordance with the SF Paratransit Rules of Operation, as they may be amended.</p> <ul style="list-style-type: none"> b. Include in the Notice of Suspension the date and duration of the suspension of paratransit services to the Customer, the reason for the suspension, and forms and instructions for the Customer to appeal the suspension decision. c. Implement all required appeal procedures for suspension determinations and document the process and outcome of the appeal.
11	SF Paratransit Rules of Operation	<ul style="list-style-type: none"> a. Enforce all policies and procedures stipulated in the SF Paratransit Rules of Operation, as they may be amended from time to time.

SECTION III: INFORMATION TECHNOLOGY

Task Number	Information Technology-Related Activities	Tasks
1.	Maintain Paratransit Broker Customer management database.	<ul style="list-style-type: none"> a. Maintain and update on a daily basis data for approximately 16,000 Customers for all Modes of service (Taxi, SF Access, SFMTA Group Van, Department of Aging and Adult Services Group Van, Paratransit Plus, Shop-n-Roll Shuttle). b. Maintain eligibility status, biographic data, and demographic data on each certified Customer, as well as client service information, such as no shows, complaints filed, etc. c. Maintain all daily individual Customer purchase transactions d. Establish a systematic data backup system with documentation e. Interface with Regional Eligibility Database. f. Interface with the Debit Card Central System.
2	Be responsible for the daily operation and management of the various components of the PDCS.	<ul style="list-style-type: none"> a. Provide management and operational support including new debit card account creation, debit card issuance, debit card account management, servicing and reporting, customer support, and Taxi company fare reconciliation, settlement and reporting. b. Provide ongoing operations training as needed for new hires, new software releases, and new PDCS features. c. Develop or use the established tracking protocol for all new versions of ITE hardware and firmware; maintain a record of any changes/updates. d. Process eligible customers to collect digital photographs and create unique magnetic stripe cards. e. Manage customer accounts to collect and post received funds, hotlist lost or stolen cards, suspend accounts where abuse is determined, perform card replacement, and respond to questions and disputes. f. Provide multiple methods for paratransit customers to add value to their debit card account, including in-person at the Broker offices, via Interactive Voice Response (IVR), and via a secure website, using check, credit card or checking account electronic funds transfer. g. Manage and procure debit card stock inventory h. Actively monitor debit card transactions utilizing reporting tools for the purpose of minimizing the risk of fraudulent or unauthorized use of paratransit debit cards (see also Section VIII: Service). i. Ensure that CabConnect's backup IVR system is fully functional. j. Provide a plan to manually process all debit card transactions should the entire PDCS, including the IVR system, become unavailable.

Task Number	Information Technology-Related Activities	Tasks
		<ul style="list-style-type: none"> k. Monitor CabConnect contract for compliance with service standards including service level monitoring/enforcement and invoice payment l. Manage and enforce PDCS warranty obligations. m. Establish and maintain a complete and accurate document control system, including PDCS contract management files, correspondence between Contractor, SFMTA, and the DCS Provider, invoice and payment reports, and training documentation. n. Operate and maintain any necessary PDCS peripheral equipment, including but not limited to, the debit card printer/encoder, report printer, debit card/report shredder, and secure facility for storing unused debit card stock. o. On-going - ensure that debit card training is available to all Customers newly certified in the Taxi or ramp Taxi program. Ensure that front line staff members are trained to orient new riders to the debit card program. Customer training may consist of individual demonstrations or weekly orientation sessions, as appropriate. p. Through contracts with individual color schemes or dispatch services and through the SF Taxi driver training programs, require that debit card training is available to Taxi company staff and drivers through a train-the-trainer model.
3	Interface with the San Francisco Bay Area regional ADA paratransit eligibility database	<ul style="list-style-type: none"> a. Ensure that data for the Regional Eligibility Database is downloaded automatically from the SF Paratransit customer database daily. b. Ensure that the Regional Eligibility Database downloads updated information to SF customer database on a daily basis. c. Check the Regional Eligibility Database to confirm ADA eligibility for non-SF Paratransit customers who may be using SF Paratransit services. d. Check the Regional Eligibility Database twice weekly to verify that ADA eligibility is updated for SF customers and communicate identified problems weekly to the Metropolitan Transportation Commission; actively coordinate in the development of solutions to problems that arise.
4	Maintain the SF Paratransit website (www.sfparatransit.com) that complies with the City's Department of Telecommunications and Information Services standards for website accessibility.	<ul style="list-style-type: none"> a. Electronic information shall comply with all accessibility standards of Section 508 of the Rehabilitation Act (29 U.S.C. § 794d). b. The website shall be capable of receiving secure Fare Media payments. c. The website shall provide general information about the SF Paratransit Program, eligibility requirements and

Task Number	Information Technology-Related Activities	Tasks
		<p>application forms.</p> <p>d. The website shall operate in accordance with the following standards for availability, speed and security of data:</p> <p>i. Website Availability: The website must be available 99.5% of the 1440 minutes in a calendar day, 365 days a year. With prior SFMTA approval of proposed website maintenance dates, the website may be taken down for maintenance between the hours of midnight and 6 a.m.</p> <p>ii. Website Speed: The average page load time into the network may not exceed four seconds on any ISP with a connection speed faster than 56kb.</p> <p>iii. Website Security: Zero failures in encryption level and standardized intrusion testing routines.</p>
5	Maintain a secure location for computer equipment and for archiving all electronic records.	<p>a. Provide backup generating capability in the event of a natural disaster.</p> <p>b. Ensure regular archiving of all electronic data associated with the performance of the Agreement regardless of the failure of IT equipment or the intentional or negligent acts of any person that results in deletion or corruption of data.</p>
6	Veolia Vision	<p>a. Provide Veolia Vision software to paratransit van Providers and train Broker and Provider staff (within 120 days of full implementation of Mobile Data Computers (MDCs)) on the use of the program.</p> <p>b. Provide on-going training of Broker and Provider staff as necessary.</p> <p>c. Provide SFMTA staff with secure access to Veolia Vision over the internet.</p> <p>d. Work with Providers and Broker staff to ensure that real time information provided by Veolia Vision is used to predict or monitor late trips, proactively schedule trips throughout the day, and to set up a predictive calling mechanism to inform Customers of schedule changes.</p>

SECTION IV: ASSET PROCUREMENT AND MANAGEMENT

Task Number	Asset Procurement and Management-Related Activities	Tasks
1	Develop and maintain a structured asset management protocol for all assets purchased with City funds.	<ul style="list-style-type: none"> a. Manage assets, including, but not limited to, City-owned vehicles, PDCS ITE, and all office furniture and equipment b. Maintain current list of inventory of all assets
2	Procure and install MDCs with GPS capability on 120 paratransit vans to be completed within the times indicated.	<ul style="list-style-type: none"> a. Develop technical specifications for the MDCs (30 days after NTP) b. Conduct procurement under FTA guidelines and execute contract with selected vendor (210 days after NTP) c. Install, configure and test MDCs (270 days after NTP) d. Begin staff training on MDCs (270 days after NTP) e. Begin pilot testing (300 days after NTP) f. Refine technology based on pilot testing (330 days after NTP) g. Complete installation (365 days after NTP) h. Maintain an inventory of MDCs installed in each paratransit van throughout the term of the Agreement i. Manage and enforce MDC warranty obligations
3	Manage, service, and track ITE through the end of the established ITE lease period (three years from the date of purchase).	<ul style="list-style-type: none"> a. Manage purchase agreements with the approved ITE vendors to allow Taxi companies to purchase additional and/or replacement ITE. b. Maintain an inventory of ITE installed in Taxis, including units that are replaced, destroyed, under repair or maintained as extra inventory. c. Require the Taxi companies to maintain an inventory of the ITE assigned to or purchased by them, including the location of the ITE. d. Manage and enforce ITE warranty obligations. e. Develop and implement an ITE inspection/audit program designed to identify unauthorized modifications to the equipment that may increase the risk of PDCS fraud.

SECTION V: OPERATING PROCEDURES, REPORTING AND RECORD RETENTION

Task Number	Operating Procedures, Reporting and Record Retention-Related Activities	Tasks
1.	Develop and implement an Operations Manual to include, but not be limited to, the following components:	<ul style="list-style-type: none"> a. Develop the Operations Manual to include, but not be limited to, the following components (according to the stated purposes), said components to be completed within the timeframes listed: <ul style="list-style-type: none"> i. Emergency Preparedness Protocol: To provide continuity of paratransit services in the event of any foreseeable interruptions in the availability of labor, vehicles, materials, supplies, power or communications, and to provide emergency transportation as directed by SFMTA in the event of a disaster (within 120 days of the Effective Date); ii. Service Quality Monitoring Program: To ensure systematic and comprehensive monitoring of key Service Standards (including on time reliability, complaints and accident/incident statistics) for all subcontractors, including a problem-solving component to develop long-term solutions to service quality issues (within 90 days of the Effective Date); iii. Driver Training Protocol: To ensure safe and courteous Customer service in compliance with Service Standards (within 60 days of the Effective Date); iv. Scheduling Protocol: To minimize delays in response to Customer requests for paratransit service (within 60 days of the Effective Date); v. On Time Reliability Methodology Protocol: To ensure a clear mechanism for tracking on time reliability in all modes of paratransit service (within 60 days of Effective Date); vi. IT Back-Up Procedures: To ensure regular archiving of all electronic data associated with the performance of the Agreement regardless of the failure of IT equipment or the intentional or negligent acts of any person that results in deletion or corruption of data (within 60 days of the Effective Date); vii. Vehicle Maintenance Inspection Procedures: For City-owned paratransit vans leased to the Broker (within 60 days of the Effective Date); viii. Asset Management Protocols: To track and monitor the condition of all assets purchased with City funds, including vehicles, hardware and software, furniture and equipment (within 60 days of the Effective Date);

Task Number	Operating Procedures, Reporting and Record Retention-Related Activities	Tasks
		<ul style="list-style-type: none"> ix. Paratransit Grievance Committee Forms and Procedures: Written grievance forms and procedures for Customer complaints (within 90 days of the Effective Date). x. Customer Feedback Forms and Procedures: Written Customer feedback forms and procedures for responding to comments (within 90 days of the Effective Date); xi. Fraud Prevention Procedures: For controlling fraud and misuse of Fare Media (within 90 days of the Effective Date); xii. Customer Survey Form and Methodology: The form of a Customer survey and a methodology for implementing the survey (within 120 days of the Effective Date). b. Review the Manual with the PCC for input prior to completion and submittal to the SFMTA. c. Once the final deliverable is approved by the SFMTA in writing, Broker shall distribute the Manual to the SFMTA and to all Transportation Service Providers. d. Broker shall comply with the provisions of the Operations Manual and shall require all Providers to comply with the procedures set forth in the approved Operations Manual.
2	Provide monthly and annual Performance Indicator Reports documenting all elements of Services provided under the Agreement.	<ul style="list-style-type: none"> a. Provide quarterly report of service level statistics, including number of trips by subcontractor and mode, number of no-show trips and cancelled trips, number of stair assists performed, and number of trip denials. b. Prepare summaries of the number of (i) ADA certifications on a monthly basis, including the number of applications received; (ii) certifications of ADA-eligible users by category; (iii) eligibility denials; (iv) appeals processed; (v) recertifications; and (vi) levels of active and inactive users. c. Provide reports identifying service trends or patterns on a bi-annual basis, or as requested by SFMTA staff. d. Maintain records and prepare operating reports as required by the SFMTA, San Francisco County Transportation Authority, Department of Aging and Adult Services, the FTA, and other agencies. e. Provide monthly reports of trip costs. f. Compile all information requested by the SFMTA for the FTA's National Transit Database Section 15 Annual Report. g. In the course of SF Paratransit duties, each of Broker's and subcontractors' employees who personally witness any SF Paratransit vehicle accident or incident that may involve personal injury, property damage, or known safety violations,

Task Number	Operating Procedures, Reporting and Record Retention-Related Activities	Tasks
		shall file reports of said events. Broker shall provide reports to the SFMTA by the next business day, and monthly Incident Report Summaries to SFMTA for each subcontractor.
3	Retain all project records.	a. Maintain all project records (either hard copy or electronic) for at least three years after the termination of the Agreement.
4	Fund two independent outside audits of Broker performance.	a. As budget permits, conduct at least once during the initial five-year contract period (and once during the option period, if exercised), (i) one financial audit; and (ii) one performance evaluation audit based upon deliverables and performance indicators, at a time to be determined by the SFMTA. Auditors shall be subject to approval by the Executive Director/CEO or his or her designated representative.
5	Customer privacy	a. Maintain and secure personal information of Customers in its possession, including, but not limited to, legal documents such as powers of attorney and guardianship, contact information and medical information, in a manner that protects all rights of privacy of Customers.

SECTION VI: FINANCIAL MANAGEMENT

Task Number	Financial Management - Related Activities	Tasks
1	Control budgeted resources so that they will meet the demands of the Contract.	<ul style="list-style-type: none"> a. For Group Van: <ul style="list-style-type: none"> i. Ensure that Group Van Providers are formally notified of annual budgetary levels, unit cost per trip, monthly target expenditures, monthly trip level targets, appropriate invoice procedures, appropriate invoice procedures, and financial penalties; ii. Inform each Group Van Provider every month of its budget status, including payments received, number of trips, expenditures, and balance; iii. Inform agencies receiving Group Van services each month of the number of trips and trip data reported by the Provider, for verification purposes; iv. Provide Group Van Providers a minimum two-month notice if budget projections indicate that service expenditures are exceeding budgeted levels; v. Maintain billings for Group Van. b. Keep passenger lists updated for SF Access and Group Van Providers on a daily basis via Broker Customer software and verify that no passengers are served that are not ADA-certified. c. Receive, verify, and provide reimbursement to Providers for trips documented, according to provisions of Provider contracts.
2	Ensure fiduciary control of funds collected.	<ul style="list-style-type: none"> a. Maintain procedures to accept and control funds in the form of cash, checks, money orders and credit card transactions. b. Collect fare revenue from Providers. c. Maintain an electronic accounting/tracking program of all Customer accounts. d. Ensure that paratransit transactions are performed with a high level of office security, to include record keeping, staff training, staff responsibility, data generation, reporting procedures, and client access to records. <ul style="list-style-type: none"> i. Maintain physical security of paratransit funds collected, debit card value and passes; ii. maintain standard accounting procedures for handling and verification of daily cash, checks, and money orders; received, and daily verification of debit card value iii. Insure and bond Paratransit Accounts Manager and other employees handling financial transactions. e. Require all persons picking up paratransit Fare Media to present photo/signature identification

Task Number	Financial Management - Related Activities	Tasks
3.	Prepare monthly invoices of subcontractor and Broker revenue, for submittal to SFMTA.	<ul style="list-style-type: none"> a. Perform fare reconciliation for all Providers. b. Submit invoices to SFMTA each month with all revenues collected for services provided by subcontractors and Broker, the dollar value of all debit card transactions and van tickets sold, trips provided, and year-to-date total in all categories. c. Submit all revenues collected monthly to SFMTA Finance.
4	Prepare monthly invoices of Broker expenses for submittal to SFMTA.	<ul style="list-style-type: none"> a. Review all Provider invoices for accuracy b. Submit invoice to SMTA each month detailing expenditures per Mode, and all Broker administrative expenses, including Department of Aging and Adult Services transportation and administrative costs.
5	Manage and document all transactions related to Fare Media and billing for Group Van, SF Access and Taxi, Inter-county and Shopping Shuttle services.	<ul style="list-style-type: none"> a. Disburse, collect and maintain fiduciary control over Fare Media. b. Broker shall not charge any Customer amounts for Fare Media in excess of the amounts approved by SFMTA. c. Manage and document all Customer information and transactions conducted as part of the PDCS. d. Manage and document payments made and received in accordance with regional Inter-County Paratransit Service agreements.
6	Disburse and Monitor Ramped Taxi Driver Incentives	<ul style="list-style-type: none"> a. As directed by SFMTA staff, disburse and monitor monthly Ramped Taxi driver incentive payments to Taxi companies, which will in turn disburse the funds to their drivers.
7	Fund a Paratransit Drivers of the Year Program	<ul style="list-style-type: none"> a. Award amount as specified by SFMTA (\$100 in 2009) for one driver from each of the van and Taxi Paratransit Service Providers, as well as two overall awards for a van driver and a Taxi driver of the year, as nominated by Customers. At least 15 drivers shall receive awards each year.

SECTION VII: PERSONNEL

Task Number	Personnel-Related Activities	Tasks
1.	Provide a General Manager to act as a single point of contact for SFMTA.	<p>a. The General Manager shall act as the liaison between the Broker and the SFMTA and be responsible for the following:</p> <ul style="list-style-type: none"> i. overall implementation of the SF Paratransit program; ii. implementation of new Broker programs, specifically Shopping Shuttle, MDT/Veolia Vision procurement and implementation and other programs that parties may agree to. iii. service planning; iv. applying a structured process to problem-solving; v. preparing reports to summarize Broker activities and progress towards the resolution of identified problems, with progress toward implementation milestones.
2	Provide professional staff with high-level analytical skills in all management positions.	<p>a. Unless otherwise approved by the SFMTA, Broker shall maintain the following positions throughout the term of the Agreement:</p> <ul style="list-style-type: none"> i. General Manager ii. Director of Finance/Admin iii. Contracts Admin iv. Director of Ops v. IT Manager vi. Finance Manager vii. Eligibility Manager viii. Shopping Shuttle Planner/Analyst
3	Provide skilled IT manager.	<p>a. Provide staff with sufficient skills and expertise to maintain the on-going operation and maintenance of the PDCS, Customer database, Regional Eligibility Database, all associated interfaces, manage the contract with the PDCS vendor, and oversee the on-going operation and maintenance of ITE.</p>
4	Demonstrate commitment in hiring practices to maintaining a diverse workforce with regards to race/ethnicity, gender, linguistic capability, and disability status.	<p>a. Work with and submit reports, as required, to the SFMTA Contract Compliance Office.</p>
5	Ensure that all Broker employee salaries comply fully with the City's Minimum Compensation Ordinance (MCO) and that	<p>a. All Broker employee wage rates shall meet or exceed the San Francisco MCO standards. For the amount of hourly gross compensation currently required under the MCO, see www.sfgov.org/olse/mco.</p> <p>b. The hourly rate may increase on July 1 of each year;</p>

Task Number	Personnel-Related Activities	Tasks
	employees receive provide health benefits.	<p>Contractor and subcontractors will be required to pay any such increases to covered employees during the term of the contract.</p> <ul style="list-style-type: none"> c. Submit annual salary levels per employee to the SFMTA Manager of Accessible Services on an annual basis. d. Broker shall provide full medical coverage to all staff members.
6	Provide one out-stationed employee to assist SFMTA's Manager of Accessible Services with paratransit and accessible fixed route tasks.	<ul style="list-style-type: none"> a. Outstationed employee shall serve as a liaison with the Paratransit Broker on fixed route concerns. b. Broker shall fund one full-time employee, including benefits, at an hourly rate of \$28.41, with annual cost of living increases.
7	Staff to participate in and report on public meetings and working groups on paratransit service issue, including Customer and stakeholder committees of the PCC.	<ul style="list-style-type: none"> a. Broker shall staff all three modal committees of the PCC Executive Committee – the Taxi/Ramped Taxi Subcommittee, Group Van Subcommittee and the SF Access Subcommittee.

SECTION VIII: SERVICE

Task Number	Service-Related Activities	Tasks
1.	Select all van (SF Access, Group Van, Shopping Shuttle) Providers by competitive solicitation.	<ul style="list-style-type: none"> a. Extend current Group Van contracts for a period of no more than nine months from March 31, 2010. b. Procure through a competitive bidding process not less than two Group Van Providers and one SF Access Provider with SFMTA funding and not less than three Group Van Providers under the program funded by the Department of Aging and Adult Services. c. Ensure that all procurement processes meet FTA guidelines for federally funded contracts. d. Review draft Provider deliverables, minimum qualifications, and driver and vehicle standards with SFMTA prior to initiating contractor negotiations. e. Ensure that selected Providers retain competitive unit costs per trip, while meeting service quality-related criteria. f. In the bidding process, encourage prospective Providers to provide employee incentive plans, bonuses, awards, dental coverage, and other benefits.. g. Ensure as part of contract negotiations with Providers that limits on unit cost increases will be set by pegging increases to the Cost of Living Index for the Bay Area Statistical Metropolitan Area as determined by the U.S. Department of Labor and that all cost-of-living adjustments received by subcontractors shall be passed on to all SFMTA-funded paratransit drivers with at least a proportional wage adjustment. h. Set up bidding process to take into account that provision of Section 5310 vehicles to Providers should result in lower costs per trip. i. Selection process must include an opportunity for protests of the contract award to be directed to the SFMTA’s Executive Director/CEO or his or her designee.
2	Ensure that subcontractors comply with the City's Minimum Compensation Ordinance.	<ul style="list-style-type: none"> a. See Section 44 of Agreement.
3	Ensure that van Providers afford health insurance to their employees.	<ul style="list-style-type: none"> a. Ensure that all van subcontractors provide full medical coverage to all SFMTA-funded paratransit drivers, or that documented equivalent medical services are being provided through other arrangements.
4	Ensure through bidding process that van Providers have minimum hardware and software capabilities and	<ul style="list-style-type: none"> a. Include detailed IT specification and staff training requirements in bidding documents for selection of van Providers

Task Number	Service-Related Activities	Tasks
	functional capacity to link to Broker-provided routing and scheduling software and Veolia Vision.	
5	Enter into contracts with Taxi company subcontractors.	<ul style="list-style-type: none"> a. Screen for compliance with minimum requirements for Program participation, including capacity to participate in the PDCS program.
6	Maintain a comprehensive service quality monitoring program	<ul style="list-style-type: none"> a. Monitor subcontracts through review of reports, data, and information obtained directly from Customers, Providers, and agencies for all subcontractors on a monthly basis for: <ul style="list-style-type: none"> i. trip documentation and verification; ii. month-to-month budget review; iii. on-time reliability rating; iv. telephone response time; v. no-show and trip cancellation percentage; vi. complaints/compliments; vii. passenger trip logs; viii. field monitoring for driver performance, safety, and courtesy. b. Conduct telephone surveys monthly or quarterly (at least 12 annually) of Taxi, SF Access Customers, randomly selected. c. Oversee the Secret Rider program (see Section II: Customer Service). d. Coordinate with other City departments such as the Mayor's Office of Disabilities, and the Department of Aging And Adult Services to get feedback on paratransit Customer concerns and develop a strategic plan to seek resolution of these issues. e. Conduct "unannounced" monitoring of all modes of service for on-time reliability, in response to complaints or to poor performance indicators on reliability reports. Field monitoring activities shall include: <ul style="list-style-type: none"> i. monitoring contractor performance in the field; ii. conducting driver and vehicle inspections, site visits and other monitoring activities; iii. preparing reports used to measure contract and regulatory compliance; iv. Taxi Service Monitor will ensure proper inventory tracking of SFMTA-owned ITE and investigate trip/transaction irregularities. f. Use Veolia Vision software to monitor the SF Access and Group Van services for late pull-outs, slack time, driver breaks and on-time performance and to predict and displays potential problems so that dispatchers can take steps to proactively correct them (see also Section III: Information Technology).

Task Number	Service-Related Activities	Tasks
		<p>The priority shall be SF Access service, and Group Van shall be a second priority.</p> <ul style="list-style-type: none"> g. Encourage contracted Providers to participate in consumer advisory group meetings. h. Utilize results of monitoring procedures, surveys, and feedback from workgroups to develop and implement action plans to address service quality issues. i. Implement a problem-solving component to the monitoring program and designate a point person to develop long-term solutions to service quality issues as they arise and ensure that problem-solving measures are implemented within agreed-upon milestones.
7	Provide customer service representatives in the service quality monitoring program to provide telephone and in-person processing of Customer complaints and commendations.	<ul style="list-style-type: none"> a. Implement and maintain a procedure to accept written and verbal complaints; require Providers to provide a formal written response to each complaint, to include, as appropriate, a time-limited plan of correction; undertake follow-up punitive or problem-solving actions to each complaint; and provide a written response to all complainants within 14 days. b. Provide training to staff to ensure polite processing of complaints and implementation of effective resolution measures. c. Ensure that all Customers have a copy of the Paratransit Rider's Guide.
8	Monitor and enforce procedures to ensure Providers' contract compliance.	<ul style="list-style-type: none"> a. Enforce performance standards and incentive programs as detailed in Provider agreements with van and Taxi Providers (with a team approach to include drivers, dispatch, and schedulers) to ensure paratransit service reliability. b. Monitor contract provisions with regards to safety, driver training, driver courtesy, drug testing, worker's compensation, vehicle maintenance through field observations, and accident reporting. c. Work with Providers to enforce Customer rules to control the level of no-show trips in SF Access and Group Van contracts. d. Ensure that Providers conduct daily trip check-in electronically through Broker customer management software. e. Ensure contract compliance, through systematic monitoring and unannounced on-site visits, and require Providers to maintain the following: <ul style="list-style-type: none"> i. DMV printouts (pull notices), Live Scan documentation, CPR and First Aid training certifications of all paratransit drivers; ii. Adherence to Standard Operation Procedures detailed in

Task Number	Service-Related Activities	Tasks
		<p>the Driver Training Protocols;</p> <ul style="list-style-type: none"> iii. Compliance with required vehicle replacement schedules; iv. Update Vehicle fleet inventory reports, annually and within 48 hours of any fleet changes; v. Perform and maintain vehicle maintenance and pre-trip inspection reports and produce such on request; vi. Timely reporting of incident/accident reports involving paratransit riders; vii. Demonstrate required insurance coverage and maintain Certification of Insurance, annually and upon renewal; viii. Maintain and provide driver trips sheets for Group Van service; ix. Through contracts, meet required driver training recertifications as required for Defensive Driving, PAT/Sensitivity, First Aid/CPR and any other required trainings every two years or as required to maintain certifications; x. Maintain daily checklist for drivers includes seatbelts, wheelchair loading and securement devices, grab rails and stanchions; xi. As needed meetings conducted with social service agencies receiving paratransit service; xii. Participation by Providers in the FTA-mandated drug- and alcohol-testing program; xiii. An annual sensitivity training for Provider office staff. <ul style="list-style-type: none"> f. Conduct quarterly un-announced on-the-street monitoring of Group Van and SF Access services and document with written reports g. Conduct an annual review of paratransit driver sensitivity training classes for appropriateness. h. Conduct on-site vehicle inspections; semi-annually for City-owned vehicles i. In course of field monitoring Broker staff shall perform visual inspections of overall condition of other non City-owned provider vehicles, such as lift, safety equipment etc. and compliance with contract standards
9	Develop a method to coordinate with van and Taxi Providers to monitor and enforce Customer conditional eligibility.	<ul style="list-style-type: none"> a. Educate certified riders to understand their conditional eligibility status and establish a method for periodically reviewing a rider's use of service to verify that the rider's trip patterns reflect the rider's conditional eligibility status. b. Develop a protocol for enforcement of conditional eligibility for van, and taxi services. c. <i>Disseminate consumer education of conditional eligibility</i>

Task Number	Service-Related Activities	Tasks
		<i>policies.</i>
10	Implement measures to promote the use of shared rides among Taxi users.	a. Working with the PCC and its subcommittees, initiate a marketing campaign through posters and other methods which would promote the benefits of Taxi ride sharing.
11	Monitor and verify Taxi use.	<p>a. Actively monitor debit card transactions utilizing reporting tools for the purpose of minimizing the risk of fraudulent or unauthorized use of debit cards.</p> <p>b. Analyze trip patterns and follow up with Customer or Taxi company management as necessary to prevent wait trips, trips that have a meter rate that does not correspond with the actual mileage, time on the vehicle, and other potentially fraudulent trips.</p> <p>c. Enforce procedures to control against fraud and misuse of Taxi service.</p>
12	Implement a program to facilitate consistent communication and follow through between Providers and social service agencies to ensure efficient delivery of services.	<p>a. Implement Group Van memoranda of understanding with agencies receiving Group Van service which document the responsibilities of Providers, agencies receiving service and Broker staff.</p> <p>b. Maintain procedures to follow-through on service quality complaints arising from agencies, including coordinating problem-solving meetings and reporting follow-through actions implemented by Broker or Providers to complainants.</p> <p>c. Monitor procedures for Group Van trip data collection, verification, review, and reconciliation with agency.</p> <p>d. Identify systemic service level problems and establish new procedures to address these problems.</p>
13	Coordinate and monitor activities among Providers, including dissemination of Operations Manual.	<p>a. Encourage service providers to share information regarding the availability of driver-training sessions to promote shared participation and cost savings.</p> <p>b. Participate in review of 5310 grant applications as requested by PCC Grant Review Committee, and encourage coordination of 5310 vehicles among paratransit Providers and within the paratransit program.</p> <p>c. Encourage leasing of social service agency vehicles to Providers through facilitation of negotiations between parties and encourage the execution of vehicle lease agreements.</p> <p>d. Encourage van Providers to cooperatively provide emergency back-up services for other Providers.</p> <p>e. Through SF Paratransit's Emergency Planning process, require SF Access Provider to provide emergency back-up service to Muni fixed route services, Police, and Fire</p>

Task Number	Service-Related Activities	Tasks
		<p>Departments.</p> <p>f. Through SF Paratransit’s Emergency Planning process, require all Providers to implement the Paratransit Emergency Plan procedures as stipulated in the Operations Manual.</p> <p>g. Through SF Paratransit service contracting and resultant MOU’s, require Group Van drivers to receive on-site agency orientation for special needs populations.</p> <p>h. Encourage smaller providers to coordinate programs such as driver training, back-up service, and emergency preparedness planning.</p> <p>i. Through the SF Paratransit contracting process, require Contractors to have provisions in place to provide for back up services for themselves when demand exceeds capacity or when unforeseen circumstances tax existing resources..</p>
14	Ensure compliance of van subcontractors with federal drug- and alcohol-testing requirements.	<p>a. Confirm and monitor implementation of federally approved drug testing program by distributing FTA drug testing regulations to all Providers, and requiring evidence of Provider compliance with FTA drug testing regulations, (i.e. including a copy of drug and alcohol policy, copies of contracts with testing labs, copies of annual reports, proof of management and employee training, etc.)</p> <p>b. Coordinate program monitoring with SFMTA’s Substance Abuse Program.</p>
15	Maintain stair assist program for qualified wheelchair users with a method that contains costs over the long term.	<p>a. Ensure that SFMTA-approved screening for eligibility to stair assist program is conducted at the time of the initial registration.</p> <p>b. Enforce policy which limits the conditions under which a two-person stair assist is provided.</p> <p>c. Be willing to explore alternative, cost-effective stair assist procedures (i.e. portable stair glides) to make stairs more accessible to wheelchair users.</p> <p>d.</p>
16	Interface between service Providers for the provision of inter-county paratransit service to meet the needs of both San Francisco and visiting Customers	<p>a. Where applicable, maintain agreements with BART and/or AC Transit, Golden Gate Transit, and SamTrans and their paratransit providers (as needed) for trip reporting, cost sharing, and invoicing of inter-county trips.</p> <p>b. Monitor expenditure amounts for inter-county service and report inter-county trip data on a monthly basis.</p> <p>c. Provide inter-county riders with information regarding scheduling, fare payment, trip-making, transfer operations between different providers, identifying transfer points, emergency back-up trip information, and specific service operations procedures.</p>

Task Number	Service-Related Activities	Tasks
		<ul style="list-style-type: none"> d. Work with Regional Operators to promote coordination between regional and connecting paratransit operators for transfer trips by: <ul style="list-style-type: none"> i. Educating SF service operators on protocols for regional trip provision between regional providers including coordination of hours of operations, methods of service delivery, lines of communication, travel procedures, driver/scheduler/ dispatcher training, recording of trip data, emergency back-up plans, etc.; ii. Reviewing scheduling protocols of inter-county Providers to allow waiting time, until arrival of transfer pick-up; iii. Explaining typical requirements of pre-trip confirmation by passenger and/or both service Providers for a trip transfer; iv. Explaining requirements of post-trip confirmation between providers that transfer/pick-up was completed; v. Requiring that service providers attend coordination meetings for regional providers as requested; vi. Review potential regional trip coordination changes with the PCC Executive Committee and with service providers as required; e. Monitor inter-county service provided by local SF service providers and assist inter-county customers to resolve problems and issues as they arise.
17	Ensure that training for Taxi drivers includes a comprehensive sensitivity training curriculum.	<ul style="list-style-type: none"> a. Work with the SFMTA Taxi Regulatory Division to maintain and update the established Sensitivity Training Course for Taxi Drivers. b. Work with the SFMTA Taxi Regulatory Division to monitor Taxi company compliance with sensitivity training requirement for all Taxi drivers. c. Work with SFMTA to contract for or provide for Passenger Assistance Techniques (PAT) and sensitivity trainers.
18	Implement the emergency preparedness protocol, as developed in the Operations Manual, to provide emergency transportation in the event of a natural disaster.	<ul style="list-style-type: none"> a. Broker shall serve as the facilitator and point of contact during an emergency for provision of emergency transportation for persons with disabilities during/after a natural disaster and report to the SFMTA Departmental Operations Center (DOC) as necessary b. Broker shall require of its Providers through the procurement and contracting process the development of an emergency response plan and monitor the implementation of each Provider's emergency response plan to include: <ul style="list-style-type: none"> i. The contact protocol and liaison, by name, for each entity, including key telephone numbers, cellular phones numbers, two-way radio frequencies and locations of: San Francisco's Department of Emergency Management,

Task Number	Service-Related Activities	Tasks
		<p>Police, Fire, Muni Central Control, SFMTA's DOC, Broker's Office and other Providers;</p> <ul style="list-style-type: none"> ii. Each Provider's resources and location, the chain of command within each agency and the responsibilities of management personnel; iii. In cases where the Broker's IT system is not being fully utilized by a Provider, the Provider shall be required to prepare and submit weekly hard copy print-out of updated Customer list, including address, phone number and mobility aid/disability noted; iv. Where required, contractually dedicated vehicles to emergency evacuation duty; v. Broker shall develop a brochure describing emergency plan for inclusion and publication in Riders' Guide; vi. Updates of the Emergency Plan annually and annual table top exercises to test the Plan.

**Appendix B
Calculation of Charges
Veolia Budget Summary**

	4/1-6/30/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
DESCRIPTION						
ON SITE STAFF						
Labor	235,735	942,939	971,227	1,000,364	1,030,375	1,061,286
Fringe						
Payroll Taxes						
FICA	19,345	77,379	79,700	82,091	84,554	87,091
SUTA	1,762	7,049	7,049	7,049	7,049	7,049
FUTA	266	1,064	1,064	1,064	1,064	1,064
401K/Retirement	8,597	34,387	35,419	36,481	37,576	38,703
Health Insurance	36,000	143,999	148,580	153,288	158,148	163,144
Dental Insurance	1,969	7,874	8,107	8,346	8,594	8,848
Vision Insurance	297	1,188	1,221	1,262	1,297	1,338
Life Insurance	68	273	280	286	293	300
STD & LTD	761	3,045	3,127	3,217	3,304	3,399
EAP	103	410	422	434	447	460
Vacation & Other Paid Time Off	27,751	111,004	114,334	117,764	121,297	124,936
GM Car Allowance, Ins., Fuel & Maint.	2,735	10,940	11,268	11,606	11,954	12,313
Workers Comp. Insurance	2,464	9,855	10,151	10,455	10,769	11,092
Total Fringe	102,117	408,468	420,722	433,344	446,345	459,735
SUBTOTAL - ON SITE STAFF	\$ 337,852	\$1,351,407	\$ 1,391,949	\$ 1,433,708	\$1,476,720	\$ 1,521,021
G & A (INDIRECT)	\$ 35,537	\$ 149,747	\$ 160,078	\$ 161,655	\$ 163,030	\$ 167,260
CONTRACTED SERVICES						
DAJA	139,274	559,880	576,679	593,980	611,799	630,153
Center for Independent Living	3,750	15,000	15,450	15,910	16,390	16,880
Third Party Vehicle Inspection Services	4,500	18,000	18,540	19,100	19,670	20,260
In-Plant Vehicle Inspection Services	0	0	18,540	0	19,670	0
Miscellaneous Outside Services						
PCC Driver Gift	591	2,362	2,436	2,501	2,579	2,658

	4/1-6/30/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
Certificates						
Passenger Transport Subscription	106	424	437	450	463	477
Aramark - bathroom air fresheners, mats	156	625	644	663	683	703
Helping Wheels account service fee	23	90	93	95	98	101
Commuter Check administrative costs	96	385	397	408	421	433
Locksmith services	133	531	547	563	580	598
Document shredding	250	1,000	1,030	1,061	1,093	1,126
Fire extinguisher maintenance	39	158	162	167	172	177
Electrician	77	308	317	327	337	347
Muzak service	458	1,830	1,885	1,941	2,000	2,060
Petty Cash small expenses	73	293	301	310	320	329
Support van fuel	127	508	523	539	555	571
Exterminator	276	1,104	1,137	1,171	1,206	1,243
Medical Supply	326	1,303	1,342	1,382	1,424	1,466
Total Miscellaneous Services	2,730	10,920	11,250	11,580	11,930	12,290
Costless Maintenance Services	10,338	41,350	42,590	43,870	45,190	46,550
Nelson/Nygaard Consulting	10,000	10,000	0	0	0	0
Corey, Canapary & Galanis Research & Counsel		22,000	22,660	23,340	24,040	24,761
Lan Do & Associates Translation Services	7,200	28,800	29,664	30,554	31,471	32,415
TOTAL CONTRACTED SERVICES	\$ 177,792	\$ 705,950	\$ 735,374	\$ 738,333	\$ 780,160	\$ 783,309
	4/1-6/30/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15

	4/1-6/30/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
Utilities	3,655	14,620	15,060	15,510	15,980	16,460
Telephone & Internet	11,355	45,420	46,779	48,187	49,635	51,123
TOTAL UTILITIES	\$ 15,010	\$ 60,040	\$ 61,839	\$ 63,697	\$ 65,615	\$ 67,583
Off site storage	2,433	9,732	10,024	10,325	10,634	10,953
Facility rent - 12th Street	61,899	247,597	255,025	262,675	270,556	278,672
Common Area Maintenance & Utilities	3,333	13,332	13,732	14,144	14,568	15,005
Facility rent - 365 Main Street	4,759	19,034	19,605	20,194	20,799	21,423
HVAC Maintenance	405	1,620	1,669	1,719	1,770	1,823
TOTAL RENT	\$ 72,829	\$ 291,315	\$ 300,055	\$ 309,056	\$ 318,328	\$ 327,878
SF Access Ticket printing	1,875	7,500	7,725	7,952	8,192	8,434
Newsletter	3,000	12,000	12,360	12,731	13,113	13,506
Other Misc. Printing	4,068	16,270	16,755	17,257	17,775	18,310
TOTAL Printing COST	\$ 8,943	\$ 35,770	\$ 36,840	\$ 37,940	\$ 39,080	\$ 40,250
Office Supplies	8,250	33,000	33,990	35,010	36,060	37,140
Postage/Shipping	6,000	24,000	24,720	25,460	26,220	27,010
Security Expense						
ADT	750	3,000	3,090	3,183	3,278	3,377
Bay Alarm	338	1,352	1,393	1,434	1,477	1,522
Brinks	150	600	618	637	656	675
Travel	1,750	7,000	7,210	7,426	7,649	7,879
Education & Training	1,000	4,000	4,120	4,240	4,370	4,500
Insurance - G & L Policy	1,750	7,000	7,350	7,720	8,100	8,510
Legal Expenses	3,750	15,000	15,446	15,906	16,379	16,875
Computer & Other Equipment Maint. & Service Agreements	9,193	36,770	41,718	20,765	21,768	21,058
CabConnect Hosting Expense	82,500	357,500	393,900	429,000	450,450	472,973
Trapeze Maintenance Fees	16,470	65,880	69,174	72,633	76,264	80,078

	4/1-6/30/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
SF Tax-Fees	3,750	15,000	15,450	15,910	16,390	16,880
Performance Bond Expense	9,000	36,000	36,000	36,000	36,000	36,000
TOTAL OTHER COSTS	\$ 144,651	\$ 606,102	\$ 654,178	\$ 675,323	\$ 705,062	\$ 734,476
Projected Equipment Purchases	0	2,500	96,633	79,880	0	7,650
TOTAL EQUIPMENT COSTS	\$ - 0	\$ 2,500	\$ 96,633	\$ 79,880	\$ 0	\$ 7,650
Management Fee	\$ 35,537	\$ 149,747	\$ 160,078	\$ 161,655	\$ 163,030	\$ 167,260
Total Budget	\$ 828,149	\$3,352,578	\$ 3,597,023	\$ 3,661,246	\$3,711,024	\$3,816,686
Contract Total 4/1/10 - 6/30/15						\$18,966,707

APPENDIX C

Trapeze Software Agreement
[available for review in the Accessible Services office]

APPENDIX D

FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

I. DEFINITIONS

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

B. Contractor means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

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

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

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

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

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

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

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

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

designee.

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

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

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

II. FEDERAL CHANGES

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

III. ACCESS TO RECORDS

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

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

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

IV. DEBARMENT AND SUSPENSION

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

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

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

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

VI. CIVIL RIGHTS

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

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

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

2. Age – In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective

employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

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

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

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

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

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

does not include financial reports, cost analyses, and similar information incidental to contract administration.

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

1. Publication of Data. Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

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

a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.

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

4. Hold Harmless. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional

violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

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

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

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

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

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

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

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

B. Violation; liability for unpaid wages; liquidated damages – In the event of any

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

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

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

X. ENERGY CONSERVATION REQUIREMENTS

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

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

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

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

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

A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor

agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

XIII. PRIVACY

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

XIV. DRUG AND ALCOHOL TESTING

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

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

XVII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

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

acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

XVIII. FLY AMERICA

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

XIX. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

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

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

1. General Transit Employee Protective Requirements – To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

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

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

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

APPENDIX E

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

SBE REQUIREMENTS

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

I. POLICY

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

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

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

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

A. Applicability

Pursuant to 49 C.F.R. Sections 26.3 and 26.21, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement an SBE Program in accordance with the Regulations. The Regulations are incorporated into this Program as though fully set forth herein. This Program applies to all SFMTA contracts that are funded, in whole or in part, by DOT federal financial assistance.

B. Objectives

The objectives of this program are to:

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

C. Administration of Program

The Executive Director/CEO of SFMTA is responsible for adherence to this policy. The Director of the SFMTA Contract Compliance Office (CCO) shall be responsible for the development, implementation and monitoring of this program. It is the expectation of the Municipal Transportation Board of Directors and the Executive Director/CEO that all SFMTA personnel shall adhere to the provisions and the spirit of this program.

D. Prohibited Discrimination

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

SFMTA shall not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing

accomplishment of the objectives of this program with respect to individuals in the groups or categories or having the characteristics listed above.

SFMTA has signed the federal assurances regarding non-discrimination required under 49 C.F.R. Section 26.13.

II. DEFINITIONS

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

Small Business Enterprise (SBE): An SBE is a for-profit, small business concern with a three- (3-) year average gross revenue not exceeding \$12 million and is certified under any of the following programs: the State of California's Small Business Program with the Department of General Services, the California Unified Certification Program with a U.S. Department of Transportation recipient, or the City and County of San Francisco's LBE program with the Human Rights Commission.

III. SBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

A. SBE Participation Goal

There is a goal of 20% SBE participation of the total Administrative Expenses for this contract. This SBE goal will apply to the following types of contracts or scope of work in the contract, or as otherwise permitted by the Contract Compliance Office: Construction – Building, Heavy; Construction-Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection, Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering services (to include professional and technical services); Surveying and Mapping; Drafting (Design Services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (Construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

B. Determining the Amount of SBE Participation

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

1. SBE Participation

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

support services necessary to fulfill the requirements of the Agreement.

2. Function

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

3. Determining the amount of SBE Participation

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

An SBE's participation can only be counted if it is performing a commercially useful function.. An SBE is performing a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the SBE is not responsible for at least 30% of the work with its own forces, or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function.

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

SBE Prime Contractor

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

SBE Subcontractor

Count the entire amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work (except for materials and

supplies purchased or leased from the Prime Contractor) and reasonable fees and commissions charged for the services. Do not count any work subcontracted by an SBE subcontractor to another firm as SBE participation by said SBE subcontractor. If the work has been subcontracted to another SBE, it will be counted as SBE participation by that other SBE.

SBE Joint Venture Partner

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

SBE Regular Dealer

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

Other SBEs

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

C. Submission of Certification for SBEs

All firms wishing to work for the City and County of San Francisco must be certified as bona fide SBEs with the SFMTA. This requires submission of the completed certification applications for either SBEs, DBEs, or LBEs. For information where to obtain applications for these certifications, please contact the SFMTA Contract Compliance at:

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

D. Prompt Payment to Subcontractors

In accordance with SFMTA's SBE Program, no later than thirty (3) days from the date of

Contractor's receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subconsultants. Unless the prime consultant notifies the CCO Director in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between the prime consultant and the subconsultant. Within five (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.

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, Contractor shall release any retention withheld to the subconsultant. Satisfactory completion shall mean when all the tasks called for in the subcontract with subconsultant have been accomplished and documented as required by City.

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

IV. MONITORING AND COMPLIANCE

A. SBE Records; Reporting Requirements

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

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

B. Noncompliance; Administrative Remedies

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

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

**APPENDIX F
INCENTIVE/DISINCENTIVE PLAN**

	Activities	Incentives that may be Paid/ Disincentives that may be Assessed
1.	<p>SF Paratransit Goals/Performance Measures</p> <p>a. Complaints: less than two per 1000 trips, for each Mode</p> <p>b. On Time Reliability: at or above 93% for each Mode</p> <p>c. Accidents/Injuries: less than 1 FTA-Defined Reportable Incident per 100,000 trips for each Mode</p> <p>d. Telephone Call Wait Time: over 90% of all calls to the Broker's Office during business hours answered by a live person within 45 seconds</p>	<p>Incentive: \$10,000 if all five Goals/Performance Measures are met on an annual basis</p>
2	<p>Consumer Satisfaction – 90% overall customer satisfaction, as measured by an annual independent customer satisfaction survey.</p>	<p>Incentives:</p> <ul style="list-style-type: none"> • For Broker-related aspects of the survey, if Customer Satisfaction is between 85% and 90%, \$5,000 will be paid on an annual basis. • For Broker-related aspects of the survey, if Customer Satisfaction is between 90.1% and 95%, \$10,000 will be paid on an annual basis. • If Customer Satisfaction is between 95.1% and 100%, \$15,000 will be paid on an annual basis.
3	<p>Travel Training – Shift paratransit trips to Muni fixed route service through travel training paratransit Customers. Reduce paratransit trips per paratransit Customer by an average of 10 trips per month for six months</p>	<p>Incentives:</p> <ul style="list-style-type: none"> • \$250 per individual paratransit Customer shifted to fixed route service, determined on a bi-annual basis
4	<p>Telephone Call Wait Time – over 80% of all calls to the Broker's Office during business hours shall be answered by a live person within 45 seconds.</p>	<p>Disincentive:</p> <ul style="list-style-type: none"> • \$30 per verified complaint for all calls answered below the 80% threshold, determined on a monthly basis
5	<p>Language Capacity (language capability in Spanish, Chinese (Cantonese) and Russian by front line staff) – if an employee who is fluent in one of the specified languages leaves the Broker's employment, the Broker must replace the employee with an equally fluent individual within three weeks time.</p>	<p>Disincentive:</p> <ul style="list-style-type: none"> • For failure to replace such an employee, \$250 per business day for each day beyond the three-week period
6	<p>Outreach – Broker shall conduct at least 20 information sessions/workshops annually.</p>	<p>Disincentive:</p> <ul style="list-style-type: none"> • \$250 for each session/workshop conducted by Broker under 20 sessions a

	Activities	Incentives that may be Paid/ Disincentives that may be Assessed
		year.
7	ADA eligibility Process	Disincentive: <ul style="list-style-type: none"> • \$250 per complaint against the Broker (verified to be legitimate) that is determined by the SFMTA to constitute a violation of the approved ADA eligibility process. • Unless assessed above, \$250 per occurrence for applications that are not processed within 21 days (regardless of whether a complaint has been filed)
8	Customer Service	Disincentive: <ul style="list-style-type: none"> • \$100 for each complaint against the Broker (verified to be legitimate) over a total of five verified complaints a month
9	Processing of Complaints	Disincentive: <ul style="list-style-type: none"> • \$100 per occurrence for any complaint that is not responded to within 14 days.

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs and Construction

BRIEF DESCRIPTION:

Requesting authorization to award San Francisco Municipal Transportation Agency Contract CS-155-2, Professional Architectural and Engineering Services for the Final Design and Construction Support of the Central Subway Project – Design Package #2 Stations Design, to Central Subway Design Group, a joint venture of Parsons Brinckerhoff, Inc., Michael Willis Architecture, Inc., and Kwan Hemni Architecture Inc. for an amount not to exceed \$39,949,959 for a term not to exceed 10 years with an option to extend the term an additional two years.

SUMMARY:

- The selected consultant will provide necessary professional Architectural and Engineering Services required for Final Design Package #2 to complete Central Subway Station Designs.
- SFMTA Board of Directors adopted Resolution No. 09-055 on April 7, 2009 authorizing the Executive Director/CEO to issue a Request for Proposal (RFP), evaluate proposals, select the highest ranking proposal, and to negotiate a contract for Contract No. CS-155, Professional Architectural and Engineering Services for the Final Design and Construction Phases of Central Subway.
- SFMTA advertised the RFP on April 10, 2009 and completed the contract negotiations with the highest ranked firm in November 2009.
- The base contract for Final Design Package #2 for the final design of the Subway Stations, construction support and other related services within the initial ten year term is \$35,059,252.
- Options to provide additional services have been negotiated to an amount not to exceed \$4,890,707.

ENCLOSURES:

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

APPROVALS:

DATE:

DIRECTOR OF DIVISION

PREPARING ITEM: _____

FINANCE (IF APPLICABLE): _____

EXECUTIVE DIRECTOR/CEO: _____

SECRETARY: _____

ADOPTED RESOLUTION TO BE

RETURNED TO: Gigi Pabros

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

Requesting authorization to award San Francisco Municipal Transportation Agency Contract CS-155-2, Professional Architectural and Engineering Services for the Final Design and Construction Support of the Central Subway Project – Design Package #2 Stations Design, to Central Subway Design Group, a joint venture of Parsons Brinckerhoff Inc., Michael Willis Architecture, Inc., and Kwan Hemni Architecture, Inc. for an amount not to exceed \$39,949,959 for a term not to exceed ten years with an option to extend the term an additional two years.

GOAL

Contract No. CS-155-2 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

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April 2007, restoring light rail service to the heavily transit-dependent Third Street corridor in eastern San Francisco for the first time in 50 years.

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

The 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).

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 Central Subway Project is the second phase of the Third Street Light Rail Project. Both phases of the project were initially evaluated under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), in an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) that was certified in 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 1998 FEIS/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. Revenue operation of Phase 1 of the Third Street Light Rail, extending from Bayshore Boulevard to Fourth and King Streets, began in April 2007.

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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.

On June 7, 2005, the SFMTA Board of Directors adopted Resolution No. 05-087 on June 7, 2005, which selected the Fourth/Stockton option as the Locally Preferred Alternative (LPA) to be carried forward in the SEIS/SEIR. The intent of the SEIS/SEIR was to update environmental conditions in the Central Subway study area and to evaluate alternatives to the project, including an enhancement to the alignment discussed in the EIS/EIR (Alternative 2) and the Fourth/Stockton Alignment, LPA (Alternative 3A). A Notice of Preparation was issued in June 2005 and a public scoping meeting was held.

In response to comments received during the public scoping process and preliminary cost estimates prepared for the project, SFMTA made refinements to the Fourth/Stockton Alignment and identified a Fourth/Stockton, Modified LPA (Alternative 3B) for evaluation in the SEIS/SEIR.

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 expressed opposition to the project. Of those responding during the public comment period, five (including the Recreation and Parks Department) expressed support specifically for Alternative 3B.

On February 19, 2008, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 08-029, 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.

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On August 19, 2008, the SFMTA Board of Directors, adopted Resolution No. 08-150 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 issued the Record of Decision announcing the completion of the Central Subway environmental process on November 16, 2008.

The Federal Transit Administration (FTA), the FTA Project Oversight Consultant (PMOC) and the SFMTA have jointly participated in four risk assessment workshops that resulted in the conformation of the Project schedule and budget, and provided for additional schedule and budget contingency.

Current Status:

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

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

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The project has completed the preliminary engineering work and is anticipating FTA approval to enter into Final Design in December 2009. Construction is scheduled to begin in 2010. The start of revenue operation is scheduled for 2018.

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 design 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 2018, it is in the best interests of the agency to engage a qualified design consultant with specific experience and expertise in transit, tunneling, architectural, engineering, and other professional services for the execution of the Central Subway phase of the Third Street LRT Project.

The purpose of this contract is to secure engineering and other services during design and construction. Consultant's services will include, but are not limited to, the following:

- verify/validate existing preliminary engineering design
- verify cost and schedule for each construction contract;
- complete the stations final design;
- prepare construction contract documents for
 - Moscone Station Contract
 - Union Square/Market Street Station Contract
 - Chinatown Station Contract
- furnish professional engineering services as necessary to complete final design
- provide engineering support during construction;
- provide as-needed geotechnical engineering support during construction;
- review and respond to technical submittal from contractors;
- review and respond to proposed changes;
- perform field visits and observations to verify design compliance and/or assist in resolving issues;
- witness and approve factory testing of manufactured equipment and materials;
- update design drawings as a result of responses to request for information, submittals and changes;
- assemble operations and maintenance manuals;
- prepare conformed plans and specifications upon contract completion
- implement a quality control program in performing final design services;

The contract will have an initial term of ten years for engineering services as described above. The SFMTA may elect to extend the contract up to two years for continued engineering and construction support services.

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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 project controls, construction and procurement services for the Central Subway Project.

Selection Process:

SFMTA Board of Directors adopted Resolution No. 09-055 on April 7, 2009 authorizing the Executive Director/CEO to issue a Request for Proposals (RFP), receive and evaluate proposals, select the highest ranking proposal, and negotiate a contract for Contract No. CS-155, Professional Architectural and Engineering Services for the Final Design and Construction Phases of Central Subway.

The RFP, which was originally written to be evaluated, selected and awarded as a single design contract, was advertised on April 10, 2009. The RFP contained a 30 percent Small Business Enterprise (SBE) participation goal. During the proposal period the SFMTA received substantial feedback from the professional engineering services community. There were a couple of key issues in this feedback that were cause for concern to staff:

- As originally written, the prime proposers were required to meet the 30 percent SBE participation goal; however, the RFP did not specify that proposers were required to place SBEs in key, meaningful roles. As such, the community was concerned that small businesses would be relegated to ancillary, rather than leadership roles.
- Additionally, there was general concern that the Central Subway preliminary engineering consultant for the preliminary engineering phase would have a perceived advantage, which would serve to discourage competition.

Upon thorough analysis, staff decided that for this major capital program it was critical to maximize competition and opportunities for small businesses, including local businesses. The RFP was then revised through addenda to divide the scope of services into three separate design packages and proposers were invited to propose on each package independently. The three design packages were Design Package #1 – Utilities Relocation and Tunnel Design, Design Package #2 – Stations Design, and Design Package #3 – Systems. The revised RFP also encouraged prime proposers to place SBEs with local expertise in key roles by awarding up to two additional points for each firm placed in a key role based on the firm's status as an SBE and/or demonstrated local expertise. Two pre-proposal conferences were held on April 28, 2009 and June 11, 2009. On July 21, 2009, four proposers submitted a total of five proposals for the three design packages. All proposals contained significant levels of participation for small businesses, including local business enterprises. Proposals for Design Package #2 were received from ARUP and from Central Subway Design Group, a joint venture of Parsons Brinckerhoff, Inc., Michael Willis Architects, Inc., and Kwan Hemni Architecture and Planning, Inc. Both proposals were evaluated by a technical selection committee comprised of members from various SFMTA divisions, other City Departments and BART. Central Subway Design Group was selected as the qualified proposer for Design Package #2.

Negotiations with Central Subway Design Group have been underway since September 9, 2009. The negotiations have focused on clarifying the scope of work and determining reasonable compensation to ensure that the SFMTA and City are obtaining high quality and cost-effective

engineering services that will help ensure that the public receives a quality transit system, on time and within budget.

After completing these negotiations, SFMTA management concludes that the award of the contract to Central Subway Design Group for Design Package #2 will support SFMTA goals and objectives in the delivery of the Central Subway Project by: maintaining customer focus, 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 for a total amount of \$39,949,959. The base contract for Final Design Package #2 (final design of the three subway stations) and construction support services within the initial ten year term is \$35,059,252. Options to provide additional related services have been negotiated to an amount not to exceed \$4,890,707.

The work breakdown (hours and Year of Expenditure (YOE) Cost) is as follows:

Task # / Title	Base Hours	Base YOE Cost \$	Option Hours	Options YOE Cost \$
1.0 Program Management and Control	27,180	3,692,573	0	0
2.0 Design and Project Integration	4,160	648,941	1080	148,092
3.0 Geotechnical Investigations	10,140	1,410,477	0	0
4.0 Surveying and Right-Of-Way	1,280	139,113	0	0
5.0 Traffic Engineering	240	32,960	2880	388,462
6.0 Utility Design Coordination	1,716	201,202	0	0
7.0 Drainage	240	34,342	940	141,945
8.0 Permits	1,200	193,587	0	0
9.0 Contract Specifications	2,560	380,918	0	0
10.0 Cost Estimate and Scheduling	3,160	447,615	0	0
11.0 Quality Control	2,140	284,879	0	0
12.0 Drawings and Documents	139,680	15,771,911	25,784	3,009,757
13.0 Construction Packaging and Schedules	1,320	154,964	0	0
14.0 Outreach Support	1,000	114,691	0	0
15.0 Bid Support Services	1,800	260,561	0	0
16.0 Design Services During Construction	53,731	7,080,497	5,098	691,130
Direct Labor Costs:	251,542	\$30,849,234	35,782	\$4,379,386
Fixed Fees		\$3,308,718		\$474,821
Other Direct Costs (Reimbursable Expenses)		\$901,300		\$36,500
Total:	251,542	\$35,059,252	35,782	\$4,890,707

Optional professional services identified under this agreement include design and project integration, traffic engineering, drainage and design services during construction.

Optional work has been established to provide professional engineering and construction management support services for the duration of the Central Subway Program delivery. Optional services beyond the scope identified as 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.

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A copy of the Consultant Agreement including Appendix A, Scope of Services, is attached as Enclosure 4. Appendices B-O, listed on page 87 of the contract are not attached hereto but are available at the SFMTA Board Secretary's office for review.

The Contract Compliance Office has determined that Central Subway Design Group will meet the 30% SBE participation goal established for this contract.

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 design services necessary for a project of the size and complexity of the Central Subway. Given the substantial capital investment in the Central Subway and the target project completion schedule of 2018, it is in the best interest of the SFMTA to engage a qualified consultant with specific experience and expertise in transit tunnel engineering, 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 the Board of Supervisors.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Executive Director to execute Contract CS-155-2, Professional Architectural and Engineering Services for the Final Design and Construction of the Central Subway Project – Station Design, with Central Subway Design Group, a joint venture of Parsons Brinckerhoff, Inc., Michael Willis Architecture, Inc. and Kwan Hemni Architecture, Inc., in an amount not to exceed \$39,949,959, and for a term not to exceed ten years with an option to extend the term for an additional two years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

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 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 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 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 SFMTA Board of Directors adopted Resolution No. 09-055 on April 7, 2009, authorizing the Executive Director/CEO to issue a Request for Proposals (RFP) for Contract No.CS-155 for Professional Architectural and Engineering Services for the Final Design and Construction of the Central Subway Project, evaluate proposals, select the highest-ranking proposal, and negotiate a contract for Contract No. CS-155, Professional Architectural and Engineering Services for the Final Design and Construction Phases of Central Subway.

WHEREAS, The anticipated complexity of the Central Subway Project, in proximity to sensitive urban structures and facilities, poses significant design, coordination, 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 Design Group was selected as the most qualified proposer; and,

WHEREAS, Staff and Central Subway Partners have engaged in a detailed contract negotiation to determine the costs and resources necessary to provide the Central Subway Project comprehensive engineering, construction support and related services for station design; 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 SFMTA Board of Directors authorizes the Executive Director/CEO to execute Contract CS-155-2, Architectural and Engineering services for the Final Design and Construction of the Central Subway Project – Station Design, with Central Subway Design Group, a joint venture between Parsons Brinkerhoff, Inc. and Michael Willis Architecture, Inc. and Kwan Hemni Architecture, Inc., for an amount not to exceed \$39,949,959 for all base and optional contract work to complete the final design of the Central Subway Stations, and for a term not to exceed ten years, with an option to extend the term for an additional two years; all options to be exercised by the Agency by the approval of the Executive Director/CEO; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors recommends Contract CS-155-2 to the Board of Supervisors for its approval.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2
 THIRD STREET LIGHT RAIL PROJECT
 CENTRAL SUBWAY

San Francisco Municipal Railway Contract No. CS-155-2

Project Budget and Financial Plan

Cost	(\$Million)
Conceptual and Preliminary Engineering	42.45
Program Management & Construction Management	155.30
Final Design	41.13
Construction Contracts	982.28
Vehicles	28.16
Contingency	213.74
Right-of-Way	34.02
Other Professional Services	81.22
Total Central Subway Cost	\$ 1,578.30

Funding	(\$Millions)
Federal 5309 New Starts ¹	942.20
State RTIP Grant	88.00
CMAQ	6.03
State TCRP Grant	14.00
Proposition 1B-2006 MTC Share	100.00
Proposition 1B-MTA Share	100.00
Proposition Additional 1B-MTA Share	40.00
Proposition K Sales Tax Funds	123.98
Option Local and Regional Sources	164.09
Total Central Subway Funding	\$ 1,578.30

^{1.} New Starts funding to be determined

ENCLOSURE 3
 THIRD STREET LIGHT RAIL PROJECT
 CENTRAL SUBWAY
 LIST OF SUBCONTRACTORS

**Central Subway Design Group
 CS-155-2**

	Base Services	Optional Services	SBE
Parsons Brinckerhoff, Inc.	X	X	
Kwan Hemni Architecture	X	X	X
Dr. G. Sauer Corporation	X	X	
Michael Willis Architecture	X	X	
CHS Consulting Group	X	X	X
Silverman & Light, Inc.	X	X	X
SJ Engineers	X	X	X
Forell/Elsesser Engineers, Inc.	X		X
Creegan & D'angelo Consulting Engineers	X	X	X
SOHA Engineers	X		X
Telamon Engineering Consultants	X		X
FW Associates	X	X	X
ILF Consultant, Inc.	X		
Robin Chiang & Co.	X	X	X
Treadwell & Rollo	X		
Cornerstone Transportation Consulting	X		X
Timmons Design Engineers, Inc.	X	X	X
YEI Engineers, Inc.	X	X	X
F.E. Jordan Associates	X	X	X
CB Engineers, Inc.	X	X	
Fong Brothers Printing, Inc.	X	X	

	Base Services	Optional Services	SBE
Stevens & Associates	X		X
Martin M. Ron	X		X
SC Solutions, Inc.	X		X
Independent Consultants	X	X	
Carey & Company	X	X	X
A. R. Sanchez-Corea & Associates, Inc.	X		X
Sonoma State	X		
Trans Pacific Geotechnical Consultants	X		X
National Constructors Group	X		
HortScience	X		X

CONTRACT FOR CENTRAL SUBWAY

FINAL DESIGN PACKAGE # 2

MOSCONE, UNION SQUARE & CHINATOWN STATIONS

11-12-09



**Agreement between the City and County of San Francisco
and
the Central Subway Design Group
for Architectural and Engineering Services
for the Final Design and Construction of the
the San Francisco Municipal Transportation Agency
Central Subway Project
(Third Street Light Rail Project, Phase 2)**

Contract No. CS-155-2

**Design Package #2
FINAL DESIGN OF THE
MOSCONE STATION,
UNION SQUARE/MARKET STREET STATION
& CHINATOWN STATION**

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**Agreement between the City and County of San Francisco
and
the Central Subway Design Group, a Joint Venture between
Parsons Brinckerhoff, Inc. and Michael Willis Architects, Inc. and
Kwan Henmi Architecture and Planning, Inc.
for Architectural and Engineering the Final Design and Construction of
the San Francisco Municipal Transportation Agency
Central Subway Project (Third Street Light Rail Project, Phase 2)
Final Design of the Moscone Station, the Union Square/Market Street Station
and the Chinatown Station**

This Agreement, dated for convenience as November ____, 2009, in the City and County of San Francisco, State of California, by and between: Central Subway Design Group ("Consultant"), a joint venture between Parsons Brinckerhoff, Inc., contracting through its subsidiary PB Americas, Inc., a corporation with its principal place of business in New York (hereinafter PB), and Michael Willis Architects, Inc., (hereinafter "MWA") and Kwan Henmi Architecture and Planning, Inc. (hereinafter "KHA"), each with their respective principal place of business in San Francisco, and the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency (hereinafter "SFMTA" or "City").

RECITALS

A. The SFMTA desires that the Consultant renders professional architectural and engineering and related services in connection with the design and construction of the Central Subway Project, Phase 2 of the SFMTA Third Street Light Rail Project.

B. A Request for Proposals was issued on March 27, 2009 ("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 and that it possesses the requisite experience and resources to render the services required by the SFMTA as set forth under this Contract.

D. The City and Consultant intend that this Agreement comply with the regulations of the Federal Transit Administration of the United States Department of Transportation ("FTA").

E. On December ____, 2009, the SFMTA Board of Directors adopted Resolution No. _____ authorizing the SFMTA's Executive Director/CEO to execute this Agreement.

F. On _____, 2009, the San Francisco Board of Supervisors adopted Resolution No. _____ approving this Agreement.

G. Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number _____ on _____, 2009.

NOW, THEREFORE, THE CITY AND THE CONSULTANT AGREE AS FOLLOWS:

1. THE PROJECT.

1.1. General Description. The City does hereby engage the Consultant to perform, under the terms and conditions in this Agreement, professional services to complete the design of the Moscone Station, the Union Square Station, and the Chinatown Station (collectively referred to as "the Stations") and to perform related engineering, architectural, and construction support work for the Final Design of and related Construction Support Services for the Central Subway Project (the "Project"), which is Phase Two of the Third Street Light Rail Transit Project. The Project and the work that Consultant may perform under this Agreement are fully described in the Request for Proposals ("RFP") dated March 27, 2009, the documents referenced therein and referenced in Appendix 10 of the RFP, and Addendums 1 through 6 to the RFP, the Consultant's Proposal, and this Agreement. It is the responsibility of the Consultant to request, review and incorporate requirements for the Stations design for the Project that may be established in such referenced documents. As directed by the SFMTA, Consultant shall perform as Basic Services, Optional Services, and Additional Services all work reasonably related and necessary to the final design and support the construction of the Stations for the Project and to support the construction of the Project, as determined by the SFMTA and as that work is described in this Agreement and in the RFP.

1.2. Primary Responsibilities and Design Integration. Consultant's primary responsibilities shall be to perform and provide final design services for construction of the Stations for the Project and to coordinate and integrate with Work Products created, developed or prepared by City staff and the PM/CM Consultant. Consultant shall also lead the design firm assigned to Design Package # 1 (Tunnels and Utility Relocation) in coordinating design activities and integrating the final design of the Stations to the Tunnels. Consultant shall also assist and follow the lead of the design firm assigned to Design Package #3 (design of controls, communications, traction power, trackway and design integration) in coordinating design activities and integrating the final design of those systems to the Tunnels and the Stations.

1.3. Term. This Agreement shall be in effect upon final approval by the Parties and shall continue for a period of Ten (10)Years from the date that the SFMTA first issues Notice to Proceed ("NTP") to the Consultant. Upon approval by the Consultant and the SFMTA, the Agreement may be extended for up to an additional two (2) years.

2. DEFINITIONS.

For all purposes of this Agreement, the terms listed below shall be given the meaning provided. The terms and abbreviations listed in the RFP are incorporated by reference as if fully out here.

2.1. Additional Services or Additional Work means work or services requested by the SFMTA that are outside the Scope of Services set out in this Agreement.

2.2. Agreement or Contract means this Agreement for Final Design Architectural and Engineering Services and all referenced Appendices to this Agreement and approved modifications to this Agreement.

2.3. Appendix means a document or set of documents incorporated by reference into this Agreement.

2.4. Architectural and Engineering Services means the design services necessary to produce Construction Drawings, Work Product and other design deliverables necessary for the construction of the Project or otherwise deemed necessary by the SFMTA.

2.5. 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.

2.6. Basic Services (Base Services) means the creation, design and provision of Work Product and work and services incidental thereto that are described or listed in this Agreement.

2.7. Bid Alternate means Work that has been designed in two or more alternative ways, which are included in construction bid documents and that call for line-item construction bids for each Bid Alternate, and which the SFMTA will select to bring the construction contract within the Project construction budget.

2.8. Bid Option means Work that may be incidental or ancillary to the CSP that is packaged in the construction bid documents for which a separate or line-item bid is sought and that would be constructed only if the SFMTA exercises its option to do so.

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

2.10. City means the City and County of San Francisco.

2.11. 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.

2.12. Chinatown Station (CTS) means the subway station to be located at Stockton Street and Washington Street, for which Consultant shall provide architecture, engineering, and construction support services as described in this Agreement.

2.13. 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.

2.14. Configuration Management Board (CMB) means the body responsible for approving / disapproving changes that meet the criteria and thresholds defined for design changes, construction change orders and cost estimate changes and schedule changes.

2.15. Construction Support Services means the services described in Section 3.10 of this Agreement and other services commonly provided in the construction industry in the San Francisco Bay Area to assist the owner and construction contractor in interpreting and implementing the design for the construction of the intended project.

2.16. Contract Documents or Construction Documents mean the Work Product produced by the Consultant necessary for the SFMTA to issue a call for competitive bids to construct the CSP, which shall include but is not limited to designs, working drawings, specifications, general conditions and special and/or supplementary general conditions, information for bidders, accepted bid proposals and addenda developed to set forth in detail all aspects of the design, function, and construction of the Project.

2.17. Contract Bid Package means a set of Construction Documents for construction of a portion of the Project, as those portions are listed in Section 6.1.1 of this Agreement.

2.18. Construction Management means the daily management of the construction and quality control of the Project, including but not limited to oversight and coordination of contractors to ensure that the Project is constructed in conformance with design specifications and requirements.

2.19. Consultant means the Central Subway Design Group, a joint venture between Parsons Brinckerhoff, Inc., contracting through its subsidiary PB Americas Inc. a New York Corporation with offices located at 303 Second Street, Suite 700 North, San Francisco, CA 94107 and Michael Willis Architects, Inc., located at 301 Howard Street, Third Floor, San Francisco, CA 94105, and Kwan Henmi Architecture and Planning, Inc. located at 456 Montgomery Street, Suite 500, San Francisco, CA 94104.

2.20. 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.

2.21. Controller means the Controller for the City and County of San Francisco.

2.22. Cost-plus-Fixed-Fee means a method compensating Consultant for Work performed under the Agreement by which the SFMTA reimburses Consultant its costs for performing the Work and also pays a Fixed Fee as compensation for having performed the Work.

2.23. 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" shall be synonymous.

2.24. Design Plan means a plan approved by the Parties for advancing the Work under the Agreement as described in Section 7.7 of the Agreement.

2.25. Discipline means the area of primary technical capabilities of Key Personnel, as evidenced by academic degrees, professional registration, certification, and/or extensive experience.

2.26. Engineer's Estimate means the detail estimate prepared by the City based upon the quantity takeoff prepared by the Consultant. Such cost estimates shall be reviewed and accepted by Consultant.

2.27. Executive Director/CEO means the Executive Director/CEO of the SFMTA, also known as the City's Director of Transportation.

2.28. Effective Date means the date that the SFMTA informs Consultant in writing that the Agency has received all necessary approvals for this Agreement and the Controller has certified funds for this Agreement.

2.29. Federal Transit Administration (FTA) means an operating agency of the U.S. Department of Transportation, which is a funding agency of the CSP.

2.30. Field Office Overhead Rate means the audited rate of compensation that the City shall pay Consultant as a multiplier of salary costs to compensate Consultant for administrative support of its employees who work out of offices supplied by the SFMTA.

2.31. Final Design means the architectural and engineering services and related Work to be performed by Consultant under this Agreement incorporating design products prepared by City personnel and the Project Management/Construction Management consultant.

2.32. Final Completion (Final Acceptance) means the date that the substantial completion has been declared, punch list items have been completed, and that the SFMTA Board accepts each construction contract.

2.33. 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.

2.34. Home Office Overhead Rate means the audited rate of compensation that the City shall pay Consultant as a multiplier of salary costs to compensate Consultant for administrative support of its employees who work out of offices supplied by the Consultant.

2.35. 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 12.2.

2.36. KHA means Kwan Henmi Architecture and Planning, Inc.

2.37. Lump Sum means a method of compensating Consultant for Work under the Agreement that is a payment of an all-inclusive prefixed amount of compensation agreed by the Parties for discrete tasks or other Work specified in a Task Order or Design Plan.

2.38. Milestone(s) means a description of Work to be accomplished by date(s) certain, set out in a Task Order or Design Plan.

2.39. Monthly Progress Report means the monthly report submitted by Consultant to the SFMTA addressing Consultant's progress on Design Plans and Task Orders, the status of the CSP, an update of the Project schedule, and report on current CSP funding and budget status and issues.

2.40. Moscone Station (MOS) means the subway station to be located at Fourth Street and Folsom Street, for which Consultant shall provide architecture, engineering, and construction support services as described in this Agreement.

2.41. MWA means Michael Willis Architects, Inc.

2.42. 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.

2.43. OCC means an Operations Control Center.

2.44. Optional Services means services designated to be performed by the City, but which the City at its option may assign to the Consultant.

2.45. Overhead means the costs incurred by Consultant in supporting its Work on the Project, as that term is used in applicable provisions of the FAR, cited in this Agreement, and as commonly used in the construction industry for federally funded public works projects.

2.46. Party means an entity bound by this Agreement.

2.47. Parties mean all entities bound by this Agreement.

2.48. PB means Parsons Brinckerhoff, Inc., contracting through its subsidiary PB Americas, a corporation with its principal place of business in New York.

2.49. PM/CM Consultant means the Project Management/Construction Management consultant, Central Subway Partners, a joint venture of AECOM and EPC Consultants that is responsible for Program Management for the Project

2.50. Program or Project means the Third Street Light Rail Project, Phase 2, Central Subway.

2.51. Project Construction Budget means the construction cost values as described in Section 6.1.1 of this Agreement.

2.52. Program Management means the daily management of the CSP by the PM/CM Consultant, including but not limited to coordination of design consultants, quality controls, financial management, funding coordination, budget and cost controls, scheduling, safety management, quality assurance management, and interagency coordination, and other related duties as may be assigned by the SFMTA.

2.53. Program Officer (PO) means the SFMTA Director, Capital Programs and Construction or other such executive as may be appointed by the City's Director of Transportation (SFMTA Executive Director/CEO) responsible for the executive oversight of the CSP, the administration of the Contract, and all contractual actions and Contract interpretation.

2.54. Program Manager (PM) means the SFMTA Manager responsible for overseeing daily management of the CSP, administration of this Agreement, and monitoring of the Consultant in its performance of the Agreement, including review and approval of Work Product and invoices, review and approval of all contractual actions and Contract interpretation.

2.55. Progress Payment Form means the form stating Work performed that Consultant shall submit with a request for payment or other invoice.

2.56. Proposal means the Consultant's written response to the RFP submitted to the SFMTA on or about July 21, 2009.

2.57. Reimbursable Expense means an expenditure by the Consultant that the City shall reimburse to the extent that such expenditure is necessary for the Project and meets all applicable requirements of this Agreement.

2.58. Request for Proposals (RFP) means the Request for Proposals for Final Design Architectural and Engineering and Construction Support Services, issued by the SFMTA on or about April 7, 2009 and the RFP Addendums 1 through 6.

2.59. Request for Services means a request from the SFMTA to Consultant to perform Additional Work.

2.60. Salary Burden means the full cost of payroll taxes and employee benefits, such as health and dental care insurance, vacation, leave, retirement and pension that are provided to employees in addition to wages.

2.61. 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.

2.62. San Francisco Municipal Transportation Agency ("SFMTA") 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").

2.63. 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 Services and Optional Services, pursuant to Design Plan(s) and/or Task Order(s).

2.64. 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").

2.65. Subprime Consultant means a second tier subconsultant firm under contract to the Consultant to provide services to the CSP.

2.66. Subconsultant means a subconsultant firm under contract with a Subprime Consultant (a third tier subcontractor) to provide services to the CSP. When the terms "subconsultant" or "subconsultants" are not capitalized, those terms shall generally refer to a Subprime Consultant and/or a Subconsultant, either individually or collectively, as applicable.

2.67. Substantial Completion means the stage or designated portion of a construction project that is sufficiently complete in accordance with the relevant construction contract for the SFMTA to occupy and/or utilize it for its intended use, without undue interference.

2.68. Task Order means a written directive from the SFMTA to perform specified Additional Work

2.69. Tunnel(s) means the twin bore Tunnel to be designed under an Agreement with PB Telamon to service the new Central Subway, as that Tunnel is described in the RFP, the Project EIR documents, and the Project preliminary design documents prepared by PB Wong.

2.70. Union Square/Market Street Station (UMS) means the subway station to be located at Stockton Street and O'Farrell Street for which Consultant shall provide architecture, engineering, and construction support services as described in this Agreement.

2.71. Utilities Relocation means the work necessary to remove and reinstall public and private utilities from the public right of way and other areas that would conflict with or otherwise impede the construction of the Project or any portion of the Project.

2.72. Work Product means all designs, drawings, schematics, specifications, reports, studies, presentations, data, specifications, design criteria, graphs, schedules, photographs, videos, recordings, pictures, memoranda, letters, computer-generated data, calculations, estimates, summaries and such other information and materials as may have been created, prepared, developed, accumulated, generated or kept by the Consultant, the Subprime Consultants or Subconsultants, in connection with the Work performed under this Agreement, whether approved, completed or in process. Work

Product does not include any records or documents pertaining solely to the operation of Consultant's business that are not otherwise subject to audit under this Agreement.

2.73. Work Proposal means a detailed description of Work to be included in a Design Plan or Task Order prepared by the Consultant in response to a Request for Services from the SFMTA.

2.74. Year of Expenditure (YOE) means the required budgeting metric in which project costs are estimated based on the year in which the funds will be expended (adjusting for inflation calculated from the date of the estimate to the date of expenditure).

3. SCOPE OF SERVICES.

3.1. Inclusive Services. As described in Appendix A, Consultant shall perform all customary and necessary architectural, engineering and other consulting services necessary to complete the design of the Stations for the Project, produce the Construction Documents for the Stations, and support the construction of those portions of the Project. In addition, Consultant shall perform Additional Services and/or Optional Services as the City may request that are incidental to or are otherwise required for the CSP. Consultant's work under this Agreement shall include the following final design activities:

3.1.1. All work required to comply with local, State and federal codes, regulations and standards, as interpreted by local, State or federal agencies, as such codes, regulations and standards may be amended during the Term of this Agreement.

3.1.2. All work related to addressing review comments and/or incorporating appropriate review comments into deliverable documents.

3.1.3. Consult with authorized employees, agents and/or representatives and consultants of the City relative to the programming, design, bidding, award and construction of the project.

3.1.4. Provide consultation and advice to the City as to the necessity and manner of providing or obtaining services necessary to complete the design and construction of the Project.

3.1.5. Review program requirements and existing design documents and advise the SFMTA whether such design documents are sufficient for purposes of Final Design and whether additional data is necessary before the Consultant can proceed.

3.1.6. Contract for or employ the Consultant's employees and the Consultant's consultants as may be necessary or required as Basic, Optional or Additional Services, the following disciplines, including, but not limited to, mechanical, civil, electrical, plumbing, structural, signal and control systems engineers; elevators and escalators, signage, cost estimator; landscape Consultant; and other special designers and services as may be necessary for fire protection, life safety, acoustical, audio/visual, lighting, specifications,

signaling and control, tunneling, dewatering, traction power, security, computer infrastructure, parking and traffic control studies for designated impacted areas, and disabled access; and others as may be necessary for complete design of the Project; all parties shall be licensed by the State of California if so required. The Consultant shall submit for approval by the City any changes in the subconsultants listed in Appendix B. The addition of subconsultants for unforeseen specialty services shall require a modification under this Agreement.

3.2. Review Conceptual and Preliminary Designs. Consultant shall commence the Basic Services by reviewing the environmental, conceptual and preliminary design documents referenced in Appendix 10 of the RFP. Consultant shall confirm the validity of said design work and shall incorporate and build upon that work in its own Work Product.

3.3. Subconsultants. Consultant shall engage at its sole expense all engineers, architects, cost estimators, experts and other subconsultants as may be required for the proper performance of the Agreement, as provided in Section 9 (Subcontracting).

3.4. Quality Assurance. The Consultant shall be responsible for Quality Assurance and oversight of Subprime Consultants and Subconsultants..

3.5. Code Compliance.

3.5.1. The Consultant shall comply with requirements of all applicable codes, regulations, and current written interpretation thereof published and in effect during the Consultant's services.

3.5.2. The Consultant shall be deemed to have had notice of any applicable law or regulation announced or enacted at the time of the Effective Date, even though such law or regulation did not take effect or become operative until some date after the Effective Date. In the event of changes in such codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by the Consultant and which result in a substantive change to the Construction Documents, the Consultant shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of responding to such changes. The Consultant shall be responsible, however, to identify, analyze and report to the SFMTA pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including pending changes to the California building codes and San Francisco Building Code and other amendments.

3.5.3. The Consultant shall, immediately upon becoming aware of any such imposition or change of requirement, provide SFMTA with full and detailed particulars of the changes required in the equipment and of costs involved therein, or shall be deemed to have waived any rights under this Section. In the event any governmental requirements are removed, relaxed or changed in any way after the Effective Date so as to make the Consultant's performance of unperformed work less expensive, or less difficult, then SFMTA shall have the option either to require the Consultant to perform pursuant to the more rigorous

requirements or to receive a reduction in the price of the equipment affected for all savings in direct costs which may be realized by the Consultant by reason of such change and appropriate adjustments in deductions for overhead and profit made so as to reflect actual savings made by the Consultant. SFMTA shall give the Consultant notice of SFMTA's determination, and anticipated savings.

3.6. Coordination of Design Team. The Consultant shall coordinate its work with the work of all of its Subprime Consultants and Subconsultants and that of City personnel to produce comprehensive, complete, coordinated, and accurate drawings and specifications for all elements of the Project.

3.7. 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.

3.8. Coordination with City Departments and Personnel, Other Public Agencies.

3.8.1. SFMTA and Project Consultants. The Consultant shall coordinate, meet regularly and work with the SFMTA, Program Manager, and other assigned City staff or consultants, to keep the design progressing in accordance with the Design Plan.

3.8.2. City Agencies. As directed by the SFMTA, the Consultant shall coordinate, meet and work with and make presentations to other City agencies and personnel. Such departments include, but are not limited to the Art Commission, the Department of Planning, the Department of Public Works, the San Francisco Public Utilities Commission, the Department of Building Inspection, the Fire Department, and the Department of Recreation and Parks, and City Administrator's Office (S.F. Convention Facilities) for the purposes of providing said agencies information about the Project and assisting the SFMTA in obtaining permits, licenses and other approvals required for the Project.

3.8.3. Other Agencies. As directed by the SFMTA, the Consultant shall coordinate, meet, work with and make presentations to outside agencies and personnel necessary to determine relevant requirements, develop designs that conform to those requirements, and assist the SFMTA to obtain required review and approvals of the designs. Such agencies include the California Public Utilities Commission, the Bay Area Rapid Transit Authority, the State Fire Marshall, and any other State or federal agency that has regulatory authority over the Project or that has a proprietary interest.

3.8.4. Funding Agencies. As directed by the SFMTA, the Consultant shall cooperate, meet with and assist the SFMTA to make presentations to the FTA, the FTA's Project Management Oversight consultant, the San Francisco County Transportation Authority, and the Metropolitan Transportation Commission ("MTC").

3.8.5. Community Representatives and Property Owners. As directed by the SFMTA, Consultant shall meet with and make presentations to representatives of communities and property owners along the alignment that may be affected by the Project.

3.8.6. Art Commission. The Consultant shall coordinate, meet and work with City departments and personnel necessary to determine relevant City requirements, develop designs, incorporate artwork under the San Francisco Public Art Program, and review and assist the SFMTA to obtain required City approvals of the designs. Artwork commissioned by the City that is to be incorporated in the Project as an integral building or site element may require coordination with the design and structure of the building or site. Involvement by the Consultant to assist in the selection of artwork by the San Francisco Art Commission and services by the Consultant to coordinate the design and structure of the building or site to accommodate the installation of such artwork shall be a part of Basic Services. As directed by the City, the Consultant shall coordinate and work with any representatives the City may designate in the selection of artists for the Project to incorporate requirements for the chosen artwork into the design for the Project. The Consultant shall make presentations to and/or attend meetings as necessary for the Civic Design Committee and the Visual Arts Committee of the San Francisco Art Commission. Substantial changes required of the Consultant to incorporate requirements for the chosen artwork into the Project after the completion and acceptance of the Design Development documents shall be Additional Services under this Agreement.

3.9. Open Design. In the performance of this Agreement, the Consultant shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through competitive procurement, or through standard or proven production techniques, methods, and processes. Unless Consultant presents evidence justifying the use of a sole source and seeks prior written approval from the SFMTA, Consultant shall not produce a design or specification for the Project that would require the use of structures, forms, machines, products, materials, construction methods, equipment, or processes that the Consultant knows to be patented or that would be restrictive or written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment. When one or more brand names or trade names of comparable quality or utility are listed, they must be followed by the words "or approved equal."

3.10. Correction of Errors. Upon notice from SFMTA, the Consultant shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in such plans, designs, drawings, specifications, reports, and other services; and, in the event of any deficiencies in such plans, designs drawings, specifications, reports, or other services resulting from the Consultant's professional negligence or from the professional negligence of the Consultant, Subprime Consultants and Subconsultants, whether or not said deficiencies have been brought to the attention of SFMTA, the Consultant shall indemnify and reimburse SFMTA for the cost of the corrective remedial work (including, without limitation, design, demolition, and construction) necessary to correct any such deficiencies and the consequences of such deficiencies caused by said professional negligence.

3.11. Furnishings, Furniture, and Equipment Not Affixed. In addition to the design Project elements specifically described herein as included in the Construction Bid Packages, the Consultant shall provide design and coordination services to accommodate furnishings, furniture, and equipment not affixed ("FF+E"), as appropriate to the program. Services associated with the actual procurement and installation of FF+E shall be Additional Services.

3.12. 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 request for that information. Consultant shall plan its work to allow adequate time for the City to provide the requested information. .

3.13. Use Of Computer Technology for Design and Coordination of Drawings. The Consultant may use CADD or similar technology in developing the design for the Project. The cost of any clerical work or services related to CADD support shall be included in Basic Services. Additionally, the SFMTA and the Consultant may employ multidimensional design tools compatible with Building Information Modeling ("BIM") system, the scope and extent of which shall be determined jointly by the SFMTA and the Consultant. Consultant shall be responsible for entering applicable preliminary design documents and Consultant's Work Product into the BIM.

3.14. Authorization for Bid and Construction Support Services. The services described below as Bid Support Services in Section 3.9 and Construction Support Services in Section 3.10, below, are to be performed only on the written authorization of the SFMTA Program Manager. While the SFMTA intends to authorize the Consultant to provide those services, the SFMTA shall do so only when (a) sufficient funds for such services have been appropriated in accordance with the budget and fiscal provisions of the City, and (b) the SFMTA in its sole discretion, without waiving any rights, has found that the Consultant has adequately performed its prior services under this Agreement.

3.15. Bid Support Services. Upon solicitation of bids by the City, the Consultant shall:

3.15.1. Participate in and assist the City with pre-bid conferences.

3.15.2. Prepare responses to bidders' questions, interpret Construction Documents, evaluate requests for substitutions and prepare addenda for approved substitutions and clarifications, and assist the City as required in responding to bidders' questions.

3.15.3. Provide the City with originals of all addenda to be issued.

3.15.4. Assist the City with review and evaluation of bids submitted, and recommendation for award of construction contract.

3.15.5. Perform necessary redesign services as may be required under Section 6 (Program Budget and Cost Controls).

3.15.6. Upon award of a construction contract, consolidate a set of Construction Documents with all addenda, accepted alternates, incorporated into appropriate specification sections or drawing sheets. From this set, provide the City with a conformed "for construction" Drawing Set and Project Manual including specifications.

3.16. Construction Support Services Upon award of a construction contract to a general contractor ("Contractor") by the City for any of the Construction Packages, and upon written NTP from the City to the Consultant to proceed with Construction Support Services, the Consultant shall provide said services as set forth below:

3.16.1. Provide an updated color and materials board, samples of textures and finishes of all materials to be used in the Project for review and approval of the City.

3.16.2. Review checklists of all special inspection and testing, equipment startups, submittals, warranties, guarantees, maintenance and operation manuals, spare parts and all other close-out documents that will be required of the Consultant's Project Manager or Contractor. As requested, advise the SFMTA and the PM/CM Consultant as to the acceptability of constructed products during the course of construction .

3.16.3. Interpret the Contract Documents and furnish original and one copy of all documents in CADD-produced reproducible form of all clarification drawings and other documentation prepared by the Consultant for issue by the City.

3.16.4. Review requests for information (RFIs), submittals, mock-ups, substitutions, and change requests properly prepared by and received from the Contractor within the time specified in the Contract Documents, and make appropriate recommendations with supporting documentation and data to the City. Any proposed substitutions or revisions shall consider priority of need to keep the construction work on schedule and minimize construction work progress delay. The construction specifications will be prepared to require the construction Contractor to prepare all necessary design documentation to support its substitutions or value engineering proposals.

3.16.5. If deemed appropriate by the City, the Consultant shall on the City's behalf prepare, reproduce and distribute supplementary drawings and specifications in response to RFIs, or as otherwise required to clarify the design intent of the Construction Documents, or to document construction change directives by the City.

3.16.6. In preparing a response to a RFI, if requested by the SFMTA, Consultant will obtain the input of Consultant's or subconsultant's personnel who prepared or were responsible for overseeing the preparation of the design document or specification that is the subject of the RFI. Consultant and subconsultant personnel still employed but reassigned to other projects within the United States must be available within 48 hours to respond to a RFI.

3.16.7. The Consultant will assist the Program Manager with preparation of drawings, specifications and other documents that may be necessary for the Program Manager to prepare change orders and construction change directives for City approval and execution in accordance with the Contract Documents. The City will prepare and effect any required contract modifications and change orders.

3.16.8. The Program Manager will categorize all RFIs and change orders by cause, as follows, of the RFI or change order, and so advise the Consultant. This will assist the City in tracking the amount and percentage of additional costs incurred attributable to, for example, Owner requests, Consultant errors, Consultant omissions, hidden obstructions, unforeseen conditions, Contractor errors, other Contractor-generated conditions, and new regulatory mandates. The Consultant shall indicate in writing its concurrence or objection with the Program Manager's categorization and shall recommend for City consideration any change to the category assigned.

3.16.9. Make all revisions and changes to the Contract Documents and prepare additional appropriate documents as directed by the City to correct the Consultant's errors, design conflicts or omissions at no additional cost to the City.

3.16.10. The Consultant and its subconsultants shall make visits to the Project site as appropriate to the stage of construction or as otherwise agreed by the City and the Consultant shall: (a) to become generally familiar with the portion of the work completed; (b) to notify the SFMTA of defects and deficiencies observed in the work; and, (c) to determine in general if the work is being performed in a manner indicating that the work when fully completed, will be in accordance with the Contract Documents. These visits are not to be construed to require supervision or inspection, and the Consultant shall not be required to make exhaustive or continuous on-site observations of the work. The Consultant shall prepare a written report of each and every site visit, and shall advise and report to the City in writing of any deviations from the Contract Documents, non-conforming items or issues of concern observed during such visits.

3.16.11. The Consultant shall attend project meetings throughout the construction phase as requested by the City. The Consultant shall require that its subconsultants make such visits and attend project meetings when appropriate to observe the progress of work designed or specified by them. It is understood that the City Program Manager will be responsible for providing day-to-day field inspection services and shall cooperate and coordinate with the Consultant in matters pertaining to the Consultant's work. The Consultant and its subconsultants shall coordinate and cooperate with the Program Manager to time its visits jointly to observe and discuss the Contractor's field work and installation to reduce duplication of work by both the Program Manager and Consultant.

3.16.12. Additionally, the Consultant, as part of Basic Services, will assign at least one senior responsible member of its design team to be available as needed for all the Station sites for the duration of construction until substantial completion, unless otherwise authorized or directed by the City. This staff member shall be authorized to represent and render decisions on behalf of the

Consultant in all design and construction coordination matters, and shall be charged with representing the design team in responding to questions and clarifications needed on site to minimize disruption to construction. When assigned member(s) are temporarily unavailable for any reason (such as vacations or extended illness), the Consultant shall advise the City and assign an alternate, similarly capable and authorized individual. If other consultants representing specialty services are required to perform similar on-site services for periods agreed-to between the Consultant and the City, it is the Consultant's responsibility to coordinate the availability of other consultants and schedule such on-site services as necessary for the timely progress of the work.

3.16.13. The Consultant shall provide Construction Support, which includes but is not limited to interpretation of the Contract Documents and advising the City and the PM/CM Consultant of all decisions rendered. Interpretations by the Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form.

3.16.14. The Consultant acknowledges that a construction contract will be awarded based on the lowest responsive bid by a responsible bidder for the construction of the Stations; that there is no certainty that the successful bidder will cooperate willingly with the Contract Documents; and that the level of administrative difficulties faced by the Consultant during the construction phase may vary substantially. Accordingly, the Consultant agrees that it shall not seek additional compensation for administrative difficulties the Consultant may encounter with the Contractor on the Project, unless the parties agree that Contractor refused to communicate with Consultant or otherwise acted unreasonably, and that the Contractor's action forced the Consultant to expend undue and otherwise unavoidable additional professional labor hours.

3.16.15. The Consultant shall review and advise the City when requested on claims, disputes and other matters in question between Contractor and the City relating to the interpretation of the construction Contract Documents or proposed changes to the same.

3.16.16. Except as may otherwise be provided in the Contract Documents or when direct communications have been specifically authorized, the Consultant shall only communicate with the Contractor through the City. In no event shall the Consultant make any directive or communication to the construction contractor that will affect the means or methods, time, cost or quality of construction. Communications by and with the Consultant's consultants shall be through the Consultant.

3.16.17. The Consultant shall review with the Program Manager baseline schedule of values prepared by the construction contractor to seek sufficient detail, such as by specification section, floor and space segmentation, to evaluate effectively progress payment requests from the construction contractor and provide recommendations to the City.

3.16.18. Upon request by the SFMTA or where it appears necessary from Consultant's own observations, the Consultant shall consult with the PM/CM

Consultant and the Program Manager as to the Contractor's level or percentage of completion of work, quality of work, and Contractor's adherence to the design and specifications.

3.16.19. The Consultant shall advise the City to reject work that the Consultant believes in good faith does not conform to the Contract Documents. Whenever the Consultant considers it necessary or advisable to implement the intent of the Contract Documents, the Consultant will advise the City to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed or completed.

3.16.20. The Consultant shall review proposed procedures and results of testing and special inspection procedures that are required by the construction Contract Documents, and report comments to the City. Review and advise the City on special testing and/or inspection that may arise due to field conditions or as requested by appropriate authorities. It is understood that separate contracts for testing and special inspection consultants, laboratories or agencies will be arranged by the City. Attend inspections with appropriate consultants when requested to do so by the City as a part of Additional Services.

3.16.21. The Consultant shall review and advise the City as to the approval of substitutions proposed by the construction contractor, including advice as to whether or not acceptance of the substitutions will require substantial revision to the Contract Documents. Additional costs incurred by the Consultant for substantial revision, as determined by the City, of documents to accommodate the substitutions or equals shall be compensated under Additional Services, if not due to the Consultant's errors or omissions.

3.16.22. The Consultant shall review and advise the City as to the approval of shop drawings, laboratory reports, samples, wiring and control diagrams, schedules and lists of materials and equipment, and other descriptive data pertaining to specified materials, equipment and storage thereof.

3.16.23. The Consultant shall review documents and materials that are required by the Contract Documents to be submitted for conformance with the design intent of the work and with the information given in or inferable from the Contract Documents. Such review shall be made by the Consultant upon receipt of submittals that have been dated, signed and approved by the construction contractor, except where otherwise directed by the City. The Consultant may note the exceptions taken or not taken, the corrections necessary, and the resubmittals required, and will return the documents or materials with such notations to the construction contractor as directed by the City. Review and action on an item that is a component of an assembly or system shall not necessarily apply to the entire assembly or system. In its agreement with the construction contractor, the City will include a provision (such as clause 4.2.7 for AIA Document A201, 1987 edition) specifying that the Consultant's review of the construction contractor's submittals does not alter the construction contractor's responsibility for errors and omissions in such submittals; it is the Consultant's responsibility to check the Contract Documents prior to advertisement for Bids to ensure that said provision is included.

3.16.24. After compilation of the final punchlist by the construction contractor, the Consultant, in conjunction with the Program Manager will verify the final punchlist, recommend changes, participate in site visits to determine and track the status of the acceptability of all punchlist items, participate in the final review of the Project and advise the City as to the approval of work performed by construction contractor.

3.16.25. Assist the Program Manager and a commissioning agent, if retained by the City, in arranging for building and or facility commissioning, start-up and testing, adjusting and balancing and the coordination of operational testing and proper functioning of all installed equipment. Submit a statement to the City as to the proper functioning of all items of equipment prior to the release of final payment to the construction contractor.

3.16.26. The Consultant shall at all times have access to the construction sites and the work performed thereon.

3.16.27. The Consultant shall have authority to make interpretations and decisions in matters relating to appearance and aesthetic or artistic effects where they do not conflict with any design element previously approved by the City and where such decisions are consistent with the intent of the Contract Documents; provided the City shall retain the authority to make the final interpretations and decisions. Whenever interpreting or making decisions concerning an integrated artwork commissioned by the City, the Consultant must obtain City approval prior to making any such interpretation or decision. The Consultant shall be responsible for any additional construction costs arising out of any aesthetic change initiated by the Consultant after the commencement of construction, unless payment to the construction contractor for and notice to the Consultant to implement such changes have been specifically approved in writing by the City in advance of the Consultant making the changes to the construction documents.

3.16.28. The Consultant shall not have control or charge of and shall not be responsible for construction means, methods, techniques, scheduling, sequences or procedures, for safety precautions and programs in connection with construction of the Project; for the acts or omissions of the construction contractor, its subcontractors or any other persons performing any of the work on the Project (unless directly employed or retained by the Consultant); or for the failure of any of them to carry out the work on the Project in accordance with the Contract Documents.

3.16.29. The Consultant shall coordinate with all artists in the installation of artwork, either by the artists, contractors or separate installers that are to be incorporated in the Project as an integral building or site element as a part of Additional Services.

3.16.30. The Consultant shall not have the authority to stop the work unless specific authorization has been granted in writing by the City.

3.16.31. All design-build systems recommended by the Consultant and submitted by the construction contractor shall be reviewed and approved by the

Consultant in a timely manner for conformance with the intent of the design drawings and specifications.

3.16.32. The Consultant shall prepare record drawings showing changes and relations in the work made during construction based on marked-up prints, drawings and other data furnished by the construction contractor to the Consultant. The City understands and acknowledges that the Consultant must evaluate and verify the accuracy or completeness of information which will be furnished to the Consultant by other parties and required to be incorporated into the record drawings. The Consultant shall be responsible for any inaccuracies, errors, omissions, ambiguities, or conflicts that may be introduced into the record drawings to the extent due to the fault of the Consultant.

3.16.33. Warranty Services. The Consultant shall assist the SFMTA in conducting warranty inspections during the warranty period. The Final Warranty Inspection shall take place no earlier than the twenty-third (23rd) month following Final Completion and no later than the twenty-fourth (24th) month following Final Completion. In the event that systems, components, equipment, and finishes fail to meet the specified performance criteria or the terms of specific product warranties at any time prior to the Final Warranty Inspection, the Consultant shall observe and review the condition of completed work, and provide assistance to the City to develop a list of Corrective Warranty work and a schedule for completion.

3.17. Operations Control Center Design Consultant shall perform as Additional Services feasibility studies, conceptual and preliminary design engineering services, and any required environmental studies for the OCC. If directed by the SFMTA, Consultant shall provide the final design of the OCC as Additional Services.

4. DESIGN RESPONSIBILITY AND STANDARDS.

4.1. Responsibility for Design. In all work performed by Consultant, Subprime Consultants, and Subconsultants, the Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all design work defined herein, including but not limited to Work Product, which includes but is not limited to plans, designs, drawings, specifications, quantity takeoffs and cost estimate review, reports, and other services prepared or performed by the Consultant, Subprime Consultants and Subconsultants under this Agreement. Consultant shall be responsible for the performance of the work of all architects, engineers, cost estimators, experts and subconsultants engaged by the Consultant, including maintenance of schedules, correlation and coordination of designs, and resolution of differences between them. As directed by the SFMTA, Consultant shall be responsible for reviewing, responding with comments (where Consultant finds defects or deficiencies), and recommending for construction design work on the Project performed by engineers and architects employed by the City. Consultant shall be responsible for coordinating and integrating work on the Project performed by engineers and architects employed by the City with Consultant's work, and incorporating the work of Consultant and City into the applicable Work Product or Construction Documents.

4.2. Standard of Performance. The Consultant shall perform its work to conform to highest professional standards applicable to the types of services and work provided hereunder as measured by professional engineering standards applicable in the San Francisco Bay Area. The remedies herein are nonexclusive, cumulative and in addition to any other remedy available to SFMTA under this Agreement or otherwise provided by law or in equity.

4.3. No Waiver. SFMTA's approval of any of the Work Product or services shall not in any way relieve the Consultant of responsibility for the technical adequacy or accuracy thereof. Neither SFMTA's review, approval, acceptance of, nor payment for any of the services or Work Product shall be construed to operate as a waiver of any rights under this Agreement.

4.4. Expertise. Consultant represents that it, its employees, and its Subprime Consultants and Subconsultants possess the professional and technical expertise and experience necessary to perform the work required under this Agreement.

4.5. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Consultant, Subprime Consultants or 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 or reassignment of personnel, but Consultant must supervise all personnel, including those assigned or reassigned at City's request. The Consultant shall submit for SFMTA approval for each employee working on the project: employee's resume, direct hourly labor rate, overhead rate, task number and description of employee's proposed work effort with estimated duration of effort.

5. PROGRAM DIRECTION.

5.1. SFMTA Direction. Consultant shall perform all work under this Agreement under the direction of and to the satisfaction of the SFMTA's Program Officer and Program Manager. 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:

5.1.1. 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.

5.1.2. Review and, where required, approve, disapprove, accept or refuse submittals or other product prepared by Consultant in the performance of its services in accordance with the Design Schedule (described at Section 7.1, *infra*).

5.1.3. Assign or reassign staff to perform particular tasks.

5.1.4. Attend meetings at regular frequencies as determined by the Program Manager or as requested by Consultant to manage the day-to-day progress and requirements of the Project.

5.2. SFMTA Program Manager. Consultant shall direct any request for clarification or other communication concerning Program Direction first to the SFMTA's Central Subway Program Manager. In performing the services provided for in this Agreement, the SFMTA CSP Program Manager identified below shall be the Consultant's liaison with the SFMTA.

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

5.3. Evaluation of Consultant's Performance. The Consultant shall meet with SFMTA no less than quarterly to evaluate Consultant's performance under the Contract with respect to the following:

- 5.3.1.** Consultant's adherence to this Agreement
- 5.3.2.** Quality of performance of Key Team Members and other staff assigned to the Project
- 5.3.3.** Quality of performance of Subprime Consultants and Subconsultants
- 5.3.4.** Management of authorized budget for each Task
- 5.3.5.** Adherence to agreed schedule
- 5.3.6.** Quality of deliverables
- 5.3.7.** Monitoring, reporting and updating of progress of assigned work
- 5.3.8.** Timeliness in resolving issues, including issues arising from performance evaluations
- 5.3.9.** Working relationship between Consultant's team and other agencies

Should the SFMTA be dissatisfied with more than two of the above categories of Consultant performance in the same evaluation, SFMTA 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 SFMTA within five (5) working days a corrective action and schedule plan to be followed by the Consultant with results reported to SFMTA monthly until the problem areas have been resolved or otherwise improved to the SFMTA's satisfaction.

6. PROGRAM BUDGET AND COST CONTROLS.

6.1. Construction Budget. The “Construction Budget”, as set out below, represents the budget for bid and award of the construction contracts listed below. The Construction Budget may not be changed unless such changes are documented and effected through the Project’s Design Control Procedures as set out in the Project Management Plan.

6.1.1. The 2009 Base Year Cost as of the Effective Date of this Agreement for each Station Construction Bid Package are as follows:

CP 4 (Union Square/Market Street Station)	\$168,016,000
CP 5 (Chinatown Station)	\$143,176,000
CP 6 (Moscone Station)	\$86,629,000

The 2009 Base Year Cost excludes construction contingencies, year of expenditure escalation and alternates, either additive or deductive, the cost of furniture, operating and office equipment, systemwide networks, and the cost of artwork that is to be incorporated in the Project as an integral building or site element. The Construction Budget shall be reviewed and amended as set forth herein upon completion of 65 percent, 90 percent, and 100 percent completion for each of for each of the above Construction Contracts. The Construction Budget as of the Effective Date is attached hereto as Appendix O.

6.1.2. The 2009 Base Year Costs for the Stations, as listed in the preceding section, includes all construction costs except for the following:

- a. The estimate for UMS and MOS do not include the SFMTA’s Public Art Contribution to the Arts Commission, and costs for permanent station utility connection fees, and the cross passage;
- b. The estimate for CTS does not include the SFMTA’s Public Art Contribution to the Arts Commission, and costs for permanent station utility connection fees;

6.1.3. Amendments to the Construction Budget shall be determined as follows:

(a) The City shall prepare detailed cost estimates. Consultant shall provide quantity takeoffs for the Project elements covered under this Agreement using the Work Breakdown System (“WBS”) provided by the City. Consultant shall review the construction cost estimates provided by the City and shall provide comments.

(b) If the Consultant disagrees with the City's estimate of the Construction Budget and the disagreement cannot be resolved by conferring with the City's Program Manager, the Consultant may request that the City cause to be prepared an independent third party cost estimate by a reputable estimator acceptable to the Consultant and the City. The cost of this third party estimate shall be shared equally by the City and the Consultant. Said third party cost estimate shall not be binding on any party, but will provide a basis and measure for further mediation of the dispute.

(c) The process for reviewing and amending the Construction Budget is summarized in the following table:

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[Construction Budget] =	[Σ2009 or Current Base Year Cost]	+ [ΣAgreed Adjustments]
<p>Construction Budget for each Construction Contract Package will be recalculated after each of the submittals leading up to bid.</p>	<p>Base Year Cost will be the sum of the direct capital construction costs in 2009 base year dollars for each of the project elements that make up the Construction Contract Packages. Base year costs as defined by FTA do not include allocated contingency and do not include escalation to year of expenditure. Project elements included in each Construction Contract will be identified using the FTA Standard Cost Classification (SCC) categories to be listed in Appendix N of Terms and Conditions. The reference cost estimate is: “<i>Central Subway Project, 2009 Capital Cost Estimate</i>” Rev 0, August 31, 2009.</p>	<p>All allowed adjustments to the above base year Construction Budgets require approval of the Central Subway Configuration Management Board (CMB). Adjustments will be requested to reflect:</p> <ul style="list-style-type: none"> o Changes in Project Configuration o Design Development[– i.e, a change in the quantities or quality of materials resulting from refinement/advancement of design) o Adjustments to Year of Expenditure (YOE) o Materials cost escalation as determined using published ENR construction cost indexes o Adjustments due to unforeseen conditions at time of bid (e.g., excessive escalation of indirect costs such as fuel and availability of labor) o Allocated contingencies o Adjustments to cost components shall be documented by originator and reviewed by other contributors (SFMTA and it’s Consultants and Stakeholders)

6.1.4. For each Station, the Consultant is responsible for designing a comprehensive and complete Construction Contract Bid Package that does not exceed 105 percent (105%) of the Construction Budget for that Station.

(a) In the event that cost estimates developed at 100% design completion or changes initiated by Consultant in quantity estimates or construction materials during design development between 90% and 100% completion indicate that the Construction Cost will exceed One Hundred Five Percent (105%) of any Construction Budget for a Station, Consultant shall, at the request of the City and at no additional cost to the City (i.e., for no further reimbursement, Fixed Fee or other compensation), revise the design and Construction Documents, plans and specifications for that Station until the construction cost does not exceed One Hundred Five percent (105%) of the Construction Budget for that Station, subject to the conditions listed in Section 6.1.2.

(b) In the event that the City receives a responsive lowest bid from a responsible bidder that exceeds One Hundred Five Percent (105%) of the Construction Budget for a Station, the Consultant shall, at the request of the City and at additional cost but no additional Fixed Fee to the City: (a) revise the design and Construction Documents, plans and specifications for that Station and (b) assist the City with negotiating or re-bidding of the contract for that Station, until the construction cost does not exceed One Hundred Five percent (105%) of the Construction Budget for that Station, subject to the conditions listed in this Section 6.

6.1.5. Bid Alternates:

(a) The intent of the SFMTA is to use Bid Alternates when the anticipated Construction Cost Estimate is expected to exceed the Construction Budget and the Consultant has exhausted all other avenues available to meet the Construction Budget.

(b) Pre-Bid: The Consultant and the City will confer at all phases of design and before the design of any alternates.

(c) The Consultant shall design Bid Alternates to be incorporated into each Construction Contract Package. Bid Alternates shall be clearly identified and set out in the Construction Documents. Bid Alternates will be identified and recommended by the Consultant at 65% Design Submittal. The City shall determine the order in which it would accept such Bid Alternates in the Construction Bid Package. A \$200,000 Allowance in aggregate has been established in Basic services to be used for designing Bid Alternates. This allowance includes labor, overhead and fee.

6.1.6. In the event that redesign services are necessary after the City has received bids for construction of the Project, the City shall cooperate with the Consultant in approving design changes, including, if necessary, changes which reasonably affect the size and quality of the Project. The final decision as to what elements of the Project are redesigned shall rest solely with the City. The Consultant must complete any redesign within two (2) months of notification by the City of its intent to redesign.

6.1.7. In the event that redesign services are performed after the Consultant has received notification by the City to redesign and modify the Contract Documents, preparation of modified Construction Documents and review and acceptance of the Engineer's Estimate of Construction Cost prepared by the City's consultant, and obtaining City approval of the final Construction Documents, shall be the limit of the Consultant's strict responsibility arising out of the establishment of the Construction Budget. This, however, shall in no way limit the Consultant's responsibility or the City's remedies in the event that the reason that the Construction Budget was exceeded was the result of the Consultant's negligent acts, errors or omissions.

6.1.8. Should the City accept a bid for a Construction Bid Package which exceeds the Construction Budget for that portion of the Project or for the overall Construction Budget for the Project, Consultant shall not receive a proportional increase in the Fixed Fee. Construction Budget may be adjusted in the SFMTA's sole discretion based on changes in market conditions and rates as documented by changes in relevant indexes published in the Engineering News Record (ENR). Construction Budget Limits also may be adjusted based on changes in Project scope, as quantified by the Central Subway Design Change Control Process.

6.2. Cost Estimating

6.2.1. Within two months of the SFMTA's issuing NTP to Consultant, the Consultant shall review the existing conceptual and preliminary design documents for the Project and shall also review the Construction Budgets for each Contract Bid Package, as listed in Section 6.1.1. Within three months of NTP, Consultant shall then prepare quantity takeoffs to be used by the City's Consultant to prepare an update to the Project Construction Cost ("Cost Estimate") for SFMTA approval. The quantity take-offs and estimating units shall be consistent with the level of design completion and be accompanied with a statement of assumptions regarding design contingencies and exclusions.

6.2.2. The SFMTA will provide or cause to be provided the updated unit pricing, and the Consultant will provide the construction quantities necessary to create the Cost Estimate at the following phases of design: 65 percent, 90 percent completion of Construction Documents for construction; and 100 percent Construction Documents for each construction bid package. The Consultant will be provided a copy of the resulting completed Cost Estimate for review and comment.

6.2.3. With each update to the Cost Estimate, consultant shall consider all changes to estimated costs as cost trends, and the Consultant shall analyze such information to determine the cause of the cost change, reconcile cost estimate variances with the contemporaneous cost estimates by the City and/or another consultant for the Project, and present the reconciled Cost Estimate to the City for approval according to the City Configuration Management Procedure (CMB).

6.2.4. The Consultant shall review and accept the Engineer's Estimate of Construction Cost based on the complete (100 percent) Construction

Documents issued for bidding, and considering the Construction Budget for the Project.

6.3. City Cost Change Control Procedure.

6.3.1. The Consultant shall assist and cooperate with the City to control design or scope changes that would affect the cost of the Project during the Project design and construction. The Consultant shall comply with any cost change control procedure as may be established by the City or another consultant for the Project. The purposes of the procedure are:

- (a) To assure that the City requirements for the Project are met;
- (b) To assure that estimated construction costs are understood as the design is developed, and remain within the Project Construction Budget ;
- (c) To assure that all proposed changes to the design properly analyze cost effects;
- (d) To avoid unnecessary re-design work by the Consultant; and
- (e) To avoid unnecessary additional costs to the City.

6.3.2. The Consultant shall fully inform the City of any proposed changes to the design recommended by the Consultant, or to the scope of the Project requested by the City or other stakeholders, that would affect the estimated (added or decreased) construction cost for the Project. The Consultant shall support the PMCM in reviewing with the City the benefits as well as costs of the proposed changes, including the potential effect to City operating costs for the Project. The Consultant shall complete a Change Request Form provided by the City providing a summary of any proposed change, and attach such other analyses as may be appropriate for City consideration. Should the recommended change increase the estimated cost of the Project, the Consultant shall cooperate with the City to identify other changes to the Project that could reduce cost and offset the recommended increased cost, for approval by the City.

6.3.3. No change shall be incorporated into the design documents unless it has been first approved by the City by written approval of the Change Request Form.

6.3.4. City approval of any change in the design shall not entitle the Consultant to a change in the Consultant's Fixed Fee, unless the scope of the Project changes and the SFMTA approves additional cost is in writing.

6.4. Task Budgets. During performance under this Agreement, the Consultant shall manage its work and that of its Subprime Consultants and Subconsultants so that all services are provided and performed in a cost-effective and efficient manner. Within each Design Plan, a task budget shall be established for each task. The Consultant shall complete its work and services

within said task budgets. The SFMTA will control the budget at the work Sub-Task level. Sub-task budgets may be modified only upon authorization of the SFMTA Program Manager. Sub-task budgets shall not be increased because of any unwarranted delays, conduct or costs attributable to the Consultant, but will be increased by SFMTA in the event of Additional Work within or affecting a task, because of unavoidable delay by any governmental action, or other conditions beyond the control of the Consultant that could not be reasonably anticipated.

6.5. Retention. The SFMTA shall retain Five Percent (5%) of every payment to Consultant as security of the faithful performance by the Consultant of all the conditions, covenants and requirements specified or provided in this Agreement. The City shall release amounts retained to Consultant as follows:

Upon SFMTA Board's award of a Station construction contract, the SFMTA will release 75 percent of amounts retained from payments for the design work of that Station construction contract. The SFMTA will release the remaining amounts held in retention for design work upon the SFMTA's acceptance of work as substantial construction completion of the Stations.

6.5.1. City shall release all remaining amounts held in retention upon the City's acceptance of Consultant's work.

6.6. Accounting of Retention. Consultant shall track its work and invoices so that retention held for design, respectively, may be separately accounted. Consultant shall provide back-up documentation showing such accounting with any request for release of retention.

6.7. Letter of Credit in Lieu of Retention. Consultant, in lieu of retention, may submit to the City an irrevocable letter of credit drawn from a bank and on a form acceptable to the City for the value of the retention for which Consultant seeks release.

7. PROGRAM SCHEDULE.

7.1. Schedule of Services. Attached to this Agreement as Appendix M is a preliminary Design Schedule indicating the times and sequences assumed for the completion of all services required under this Agreement. Within fifteen (15) Days after the SFMTA issues NTP to the Consultant, the Consultant shall submit for City approval a final progress Design Schedule. The progress Design Schedule shall be in the form of a progress Gantt (schedule bar) chart indicating phases, tasks, durations and times, and sequences of key activities and tasks, including City and other required reviews and approvals as related to the services in this Agreement, but excluding detailed construction schedules. Upon the SFMTA's approval of the Design Schedule, the Consultant shall adopt the Design Schedule as a baseline schedule, and on a monthly basis submit a progress schedule update to the Design Schedule indicating actual progress compared to the baseline schedule.

7.2. 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 as identified in Appendix A in a manner so as to not delay the prosecution of any Work.

7.3. Force Majeure. 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.

7.4. Extension of Time. If the Consultant has been delayed through no fault of its own, and as a result will be unable, in the opinion of the SFMTA, to complete performance fully and satisfactorily within the time provided in the Design Schedule, the Consultant, upon submission of evidence of the causes of the delay and an amended Design Schedule, may at the discretion of the SFMTA, be granted an extension of time for performance equal of the period the Consultant was actually and necessarily delayed.

7.5. Construction Support Services. The Parties estimate that the SFMTA will require and that Consultant shall provide Construction Support Services for 84 months following completion of the Construction Bid and Award. Should the Consultant be required to perform Construction Support Services for a period beyond a total duration of 84 months following completion of the Construction Bid and Award, due to no fault of the Consultant, the Consultant shall be entitled to additional compensation, conditional upon Consultant's providing to the SFMTA complete and accurate documentation of all actual increased cost of performance of its services for that additional period. In the event that the construction is delayed beyond the scheduled completion date due to the fault of the Consultant, as determined by the City in its sole discretion, then the Consultant shall continue to provide Construction Support Services in accordance with this Agreement for the additional time delay attributed to the Consultant at no additional charge to the City. In such event, the City reserves all rights as against the Consultant. The Consultant may submit any disputed amounts as a claim.

7.6. Commencement and Completion of Project Work. After execution of this Agreement by SFMTA and the Consultant and the contract is certified by the City Controller's Office, SFMTA will issue a written Notice to Proceed on the Project or specific tasks thereof. Such notices to proceed will be provided for specific tasks identified as necessary to produce specified Work Product and shall set forth the date of commencement of the work, a description of the work to be performed, the schedule for the work authorized, and the budgets for such tasks.

7.7. Design Plans. The Parties will meet no later than 10 days after the SFMTA issues NTP to the Consultant to agree on a Design Plan consistent with the Project milestone dates, which shall include a description of the Work and Work Product

that the Consultant shall complete applicable Milestones and appropriate compensation for said Milestones.

8. CHANGES IN SCOPE.

8.1. Work Revised at SFMTA Request. SFMTA may, at any time, by written order direct the Consultant to revise portions of the Work Product previously completed in a satisfactory manner, delete portions of the Project, or make other changes within the general scope of the services or work to be performed under this Agreement. If such changes cause an increase or decrease in the Consultant's cost of, or time required for, performance of any services under this Agreement, an equitable cost and/or completion time adjustment shall be made and this Agreement shall be modified or a Task Order issued in writing accordingly. The Consultant must assert any claim for adjustment under this Section in writing within thirty (30) days from the date of receipt by the Consultant of the notification of change or such claim shall be waived. The Consultant shall not perform any work or make any revisions to the Project Services or Scope of Work until SFMTA has provided written direction.

8.2. Proposal for Additional Work. SFMTA may, at any time, request that the Consultant perform Additional Work beyond the scope of the Scope of Work set out in this Agreement. If the SFMTA desires the Consultant to perform Additional Work, the SFMTA will submit to Consultant a request for services, to which the Consultant will respond within 30 days with a Proposal for Additional Work, as described below, which the parties will then negotiate. If the Consultant discovers any work to be otherwise out-of-scope and necessary to the Project, the Consultant shall submit to the SFMTA a proposal for the Additional Work, as described below. A proposal for Additional Work shall include:

8.2.1. A detailed description by task and subtask of the Additional Work to be performed and the means and methods that will be used to perform it;

8.2.2. Milestones for completion for each subtask and deliverables at each milestone for the Additional Work;

8.2.3. Personnel and the subconsultants to be assigned to each part of the Additional Work along with a brief justification as to why such personnel are qualified to perform the Additional Work;

8.2.4. A detailed cost estimate for each subtask of the Additional Work showing:

- (a)** Breakdown of estimated hours and direct salaries by individual for each activity required to complete all tasks and subtasks;
- (b)** Overhead, including Salary Burden costs;
- (c)** Estimated out-of-pocket expenses;
- (d)** Proposed additional Fixed Fee.

8.3. Proposal Review.

8.3.1. The SFMTA will review the proposal and determine whether the proposed work is Additional Work, and if so, then negotiate a final written description of services staff assignments, deliverables, schedule requirements, and budget for all tasks and subtasks included in the Design Plan or Task Order.

8.3.2. 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.

8.3.3. In the event that City and Consultant cannot reach agreement on the terms of any Task Order for Additional Work, 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 26.12 (Resolution of Disputes) of this Agreement while the additional Task Order is being performed. The City shall not deny the Consultant reasonable compensation for Additional Work performed under an approved Task Order.

8.4. Request for Additional Work. 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 Program Manager, with copies to parties identified in Section 26.1(Notices to the Parties), in writing within five (5) working days of discovering such extra work or services to request authorization to perform the Additional Work. Neither Consultant nor any Subprime Consultant or Subconsultant shall be reimbursed for out-of-scope work performed without first obtaining approval of Program Manager in accordance with the procedures set forth below.

8.5. Approvals Required.

8.5.1. No services for which additional compensation will be charged under this Section or any other section of this Agreement by the Consultant shall be furnished without the prior written authorization of SFMTA specifying the changes to be made and the price to be charged per said change.

8.5.2. Before beginning Work on any task under a Design Plan or Task Order, the Design Plan or Task Order, including the scope of services, schedule requirements, and budget must be signed by both Parties' authorized representatives and the Program Manager must issue authorization to the Consultant to begin work.

8.6. Consultant at Risk. If the Consultant proceeds to do work that it perceives to be Additional Work 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 Additional Work without City's prior written approval.

8.7. Changes to Design Plan. The SFMTA may direct Consultant to make changes in the Design Plan at any time in its sole discretion. The SFMTA, acting through the 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 Design Plan or Task Order and to direct Consultant to amend a Design Plan to those ends.

8.8. Decrease in Scope. The SFMTA may reduce the Scope of Work of the Consultant at any time and for any reason upon written notice to the Consultant specifying the nature and extent of such reduction. In such event, the Consultant shall be duly compensated for work already performed, including the payment of all necessary costs due and payable under this Agreement prior to receipt of written notification of such reduction in scope. The SFMTA shall compensate Consultant as Additional Work for the Consultant's Revision of Work Product and other documents necessitated by the SFMTA's reduction of Consultant's Scope of Work shall be Additional Work.

8.9. Change Through Fault Of Consultant.

8.9.1. In the event that any change is required in the Work Product, the Construction Bid Packages and any other plans, specifications, drawings or other documents because of a defect of design or non-constructability of design, or non-workability of details, or because of any other fault or error of the Consultant, no additional compensation shall be paid to the Consultant for making such changes.

8.9.2. In the event the SFMTA is required to pay to a construction contractor additional compensation or any compensation for additional work as a result of an error or omission by the Consultant that violates the applicable professional standard of care, the SFMTA may charge to the Consultant against any amount owing to Consultant any cost or expense that the SFMTA would not have sustained but for such error or omission. The SFMTA shall provide Consultant notice of a contractor's claim for additional compensation arising out of such error or omission and opportunity to respond to those allegations prior to assessing any charge.

9. SUBCONTRACTING.

9.1. Assignment of Work. Consultant is permitted to subcontract portions of the services it shall perform under this Agreement as provided in its Proposal and as approved by the SFMTA. Consultant may reassign work assigned to Subprime Consultants and Subconsultants as provided in its Proposal only with the prior written approval by the SFMTA. Consultant shall itself perform the work of a Subprime Consultant and of a Subconsultant for at least on Construction Bid Package, as provided in the Organization Chart attached to this Agreement as Appendix E. Execution of this Agreement shall constitute approval of the firms and individuals listed

in Appendix B (Directory of Subconsultants), to this Agreement as subconsultants on this Project.

9.2. Responsibility. The Consultant shall be responsible for the professional standards, performance, and actions of all persons and firms performing subcontract work under this Agreement at any and all tiers, including but not limited to the Subprime Consultant and Subconsultant levels.

9.3. Substitutions of Subconsultants. Substitutions may be made for any subconsultants listed in Appendix B, "Directory of Subconsultants," for: (a) failure to perform to a reasonable level of professional competence; (b) inability to provide sufficient staff to meet the Project requirements and schedules; or (c) unwillingness to negotiate reasonable contract terms or compensation. Consultant may only substitute subconsultants with the prior written approval of the SFMTA Program Officer.

9.4. Prompt Payment of Subconsultants. 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 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 ten (10) working days following receipt of payment from the City, Consultant shall provide City with a declaration under penalty of perjury that it has promptly paid such subconsultants for the work they have performed and stating the amounts paid. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

9.5. 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. This Section shall not impair or limit any remedies otherwise available to the Consultant or a subconsultant in the event of a dispute involving late payment or nonpayment by the Consultant or deficient subconsultant performance or nonperformance by the Consultant.

9.6. Retention. Consultant may withhold retention from subconsultants if City withholds retention from Consultant. Should retention be withheld from Consultant, within thirty (30) calendar 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.

9.7. Substitutions of SBE Firms. If Consultant wishes to substitute a Subprime Consultant or 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 SFMTA's CCO with any documentation requested to support the substitution. The CCO must approve the request in writing for the substitution to be valid.

9.8. Addition of Subconsultants. The City reserves the right to require Consultant to retain a subconsultant or subconsultants that possess specific expertise to provide services under this Agreement, if the City determines that the Consultant does not have specific expertise necessary for the timely and successful completion of the Project.

9.9. Subcontracts. Consultant shall fully inform all Subprime Consultants, and shall require each of its Subprime Consultants to warrant that it has fully informed each of its respective Subconsultants, of the terms and conditions of this Agreement. Consultant shall ensure that all services performed and material furnished and the manner by which those services and materials are provided shall conform to the requirements of this Agreement. The terms and conditions of Consultant's subcontracts shall conform to the requirements of this Agreement. Each of Consultant's Subprime Consultant contracts and a cost summary of each of those agreements shall be subject to review by the SFMTA prior to the Subprime Consultant proceeding with the work. Upon request, Consultant shall provide the SFMTA copies of any written agreements between a Subprime Consultant and a Subconsultant.

9.10. Activity Reports. The Consultant shall submit monthly reports with its monthly invoices for payment, describing all work completed by Consultant, Subprime Consultants and Subconsultants during the preceding month and copies of all invoices relating thereto.

10. SMALL BUSINESS ENTERPRISE PROGRAM.

10.1. 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 C.F.R. 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>.

10.2. Compliance with SBE Program. Consultant shall comply with the SBE provisions contained in the attached Appendix G, 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.

10.3. SBE Goal. The goal for SBE participation is Thirty Percent (30%) of the total dollar amount awarded for the services to be performed under this Agreement.

10.4. 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.

11. WORK PRODUCT, DELIVERABLES AND SUBMITTALS.

11.1. Construction Documents Requirements.

Work Product shall be created and maintained as follows:

11.1.1. CADD drawings shall be provided in AutoCAD R2004 or more recent version, and corresponding pen files and image files, or other computer drawing and drafting software approved by the City.

11.1.2. Written documents, spread sheets and cost estimates on Microsoft Office Suite 2003 (Word and Excel) or as otherwise agreed to by the parties.

11.1.3. Critical Path Method Schedules in Primavera Project Planner P6 Scheduling Software.

11.1.4. Audiovisual presentations in Microsoft PowerPoint 2003.

11.1.5. Image files in JPG, GIF, PIC, TIF and BMP formats. These images shall be made available on any storage format selected by the City.

11.1.6. Renderings in Adobe Photoshop 7.0 and 3D Studio VIZ, or other software approved by the City.

11.1.7. Presentation boards, mounted on 3/8-inch or 1/4-inch Gatorboard.

11.1.8. Architectural models shall be composed of painted Plexiglas, wood or other materials as requested as a part of Additional Services and as approved by the City and mounted on wooden base with optically clear Plexiglas panel covering suitable for public display.

11.2. Transmittal of Work Product. As directed by the SFMTA, and after completion of each task and subtask, the Consultant shall transmit to Agency all Work Product, including but not limited to originals, produced or accumulated in the course of its and the Subprime Consultants' and Subconsultants' work under this Agreement. The Consultant's Project Manager and Key Team Members shall thoroughly review and approve all Work Product in writing prior to transmitting the Work Product to the SFMTA. Consultant shall retain a copy of all Work Product for its records. Upon the termination of this Agreement, or prior to final payment, upon demand by the SFMTA, the Consultant shall surrender forthwith to the SFMTA all Work Product prepared, developed or kept by Consultant in connection with or as part of the Project. Any use of the Work Product by a party other than the City and its contractors and consultants is at the sole risk of the user.

11.3. Reproduction of Work Product. The Consultant shall arrange and provide for printing (or other required reproduction) of three master copies of all final designs; Consultant shall also deliver all Work Product in electronic format as determined by SFMTA.

11.4. Agency's Responsibilities Regarding Submittals. The SFMTA will review and comment on Consultant's submittals generally within 15 Days of receipt or such other time as agreed by the SFMTA in the Design Schedule (described in Section

7.1, supra). The Agency and Consultant will establish a timetable of submittals and reviews during initial Project coordination meetings, which the Consultant shall include in the Design Plan. 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.

12. CONSULTANT PERSONNEL.

12.1. Consultant’s Project Manager. The Consultant agrees to commit and assign an Engineer or Architect as the Project Manager to direct Consultant’s Work and to serve as the official contact and spokesperson on behalf of the Consultant in matters related to the Project for the Term of this Agreement. The Consultant’s Project Manager shall have signature authority to bind Consultant. The Consultant’s Project Manager must work in the project design office in San Francisco for the Design Phase of the Agreement. The Consultant has identified Nasri Munfah, as the Consultant’s Project Manager during the design phase. At the end of the design phase, the Consultant and SFMTA will review the Project Manager position in the interest of reaching a new agreement on the assignment of the Project Manager for the Construcion Phase of this contract.

12.2. Key Personnel. The Consultant agrees that 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, and shall work at the Project design office in San Francisco during the Design Phase of the agreement. Key Personnel shall be assigned to complete the Final Design, provide bid support and construction support services, unless otherwise authorized by the SFMTA. At the end of design phase, the Consultant and SFMTA shall review the list of Key Personnel in the interest of reaching an agreement on assignment of Key Personnel for the Construction Phase of this contract. The SFMTA shall not arbitrarily refuse Consultant’s request to reassign a Key Team Member, but such reassignment shall not delay or otherwise harm the Project, which determination shall be in the SFMTA's sole discretion. Consultant’s Key Personnel during the design phase are:

<u>PB:</u>	<u>MWA:</u>	<u>KHA</u>
<ul style="list-style-type: none"> • Nasri Munfah (PM) • Dan Yavorsky (UMS Manager – PB) • Fadi Walieddine (Electrical Lead / Interface Manager – PB) • Ken Johnson (Geotechnical Lead – PB) 	<ul style="list-style-type: none"> • Jeff Tusing (MOS Manager – MWA) 	<ul style="list-style-type: none"> • Denis Henmi (CTS Manager – KH) • Christian Karnar – (CTS Structural Lead - Dr. Sauer)

12.3. Substitution of Key Personnel.

12.3.1. Substitutions of Key Personnel will not be allowed except for extenuating circumstances, such as death, illness or departure from the firm, or with the City's prior approval, which approval will not be arbitrarily 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 Program Officer for approval.

12.3.2. 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, unless the SFMTA's Program Manager grants an extension to that time limit in writing. Consultant's failure to replace a Key Team Member shall be cause for the City to suspend invoice payments. 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.

12.3.3. Upon completion of the Design Phase, the Consultant may request SFMTA authorization to reassign one or more Key Personnel with persons who have the requisite experience and expertise to provide construction support services to the CSP. The SFMTA shall not unreasonably deny Consultant's requests to substitute Key Personnel from the Design Phase with. No less than 30 calendar days prior to start of construction, the Consultant shall provide for the SFMTA's consideration and review: (a) an updated organization chart (in the same format as the chart set out in the Appendix E); (b) identify the candidates that it seeks to assign as Key Team Members for construction support, and provide those persons' respective qualifications. If the Agency rejects a candidate, within 10 working days the Consultant will propose another qualified candidate for SFMTA review and approval. Once accepted by SFMTA as Key Personnel, the candidate shall be subject to the restrictions on reassignment of Key Personnel set out in Section 12.5.

12.4. Construction Support. All Key Personnel who participated in the design of the Project shall be available if possible through completion of construction to respond to RFI's and otherwise provide Construction Support for the Project, as required. Key Personnel who have been reassigned by Consultant must acknowledge receipt of an RFI within 48 hours of transmission, and must respond to the RFI as provided in Section 16 of the Scope of Services.

12.5. Departure Notice and Corrective Action Plan. Consultant shall advise SFMTA immediately any time a Key Team Member severs employment or otherwise deviates from his or her committed role or time on the Project. Consultant shall provide a corrective action plan to replace that Key Team Member within 30 days of said notice. All candidates to replace a departing Key Team Member must have experience and expertise similar to the Key Team Member he or she would replace.

12.6. Reassignment Costs. Consultant shall bear any additional costs incurred in substituting personnel, including Key Personnel. Such costs include relocation expenses, expenses related to recruiting and hiring, training and learning on the job.

12.7. Liquidated Damages. Consultant acknowledges that the SFMTA's selection of Consultant 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. The SFMTA reserves the right to require Consultant to replace or reassign any personnel assigned by Consultant to the Project, including but not limited to Key Team Members. 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 12.5 shall not apply. If the SFMTA suspends the Project longer than six months, then Consultant may reassign Key Personnel without payment of liquidated damages.

13. COMPENSATION.

13.1. 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 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. Notwithstanding any other provision of this Agreement, 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 13.1 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

The SFMTA shall promptly inform the Consultant if the SFMTA learns of a threat to Project funding, and shall work with Consultant to minimize financial impacts.

13.2. Guaranteed Maximum Costs

13.2.1. 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.

13.2.2. 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.

13.2.3. 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.

13.2.4. 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.

13.3. Total Amount.

13.3.1. The total amount of compensation under this Agreement for all Work performed by Consultant, shall not exceed Thirty Five Million Fifty Nine Thousand Two Hundred and Fifty Two Dollars (\$35,059,252) for Basic Services, and an additional Four Million Eight Hundred and Ninety Thousand Seven Hundred and Seven Dollars (\$4,890,707) for Optional Services. The total amount of compensation shall be adjusted based on an audit performed by each respective consultant of the overhead rate of KHA and MWA as a result of procuring and maintaining a project specific insurance rider or practice rider as identified in clause 15.5. This adjustment shall be made through the contract modification process as supported by the results of audits performed in accordance with the provisions of article 13.11. The fixed fee will not be affected by the above.

13.3.2. The prices listed above for Basic Services and Optional Services are inclusive of all direct labor costs, other direct costs, indirect costs and Fixed Fee for all Work performed under this Agreement subject only to authorized adjustments as specifically provided in this Agreement. Said amounts shall include all Work provided on a Cost-plus-Fixed-Fee basis or on a negotiated Lump Sum Price basis. In the event the Consultant incurs costs in excess of the Total Price, adjusted as provided herein, the Consultant shall pay such excess from its own funds and SFMTA shall not be required to pay any part of such excess and the Consultant shall have no claim against SFMTA on account thereof.

13.4. Fixed Fee.

13.4.1. For all of the Consultant's Basic Services, which are all services provided by Consultant except for those tasks and work specifically identified as

Additional Work, the Agency shall pay the Consultant a Fixed Fee, which is Consultant's profit for performing the Basic Services under this Agreement. The Fixed Fee shall not exceed a sum total of Three Million Three Hundred Eight Thousand Seven Hundred Eighteen Dollars (\$3,308,718) for Basic Services and an additional Four Hundred Seventy Four Thousand Eight Hundred Twenty One Dollars (\$474,821) for Optional Services. The Fixed Fee, which is profit, will be allocated to the Prime and Subconsultants and is included in the Total Price set forth above. The SFMTA will pay Consultant the Fixed Fee proportionate to the completion of the design.

13.4.2. Payment of the full Fixed Fee is not guaranteed; to receive the full Fixed Fee Consultant shall fully perform all Work described in this Agreement in compliance with the standards of performance described herein.

13.4.3. It is understood and agreed that the Fixed Fee is a fixed amount that cannot be exceeded because of any differences between the Total Price and actual costs of performing the work required by this Agreement, and in no event shall payments to the Consultant exceed said Total Price, adjusted as provided herein. The Fixed Fee is based on earned value to the Project, and bears no relation to value of costs incurred by Consultant or reimbursed by the SFMTA. The SFMTA may approve an increase in Fixed Fee only if such increase is required due to an increase in the Basic Services scope of work or to "Additional Work" that increases the scope of work. The Fixed Fee shall not be increased for Consultant's additional level of effort to complete Basic Services. It is further understood and agreed that the fixed fee is only due and payable for Project work for which SFMTA has given notice to proceed and for which the Consultant has satisfactorily completed.

13.4.4. The Fixed Fee will be prorated and paid monthly in proportion to the Project work satisfactorily completed. The proportion of work completed shall be documented by invoices and shall be determined by a ratio of the total costs to date compared to the Total Price, less profit. A payment for an individual month shall include that approved portion of the fixed fee allocable to the Project work satisfactorily completed during said month and not previously paid. Any portion of the fixed fee not previously paid in the monthly payments shall be included in the final payment. The method of proration may be adjusted by SFMTA to reflect deletions or amendments in the Project work that are approved as herein described.

13.5. Change in Scope of Services. 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(s) or Design 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 Appendix C (Summary of Fees) to this Agreement or other agreed document setting out the relative value of tasks. If the Scope of Services is increased, then the Parties will negotiate an appropriate Fixed Fee for the Additional Services. Any negotiations for changes in the scope of services shall be subject to the agreement of the SFMTA's Program Officer and the Consultant. The Consultant shall do no work in addition to or beyond the scope of the services set forth and contemplated by this

Agreement unless and until it is authorized to do so by the issuance to it of a "Modification of Contract," duly executed and approved.

13.6. Calculation of Compensation. Consultant acknowledges and agrees that the Agency shall compensate Consultant for its Work under the Agreement either by: (a) by Cost-plus-Fixed-Fee, in which the SFMTA shall reimburse Consultant Reimbursable Expenses to compensate Consultant its costs and applicable Overhead and pay a Fixed Fee proportionate to the value of the Work ("Cost-plus-Fixed-Fee") within a stated amount (amount not to exceed); or (b) Lump Sum, negotiated for specific tasks approved as Additional Work, identified in an approved Task Order or Design Plan.

13.7. Redesign Due to Consultant's Error If during the course of construction, the City determines at its sole discretion that modifications to Construction Documents or Contract Documents are required due to errors or omissions on the part of the Consultant or its subconsultants in the final Construction Documents working drawings and specifications, the Consultant shall not be entitled to additional compensation for the cost of developing, preparing or reproducing the necessary revised drawings and specifications to correct said errors or omissions nor shall the Consultant be compensated in its fee for the cost of extra design work made necessary by errors or omissions of the Consultant or its subconsultants.

13.8. Cost Plus Fixed Fee Payment. For all Work that the City does not designate as Lump Sum Additional Work, the City will reimburse Consultant for Reimbursable Expenses (allowable costs) and will pay the Consultant a Fixed Fee proportionate to the value of the Work. 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 and as allowed under the compensability standards set out in 48 C.F.R. parts 31.105, 31.2, 31.6 and the Cost Accounting Standards set out in 48 C.F.R. part 9904 et seq. Compensation for Cost-plus-Fixed-Fee Work will be computed as follows:

13.8.1. Actual direct salaries paid by Consultant and subconsultants as shown in Appendix C; Overhead of Consultant and subconsultants as shown in Appendix C (Summary of Fees), and as described herein.

13.8.2. Actual costs or prices of approved Reimbursable 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.

13.8.3. Consultant shall not "mark-up" or request additional compensation for work performed by subconsultants.

13.8.4. Costs for which Consultant seeks compensation must be (a) necessary in order to accomplish the work under an accepted Design Plan or Task Order, and (b) be reasonable for the services performed.

13.8.5. A Fixed Fee invoiced as a proportionate share of the total Fixed Fee for the task.

13.8.6. All compensation due to Consultant for all Work performed under this Agreement shall be computed in conformance with Appendix C attached hereto.

13.9. Additional Work. Where the City designates Additional Work to be performed, the Parties shall negotiate a reasonable Cost-plus-Fixed Fee amount or a Lump Sum amount as compensation for the Additional Work. The SFMTA shall in its sole authority determine which pricing method shall be used for specified Additional Work. The City shall make monthly progress payments for Lump Sum Work based on agreed Milestones or proportionate to the percentage of tasks completed, as provided an approved Task Order, where the time to complete all Lump Sum Work under the relevant Task Order exceeds one month.

13.10. 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 C. The direct salary rates in Appendix C may be adjusted at twelve (12) month intervals, but each increase shall be no more than the Consumer Price Index (CPI). 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. Consultant shall not make any individual salary adjustments above Consumer Price Index for which the SFMTA would incur additional costs unless approved by the SFMTA's Program Manager in writing and 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.

13.11. Overhead Rates - Provisional Rates and Annual Audit. The overhead rates applicable to Consultant and its subconsultants are listed in Appendix H, which is incorporated by reference as if fully set out here. Field Office Overhead rates are applicable to all Consultant and subconsultant personnel who are working 40 hours a week at the Project Field Office for more than six months annually. Said employees are not working out of their home offices, and are therefore not receiving home office support in their day-to-day activities, so the hours they bill do not qualify for the Home Office Overhead rate. The Field Overhead rate is a reduced rate as consideration for the support those personnel receive from SFMTA. The purpose of the Field Office Overhead Rate is to reimburse the Consultant for the Salary Burden and home office support provided to the field employees. Home Office Overhead rates are applicable to all other personnel who provide non-continuous or part time services to the project.

The rates set out in Appendix H are provisional and shall apply only for one year following NTP. Commencing within three months after the first anniversary of NTP, the City may audit Consultant's and subconsultants' books and records to determine the actual rates of compensation due. The Federal Acquisition Regulations (FAR) shall be used for the purposes of this audit to provide guidance as to the calculations of the Overhead rates and Reimbursable Expenses to the extent the FAR does not conflict with standards set out in this Agreement. 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 three months of the anniversary of NTP.

13.12. 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 if in the opinion of the Program Manager the funds are no longer necessary for the original task(s) for which the funds were allotted and 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 Program 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.

13.13. Non-Reimbursable Expenses. Consultant shall be compensated only for those Reimbursable Expenses authorized in Appendix C and that are allowed under Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," and under the compensability standards set out in 48 C.F.R. parts 31.105, 31.2, 31.6 and the Cost Accounting Standards set out in 48 C.F.R. part 9904 et seq. If an expense is not a Reimbursable Expense or Overhead, the City shall have no obligation to compensate Consultant for it. Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses shall be considered Overhead and will not be accounted as Reimbursable Expenses. Consultant and subconsultant personnel entertainment or personal expenses of any kind shall not be considered Overhead or a Reimbursable Expense under this Contract. Office and field supplies/equipment expenses are not reimbursable expenses unless said 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 C are not reimbursable.

13.14. Prepayment. Unless the 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.

13.15. 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.

13.16. Payment of Invoices. Compensation shall be made in monthly payments on or before the last day of each month for Work, as set forth in an Design 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 Design Plans and Task Orders. The City shall endeavor

to issue payments of undisputed amounts to the Consultant within thirty (30) calendar days following the receipt of complete and accurate invoices. City shall make payment to Consultant at the address specified in Section 26.1 (Notices to the Parties). All amounts paid by City to Consultant shall be subject to audit by City.

13.17. No Interest on Late Payments.. In no event shall City be liable for interest or late charges for any late payments.

13.18. Payment Limitations.

13.18.1. The City shall incur no charges under this agreement nor shall any payment becomes due to Consultant until the work product and other services for which payment is requested and required under this Agreement are received from Consultant and approved by SFMTA as being in accordance with this agreement.

13.18.2. The City may reasonably withhold payment to the Consultant pending resolution, in an amount equal to questioned, disputed, or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the City in connection with the Consultant's negligent errors or omissions. Payments for undisputed amounts due on the same or other invoice shall not be unreasonably withheld or delayed.

13.18.3. If the evidence of production, the quality of the work, or the costs expended are not consistent with the budget and the schedule for an assigned task, the Consultant shall justify to the SFMTA's Program Manager the costs and Fixed Fee invoiced. The Program 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.

13.19. Invoices.

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:

1. Contract Number
2. Design Plan or Task Order Number
3. Name, position, hourly rate and hours worked of employee(s) whose labor is invoiced
4. Description of the work performed or services rendered

5. Cost by employee (per hour or other agreed increment of measure) and other direct costs
6. Subconsultant costs supported by invoice itemization in the same format as described here
7. Fixed-Fee for current invoice period and amount of Fixed Fee paid as of date of invoice
8. Total costs
9. SBE utilization report (MTA Form 6)
10. Certified payroll records substantiating all labor charges for Consultant and all subconsultants shown on the invoice

13.20. 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.

13.21. 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. Consultant shall submit weekly time sheets for its staff for approval by the Program Manager or his/her designee. 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 SFMTA'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.

13.22. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code Sections 6.80 to 6.83 and Section 21.35, and pursuant to applicable federal law, 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. Consultant agrees that said remedies are cumulative and in addition to the remedies and penalties provided for false claims under federal law.

13.23. Disallowance and Disputed Amounts. If Consultant claims or receives payment from City for a service, reimbursement for which is later disallowed by the City, 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 are 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. The City may reasonably withhold payment to the Consultant pending resolution, in an amount equal to questioned, disputed or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the City in connection with the Consultant's negligent errors or omissions. Payments for other amounts due on the same or other invoice shall not be unreasonably withheld or delayed.

13.24. Payment Does Not Imply Acceptance of Work. The issuance of any progress payment or final payment by the City or the receipt thereof by the Consultant shall in no way lessen the liability of the Consultant to correct unsatisfactory work although the unsatisfactory nature of such work may or 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 performed again by Consultant without delay.

13.25. Project Suspension or Termination

13.25.1. If the Project is suspended for more than six months or abandoned in whole or in part, the Consultant shall be compensated for services satisfactorily performed prior to receipt of written notice from the City of such suspension or abandonment. If the Project is resumed after being suspended for more than six months, the Consultant's documented and reasonable

remobilization costs and compensation for the remainder of the services to be provided for the Project shall be equitably adjusted based on the Consultant's demonstrated increased costs.

13.25.2. In the event that the City terminates the Agreement for fault, the City may reduce any amount earned or otherwise due the Consultant by the sum of any additional costs the City has or will incur as a result of the Consultant's default.

13.26. Final Payment. Final payment of any balance earned by the Consultant for Project work will be made within two months after all of the following:

1. Satisfactory completion of all work required by this Agreement;
2. Receipt by SFMTA of the Work Product not previously delivered;
3. Delivery of all equipment/materials purchased specifically for the Project ;
4. Receipt by SFMTA of a fully executed final statement of amounts paid to and owed to each SBE under this Agreement;
5. Such audit and verification as SFMTA may deem necessary, provided such audit is not unreasonably delayed beyond the completion of the Project; and,
6. Execution and delivery by the Consultant of a release of all claims against SFMTA arising under or by virtue of this Agreement, other than such claims, if any, as may be specifically exempted by the Consultant from the operation of the release in stated amounts to be set forth therein.

14. TAXES; INDEPENDENT CONTRACTOR.

14.1. 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.

14.2. 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:

14.2.1. 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;

14.2.2. 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.

14.2.3. 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.

14.2.4. 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.

14.2.5. Consultant shall provide a San Francisco Business Tax Registration to the SFMTA for the City to certify this Agreement.

14.3. Independent Contractor.

14.3.1. 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.

14.3.2. 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.

14.3.3. Any claim by any agent, Subconsultant or employee of Consultant, Subprime Consultant or Subconsultant that alleges or seeks to establish employment status with the City shall come under the defense and indemnification provisions of this Agreement.

14.4. Payment of Employment Taxes and Other Expenses.

14.4.1. 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.

14.4.2. 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).

14.4.3. 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.

15. INSURANCE REQUIREMENTS.

PB, KHA, and MWA shall each separately maintain in force for as long as the City faces exposure to liability from Consultant's activities performed pursuant to this Agreement, insurance in the following amounts and coverages set out below.

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

15.2. General Liability. 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

15.3. Automobile. 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.

15.4. Valuable Papers. PB shall maintain "All Risk" general insurance on Valuable Papers and Records for cost to repair or replace with like kind and quality including the costs of gathering and/or assembling information, subject to a minimum limit of Five Million Dollars (\$5,000,000). KHA and MWA shall each maintain "All Risk" general insurance on Valuable Papers and Records for cost to repair or replace with like kind and quality including the costs of gathering and/or assembling information, subject to a minimum limit of One Million Dollars (\$1,000,000).

15.5. Professional Liability.

15.5.1. PB. From the effective date of this Agreement, PB shall maintain professional liability insurance practice coverage with limits of Twenty Million Dollars (\$20,000,000) each claim/annual aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement. Any deductible for said policy shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000). PB shall be responsible for the payment of all claim expenses and loss payments within the deductible. Said professional liability practice policy shall also apply to the services provided by PB for the design of the Tunnels under Design Package #1. But at no time shall PB allow the aggregate value of professional liability insurance available to the City from PB for the Project to drop below Twenty Million Dollars (\$20,000,000). If said policy limits are eroded by claims not arising from the Project, then PB shall immediately obtain additional insurance coverage to meet the requirements of this Agreement. The costs of said insurance shall be reimbursed as part of PB's overhead.

15.5.2. KHA. From the effective date of this Agreement, KHA shall maintain professional liability insurance coverage with limits of Five Million Dollars (\$5,000,000) each claim/annual aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement. To meet that professional liability insurance requirement, KHA shall provide not less than One Million Dollars (\$1,000,000) of practice professional liability insurance, with the remaining coverage provided under a project specific rider or a practice rider. At no time shall KHA allow the aggregate value of professional liability insurance available to the City for this Project to drop below Five Million Dollars (\$5,000,000). If said policy limits are eroded by claims not arising from the Project, then KHA shall immediately obtain additional insurance coverage to meet the requirements of this Agreement. Any deductible for said policy shall not exceed Seventy Five Thousand Dollars (\$75,000). KHA shall be responsible for the payment of all claim expenses and loss payments within the deductible. The costs of said insurance shall be reimbursed as part of KHA's overhead.

15.5.3. MWA. From the effective date of this Agreement, MWA shall maintain professional liability insurance coverage with limits of Five Million Dollars (\$5,000,000) each claim/annual aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement. To meet that professional liability insurance requirement, MWA

shall provide not less than One Million Dollars (\$1,000,000) of practice professional liability insurance, with the remaining coverage provided under a project specific rider or a practice rider. At no time shall MWA allow the aggregate value of professional liability insurance available to the City for this Project to drop below Five Million Dollars (\$5,000,000). If said policy limits are eroded by claims not arising from the Project, then MWA shall immediately obtain additional insurance coverage to meet the requirements of this Agreement. Any deductible for said policy shall not exceed Seventy Five Thousand Dollars (\$75,000). MWA shall be responsible for the payment of all claim expenses and loss payments within the deductible. The costs of said insurance shall be reimbursed as part of MWA's overhead.

15.5.4. Excess Professional Liability Insurance. The City will in good faith endeavor to obtain excess professional liability insurance coverage on behalf of Consultant (to protect against Consultant's errors and omissions in excess of Professional Liability Insurance) for commercially reasonable terms and cost that conform to the terms and conditions of this Agreement. If the City is successful in obtaining that coverage, the City will: (a) limit each of the joint venture partners' respective joint and several liabilities for errors and omissions in design to the other joint venture partner(s) to Five Million Dollars (\$5,000,000); and, (b) waive subrogation of claims by the City's excess insurance against Consultant. If the City is unable to obtain said excess professional liability insurance, the SFMTA and Consultant shall meet to revisit and renegotiate the professional liability provisions of this Agreement to provide adequate insurance coverage to the City at reasonable cost to the City in light of the risks of the Project.

15.5.5. Consultant shall maintain all professional liability policies for a claim reporting period not less than four (4) years following completion of services under this agreement.

15.5.6. All professional liability policies shall protect against any negligent act, error or omission arising out of the Consultant's design or engineering activities or with respect to the Project, including coverage for acts by Subprime Consultants and Subconsultants for whose work the Consultant is responsible under this Agreement. Professional liability policies shall be endorsed to require the insurer to provide the City with no less than 30 calendar days notice of policy expiration or cancellation.

15.5.7. Consultant shall notify the SFMTA of any claims against its professional liability policy or policies that are not specific to the Project under this Agreement. If the SFMTA determines, in its sole discretion, that said claims jeopardize the protection against errors and omissions required by this Section 15, Contractor shall at its expense procure additional professional liability insurance in an amount sufficient to replenish coverage lost by said claim(s) to meet the requirements set out in Sections 15.5.1 and 15.5.2, above.

15.5.8. Each partner of the Central Subway Design Group joint venture partnership shall ensure and does warrant for itself that its Professional Liability (Errors and Omissions) Insurance policy does not contain any provision that excludes 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. Consultant may be relieved of the obligations of this Section 15.5.8 only if the City is able to obtain excess professional liability insurance (see Section 15.5.3, above).

15.6. Requirements of Insurance Policies.

15.6.1. Valuable Papers, Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

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

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

(c) All rights of subrogation against the City shall be waived.

15.6.2. Workers Compensation insurance policies must provide the following:

(a) 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.

(b) All rights of subrogation against the City shall be waived.

15.7. Notice. All insurance policies shall be endorsed to provide thirty (30) calendar 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.
Central Subway Program Officer
Director, Capital Programs and Construction
San Francisco Municipal Transportation Agency
1 South Van Ness, 7th floor
San Francisco, CA 94103

Shahnam Farhangi
Division Deputy, Construction Administration and Quality
Management
San Francisco Municipal Transportation Agency
1 South Van Ness, 3rd floor
San Francisco, CA 94103

15.8. 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.

15.9. General Annual Aggregate Limit. Should any of the required insurance other than professional liability 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.

15.10. 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.

15.11. Proof of Insurance. Before commencing any operations under this Agreement, Consultant 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.

15.12. No Decrease of Liability. Approval of the insurance by City shall not relieve or decrease the liability of Consultant hereunder.

15.13. 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.

16. INDEMNITY, LIABILITY, AND REMEDIES,

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

16.2. Limitations.

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

16.2.2. The Consultant assumes no liability for the sole negligence, active negligence, or willful misconduct of any Indemnitee.

16.3. Intellectual Property Infringement. Notwithstanding any other provision of this Agreement, 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 rights of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Consultant's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, shall be considered a material breach of contract, if not the basis for indemnification under the law.

16.4. Joint Venture Partners.

16.4.1. Notwithstanding the joint venture status of Consultant or other separate legal status of the Consultant from its owner partners, each of the joint venture partners, PB , MWA, and KHA, as the owners of the Consultant, shall remain jointly and severally liable for the performance, errors and omissions of Consultant, as limited by Section 15.5.3 of this Agreement.

16.4.2. Any notice, order, direction, request or any communication required to be or that may be given by the SFMTA to the Consultant as set forth in Section 26.1 (Notices to the Parties) of this Agreement, shall be deemed to have been well and sufficiently given to and shall bind the Consultant, its individual joint venture members, and all persons acting on behalf of the Consultant. Any notice, request or other communications given by the Consultant to the SFMTA as indicated in Section 26.1 (Notices to the Parties) of this Agreement, shall be deemed to have been given by and shall bind the Consultant, its individual joint venture members, and all persons acting on behalf of the Consultant.

16.4.3. In the event of a dissolution of the joint venture, the SFMTA shall have the unqualified right to select which joint venture member, if any, shall continue the work under this Agreement and such selected member shall assume all liabilities, obligations, rights, and benefits of the Consultant under this Agreement. Such dissolution of the joint venture shall not be effected without prior consultation with the SFMTA. In the event of failure or inability of any one of the joint venture members to continue performance under this Agreement, the other joint venture member(s) shall perform all services and work and assume all liabilities, obligations, rights and benefits of the Consultant under this Agreement. Such determination of failure or inability to continue performance shall not be effected without prior consultation with SFMTA. Nothing in this Section shall be construed or interpreted to limit SFMTA's rights under this Agreement or bylaw to

determine whether the Consultant or any one of the joint venture members has performed within the terms of this Agreement.

16.5. Liability of City. City's payment obligations under this Agreement shall be limited to the payment of the compensation for Work actually performed for the City in accordance with the payment provisions set out in Section 13 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 to any individual or business entity, 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.

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

16.6.1. Consultant fails or refuses to perform or observe any term, covenant or condition contained in any of the following Subsections of this Agreement:

(a) 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.

(b) 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.

16.6.2. 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 working days after written notice thereof from City to Consultant.

16.7. 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.

16.8. 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.

17. EQUIPMENT

17.1. 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.

17.2. 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.

18. CITY'S RESPONSIBILITIES

The City's responsibilities for design of the Project are expressly set out in this Agreement and the RFP. The Consultant shall be responsible for all aspects of the Project's design except for those tasks, duties, or areas of design that are expressly assigned or reserved to the City in this Agreement. In addition to those tasks, duties, or areas of design that are expressly assigned to the City elsewhere in the Agreement or RFP, the City shall perform the following:

18.1. Approvals. Obtain approvals from Appropriate Authorities, as defined herein, with the assistance of the Consultant, and promptly render decisions, when within its power to do so, pertaining thereto to avoid unreasonable delays in the progress of the Project.

18.2. Deficiencies. Promptly notify the Consultant in writing of apparent deficiencies in Consultant's designs.

18.3. Fees. Pay all fees required to secure building permits.

18.4. Hazardous Substances. Acknowledge that the discovery, presence, handling or removal of asbestos, asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances, which may presently exist at the job site, is outside of the Consultant's expertise and is not included in the scope of work the Consultant is to perform nor included in the Consultant's insurance. The City therefore agrees to hire one or more expert consultants in this field to deal with these problems if the Project involves such materials. Even though the Contract Documents may incorporate the work of such other consultants, the Consultant shall not be responsible for the discovery, presence, handling or removal of such materials.

18.5. Nonaffixed Furniture and Equipment. Be responsible for purchase and coordination with successful vendors for delivery, assembly, storage and placement of loose furniture, furnishings and equipment not included within the Construction Documents prepared by the Consultant.

18.6. Project Data. Furnish the documents and data developed for the Project under conceptual and preliminary design, which are listed in the RFP in Appendix 10.

18.7. Program Manager. Designate a Program Manager who shall coordinate his or her duties with the Consultant as provided herein.

18.8. Respond to Submittals. Review and respond in writing as provided herein or in the Design Schedule to submittals from the Consultant to all aspects of the documents.

18.9. Tests and Inspections. Furnish tests and inspections as required during the construction phase for structural, mechanical, chemical and other laboratory tests, inspections, special inspections and reports specified by the Consultant in the Construction Documents.

18.10. Construction Cost Estimates. SFMTA shall cooperate with Consultant to bring construction cost estimates within agreed acceptable limits of Construction Budget.

18.11. Project Office. The SFMTA will pay for and provide Consultant a Project Office furnished with furniture, computers, software, IT support, facsimile and telecommunication equipment. The Consultant shall use this Project Office for administrative and professional activities related to the performance of the Project and for the SFMTA and other City personnel assigned to perform work on the Project. The Project Office shall be made available within three months from the Notice to Proceed.

19. TERMINATION OF CONTRACT.

19.1. Termination for Cause. Either party may terminate this Agreement, in whole or in part, in writing, if the other party substantially fails to fulfill its obligations under this Agreement through no fault of the terminating party. However, such termination may not be effected unless the other party is given (a) not fewer than ten (10) working days written notice (delivery by certified mail) of its intent to terminate; and (b) an opportunity for consultation and to rectify failures of obligations (to cure the

alleged breach or default of Agreement) within thirty (30) calendar days of consultation with the terminating party before termination becomes effective.

19.2. Termination for Convenience.

19.2.1. Exercise of Option to Terminate for Convenience.

Notwithstanding any other provision of this Agreement, the 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 no less than fourteen (14) calendar days written notice of termination. The notice shall specify the date on which termination shall become effective. Consultant shall not have the right to terminate this Agreement for convenience. Consultant does not have the right to terminate for convenience,

19.2.2. 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:

19.2.3. Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

- (a) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (b) Terminating all existing orders and subcontracts.
- (c) 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.
- (d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts, as allowed under the principals set out in 48 CFR Subparts 49.2 and 49.3 to the extent that those principles are in accord with the cost principles for local governments set out in the Office of Management and Budget Circular A-97.
- (e) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- (f) 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.

19.2.4. Final Invoice for Services Performed. Within 30 calendar 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:

(a) A reasonable allowance for profit on the cost of the services and other work described necessary to effect termination.

(b) The reasonable cost to Consultant of handling work products, material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(c) 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.

(d) 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.

19.2.5. 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 Subsection 19.2.3. 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 except overhead cost due to procuring project specific insurance rider or practice rider by KHA and MWA, 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 19.2.3.

19.2.6. Deductions. In arriving at the amount due to Consultant under this Section 19, City may deduct: (a) all payments previously made by City for work or other services covered by Consultant's final invoice; (b) any claim which City may have against Consultant in connection with this Agreement; (c) any invoiced costs or expenses excluded pursuant to the immediately preceding Subsection 19.2.4; and (d) the reasonable costs to the City to remedy or replace defective or rejected services or other work that does not comply with the requirements of this Agreement.

19.2.7. Survival of Payment Obligation. City's payment obligation for Work performed in accordance with this Agreement shall survive termination of this Agreement.

19.3. Rights and Duties Upon Termination or Expiration.

19.3.1. Survival of Provisions. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 13.22 (Submitting False Claims; Monetary Penalties), 13.23 (Disallowance and

Disputed Amounts), 13.24 (Payment Does Not Imply Acceptance of Work), 14 (Taxes, Independent Contractor), 15 (Insurance Requirements), 16.1 (Indemnification), , 16.5 (Liability of City), 17 (Equipment), 19.1 (Termination for Cause), 19.2 (Termination for Convenience), 21.3 (Protection of Private Information), 22 (Work Product and Works for Hire), 23 (Audit and Inspection of Records), 26 (Contract Administration and Construction),

19.3.2. Duties Upon Termination. Subject to the immediately preceding Subsection 19.3.1, upon termination of this Agreement prior to expiration of the term of this Agreement specified in Section 1.3, 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.

20. CONFLICT OF INTEREST.

20.1. Applicable Authority. Through its execution of this Agreement, Consultant acknowledges that it is familiar with Article I, Chapter I and Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which constitute 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 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 87300 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.

20.2. Other Bids Prohibited. Consultant agrees that neither it nor any corporation, joint venture or partnership in which it has a financial interest shall submit a proposal for Program Controls System RFP or bid for construction work on the Central Subway Project. Consultant further agrees that except as may be specifically authorized by the SFMTA Consultant shall not consult with or otherwise provide advice or information concerning the Central Subway Project to any potential proposers for the Program Controls System RFP or to potential bidders for construction contracts for the Central Subway Project.

20.3. No Financial Interest in the Project. By submission of its Proposal, the Consultant covenants that it has no direct or indirect financial interest and that it shall not acquire any financial interest that creates or would create a conflict of interest with respect to any of the work, services or materials required to be performed or provided under this Agreement. Furthermore, the Consultant shall not employ any person or agent having any such conflict of interest. In the event that the Consultant or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall

immediately disclose such interest to SFMTA and take action immediately to eliminate the conflict or to withdraw from this Agreement, as SFMTA requests.

20.4. Conflicts of Interest. By submission of its Proposal, the Consultant covenants that it has no direct or indirect pecuniary or proprietary interest and that it shall not acquire any interest that conflicts in any manner or degree with the work, services or materials required to be performed or provided under this Agreement. Furthermore, the Consultant shall not employ any person or agent having any such conflict of interest. In the event that the Consultant or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to SFMTA and take action immediately to eliminate the conflict or to withdraw from this Agreement, as SFMTA requests. The Consultant shall not employ any consultant who is concurrently employed by SFMTA or by another consultant to the SFMTA (including, but not limited to, surveyors, engineers, Consultants, and testing laboratories), without first obtaining SFMTA's approval in writing.

20.5. Other Agreements between the City and the Consultant. Through its execution of this Agreement, the Consultant certifies that neither it nor any of its employees has any undisclosed financial interest, however remote, in any other Agreement with the City, whether or not such Agreement is with Consultant's respective firms, affiliate firms or through separate employment, except as expressly itemized below. The Consultant understands and agrees that failure to disclose such information may result in termination of this Agreement for cause.

20.6. Lobbyists and Gratuities.

20.6.1. Contingency Fees Prohibited. The Consultant warrants and covenants that it has not employed or retained any person or persons to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach of violation of this warranty SFMTA shall have the right to annul this Agreement without liability or in its discretion to deduct from the Total Price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee

20.6.2. No Gratuities to City Employees. The Consultant warrants and covenants that no gratuities, in the form of entertainment, gifts, or otherwise, have been or will be offered or given by the Consultant or any of its agents, employees, or representatives to any official or employee of the City and County of San Francisco in an attempt to secure a contract or favorable treatment in awarding, amending, or making any determination related to the performance of this Agreement. Consultant acknowledges that it is familiar with San Francisco Campaign and Governmental Conduct Code Section 3.216 and the regulations adopted thereunder, and understands that Consultant is a "restricted source" for all SFMTA employees and officers, as the term is defined in that Section. Contractor agrees that it will make no gifts to any SFMTA employee or officer the acceptance of which would violate Section 3.216. (See also federal lobbying restrictions discussed at Section 28.6, below.)

20.7. Collusion in Contracting. Consultant warrants and covenants that it has not imposed on any Subprime Consultant or Subconsultant as a condition for receiving

a subcontract under this Agreement a requirement that said subconsultant not participate in or be listed on in any other Proposal for this Contract. This restriction provision shall not apply between a Proposer and a Subprime Consultant listed in the Proposal to whom the Consultant provided proprietary or confidential financial information such that the participation of the Subprime Consultant in another Proposer's Proposal would provide an unfair advantage to a Proposer. Consultant further warrants that it informed its Subprime Consultants that Subconsultants cannot be restricted from being listed or otherwise participating in a Proposal from another consultant for this Contract, and that to Consultant's knowledge its Subprime Consultants have complied with these requirements.

20.8. Remedies. If the Executive Director/CEO has reason to believe that the Consultant has breached the covenants set forth in this Section 20, he shall so notify the Consultant in writing. The Consultant shall respond to said notice within ten (10) working days of receipt with a detailed written explanation or answer to any facts, allegations, or questions contained or referenced in said notice. The Consultant may request a hearing on the matter by Executive Director/CEO or his designee that shall be conducted within fifteen (15) days of the receipt by the Executive Director/CEO of the request unless a later date is concurred in by SFMTA and the Consultant. The decision of the Executive Director/CEO shall be a prerequisite to appeal thereof to SFMTA Board of Directors or to Superior Court in the County of San Francisco, State of California. If, after consideration of the Consultant's response and any hearing, the Executive Director/CEO determines that the covenants have been breached, the Executive Director/CEO shall have the discretion to exercise those remedies provided by any applicable federal or state laws or regulations or by this Agreement in the event of said breach and/or prohibited conflicts of interest.

21. CONFIDENTIALITY, PRIVACY AND SECURITY OF INFORMATION.

21.1. Proprietary, Confidential and Security Sensitive Information.

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, or it may constitute Sensitive Security Information, the disclosure of which to third parties may be contrary to law, harmful to public safety, and/or damaging to City. Consultant agrees that all information disclosed by City to Consultant shall be held in the strictest confidence and used only in performance of the Agreement. Consultant agrees that all Work Product, reports, studies, analyses, specifications, work schedules and recommendations prepared by the Consultant for use in connection with the work under this Agreement or furnished to the Consultant by the City are confidential, and that Consultant will not publish, circulate or use any of the foregoing except in the performance of this Agreement without first obtaining the SFMTA's written approval to do so.

21.2. Project Security. Consultant shall consider and treat all Work Product as Sensitive Security Information as defined by FTA Circular 42.20.1(f) and other applicable regulation and authority. Consultant shall at all times guard and keep secure and confidential all such information and documents. Consultant's failure to guard and keep safe and confidential said documents shall be a material breach of this

Agreement. 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 Consultant pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Consultant.

21.3. Protection of Private Information. Consultant 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. Consultant 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 Consultant pursuant to Chapter 6 or Chapter 21 of the San Francisco Administrative Code, or debar the Consultant.

22. WORK PRODUCT AND WORKS FOR HIRE.

22.1. Ownership. All Work Product, including but not limited to documents, electronic, written, graphic, or three dimensional models, including drawing sets, CADD files, BIM files, schematics, system designs, blue prints, specifications, presentation drawings, models, films and videos, simulations or other presentation materials and other documents, models or computer files prepared by the Consultant are works for hire as defined under Title 17 of the United States Code commissioned by the SFMTA, and all such works shall be made and remain the property of the City, including all intellectual property rights to all documents; provided, however, that the Consultant shall be entitled to retain one reproducible copy thereof and CADD files, made at the Consultant's expense. As part of its Basic Services, the Consultant shall provide the City with one licensed copy of software that will allow the City to view the electronic CADD files prepared by the Consultant and its Subprime Consultants and Subconsultants. Additionally, the Consultant shall provide technical specifications for any computer hardware required to use the provided software and files.

22.2. Assignment. To the extent that the Work Product does not qualify as a work made for hire under applicable law, and to the extent that the Work Product includes material subject to copyright, patent, trade secret, mask work, or other proprietary right protection, the Consultant hereby assigns to SFMTA, its successors and assigns, all right, title and interest in and to the Work Product, including but not limited to (1) all copyrights in the same, and in all renewals and extensions of the copyrights that may be secured under applicable laws; and (2) all rights in and to any inventions and designs embodied in the Work Product or developed in the course of the Consultant's creation of the Work Product. The foregoing assignment includes a license under any current and future patents owned, patents applied for or licensable by the Consultant to the extent necessary to exercise any rights of ownership in the Work Product. Any reuse of the Work Product except for the specific purpose intended will be at the users' sole risk without liability or legal exposure to the Consultant.

22.3. Moral Rights. To the extent that the Consultant may have any moral rights to the Work Product, the Consultant hereby forever waives any and all such rights. Neither the Work Product nor anything constructed from the plans, designs,

drawings and specifications in the Work Product shall be considered art or a work of art. To the extent that the Work Product, any part of the Work Product, or anything constructed from the plans, designs, drawings and specifications in the Work Product are considered art or works of art, any rights of the Consultant or obligations of the City under applicable law, including but not limited to Visual Artists Rights Act of 1990, 17 U.S.C. §§ 101 et seq., and the California Art Preservation Act, Civil Code sec. 987, are hereby forever waived.

22.4. Assistance. At SFMTA's expense, the Consultant shall execute and deliver such instruments and take such other action as may be requested by SFMTA to perfect or protect SFMTA's rights in the Work Product and to perfect the assignments contemplated by this Section.

22.5. Delivery of Work Product. The Consultant agrees to deliver all aspects of the Work Product, including without limitation all plans, drawings, designs, specifications, technical reports, operating manuals, notes, data, documentation, and computer software (in source code and object code form), in accordance with the delivery schedule set forth in this Agreement. In the event of early termination of this Agreement, the Consultant shall deliver all aspects of the Work Product immediately upon such early termination at the then-existing stage of completion, and all aspects of the Work Product shall become the property of SFMTA.

22.6. Representations and Warranties. The Consultant hereby represents and warrants that:

22.6.1. It has full power to enter into this Agreement and make the assignments set forth herein;

22.6.2. It has not previously and will not grant any rights in the Work Product to any third party that are inconsistent with the rights granted to SFMTA herein;

22.6.3. The Work Product does not infringe or violate any copyright, trade secret, trademark, patent or other proprietary or personal right held by any third party; and

22.6.4. The Work Product has been or will be created solely by the Consultant or employees of the Consultant within the scope of their employment and under obligation to assign all rights in the Work Product to SFMTA, or by independent subconsultants, approved by SFMTA in advance, under written obligations to (a) assign all rights in the Work Product to SFMTA and (b) maintain the confidentiality of any SFMTA confidential information disclosed to the subconsultant.

22.7. Indemnity for Copyright or Patent Infringement. The indemnity and defense requirements set out in Section 16.3 of this Agreement shall apply to Consultant's Work Product and the tools used by Consultant to product it, without limitation.

22.8. Notations. All Work Product furnished by the Consultant, other than documents exclusively for the internal use by SFMTA, shall carry such notations on the

front cover or a title page (or in the case of maps, in the name block) as may be determined by SFMTA. The Consultant shall also place its endorsement on all Work Products. All such notations and endorsements shall be subject to prior approval by SFMTA prior to delivery. All such notations and/or endorsements placed on the Work Product(s) by the Consultant shall be for intellectual property purposes only and shall not be for professional engineering services.

22.9. Reuse. Should the City or any other person, firm or legal entity under the authority and control of the City, without the Consultant's participation, use, re-use, or modify the Consultant's drawings, specifications or other documents prepared under this Agreement, the City agrees to notify the Consultant of said intended use. The Consultant shall not be responsible for any loss, costs or expenses incurred by any party arising out of such use, re-use or modification of the Consultant's drawings, specifications, and other documents.

22.10. Artists Rights. If Consultant contracts for any art or work of art to be included in the Project, prior to executing such contract, Consultant shall obtain from the artist(s) who produced or will produce the art a written and signed agreement stipulating that such works are works for hire for commercial use and forever waiving any and all rights of the artist(s) and any and all obligations of the City under applicable law requiring preservation of said art or works of art, including but not limited to Visual Artists Rights Act of 1990, 17 U.S.C. §§ 101 et seq., and the California Art Preservation Act, Civil Code § 987 et sec.

22.11. Subcontracts. Consultant shall include the provisions of this Section in all contracts with Subprime Consultants and shall further require that Subprime Consultants include said provision in their respective contracts with Subconsultants.

23. AUDIT AND INSPECTION OF RECORDS.

23.1. 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, irrespective of whether such services were funded in whole or in part by this Agreement. Consultant will permit the City to audit, examine, reproduce, 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 necessary to determine or audit allowable expenses, overhead, including costs and overhead incurred as work performed as Additional Services,.

23.2. 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. The period of access and examination for records that relate to (1) litigation or the settlement of claims arising out of the performance of this Agreement, or (2) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General of the United States or the U.S. Department of Transportation, or any of their duly authorized representatives, shall continue until such litigation, claims, or exceptions have been finally resolved. Consultant shall require its subconsultants to also comply with the provisions of this Section, and shall include the provisions of the Section in each of its subcontracts.

23.3. Audit of Subconsultants. Consultant shall include the provisions of this Section in all agreements between Consultant and its Subprime Consultants and subconsultants of every tier giving the City the same rights against the Subprime Consultants. Consultant shall require that the Subprime Consultants include the provisions of this Section in their respective contracts with Subconsultants. Cancelled checks of payments to Subprime Consultants and Subconsultants must be maintained by Consultant and Subprime Consultants, respectively, and made available to the City upon request.

23.4. Audit. The City may initiate an audit under this Agreement by written notice, upon not fewer than seven (7) calendar days.

23.5. Rights of State or Federal Agencies. Consultant shall comply with reporting requirements of the U.S. Department of Transportation grant management rules, and any other reports required by the Federal Government. The State of California or any federal agency having an interest in the subject matter of this Agreement shall at a minimum have the same rights conferred upon City by this Section 23.

24. NONDISCRIMINATION; PENALTIES.

24.1. 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. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the City deems appropriate.

24.2. 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.

24.3. 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.

24.4. 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.

24.5. 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.

24.6. 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’s design of the Project under this Agreement shall comply with the AD and any and all other applicable federal, state and local disability rights and/or access legislation. Said requirements shall apply both to the manner and process by which the Consultant provides the services, and the content of all deliverables under this Agreement. 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.

25. GENERAL CONTRACT REQUIREMENTS.

25.1. Compliance with All Laws and Regulations.

25.1.1. The 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

25.1.2. The Consultant shall comply with all federal, state, and local licensing, registration, filing and/or certifications standards, all applicable accrediting standards, and any other standards or criteria established by any

agency of the State of California or of the federal government applicable to the Consultant's operation.

25.2. 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.

25.3. 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.

25.4. Earned Income Credit (EIC) Forms. Administrative Code Section 120 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.

25.4.1. Provision of Forms to Eligible Employees. Consultant shall provide EIC Forms to each Eligible Employee at each of the following times: (a) within thirty calendar 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); (b) promptly after any Eligible Employee is hired by Consultant; and (c) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

25.4.2. Failure to Comply. Failure to comply with any requirement contained in this Section shall constitute a material breach by Consultant of the terms of this Agreement. If, within 30 calendar 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 calendar 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.

25.4.3. 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.

25.4.4. Terms. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

25.5. 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 Section 67.24(e) will be made available to the public upon request.

25.6. 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.

25.7. Limitations on Contributions. Through execution of this Agreement, Consultant 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. Consultant 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. Consultant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Consultant's board of directors; Consultant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Consultant; any Subprime Consultant or Subconsultant listed in the bid or contract; and any committee that is sponsored or controlled by Consultant. Additionally, Consultant acknowledges that Consultant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

25.8. Requiring Minimum Compensation for Covered Employees.

25.8.1. Consultant 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. A partial listing of some of Consultant's obligations under the MCO is set forth in this Section. Consultant is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

25.8.2. The MCO requires Consultant to pay Consultant'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 Consultant is obligated to keep informed of the then-current requirements. Any subcontract entered into by Consultant shall require the subconsultant 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 Consultant's obligation to ensure that any subconsultants of any tier under this Agreement comply with the requirements of the MCO. If any subconsultant under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Consultant.

25.8.3. Consultant 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 three months of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

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

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

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

25.8.7. Consultant 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 calendar days after receiving written notice of a breach of this Agreement for violating the MCO, Consultant fails to cure such breach or, if such breach cannot reasonably be

cured within such period of 30 calendar days, Consultant 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.

25.8.8. Consultant 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.

25.8.9. If Consultant 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 Consultant later enters into an agreement or agreements that cause Consultant to exceed that amount in a fiscal year, Consultant 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 Consultant and this department to exceed \$25,000 in the fiscal year.

25.9. Requiring Health Benefits for Covered Employees. Consultant 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. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

25.9.2. Notwithstanding the above, if the Consultant is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with Subsection 25.9.1 above.

25.9.3. Consultant's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Consultant if such a breach has occurred. If, within 30 calendar days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Consultant fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 calendar days, Consultant 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.

25.9.4. Any Subcontract entered into by Consultant shall require the Subconsultant to comply with the requirements of the HCAO and shall contain

contractual obligations substantially the same as those set forth in this Section. Consultant 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 Subconsultant of the obligations under the HCAO and has imposed the requirements of the HCAO on Subconsultant through the Subcontract. Each Consultant shall be responsible for its Subconsultants' compliance with this Chapter. If a Subconsultant fails to comply, the City may pursue the remedies set forth in this Section against Consultant based on the Subconsultant's failure to comply, provided that City has first provided Consultant with notice and an opportunity to obtain a cure of the violation.

25.9.5. Consultant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Consultant'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.

25.9.6. Consultant 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.

25.9.7. Consultant 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.

25.9.8. Consultant shall keep itself informed of the current requirements of the HCAO.

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

25.9.10. Consultant 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.

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

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

25.9.13. If Consultant is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Consultant later enters into an agreement or agreements that cause Consultant'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 Consultant and the City to be equal to or greater than \$75,000 in the fiscal year.

25.10. First Source Hiring Program.

25.10.1. 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.

25.10.2. 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 Consultant shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Consultants shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(a) 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.

(b) 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 working 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.

(c) 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.

(d) 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.

(e) 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.

(f) Set the term of the requirements.

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

(h) 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.

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

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

25.10.4. 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.

25.10.5. 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. Consultant agrees:

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

(b) 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;

(c) That the Consultant's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the Consultant 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 Consultant from the first source hiring process, as determined by the FSHA during its first investigation of a Consultant, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the Consultant's failure to comply with its first source referral contractual obligations.

(d) That the continued failure by a Consultant 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 Consultant's continued failure to comply with its first source referral contractual obligations;

(e) 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;

(f) That the failure of Consultants to comply with this Chapter, except property Consultants, 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

(g) 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 Consultant will be liable for the City's costs and reasonable attorneys fees.

25.10.6. 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.

25.11. Prohibition of Political Activity with City Funds. No funds appropriated by the City for any contract, grant agreement or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign for any candidate or measure. Recipients of City funds will cooperate in audits conducted by the Chief Financial Officer to verify that no City funds were used for political purposes.

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.

25.12. Services Provided by Attorneys. Any services to be provided as part of Consultant's services under this Agreement that are provided by a law firm or attorney retained by the Consultant 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.

26. CONTRACT ADMINISTRATION AND CONSTRUCTION.

26.1. 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.
Central Subway Program Officer
Director, Capital Programs and Construction
San Francisco Municipal Transportation Agency
1 South Van Ness, 7th floor
San Francisco, CA 94103
Tel: 415-701-4282
Fax: 415-701-4300
carter.rohan@SFMTA.com

Shahnam Farhangi
Division Deputy, Contract Administration
and Quality Management
San Francisco Municipal Transportation Agency
1 South Van Ness, 3rd floor
San Francisco, CA 94103
Tel: 415-701-4284
Fax: 415-701-4300
shahnam.farhangi@SFMTA.com

To Consultant: Nasri Munfah
Project Manager
PB Americas, Inc.
303 Second Street, Suite 700 North
San Francisco, CA 94107
Tel: 646-245-2167
Fax: N/A
munfah@pbworld.com

Michael Willis
Michael Willis Architects, Inc.
301 Howard Street, Suite 500
San Francisco CA 94105
Tel: 415-489-1240
Fax: 415-957-2780
mwillis@mwaarchitects.com

Denis Henmi
Kwan Henmi Architecture and Planning, Inc.
456 Montgomery Street, 3rd floor

San Francisco, CA 94104
Tel: 415-901-7202
Fax: 415-777-5102
Denis.henmi@kwanhenmi.com

Any notice of default must be sent by registered mail.

26.2. 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 law. 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.

26.3. Successors and Assigns. 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.

26.4. 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.

26.5. 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.

26.6. Successors and Assigns. This Agreement shall be binding upon the City and the Consultant and their respective successors and assigns.

26.7. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco or as provided by Code of Civil Procedure Section 394; the venue for litigation in a county other than San Francisco pursuant to Section 394 will be Alameda County.

26.8. Negotiated Scope of Work. The Final Design services Consultant shall provide to the City for the Project are described in this Agreement. Tasks and subtasks that are reasonably related to the tasks included within the work described in Appendix A are Basic Services.

26.9. Construction of Agreement. All article or section titles and 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 architectural and engineering design, construction support and related services, 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.

26.10. Entire Agreement. This Agreement and its listed Attachments and other documents incorporated by reference 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 Attachments supersede all other oral or written provisions, drafts of the Agreement. This contract may be modified only as provided in Section 8.

26.11. 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.

26.12. Disputes and Resolution.

26.12.1. 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) calendar days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the Party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the Party's position.

26.12.2. Resolution of Disputes. Disputes arising in the performance of this Agreement that are not resolved by negotiation between the SFMTA Program Manager and Consultant's Project Manager shall be decided in writing by the SFMTA Senior Manager of Contract and Quality Management. The decision shall be administratively final and conclusive unless within ten (10) working days from the date of such decision, the Consultant mails or otherwise furnishes a written appeal to the SFMTA Program Officer, 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 SFMTA Program Officer shall be administratively final and conclusive. This Section applies to all disputes unless a specific provision of this Agreement provides that the SFMTA Program Manager's decision as to a particular dispute is final.

26.12.3. 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 Program Manager.

26.12.4. Alternative Dispute Resolution. If agreed to by both Parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

26.12.5. 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.

26.12.6. Disputes among Consultant Partners. If Consultant is a joint venture partnership, 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 and . not to impact Consultant's performance of the Contract or otherwise delay the Project. Any such disputes that impact the Project 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.

26.13. Mutual Agreement. This Agreement is the product of negotiations between the Parties. Each Party represents that it is a sophisticated and experienced participant in contracting for public works. Each Party has been represented by legal counsel of their choosing. Each Party represents that it has read and understands this Agreement, and enters into this Agreement of its own free-will and without coercion of any kind. The Parties agree that this Agreement shall not be subject to any rule of contract construction that may hold or would result in any ambiguity of any provision of this Agreement being held against the drafter of said provision.

26.14. 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.

26.15. 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.

26.16. 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.

27. ENVIRONMENTAL REQUIREMENTS.

27.1. Resource Efficiency and Conservation. Consultant shall adhere to the extent practicable to all requirements of Chapter 82 Resource Efficiency Requirements

for City-owned Facilities (Green Building Ordinance), attached hereto as Appendix J. 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 specifically required by the SFMTA may be deemed a material breach of contract.

27.2. Preservative-Treated Wood Containing Arsenic. Consultant shall 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.

27.3. 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.

27.4. Food Service Waste Reduction Requirements. Consultant 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, Consultant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Consultant 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 Consultant's failure to comply with this provision.

27.5. 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 and consultants not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

27.6. Recycled Products. Consultant shall use recycled products, as set out in Sections 28.10 and 28.19, below.

28. FEDERAL REQUIREMENTS.

28.1. Federal Contract Requirements and Applicable Law. The provisions set out this Section 28 are required by federal law. If there is any conflict between said provisions or any federal law, regulation or requirement, including such limitations and requirements as the FTA may impose, such federal requirements, terms and conditions shall take precedence over any terms and conditions set out in this Agreement. 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 (FAR) shall not apply to this Agreement, except as to provide guidance as to accounting and auditing standards, including but not limited to calculation of compensable costs and overhead.

28.2. Incorporation of Federal Transit Administration (FTA) Terms.

28.2.1. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, (http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html), as amended and the Master Grant Agreement (<http://www.fta.dot.gov/documents/15-Master.pdf>), are hereby incorporated by

reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any SFMTA request that would cause SFMTA to be in violation of the FTA terms and conditions.

28.2.2. The FTA Master Agreement obligates SFMTA to incorporate certain provisions into this Agreement and any lower tier subcontracts at any level and to take appropriate measures to ensure that Consultant and its lower tier subconsultants at any level comply with certain applicable requirements set forth in the Master Agreement. The FTA Master Agreement is hereby incorporated by reference into this Agreement, and Consultant shall comply with all such requirements.

28.2.3. Copies of the FTA Master Agreement are available from SFMTA.

28.3. Applicability of Federal Grant Contract.

28.3.1. This procurement may be subject to one or more financial assistance contracts between SFMTA and the U.S. Department of Transportation, which incorporate the current FTA Master Agreement and Circular 4220.1F as amended. U.S. Department of Transportation's level of financial assistance may be between zero and eighty percent (0-80%). The Consultant is required to comply with all terms and conditions prescribed for third party contracts in these documents.

28.3.2. Federal laws, regulations, policies and administrative practices may be modified or codified after the date this Agreement is established and may apply to this Agreement. To assure compliance with changing federal requirements, Contract Award indicates that the Consultant agrees to accept all changed requirements that apply to this Agreement.

28.4. Federal Funding Limitation. Consultant understands that funds to pay for Consultant's performance under this Agreement are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All funds must be approved and administered by FTA. SFMTA's obligation hereunder is payable from funds that are appropriated and allocated by FTA for the performance of this Agreement. If funds are not allocated, or ultimately are disapproved by FTA, SFMTA may terminate or suspend Consultant's services without penalty or obligation other than those specifically provided for in Section 19.2 of this Agreement as a termination for convenience. SFMTA shall notify Consultant promptly in writing of the non-allocation, delay, or disapproval of funding.

28.5. No Federal Government Obligation to Third Parties. Consultant agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any sub-recipient, any third party contractor, or any other person not a party to the Grant Agreement in connection with this Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including a sub-recipient or third party contractor.

28.6. Federal Lobbying Restrictions.

28.6.1. This Agreement is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 C.F.R. Part 20, which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an office or employee of Congress or an employee of any Member of Congress in connection with the awarding of any federally funded contract, the making of any Federal grant or loan, or entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Consultants and Subconsultants at any time who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Consultant shall submit the "Certification Regarding Lobbying" included in this document. The Consultant's signature on this certification shall certify that: a) it has not engaged in the prohibited activity and b) the language of the certification shall be included in all lower tier subcontracts, which exceed \$100,000, and that all such subconsultants shall certify and disclose accordingly. SFMTA is responsible for keeping the certification form of the Consultant, who is in turn responsible for keeping the certification forms of subconsultants. Further, by executing the Agreement, the Consultant agrees to comply with these laws and regulations.

28.6.2. If the Consultant has engaged in any lobbying activities to influence or attempt to influence the awarding of this Agreement, the Consultant must disclose these activities. In such a case, the Consultant shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities". SFMTA must also receive all disclosure forms.

28.6.3. The Consultant and any subconsultants shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Agreement; or

(b) A change in the person(s) influencing or attempting to influence this federally funded Agreement; or

(c) A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Agreement.

28.7. Lobbying Certification and Disclosure. Pursuant to 49 C.F.R. Part 20 (which is by this reference incorporated herein), the Consultant shall execute and return the Certification Regarding Lobbying by Consultant form set forth in Appendix H with the execution of this agreement.

28.8. Certification Regarding Debarment, Suspension And Other Responsibility Matters.

28.8.1. Pursuant to Executive Order 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 and federal regulations in 49 C.F.R. 29, entities and individuals who are debarred or suspended by the federal government are excluded from obtaining federal assistance funds under this Contract. To assure that such entities and individuals are not involved as participants on this FTA-financed contract, if the contract exceeds \$25,000 each Consultant shall complete and submit, as part of its Proposal, the certification form, contained in these documents. The inability of a Consultant to provide a certification will not necessarily result in denial of consideration for contract award. A Consultant that is unable to provide a certification must submit a complete explanation attached to the certification form. Failure to submit a certification or explanation may disqualify the Consultant from participation under this Contract. SFMTA, in conjunction with FTA, will consider the certification or explanation in determining contract award. No contract will be awarded to a potential third-party contractor submitting a conditioned debarment or suspension certification, unless approved by the FTA.

28.8.2. The certification is a material representation of fact upon which reliance is placed in determination of award of contract. If at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately provide written notice to SFMTA. If it is later determined that the Consultant knowingly rendered an erroneous certification, or failed to notify SFMTA immediately of circumstances which made the original certification no longer valid, SFMTA may disqualify the Consultant. If it is later determined that the Consultant knowingly rendered an erroneous certification, or failed to notify SFMTA immediately of circumstances which made the original certification no longer valid, SFMTA may terminate the contract, in addition to other remedies available including FTA suspension and/or debarment.

28.8.3. Further, the Consultant shall not knowingly enter into any subcontract with an entity or person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds. As such, the Consultant shall require all subconsultants seeking subcontracts to complete and submit the same certification form contained in these documents before entering into any agreement with said subconsultant.

28.9. Exclusionary Or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, the Consultant agrees that it will comply with the requirement of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

28.10. Conservation. The Consultant shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State Energy Action plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.).

28.11. Clean Water. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

28.12. Clean Air. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

28.13. Fly America. International air transportation of any persons involved in or property acquired for the Project must be provided by U.S. flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, in accordance with U.S. GAO regulations, "Uniform Standards and Procedures for Transportation Transactions," 4 C.F.R. Part 52, and U.S. GAO Guidelines for Implementation of the "Fly America Act" B-138942, 1981 U.S. Comp. Gen. LEXIS 2166. March 31, 1981.

28.14. Seismic Safety. The Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Consultant also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

28.15. National Intelligent Transportation Systems Consultanture and Standards. The Consultant agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Consultanture and Standards as required by Section 5206(e) of TEA-21, 23 U.S.C. § 502-, and with FTA Notice, "Federal Transit Administration National ITS Consultanture Policy on Transit Projects" 66 Fed. Reg.

1455 et seq., January 8, 2001, and other subsequent Federal directives that may be issued.

28.16. Electronic and Information Technology. When providing reports or other information to the SFMTA, or to the Federal Transit Administration (FTA), among others, on behalf of the SFMTA, the Consultant agrees to prepare such reports or information using electronic or information technology capable of assuring that the reports or information delivered will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

28.17. Nondiscrimination. In addition to the provisions prohibiting discrimination set out in Sections 10.4 and 24.1, above, the Consultant shall ensure compliance by it and its subconsultants with all requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d), federal Executive Order No. 11246, regulations of the U. S. Department of Labor issued thereunder, the regulations of the federal Department of Transportation issued thereunder, and the Americans with Disabilities Act, as they may be amended from time to time. Accordingly, during the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

28.17.1. The Consultant shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter "DOT"), Title 49, Code of Federal Regulations, Part 21 ("Nondiscrimination in Federally-Assisted Programs of the Dept. of Transportation"), as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

28.17.2. In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, creed, sex, sexual orientation, disability, age, or nationality.

28.17.3. The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SFMTA or FTA to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information is required of a contractor or subconsultant that is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to SFMTA, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

28.17.4. In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, SFMTA shall impose such

contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:

- (a) Requiring the Consultant to take remedial action to bring the Consultant into compliance;
- (b) Withholding of payments to the Consultant under the Agreement until the Consultant complies; and/or
- (c) Cancellation, termination, or suspension of the Agreement, in whole or in part.

28.17.5. The Consultant shall include the provisions of these Subsections 28.17.1 to 28.17.4 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as SFMTA or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the Consultant may request SFMTA to enter into such litigation to protect the interests of SFMTA and, in addition, the Consultant may request the United States to enter into such litigation to protect the interest of the United States.

28.18. Title VI Compliance. During the performance of this Agreement, Consultant, for itself, its assignees, and its successors in interest agrees as follows:

28.18.1. Compliance with Regulations: Consultant shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

28.18.2. Nondiscrimination: Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

28.18.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.

28.18.4. Information and Reports: Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SFMTA or the FTA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to SFMTA, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

28.18.5. Sanctions for Noncompliance: In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, SFMTA shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

(a) Withholding of payments to Consultant under the Agreement until Consultant complies, and/or,

(b) Cancellation, termination or suspension of the Agreement, in whole or in part.

28.18.6. Incorporation of Provisions: Consultant shall include the provisions of Subsection 28.18.1 through 28.18.5 of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as SFMTA or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, Consultant may request SFMTA to enter into such litigation to protect the interests of SFMTA, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

28.19. Requirements of Americans with Disabilities Act. The Consultant is required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

28.19.1. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

28.19.2. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 27;

28.19.3. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

28.19.4. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

28.19.5. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

28.19.6. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

28.19.7. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. Part 64, Subpart F; and

28.19.8. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

28.19.9. Any implementing requirements that the FTA may issue.

28.20. Recycled Products. To the extent practicable and economically feasible, the Consultant agrees to provide a competitive preference for recycled products to be used in the Project pursuant to the U.S. Environmental Protection Agency Guidelines at 40 C.F.R. Parts 247, implementing Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962. If possible, the Consultant shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical at the fulfillment of this Agreement.

28.21. Privacy.

28.21.1. Should the Consultant, or any of its subconsultants, or their employees administer any system of records on behalf of the federal government, the Privacy Act of 1974, 5 USC § 552a, imposes restrictions on the party administering the system of records.

28.21.2. For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, SFMTA and any Consultants, third-party contractors, subcontractors, and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Agreement will make this Agreement subject to termination.

28.21.3. The Consultant agrees to include this clause in all subcontracts awarded under this Agreement that require the design, development, or operation of a system of records on individuals subject to the Act.

28.22. False or Fraudulent Statements and Claims.

28.22.1. The Consultant recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 et seq. and

U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Accordingly, by signing this Agreement, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered Grant Agreement, Cooperative agreement, Contract or Project. In addition to other penalties that may be applicable, the Consultant acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Consultant, to the extent the Federal Government deems appropriate.

28.22.2. The Consultant also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Consultant the penalties of 18 U.S.C. § 1001, 31 USC §§ 3801, et seq., and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

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

28.23. Drug-Free Workplace Policy. Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, 41 U.S.C. 702, 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.

28.24. Approval by Counterparts. This Agreement may be approved by counterparts signed by the parties' respective authorized representatives, which counterparts shall be considered a single document. Signed counterparts may be delivered by facsimile, PDF email, or courier.

29. INCLUDED APPENDICES.

The following documents included as appendices to this Agreement are incorporated by reference as if fully set out herein.

- A. Signed Scope of Services/Scope of Work
- B. Directory of Subconsultants
- C. Summary of Fees - Cost Breakdown/Schedule of Charges
- D. Other Direct Costs
- E. Organization Chart
- F. SBE Forms 4 & 5
- G. Small Business Enterprise (SBE) Program
- H. Overhead Rates for Field and Home Office Personnel
- I. Not Used
- J. Not Used

- K. Not Used
- L. Central Subway Design Control Procedures
- M. Design Schedule
- N. Construction Contract Package Definitions
- O. Construction Cost Budget

The remainder of this page is intentionally left blank.

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

CITY	CONSULTANT
City and County of San Francisco Municipal Transportation Agency	By signing this Agreement, Consultants each 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.
By _____ NATHANIEL P. FORD SR. Executive Director/CEO	Each 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.
SFMTA Board of Directors Resolution No. _____ Adopted: _____ Attest:	_____ George Pierson Chief Operating Officer PB Americas, Inc., a subsidiary of Parsons Brinckerhoff, Inc. One Penn Plaza New York, NY 10119 Federal Employer ID No. 41-2045366
_____ Roberta Boomer, Secretary SFMTA Board of Directors	_____ Michael Willis, President License No. C-15140 Michael Willis Architects, Inc.. 301 Howard Street, Suite 500 San Francisco, CA 94105 Federal Employer ID No. 94-3070035
Approved as to Form: Dennis J. Herrera City Attorney	_____ Denis Henmi, President License No. C-11009 Kwan Henmi Architects and Planning, Inc.. 456 Montgomery St., 3 rd floor San Francisco, CA 94104 Federal Employer ID No. 94-3082274
By _____ Robert K. Stone Deputy City Attorney	

Appendix A

Scope of Services

Design Package 2 (DP2)

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FINAL DESIGN PHASE

GENERAL

With challenging engineering and architectural issues at hand, successful delivery of Design Package 2 will be based on advancing the design concepts developed to date during the Preliminary Engineering Phase, capture the desires of the community, and develop designs that are efficient, economical, sustainable, and constructible.

The basis of the final design will be the preliminary design developed to date. It is anticipated that the present design will be reviewed and accepted in the Early Work (EW) milestone and the design will be adopted and advanced to the 65%, 90% and 100% milestones. Under the Basic Services scope of work, it is not anticipated to re-evaluate layouts, configurations, or planning aspects of the stations, nor significant modifications to the station designs or addition of new elements or connections to existing facilities, or major modifications to the layout and the station configurations.

Consultant's approach to the delivery of final design contract packages for Contract Packages CP-4 Union Market Street Station (UMS), CP-5 Chinatown Station (CTS) and CP-6 Moscone Station (MOS) begins with a clear understanding of the station concepts, design reference materials, and building blocks that the was established in the PE phase. Consultant will incorporate sustainable design elements. As an early action item, Consultant will work closely with SFMTA and the Design Package 3 Consultant to establish the project's sustainability policies, goals, and procedures in line with SFMTA's and the City's sustainable design guidelines. Developments of the sustainability guidelines are by others. DP2 Consultant role will be to implement these guidelines in its design provided that no significant alteration to the concepts, layouts, and designs developed during the Preliminary Engineering Phase will be required. Consultant will endorse SFMTA pursuing LEED V3 certification for the stations. However, it is not planned at this stage to have any the facilities designed under the Base Services to achieve LEED V3 certification.

Consultant will provide for opportunities for transit oriented development (TOD) at MOS and CTS Stations to bring value added to the Central Subway project. Design of the station headhouses will consider potential air rights developments by preserving spaces and provisions for utilities not to preclude future developments assuming present zoning requirements.

It is imperative that key interfaces and interface milestones within Design Package 2 and with Design Packages 1 and 3 be understood and agreed to by all project participants, regardless of design or construction package. There are numerous fixed facility, operational, functional and performance requirements common to all elements of the project, including ventilation, power, signals, communications, and emergency services, among others. These common design elements have to be identified, coordinated among the various design and construction packages, verified that they were addressed and monitored throughout design of the project. Project and system integration between the three design packages is the

responsibility of DP3 Consultant. DP2 Consultant will lead the integration between DP1 and DP2 on common elements and will incorporate in its design project integration elements identified by DP3. Revit 3D (BIM) modeling and VDC applications are potential tools to support interfaces activities and clash detection. Each of consultant's three station architects is familiar with and can utilize Revit software to standardize construction drawings and to facilitate identification of integration/interface conflicts among construction contracts/design packages and implementation of measures to resolve them early in the design process. However, the use of BIM under Basic Services will be limited in extent to the overall configuration developments due to the limited ability of the remaining project staff, who will be designing the plumbing, fire protection, electrical, and ventilation systems, to use BIM. Training of City staff or subconsultants' staff in BIM is not planned as part of the Basic Services. BIM will be used by the station architects to develop the general plans and layouts.

The following sections describe the approach to completing the Basic and Optional Services for Design Package 2 as delineated in the RFP and negotiated during the period of August 28, 2009 to November 12, 2009. The tasks are further elaborated in the Work Breakdown Structure. Days within this Scope of Work means calendar days unless otherwise noted. The cost proposal is based on the Basic and Optional scope of services and the deliverables as outlined herein.

Submittals

Early Work (EW): Upon notice to proceed, the Consultant shall familiarize itself with and review the design developed during the Preliminary Engineering (PE) Phase. The Consultant shall prepare review comments and shall provide a matrix of proposed changes from the PE concepts. Within 90 days of Notice to Proceed (NTP) Consultant shall prepare a quantity take off estimate by organizing the PE design quantities take off into the appropriate WBS.

65% Submittal: 65% complete shall be defined as being sufficiently complete to illustrate the entire scope of the work under design so that reviewers can comment on the overall scope of the project, by contract package. The intent is to avoid new, never before seen items of significance appearing for the first time in the pre-final submittal. The work also needs to be sufficiently complete to support the 65% submittal cost estimate. Items of significance shall also have been independently checked at this point, in accordance with the provisions for the QC Plan, including items on drawings, in the specifications or figures in the estimate.

Submittal shall include reports, drawings, and technical specifications sections to include the general description and products requirements, and quantity estimates at the 65% complete design level by contract package, for project design review. The submittal shall include in the transmittal letter a summary discussion of the design, by discipline, to give the reviewer an understanding of why the design

progressed in the particular manner it did. It shall reference documentation of design decisions made in the course of the work. Include outstanding issues and/or conflicts that need resolution and recommendations to resolve such issues. Provide a matrix of changes from the Preliminary Engineering documents. An electronic copy and one hard copy of the submittal materials will be provided. Additional reproduction cost will be part of the Optional Services.

For the 65% and 90% submittals Consultant will receive formal design review comments on Review Comment Forms within four weeks of each submittal from SFMTA reviewers and within eight weeks of each submittal from outside agencies or third party stakeholders. Program Manager shall compile all comments and resolve conflicting comments prior to submittal to Consultant. The Consultant is responsible for addressing previous comments (as answered or agreed upon) prior to each subsequent review.

Pre-Final Submittal (90%): All design work shall be essentially complete with only minor (insignificant) items needing detailing or checking. All calculations shall be completed; major items shall be independently checked. Drawings shall be nearly complete for bidding purposes; approximately 90% complete, and shall have incorporated or resolved comments made during the 65% design review, and other informal reviews. Unresolved comments shall be identified and addressed. Reports and studies shall be submitted as final, unless otherwise agreed. Consultant's final list of proposed contract bid items and quantities shall be submitted.

Submittal shall include final reports, drawings, special provisions and supplemental technical specifications, and updated quantity estimates. The submittal letter shall include a summary updated discussion of the design, by discipline, to give the reviewer an understanding of why the design progressed in the particular manner it did since the 65% submittal. It shall reference documentation of design decisions made in the course of the work since the 65% submittal. Include outstanding issues and/or conflicts that need resolution, if any remain, and recommendations to resolve such issues. Provide a matrix of review comments received for the 65% submittal with comment resolution. An electronic copy and one hard copy of the submittal materials will be provided. Additional reproduction cost is provided as part of the Optional Services.

Final Submittal/Contract Document (100%): Consultant's Final design submittal shall include original and electronic files of the complete drawings, special provisions; supplemental technical specifications, bid item list and final engineer's quantity take off ready for bidding of the work. Drawings shall be sealed and signed by the Consultant's appropriate architect, engineer or professional licensed by the State of California. Final drawing check prints (performed in accordance with established QC procedures) shall be submitted for review and will be returned to the

Consultant for safekeeping. Final sealed original calculations (properly indexed) and quantity estimating back up shall be submitted.

1.0 PROJECT MANAGEMENT AND CONTROL

Project Management is the daily management by Consultant of its scope, staff, and work product. It includes coordination of the design effort among disciplines and among construction packages. It also includes management of the contract schedule and budget, and implementation of cost and schedule control measures and corrective actions.

Each station package will have its own dedicated manager, design budget and schedule and be monitored on a regular basis. Interfacing and coordination among the teams will be done through weekly progress meetings. Similarly coordination and interfacing with other design packages (DP-1 and DP-3) will be done on a regular (weekly or bi-weekly) basis. Furthermore Consultant will provide support for open dialogue with building owners, utility companies, and project stakeholders as indicated hereinafter.

Changes to the Basic Services will be negotiated and implemented expeditiously in order to meet the overall Project schedule.

Task Leader

Nasri Munfah (Project Manager)

1.10 Final Design Strategic Execution Plan / Baseline Schedule

Services

The Consultant shall become thoroughly familiar with preliminary engineering design documents. The Consultant shall visit the project site to observe and determine general site conditions, utility locations, existing facilities, existing surface geologic conditions, and other pertinent information.

Verify/Validate the existing Preliminary Engineering designs, including Design Criteria, Code & ADA compliance, and other relevant requirements. The Consultant shall identify remaining outstanding issues with the Preliminary Engineering work products and shall identify steps and timeline towards resolution.

Within 21 days, the Consultant shall prepare an overall Final Design Strategic Execution Plan to cover all Final Design, irrespective of whether the Consultant or the City will perform the design. The Plan shall include: Final Design Work Plan, Design Schedule, Management and Coordination Plan of Consultant and City personnel, Communication Protocols, Design Budget and Schedule Control Plan, Drawing standards, and Quality Control.

The Final Design Strategic Execution Plan will drive the entire station design process. The plan will be the blueprint for performing the project and will develop a framework for:

- Resolution of issues remaining from Preliminary Engineering

- Monitoring project performance
- Disseminating information to all project participants
- Ensuring consistency across construction contract packages
- Controlling Quality, Schedule and Cost
- Identifying interfacing milestones both within Design Package 2 and with the other Design Packages as shown on the CSP Master Project Schedule (MPS).
- Identifying responsibilities and relationships within the Consultant Team and with SFMTA and other project participants and stakeholders

The Strategic Execution Plan shall include a baseline Task Control spreadsheet covering all subtasks. Subtasks shall be defined by construction package, discipline and deliverables (3rd or 4th level) to identify work products in accordance with the attached Work Breakdown structure (WBS). The Task Control Log shall be a spreadsheet showing subtask number, subtask title, construction package, discipline, budgeted hours and cost, and number of sheets or drawings (if appropriate). This spreadsheet shall be used for monthly reporting.

Consultant will proactively monitor its activities to anticipate problems and devise ways to avoid them before they turn into issues. Consultant shall respond to changing conditions while maintaining focus on ‘schedule busters’.

Consultant will develop a detailed Critical Path Method (CPM) schedule for its work, including cost information for each activity. The schedule will be based on the milestones contained in the CSP Master Project Schedule. The Baseline Schedule will include the activities based on the tasks and subtasks. The schedule will show the activity, description, duration, start, finish and logical relationships between activities, sub-activities and milestones. Deliverables, design reviews, incorporation of review comments, interfaces with other designers, and interfaces with third parties will be shown.

Deliverables

1.10 DP2 Final Design Strategic Execution Plan	Draft 21 days after NTP, Final 60 days after NTP
1.15 DP2 Final Design CPM schedule	21 days after NTP
Issues / Concerns with PE documents	30 days after NTP

Task Leader

Nasri Munfah (Project Manager)

Assumptions and Exceptions –

The MPS will be provided upon NTP

The design schedule will be a section of the MPS and will be uploaded into the MPS by others.

1. The Design Schedule will be cost loaded at the task and subtask levels only.

1.20 Project Control Reporting

Services

- Project Control Reports – to be submitted by the 10th of each month. The report shall include:
 - Task Control Update– Update the Task Control spreadsheet to reflect hours and cost expended to date, estimated remaining hours and cost to complete, and progress as an estimate of the percent complete. Current issues relating to the budget, proposed mitigations to address issues, and proposed and pending changes to the budget.
 - Update the DP2 schedule monthly to indicate progress, actual start and finish dates, remaining duration, percent complete, and estimated dates to complete. Submit the schedule update to the CPS Project Controls Manager electronically. The Consultant shall describe changes in logic, current issues relating to the schedule, proposed mitigations to address issues, and proposed and pending changes to the schedule.

Deliverables

1.20 a	Project Control Report 1. Updated Task control spreadsheet. Description of Task Control issues and resolution. 2. DP2 schedule status. Description of schedule issues and resolution.	Monthly (10 th)
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Task Leader

Greg Jones (Project Control Manager)

Assumptions and Exceptions –

1. In order to provide the project control reports on the 10th of the next month, portions will be assumed. Corrections to the assumed portions will be made in the following month’s report.

1.30 Invoicing

Services

Services include contract administration and contract compliance support to ensure compliance with City and County of San Francisco requirements, FTA procurement and contracting policies and procedures (including compliance with SBE requirements), and Employment and Labor provisions.

An Invoice for Payment will be submitted with the monthly progress reports on the 25th day of the month in a format provided by SFMTA and will contain up to date information for the following items:

- Monthly progress on the work. Current issues relating to interfaces, change control and other project management issues, and proposed resolutions to mitigate the issues.
- Labor information. Tables showing 1) the budgeted and actual average labor rates to date and for the month for each firm and 2) the budgeted and actual labor cost to date and for the month for each firm, 3) cumulative cost incurred to date, 4) percent complete, and 5) earned value and fee. The percent complete will be determined by the Consultant Project Manager with the concurrence of the Central Subway Design Oversight Project Manager. Earned values are calculated by multiplying percent complete against the task budget. Budget variance is calculated by subtracting estimated hours at completion from budgeted hours.
- Employee name, rate and firm for whom reimbursement is being requested.
- Time sheets, approved by employee supervisor of actual time earned by the employee, and employees of any subconsultants for each employee who worked on tasks for which a payment is requested.
- Receipts, logs and invoices for other direct costs for which reimbursement is being requested by firm.
- SBE, EEO and First Source Hiring participation, utilization and goal attainment.

Deliverables

1.30	Invoicing 1. Monthly Report and invoice 2. Labor information 3. Expenditure details by firm 4. Earned value and fee 5. Monthly SBE and EEO and First Source Hiring compliance reports	Monthly (25 th)
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Task Leader

Greg Jones (Project Control Manager)

Assumptions and Exceptions –

SFMTA will provide the invoice format upon NTP

Costs are assessed at the Sub-task level, by task, construction package and discipline (3rd level)

Subtask budgets shall not be exceeded without the prior approval of the Program Manager. If subtask budgets are exceeded without the approval of the Program

Manager, the Consultant bears full responsibility and risk for such expenditures. Changes to subtask budgets must be approved prior to billing any amount that exceeds the subtask budget.

1.40 Compliance Support

Assumptions and Exceptions –

This work has been included to subtask 1.30

1.50 Project Management

Services

- Project Management means the daily management by Consultant to coordinate design and support of construction, control quality, budget, cost, schedule, scope, safety and security, and other related duties as required.
- Hold internal coordination meetings on a weekly basis with internal DP#2 staff. The primary purpose of these meetings is to interface the work between the various construction contract packages and various design disciplines and subconsultants. Central Subway Program Management Staff will attend relevant coordination meetings.
- After each weekly internal coordination meeting, prepare an Action Item Log that identifies required actions, due dates, and responsible parties.
- Participate in Central Subway Senior Management Weekly Meeting.
- In addition, participate in coordination, interface and other meetings as needed. The primary purpose of these meetings is to progress, manage and control the CSP and interface the work among the various contract packages and for project integration. It is assumed that for meetings not requested by the DP2 Consultant that others will lead the meetings and prepare the minutes of these meetings.
- Perform other agreement and design management activities of DP2

Deliverables

1.50	Project coordination meetings 1. Action item log 2. Brief progress reports(as needed) 3. Meeting minutes (as required)	As needed
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Task Leader

Nasri Munfah (Project Manager)

Assumptions and Exceptions

1. Project management activities for DP2 will be performed under this task
2. Project Integration/Interfacing meetings will be led and documented by DP3 Consultant

3. Senior Management Weekly Meeting will be led and documented by others.
4. Program management, CSP overall financial management, ROW acquisition support, risk management, CSP overall project administration, and CSP overall document control will be done by others. Consultant's role will be to implement CSP procedures and to participate in risk management workshops and other meetings and implement measures to manage risks, scope, schedule, and budget.
5. Overall Project Document Control will be prepared and managed by others; Consultant shall adhere to and implement CSP document control procedures.

2.0 DESIGN AND PROJECT INTEGRATION

The success of the Central Subway project will be largely determined by the degree to which the consultants responsible for each of the three design packages implement the integration and coordination roles defined under Task 2. Design Package 3 (DP3) is responsible for integration between DP1, DP2 & DP3. Consultant will coordinate/integrate design among its Subprime Consultants and its Subconsultants, across disciplines and within the Integrated Team; and integrate DP2 interfaces with DP1 & DP2. It is critical that the station design packages be fully coordinated, consistent, and integrated. Furthermore, interfacing between the station contracts and the tunnel and systems contracts is of critical importance. Consultant will implement the CSP overall Interfacing and Integration Management Plan which will be developed by Design Package 3.

Task Leader

Tony Murphy (DP 2 Integration Manager)

2.10 Design Interfacing and Integration Management

Services

- Implement a comprehensive, systematic, documented, verifiable, and continuous integration plan to be developed by others..
- Produce a DP2 Interfacing and coordination Plan to identify the interfaces between design elements, construction contract packages, and design team members including sub-primes, subconsultants and City staff. It also will identify the individual responsible for ensuring that the requirements at each interface boundary are met in the design.
- Once interfaces among various design packages and contract packages are identified, work with Design Package 3 Consultant to manage each interface throughout the project.
- Comply with the Central Subway Project (CSP) Project Integration Plan to be developed by others.
- Use the overall project Interfacing Management System developed by others to organize information, track progress, and to provide a permanent record of integration activities.

- Perform Interdisciplinary coordination check of DP2 construction contract packages to identify and address conflicts and clash detection.

Deliverables

2.10	Design Interfacing and Integration Plan for DP2 Interdisciplinary coordination check prints	21 days after NTP within 21 days after each 65% and Pre-Final design submittal
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Task Leader

Tony Murphy

Assumptions and Exceptions

1. Design Package 3 Consultant will be the lead consultant in the preparation of the project wide integration plan and will manage interfacing among DP1, DP2 & DP3.
2. Consultant will coordinate within DP2 and with DP1 and DP3 and implement design requirements of DP1 and DP3 as applicable to DP2.
3. DP2 will perform early coordination with DP1 and DP3 to review and verify station layout / room configuration and other such requirements. DP2 and DP3 will present the results of their coordination to obtain concurrence from SFMTA.
4. All major design input and interfacing requirements from DP1 and DP3 will be available and finalized upon receipt of comments from the reviewers of the last DP2 65% submittal.

2.20 Third Party Coordination

Services

- Assisting SFMTA with coordination with and obtaining concurrence from third parties and approving agencies (FTA, SFCTA, BART, CPUC, Building owners and other involved stakeholders) including providing necessary documents, drawings, and information.

Task Leaders

These activities will be managed by each construction package manager.

Dan Yavorsky (CP-4)

Denis Henmi (CP-5)

Jeff Tusing (CP-6)

Deliverables

2.20	Participation and providing supporting documentation for Third party coordination and approvals 1. CPUC 2. BART 3. Building Owners 4. City & County entities (BSM, SFFD, MCAC, SFCTA, MAAC, Mayor’s Office, Civic Design Committee, BCM, DBI, etc.) 5. FTA	Periodic, as required
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Assumptions and Exceptions

- Utilities coordination is under subtask 6.10
- Community Outreach is under subtask 2.60
- Permit applications is under task 8.0.
- Graphics support will be under task 14.
- Design work is Task 12.
- Level of effort is assumed for this task based on assumptions of a number of meetings and a number of supporting documentation. Additional funding will be provided if needed.
- Work done by others to be incorporated in DP2 will adhere to the CSP MPS and will follow CSP design and CADD standards.
- DP2 will perform early coordination with DP1 and DP3 to review and verify station layout / room configuration and other such requirements. DP2 and DP3 will present the results of their coordination to obtain concurrence from SFMTA.
- All major design input and interfacing requirements from DP1 and DP3 will be available and finalized upon receipt of comments from the reviewers of the last DP2 65% submittal.

2.30 Coordination of Design Performed by City Staff

Services

Within the first two weeks of NTP, the specific scope of work to be performed by the City staff will be defined. Consultant will coordinate, integrate and incorporate as applicable City staff and the design work performed by City and SFMTA in DP2 team.

Scope of the work assumed to be performed by City and SFMTA staff in general is as follows. This work is identified as part of Optional Services in Consultant Contract.

1. Roadways, sidewalks, ADA ramps, and all civil work required within the public right of way.
2. All traffic engineering, truck routes, and maintenance and protection of traffic. All temporary and permanent relocation and restoration of traffic signals, signs, streetlights, OCS, etc.
3. All drainage work on surface and within stations.
4. All plumbing and fire protection work in all three stations including domestic water, waste water, sanitary sewer, fire lines, and sprinkler systems and all associated mechanical equipment.
5. CCTV, telephones, and LANs in all stations.
6. Traction power substations including duct banks, manholes, etc .
7. Sewer and Cistern relocation/protection in Chinatown station area

Deliverables

2.30	Coordination/ integration of City staff and their work product in DP2	Continuous
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Task Leader

These activities will be managed by each construction package manager.

Dan Yavorsky (CP-4)

Denis Henmi (CP-5)

Jeff Tusing (CP-6)

Assumptions and Exceptions

- It is assumed that the City staff working on the project will collocate in the project office and the work will be done in the project office to have full interfacing and integration with the project staff.
- City staff will be integrated in the project team and will adhere to the project work plan and design schedule.
- The City staff will follow all CSP procedures, guidelines, criteria, etc as the rest of the project team.
- As part of the Integrated DP2 Team, the design work identified above will be provided by City staff.

2.40 Systems Design Coordination

This subtask consists of the coordination of DP2 design work with the work of the DP3 team and the integration of work products prepared by the DP3 team into CP4, CP5 & CP6.

Deliverables

2.40	Systems Design Coordination 1. Implementation of decisions made and approved by SFMTA	As required
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Assumptions and Exceptions

1. Consultant will coordinate and integrate the design of systems to be designed by the DP2 team as part of other tasks and/or subtasks. Consultant will coordinate and integrate the design of systems to be designed by the DP3 team as part of other tasks and/or subtasks.
2. DP2 will perform early coordination with DP1 and DP3 to review and verify station layout / room configuration and other such requirements. DP2 and DP3 will present the results of their coordination to obtain concurrence from SFMTA.
3. All major design input and interfacing requirements from DP1 and DP3 will be available and finalized upon receipt of comments from the reviewers of the last DP2 65% submittal.
4. Tunnel Overhead Contact System (OCS), OCS support, and ductbanks will be designed and integrated by others
5. Consultant will design and incorporate in CP4, CP5 & CP6 infrastructure to support equipment to be installed in CP7, and will provide space, conduit, power, ventilation and other support facilities for this equipment. Since AC power and distribution system in UMS will be done by City/SFMTA staff coordination, power supply, conduit runs, etc to equipment to be installed in CP7 contract in UMS station will be done by City/SFMTA staff.
6. DP3 Consultant will review and comment on DP2's design of facilities to support CP7 installations.
7. TVM design will be done by others. Consultant will coordinate conduit runs and will design the support for TVMs.
8. DP3 team will be responsible for the design of train control, SCADA, radio, passenger information, and system-wide communication systems. DP2 team will incorporate in CP4, CP5 & CP6 drawings, conduit runs and termination points, including mountings, cabinets, boxes, speakers and others assemblies within the stations.
9. Train control system, SCADA, radio, passenger information, and system-wide communication systems are by others. DP2 team will show on CP4, CP5 & CP6 drawings conduit runs and termination points, including mountings, cabinets, boxes, speakers and others assemblies within the stations.
10. Stray current and cathodic protection design is by others.
11. DP3 will lead coordination of DP3 work with DP2 consultant.

12. Work done by others to be incorporated in DP2 will adhere to the CSP MPS and will follow CSP design and CADD standards

2.50 Coordination with Art for Transit (Optional Service)

Services

- Coordinate with San Francisco Arts Commission and make presentations to the Art Commission with regard to the incorporation of Art into each station. Consultant will include the Arts Commissions staff and selected artists in design team meetings as applicable and provide architectural and engineering advice of feasibility and constructability of artist proposals.

Deliverables

2.50	Arts Commission and Artist Coordination 1. Meeting minutes with Art Commission staff and with selected artists 2. Coordination and integration of Public Art in design documents.	As required
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Task Leader

Mona Tamari

Assumptions and Exceptions

- Surface and subsurface preparatory work and utilities needed for the art work are reasonable, within the parameters of the existing design, and will not significantly impact the design concepts, elements, or progress of DP2 after the 65% documents and before 90%.
- It is assumed that artists will be selected in a timely manner and that the art concepts will be developed prior to the 65% submittal of DP2 packages. Concepts will be locked down at the receipt of comments on the 65% submittals of DP2 packages.
- Design work to support installation of Art work is in Subtask 12.07.
- Civic Design Approvals are in Subtask 2.20.
- Level of effort is assumed. Additional funding will be made available is needed.

2.60 Community Outreach

Services

Services to support Public Outreach that is managed by others and will include the following:

- Participate in meetings with the public and respond to questions and issues from the public to foster good communications and general understanding and support of the design. Includes providing necessary documents, drawings, and information.

- Assist with public meetings, provide coordination and follow up on issues raised by the public related to the design elements of DP2.

Deliverables

2.60	Community/Public Outreach Support	[As requested]
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Task Leader

TBD

Assumptions and Exceptions

- Public Outreach master plan/schedule is by others
- Provision of public outreach staff is by others
- Conduction and recording of public meetings will be done by others.
- Retaining of community advocacy organizations and their management will be done by others
- Graphics support will be under task 14.
- Level of effort is assumed. Additional funding will be made available is needed.

2.70 Other Coordination Activities

Consultant’s management, architecture, and engineering staff shall participate in formal and informal review meetings as directed by the SFMTA..

Services

- Support constructability reviews.
- Support Peer Reviews
- Support Stakeholder Reviews.
- Support TOD planning
- Review, log, address, and respond to review comments on each review

Deliverables

2.70	Other Coordination records (minutes/action items/issue resolution) 1 Coordination with TOD planning (65%) 2. Stakeholder Reviews (65% and 90%) 3. Peer Reviews (65% and 90%) 4. Constructability Reviews (65% and 90%) 5. FTA Workshops 6. Provide a matrix of review comments received for each submittal showing how the comments have been resolved.	[As required]
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Task Leader

These activities will be managed by each construction package manager.

Dan Yavorsky (CP-4)

Denis Henmi (CP-5)

Jeff Tusing (CP-6)

Assumptions and Exceptions

- Program management, financial management, ROW acquisition support, risk management, contract administration, and document control will be done by others.
- Consultant’s role will be to implement CSP procedures and to participate in risk management workshops and implement measures in the design to manage risks provided such measures will not significantly alter the design concepts of DP2.
- Constructability, VE and peer reviews, will be conducted and led by others. Implementation of recommendations by these reviews will not significantly alter design concepts of DP2. Design will be locked down after receipt of the comments of the 65% submittal.
- TOD consultants are to be retained by others. Does not include design coordination for a potential developer.
- Implementation of TOD consultant requirements in the design is not included as part of Basic Services nor Optional Services.
- Drawings and graphics support are under task 12 and 14, respectively.
- A level of effort is assumed. Additional funding will be made available as needed.

2.80 Safety and Security

Services

- Implement safety and security design criteria and measures in the station designs, including incorporate the principles of Crime Prevention through Environmental Design (CPTED). (In task 12).
- Complete Safety and Security Certification checklist for each station. Safety and Security checklist items will be identified by others.

Deliverables

2.80	Completed Safety and Security Certification checklist for each package	within 21 days of 65%, 90% and 100% submittals
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Task Leader

Gulzer Ahmed (PB)

Assumptions and Exceptions

1. CSP Safety and Security Design Criteria will be provided at NTP.
2. Implementation of safety and security measures developed by others after 65% submittals will not significantly alter the design concepts of DP2 as established in the PE phase.
3. Additional Threat and Vulnerability Analysis (TVA) will be done by others.
4. Blast analyses and structural hardening design are not included as part of the Basic Services or Optional Services.

3.0 GEOTECHNICAL INVESTIGATIONS

Geotechnical investigations were performed during preliminary engineering to characterize the preferred tunnel alignment. However, due to the criticality of the construction of the three stations, especially UMS and Chinatown stations additional geotechnical investigation is warranted. For Design Package 2 supplemental borings, laboratory testing and ground water monitoring will be performed as needed.

Geotechnical services for DP1 and DP2 will be performed concurrently.

3.10 Supplemental Investigations

Services

Perform additional borings, laboratory analyses, and a pump test as needed to assess the anticipated ground and ground water conditions and behavior during excavation.

It is anticipated that up to two additional borings will be taken at Moscone station area, and three borings will be taken at each of UMS and Chinatown Stations. Also a pump test will be performed at UMS Station location. This will enable the project to better assess the anticipated ground behavior and ground water condition during excavation and impact of construction of UMS station on the ground water regime in the vicinity of BART Powell Street Station.

Prepare geotechnical data report to provide as information to bidders.

A single geotechnical data report (including data from the PE phase and Design Package 1) will be prepared and included in the three construction bid packages (CP4, CP5, and CP6).

Deliverables

3.10	Supplemental Investigations Plan	[NTP + 30 days]
3.20	Geotechnical Data Report (draft and final)	[Draft at 3.5 months + NTP, Final at the first 65% station deliverable]

Task Leader

Ramin Geolesorkhi

Assumptions and Exceptions

- Data from PE and the supplemental geotechnical investigation program from DP-1 will be made available.
- A single data report will be prepared for the three stations and will include data from the PE and DP1 geotechnical investigations.
- Environmental and hazardous materials investigations are by others
- DP1 and DP2 will combine this work.
- Includes 3.20 Geotechnical Characterization report.

3.20 Geotechnical Data Report

Assumptions and Exceptions –

This work has been moved to subtask 3.10

3.30 Geotechnical Characterization Report

Services

Preparation of geotechnical characterization reports. Geotechnical and ground water analyses will be performed to support the civil and structural designs. The analyses will address support of excavation; ground water control; geo-hydrology issues and ground water movement; and potential settlement and its impact on buildings, structures, and utilities. Geotechnical analyses for the sequential excavation of Chinatown Station will also be done under this task.

Work with DP1 to determine allowable settlement and monitoring trigger points for utilities, tunnel, and station construction contracts for settlement monitors to be installed in CP3. The work will include assessment of the effects of construction

induced settlements on overlying structures and services (within the expected settlement trough) due to station construction. Consultant will establish estimated ground displacements and Consultant will identify public and private structures and services affected by construction induced settlements. Consultant will design develop instrumentation and monitoring program to monitor existing structures performance.

Deliverables

3.30	Coordination of allowable settlements and monitoring trigger points and settlement monitoring program for CP3, CP4, CP5, & CP6. Geotechnical Characterization Reports (draft and final)	[Within 15 days of DP1 Pre-final documents] [Draft at Seven Months after NTP, Final four weeks upon receipt of comments]
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Task Leader

Mitch Fong

Assumptions and Exceptions

Data and analyses and geotechnical reports from the PE phase and DP-1 additional investigations and data reports will be made available.

3.40 Geotechnical Baseline Reports (GBR)

Services

Preparation of geotechnical baseline reports specific for each station. The reports will provide potential contractors the geotechnical baseline for each station.

Deliverables

3.40	Geotechnical Baseline Report for each station <i>3.40.C4 GBR: Const .Cont .Pkg 4 (UMS Station)</i> <i>3.40.C5 GBR: Const .Cont .Pkg 5 (Chinatown Station)</i> <i>3.40.C6 GBR: Const. Cont. Pkg 6 (Moscone Station)</i>	[Seven months after NTP and 90% and 100% submittal]
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Task Leader

Mitch Fong

Assumptions and Exceptions

- Data from the PE phase and DP-1 additional investigations and data reports will be made available in a timely manner.
- Geotechnical Characterization report from PE and DP-1 will be made available in a timely manner.
- GBR for DP-1 will be made available in a timely manner.

4.0 SURVEYING AND RIGHT-OF-WAY

The survey work will be done by the Consultant or others as defined below.

4.10 Surveying

This task will be performed by PM/CM. Signed and sealed survey maps will be provided within two months from NTP. Consultant will use these drawings as the basis of its design.

Assumptions and Exceptions

- Survey maps will be provided in hard copy and CADD Files using the project coordinate system. Survey maps and drawings will be provided signed and sealed in a timely manner to enable the advancement of the stations design.
- ROW survey and mapping is by others.

4.30 BART Powell St. Station (Survey and Condition Assessment)

Services

Perform additional surveys and a condition assessment of the BART Powell St. Station concourse level in the impacted area of the UMS Station passageway into the Powell St. Station concourse. Attention will focus on establishing the existing elevation and plan alignment of passageways and impacted entrances. The second area of attention will be the condition and integrity of the existing structures that will be modified to accommodate the connection between the two stations. Photographs will be used to document existing conditions.

Deliverables

4.20	BART station survey and condition assessment 1. BART survey work plan 2. BART Station condition survey and assessment	[65%]
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Task Leaders

John Martin and Dan Yavorsky

Assumptions and Exceptions

- o Access to BART Powell St. Station (including non public spaces) will be made available by BART in a timely manner through SFMTA.
- o As built drawings of BART Powell St Station will be provided by BART in a timely manner through SFMTA.

5.0 TRAFFIC ENGINEERING (OPTIONAL SERVICES)

This task will be done by City/SFMTA staff. It is under the Consultant’s Optional Services.

The focus of this task is, working with the San Francisco Department of Parking and Traffic, to provide a traffic engineering report that addresses construction impacts on street traffic and identifies necessary mitigation actions.

5.10 Traffic Engineering Report

Services

The report will include analysis of staging area and construction site access, truck haul routes and maintenance of traffic for the three stations. The analysis will also include a determination of allowable hours of operation and restrictions to construction traffic activities during special events. The report will also identify the level of impact and necessary temporary or permanent traffic signal and signing modifications associated with the project.

Deliverables

5.10	A Construction Traffic Report covering all three stations	[65%, 90% and 100%]
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Task Leader

TBD (City staff)

Assumptions and Exceptions -

- o It is assumed that traffic counts have been done during the PE phase and will be made available.

5.20 Traffic Plans

Services

Maintenance and protection of traffic plans for each station location will be prepared. CP-4 will require maintenance and protection of traffic (MPT) plans for cut-and-cover and top-down construction of UMS Station. This includes maintaining at least one lane of traffic on Geary Street during daytime hours, while providing detours around the construction site during nighttime and weekend hours. CP-5 will require plans to fully maintain traffic at Chinatown Station since the station will be mined. CP-6 will require traffic plans to maintain access to Moscone Convention Center loading ramp during construction of MOS Station.

MPT plans and detour plans will be prepared for each station location. Muck removal and material delivery to each construction site will be addressed. Suggested truck routes and any limitations and requirements will be provided.

Deliverables

5.20	Maintenance and Protection of Traffic Plans <i>5.20.C4 Traffic Plan: Const. Cont. Pkg 4 (UMS Station)</i> <i>5.20.C5 Traffic Plan: Const. Cont. Pkg 5 (Chinatown Station)</i> <i>5.20.C6 Traffic Plan: Const .Cont. Pkg 6 (Moscone Station)</i>	[65%, 90% and 100%]
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Task Leader

TBD (City Staff)

Assumptions and Exceptions –

- Support and corporation with San Francisco Department of Parking and Traffic will be provided in a timely manner.
- MPT concepts as developed during the PE phase will not be rejected by San Francisco Department of Parking and Traffic or significantly altered.
- MPT construction contract documents will be prepared by City staff and will be included in Task 12.

6.0 UTILITY DESIGN COORDINATION

Supplemental utility investigations will be undertaken at each station location. It is assumed that CP1 and CP2 will relocate most utilities along Union Square / Market Street and Moscone Stations. This task will supplement the work performed under DP1 and will provide the required services for supporting utilities that will cross the excavation and will provide utility relocation/support at the Chinatown Station location. Existing sewer and cistern will be done by City staff. The implementation of a joint utility trench approach that brings together buried utilities from multiple owners and agencies requires thorough documentation of existing utility locations and conditions and early and frequent coordination with utility owners to establish acceptable layout, configurations, connections schedules and cost sharing formulas.

6.10 Utility Location and Owner Coordination

Services

- Provide updated composite utility drawings showing type of utility, size, material, owner and other pertinent information along with preliminary utility relocation plans (For Chinatown Station).

- Provide additional utility research for any utilities or utility service lines not shown on the composite utility drawings in the preliminary engineering package. (For Chinatown Station)
- Prepare Utility Technical Memorandum (UTM) for Chinatown Station. UTM will identify impacted utilities and will develop a strategy to protect, support, or relocate them.
- Coordinate with utility owners and building owners (utility users) to address how to protect or relocate utilities

Deliverables

6.10	Utility Technical Memorandum 1. Utility Composite Drawings & Technical Memorandum for CP4 2. Utility Composite Drawings & Technical Memorandum for CP5 3. Utility Composite Drawings & Technical Memorandum for CP6	[65%, 90% and 100%]
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Task Leader

Fred Reynolds

Assumptions and Exceptions

- Existing composite utility drawings prepared during the PE phase will be provided.
- No allowance was made for potholing.
- Relocation or protection plans for the impacted utilities at the station locations will be provided as part of Task 12.

6.20 Settlement Impacts on Utilities

Services

- Consultant will assess the effects of potential settlements caused by the station excavation on buried utilities.
- Using the evaluations and recommendations made in the PE phase, Consultant will analyze potential settlement caused by excavation or deflection of the excavation support system on existing utilities.
- Consultant will identify remedial measures and a monitoring program.
- This effort will be a combined with DP-1 for overall settlement report with DP-2 finalizing the report.

Of particular concern are the utilities in the streets at Chinatown Station where SEM construction will be employed. Detailed monitoring and remedial measures will be developed and provided in the design documents.

Deliverables

6.20	Settlement impacts on Utilities Report Coordination of allowable settlements and monitoring trigger points and settlement monitoring program for CP3, CP4, CP5, & CP6. 6.20.C4 Utility Settlement Impacts and Protection -- Const. Cont. Pkg 4 (UMS Station) 6.20.C5 Utility Settlement Impacts and Protection -- Const. Cont. Pkg 5 (Chinatown Station) 6.20.C6 Utility Settlement Impacts and Protection -- Const. Cont. Pkg 6 (Moscone Station)	[Within 15 days of DP1 Pre-final documents] [65%, 90%]
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Task Leader

Mitch Fong

Assumptions and Exceptions –

- Settlement analysis will be done in conjunction with Task 3 Geotechnical Investigations. Protection of utilities will be done under this task.
- Protection, support, or relocation of utilities design documents will be prepared under Task 12. Drawings.

7.0 DRAINAGE (OPTIONAL SERVICES)

Drainage and handling of water for the Central Subway project will take two forms: On the surface, as the proper handling and treatment of pumped groundwater and surface runoff. In stations, the work will address the required drainage provisions – catch basins, settlement tanks, oil separators etc.

7.10 Drainage Design Report

Services

- For each station, design a drainage system to handle potential seepage, firefighting flow, and runoff water that might enter the station areas.
- Produce a Drainage Design Report to identify and quantify all anticipated sources of and disposal discharge points for waters collected at the surface work sites and in the stations.

Deliverables

7.10	Drainage Report 7.10.C4 Drainage Design Report -- Const. Cont. Pkg 4 (UMS Station) 2. 7.10.C5 Drainage Design Report-- Const. Cont. Pkg 5 (Chinatown Station) 7.10.C6 Drainage Design Report-- Const. Cont. Pkg 6 (Moscone Station)	[65 , 90 and 100%]
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Task Leader

TBD (City staff)

Assumptions and Exceptions –

- Track drainage is done by others and will be integrated by DP3. It will not be included in these reports
- The preparation of drainage drawings will be done in Task 12.

8.0 PERMITS

Consultant will work with and support SFMTA and PM/CM staff in preparing applications and obtaining permits for each construction package for Design Package 2. Required permits envisioned for the work in CP-4, CP-5 and CP-6 include: surface mounted facilities, tree permits, encroachment and street space permits for temporary construction elements; street improvement permits for the entrances, and potentially legislative review procedures for sidewalk changes as may be required around the station entrances.

8.10 Code Analyses and Permit Compliance

Services

- Support SFMTA and PM/CM Consultant in obtaining permits (Building Permit, Demolition Permit, sidewalk encroachment, and Tree Removal Permit).
- Consultant will be responsible for providing specific design information on or attached to permit applications and assuring that the design(s) presented are in conformance with permit requirements.
- Consultant will prepare code compliance summaries and will be submitted with each of the milestone submittals (65%, 90% and 100%) for each station. They will serve as the formal screening tool.
- Consultant will prepare permit drawings and specifications for CP-4, CP-5, and CP-6 for SFMTA to include in the permit applications.

Deliverables

8.10	Support of Permit Applications 8.10.C4 Support of Permit Applications and Permit Compliance -- Const. Cont. Pkg 4 (UMS Station) 8.10.C5 Support of Permit Applications and Permit Compliance -- Const. Cont Pkg 5 (Chinatown Station) 8.10.C6 Support of Permit Applications and Permit Compliance -- Const. Cont. Pkg 6 (Moscone Station)	[65% and 90%]
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8.20	Code compliance checklist 1. Code Compliance checklist for CP4 2. Code Compliance checklist for CP5 3. Code Compliance checklist for CP6	[65, 90 and 100%]
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Task Leader

Tony Sanchez-Corea

Assumptions and Exceptions

- The permitting process and obtaining permits will be done by others. Consultant’s role will be limited to providing supporting documentations, reports, drawings, etc.
- Integration of permit conditions and provisions will be done by others.
- Level of effort is assumed. Additional funding will be made available is needed.

9.0 CONTRACT SPECIFICATIONS

The Central Subway project requires a unified approach to the preparation of general conditions, special provisions and technical specifications for use with each of the seven planned construction contract packages

9.10 Special Provision and General Requirements Specification Reviews Services

Consultant understands that SFMTA will lead the preparation of Special Provisions and

General Requirements. Consultant will review the Special Provisions and provide comments and will review and provide suggested changes / information for incorporation by others into the General Requirements, minimum qualifications, Advertisement, and Information to Bidders and as related to CP-4, CP-5, and CP-6.

Deliverables

9.10	Review of Special Provisions and input to General Requirements, minimum qualifications, Advertisement, and Information to Bidders. Provide Bid Items Descriptions and Bid Schedule	90% and 100%
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Task Leader

Victor Eckland

Assumptions and Exceptions

General Provisions and Special Provisions will be prepared and provided by SFMTA in a timely manner to allow Consultant’s input by the Final submittal date.

9.20 Technical Specifications

Services

Development of a complete set of technical specifications for each station – each section receiving a fully documented chain of reviews

Consultant will provide specification specialist to integrate the various technical specifications with each other and with the General and Special Provisions. The specialist will be responsible on the production of the specifications, verification of the reference documents, compiling product data and materials and equipment spec sheets, file management, and cross checking and final production of the specifications.

Specify advanced commissioning and startup requirements for each contract. Specify testing and training programs, requirements for O&M manuals and spare parts, including material, component, subsystem, system, and system integration testing of stations contracts.

Deliverables

9.20	Technical Specifications 9.20.C4 Technical Specifications – Const. Cont. Pkg 4 (UMS) 9.20.C5 Technical Specifications – Const. Cont. Pkg 5 (Chinatown station) 9.20.C6 Technical Specifications – Const. Cont. Pkg 6 (Moscone Station)	[65, 90 and 100%]
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Task Leader

Victor Eckland

Assumptions and Exceptions - None

10.0 COST ESTIMATE AND SCHEDULING

Consultant’s understanding of Task 10 as defined in the RFP is that others will prepare the cost and schedule estimate for each construction contract based on the consultant provided work products. SFMTA will prepare the budget estimate for each construction contract using the approach outlined in the Terms and Conditions. Consultant will provide quantity takeoffs 90 days after NTP and with the 65%, Pre-Final and Final submittal of the construction documents and review and comment on construction cost estimates and schedules prior to submittal of the FTA request for a FFGA. SFMTA will support cost estimating during design development by providing estimates of options and alternates.

10.10 Cost Estimate & Schedule Review During Design

Services

- Consultant will provide written observations/comments regarding cost estimates to SFMTA within 21 days of receipt of the cost estimate.
- Consultant will provide written observations/comments regarding project schedule to SFMTA within 21 days of receipt of the schedule. Services include review and provide comments of the detailed construction schedules for CP-4, CP-5 and CP-6. Consultant role will be to support and advise SFMTA of issues concerns, and strategies related to construction schedule of CP-4, CP-5, and CP-6 construction packages.

Deliverables

10.10	10.10.C4 Cost Estimates Review Comments– Const. Cont. Pkg 4 (UMS Station) 10.10.C5 Cost Estimates Review Comments – Const. Cont. Pkg 5 (Chinatown station) 10.10.C6 Cost Estimates Review Comments – Const. Cont. Pkg 6 (Moscone Station)	Three weeks after receipt of each Cost Estimate
	10.10.C4 Schedule Review Comments– Const. Cont. Pkg 4 (UMS Station) 10.10.C5 Schedule Review Comments – Const. Cont. Pkg 5 (Chinatown station) 10.10.C6 Schedule Review Comments – Const. Cont. Pkg 6 (Moscone Station)	Three weeks after receipt of MPS at the 65 and 90

Task Leader

Keith Caro (Cost Estimate)

Lisa Avestedt (Schedule)

Assumptions and Exceptions

- Consultant’s responsibility with respect to cost estimates, construction budgets and schedules is limited to review and comments on the estimates and schedules.
- An allocated design contingency will be assigned at each submittal level suitable to the level of design at each stage. An allocated design contingency of at least 5% will be assigned at the 100% submittal.
- Quantities take off and construction cost estimate reviews of work designed by others will be done by the respective party responsible of its work.
- Integrated project schedule will be done and maintained by others.

10.20 Design Change Estimates

Services

Deviations between construction budgets and the construction estimate (prepared by SFMTA) will be addressed and resolved and modifications to the design to address any differences will be implemented. Quantity changes and other documentation for design changes will be provided as required to evaluate Change Proposals in accordance with Design Control Procedures.

- Development of quantity takeoff during the design process for
 - (a) SFMTA proposed changes to the Project Configuration
 - (b) Value Engineering Proposals
- List of potential cost reduction measures will be provided 90 days after NTP and with 65%, and 90% submittals.

Deliverables

10.20	Information for Engineering Change Proposals Cost Saving Elements List 1. Cost Saving List for CP4 2. Cost Saving List for CP5 3. Cost Saving List for CP6	[As Needed] [90 days after NTP, and with 65% and 90% design submittals]
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Task Leader

Keith Caro

Assumptions and Exceptions –

- Configuration management plan will done by PM/CM. Consultant’s role in the configuration management is to provide input and data.
- Discretionary design changes that will impact the baseline estimates, budgets, and schedules require approval in accordance with Design Control Procedures prior to implementation.
- Implementation of discretionary design changes is not part of this task and could be considered Additional Services.

10.30 Construction Quantity Estimates

Services

- Submittal of construction quantity takeoff
 - (a) 90 days after NTP
 - (b) 65% design submittal
 - (c) Pre-Final (90%) design submittal
 - (d) Final Contract Document (100%) submittal
- Quantity takeoff by Consultant and Cost Estimates by others will be developed in a timely manner to support decision making during the design process.

- o Quantity takeoff submittal will contain reconciliation with the previous submittal.

Deliverables

10.30	Construction Quantity Takeoff 10.30.C4– Const. Cont. Pkg 4 (UMS) 10.30.C5– Const. Cont. Pkg 5 (Chinatown Station) 10.30.C6– Const. Cont. Pkg 6 (Moscone Station)	[(90 days after NTP) (65%, 90% and 100% with design submittal)]
10.40	Quantity Reconciliation Reconciliation for CP4, CP5 and CP6	[65%, 90%, and 100% with design submittals]

Task Leader

Keith Caro

Assumptions and Exceptions

- o Cost estimates will be prepared by others.
- o Construction Contracting Strategy Plan will be developed by SFMTA.
- o Cost estimates and budgets will be based on the Construction Contracting Strategy Plan and the construction schedules identified in the RFP. Changes to the Construction schedule or the Construction Contracting Strategy Plan will impact the cost estimates and budgets.

11.0 QUALITY CONTROL

Quality control and quality assurance are essential elements to the success of the Central Subway project. Consultant’s team is committed to SFMTA to deliver Design Package 2 documents in full compliance with the review and documentation standards and procedures contained in the CSP Design Control Procedures.

Services

- o CSP will provide training of the Quality control plan for DP-2 Staff.
- o A DP2 Quality Control and Implementation Plan in compliance with CSP Quality Control Plan will be submitted within 30 days of NTP and will clearly spell out Consultant’s approach for implementing the CSP Design Control Procedures.
- o CSP Quality Control Plan will be provided to the consultant for review and comment.
- o Quality Control of DP2 team work.

Deliverables

11.10	Review and Comment on CSP QC Plan	[30 days after NTP]
11.30	QC review documentation including verifications of resolution and incorporation for each package	[65, 90 and 100%]

Task Leader

Aileen Reed

Assumptions and Exceptions

- o Quality Control Procedures and training will be provided upon NTP.
- o Project Quality Assurance will be by others, but consultant will assure the quality of the work of the DP2 Consultant.
- o Consultant will use established CSP quality procedures
- o Person performing Quality Control of Design work product shall be in the direct employ of the Consultant.

12.0 DRAWINGS AND DOCUMENTS

Development and production of the contract drawings, reports, and supporting calculations and documentation for Design Package 2 will take place under Task 12. All CADD drawings will be produced using agreed versions of AutoDesk products or other software.

Deliverable

12.00	Verification/Validation report of PE design Phase	[30 days after NTP]
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12.01 Civil Plans

Services

Prepare civil drawings. The drawings will cover work items identified here as Basic or Optional:

- o Demolition plans and facilities to be protected in place (Base)
- o Staging areas, site access, temporary fencing and noise barrier.(Base)
- o truck routes,(Option)
- o Site drainage and storm water management plans (Option)
- o Station drainage and connections to sewers plans (Option)
- o Site plans (Base)
- o Street and sidewalk restoration at station entrances / exits and headhouses (Option)

Deliverables

12.01	12.01.C4 Civil – Const .Cont. Pkg 4 (UMS Station) 12.01.C5 Civil – Const. Cont. Pkg 5 (Chinatown Station) 12.01.C6 Civil – Const. Cont. Pkg 6 (Moscone Station)	65, 90 and 100%
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Task Leader

- Khoi Le (CHS –UMS)
- Paul Bouman (C&D –CTS)
- Ray Leung (FJA – MOS)

Assumptions and Exceptions

- Roadway reconstruction drawings including sidewalks and ADA curb cuts, pavement, grading, and drainage will be done by City staff
- Track drawings and track alignment will be done by others.
- Presentation modeling and simulation is done under other tasks.

12.02 Utility Plans

Services

Prepare utility relocation and support and protection drawings. These drawings will cover the work that is not part of Design Package DP1 (construction packages 1 and 2) and will mainly focus on Chinatown Station area and support of utilities crossing the station excavations. The drawings will cover identification and locating existing public and private utilities, relocation and or protection of utilities during construction. House connections will be protected during construction or new connections will be made.

Chinatown Station (CTS) Utility (Base – protect and relocate existing utilities, Option – Sewer and Cistern protection/reconstruction)

Union Square / Market Street Station (UMS) Utility (Base – to protect and support existing utilities)

Moscone Station (MOS) Utility (Base – to protect and support utility crossings of the excavation and a potential sewer relocation)

Deliverables

12.02	12.02.C4 Utilities – Const. Cont. Pkg 4 (UMS Station) 12.02.C5 Utilities – Const. Cont. Pkg 5 (Chinatown Station) 12.02.C6 Traffic -- Const. Cont. Pkg 6 (Moscone Station)	65, 90 and 100%
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Task Leader

Fred Reynolds

Assumptions and Exceptions –

- It is assumed that utility drawings from DP1 for Construction contracts CP1 and CP2 will be made available.
- Support from SFMTA for the coordination and approvals by public and private utilities, and building owners will be provided

12.03 Traffic Plans (Optional Services)

Services

Preparation of maintenance and protection of traffic plans for each station.

Deliverables

12.03	12.03.C4 Traffic Drawings -- Const. Cont. Pkg 4 (UMS Station) 12.03.C5 Traffic Drawings -- Const. Cont. Pkg 5 (Chinatown Station) 12.03.C6 Traffic Drawings -- Const. Cont. Pkg 6 (Moscone Station)	[, 65, 90 and 100%
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Task Leader

TBD (City staff)

Assumptions and Exceptions

- It is anticipated that City staff will design temporary and permanent traffic signal, signing, and pavement striping and will be provided in accordance with the Project CADD standards.

12.04 Structural / Geotechnical Plans

Services

The work includes the preparation of structural plans for the three underground stations including the station structures, the head houses and entrances, ventilation ducts and shafts, and modifications to existing structures and facilities including BART’s Powell St. Station and Union Square Garage. In addition, the work also includes temporary support of excavation structures which are capable of retaining and protecting adjacent structures and utilities. The design of the temporary structures will be in accordance with the geotechnical analysis for loads and ground water control, and with the requirements and agreements with affected businesses and agencies. The support of excavation will also be designed to allow efficient construction of the permanent concrete structures.

A waterproofing membrane will be provided from the ground surface to provide a fully tanked facility at the stations and shafts.

The structures will be designed in accordance with the project seismic design criteria.

Consultant will design protective measures and develop instrumentation and monitoring program to monitor existing structures performance and take corrective actions if needed.

The work will include the preparation of the following plans:

- Support of excavation
- Excavation sequencing and initial and final support
- Foundations
- Station structures
- Headhouse structures
- Design of Instrumentation and monitoring program
- Building protection of structures due to potential impacts caused by construction
- Waterproofing
- Modifications to existing structures as required at UMS
- Support structures for the art work
- Support structures for the mechanical and electrical equipment in the stations
- Temporary decking
- Building settlement protection
- Geotechnical drawings

Deliverables

12.04	12.04.C4 Structural / Geotechnical -- Const. Cont. Pkg 4 (UMS Station) 12.04.C5 Structural / Geotechnical -- Const. Cont. Pkg 5 (Chinatown Station) 12.04.C6 Structural / Geotechnical -- Const. Cont. Pkg 6 (Moscone Station)	65, 90 and 100%
12.04b	Building Settlement Protection Report / plans	
12.04c	Geotechnical Plans	
12.04d	Instrumentation and monitoring plans	

Task Leaders

- George Inverso (CP-4)
- Christian Karner / Marco Scanu (CP-5)
- Murat Yucekul (CP-6)

Assumptions and Exceptions

- It is assumed that the PE drawings, reports and design documents will be made available upon NTP.
- Mandarin Tower will be underpinned if required.
- Consultant will determine if underpinning of additional existing structures is required, If design of underpinning of such structures is required, it will be provided as an Additional Service.
- Cross-section of CTS north and south of crosscut will be similar.

12.05 Architectural Plans

Services

Consultant will advance the design done to date and will continue to meet with stakeholders and strive to achieve consensus on the station design. Consultant will continue with the development of the PE design using system wide elements of continuity such as: Station configuration, platform paving, ticket vending machines, tactile warnings, system signing, systemwide station entry marker, platform edge lighting, station seating / benches, etc. Consultant will provide unique elements of differentiation for each station such as: station shape/aesthetic, windscreens/headhouses, integrated art, finishes, attachments to OCS, landscaping, fences and railing, and headhouses.

Design connection between the UMS and Powell Street Stations and revise existing Powell Street station facilities as necessary to maintain patron safety and a level of service of D or better including, but not limited to, reconfiguring/adding faregates and paths of travel. UMS station emergency exiting shall not require the Powell Street Station to be open. Provide means to enable the Powell Street Station to be locked down independently of the UMS Station. Perform pedestrian circulation analysis/simulation to verify that during peak hours the level of service is maintained.

Additional simulations (renderings) and models may be requested under task 14.

The scope will consist of the preparation of architectural plans for the stations including layouts, finishes, vertical circulation, etc.

Deliverables

12.05	12.05.C4 Architectural -- Const. Cont. Pkg 4 (UMS Station) 12.05.C5 Architectural -- Const. Cont. Pkg 5 (Chinatown Station) 12.05.C6 Architectural -- Const. Cont. Pkg 6 (Moscone Station)	65, 90 and 100%
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Task Leader

Robin Chiang (CP-4)

Mona Tamari (CP-5)

Jeff Tusing (CP-6)

Assumptions and Exceptions –

- It is anticipated that the PE design drawings will be made available upon NTP in CADD format
- Consultant is expected to provide a sustainable design but not obtain LEED certification.
- Does not include accessibility wayfinding beyond code requirements.

12.06 Urban Design

Services

- Develop the urban design for each station within its local setting.
- Prepare the landscaping and finishes at the surface of the station entrances and head houses.

Deliverables

12.06	12.06.C4 Urban Design -- UMS Station 12.06.C5 Urban Design – Chinatown Station 12.06.C6 Urban Design – Moscone Station	65, 90 and 100%
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Task Leader

Charu Sharma

Assumptions and Exceptions –

- Coordination with City Departments, Agencies and private businesses and owners will be led by SFMTA and will be performed as part of subtask 2.20 and 2.60.

12.07 Public Art (Optional Services)

Services

Prepare drawings showing the preparation and infrastructure required for the art work, including structural and electrical support. It is anticipated that most of the artwork will be integrated in the facilities design drawings.

Deliverables

12.07	12.07.C4 Public Art -- UMS Station 12.07.C5 Public Art – Chinatown Station 12.07.C6 Public Art – Moscone Station	65, 90 and 100%
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Task Leader

Mona Tamari

Assumptions and Exceptions –

See assumptions in Task 2.50 “Coordination with Art for Transit” above.

12.08 Signage

Services

- Implementation of system-wide SFMTA signage standards.
- Integration (includes coordination of the overall extent and information contained on signs and the detailed placement and attachment to facilities or foundations)
- Signage attachment details and utilities will be designed and provided.
- Coordinate with Urban Designer on signage outside stations

Deliverables

12.08	12.08.C4 Signage Drawings-- UMS Station 12.08.C5 Signage Drawings – Chinatown Station 12.08.C6 Signage Drawings – Moscone Station	65, 90 and 100%
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Task Leader

Robin Chiang (CP-4)

Mona Tamari (CP-5)

Jeff Tusing (CP-6)

Assumptions and Exceptions –

- Electrical connections for signs and code signage will be provided under other subtasks (electrical, mechanical, architecture, elevator, etc.)
- Does not include accessibility wayfinding beyond code requirements.

12.09 Elevators and Escalators

Services

- Consultant will design the vertical circulations elements (elevators and escalators) in accordance with SFMTA standards.
- Consultant will use qualified special consultants to confirm applicability and identify special criteria or considerations due to specific station conditions.
- Produce drawings and details as necessary, including elevator cab finishes, to integrate with the station designs and fully define elevator and escalator requirements to the Contractors.

Deliverables

12.09	12.09.C4 Elevators and Escalators -- UMS Station 12.09.C5 Elevators and Escalators – Chinatown Station 12.09.C6 Elevators and Escalators – Moscone Station	65, 90 and 100%
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Task Leader

- Robin Chiang (CP-4)
- Mona Tamari (CP-5)
- Jeff Tusing (CP-6)

Assumptions and Exceptions –

- Consultant will make staff available to assist SFMTA in defining design criteria.
- Escalators and elevators shall assume sleep mode unless patrons are detected.

12.10 Acoustics, Noise and Vibration

Services

- Conduct noise surveys at surface facility locations as necessary.
- Provide acoustical analysis and design for public areas within the stations.
- Work with station architects and electrical designers to select finishes and assist in design of PA system to reduce reverberation and to enable announcements to be clearly heard within station spaces.
- Identify acoustic treatment of ventilation plenums and equipment.
- Provide technical specifications, criteria, and analysis, as necessary, to define construction noise restrictions to which the Contractor will be required to adhere and any minimum noise abatement measures such as temporary construction site noise walls.
- Prepare noise and acoustical report and prepare contract documents of provisions for noise and vibration protective measures including drawings and specifications.

Deliverables

12.10	12.10.C4 Noise and Vibration -- Const. Cont. Pkg 4 (UMS Station) 12.10.C5 Noise and Vibration -- Const. Cont. Pkg 5 (Chinatown Station) 12.10.C6 Noise and Vibration -- Const. Cont. Pkg 6 (Moscone Station)	65, 90 and 100%
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Task Leader

Steve Wolf

Assumptions and Exceptions –

- Coordination is under subtasks 2.20, 2.30, 2.40, & 2.60.

12.11 Mechanical (Optional Services for Plumbing and Fire Protection) Services

- Coordination of the design among various elements including plumbing, fire protection, HVAC and emergency ventilation for the project.
- Design of sump pumps with mechanical control at the stations. (Optional service).
- Sanitary facilities in the stations and connections to the sewer system including ejectors, pumps and mechanical control (Optional Services).
- Consultant will design the station ventilation and HVAC systems for normal and emergency ventilation. The emergency ventilation system shall provide a tenable environment for emergency evacuations and tunnel ventilation as required by result of the Subway Environmental Simulation. HVAC shall maintain environmental conditions of DP2 and DP3 equipment within normal operating parameters. AC shall be provided in Agent Booths for comfort.
- Fire suppression system design (Optional Services)
- Consultant will design fire detection system for the stations in all occupied rooms and the public areas.

Deliverables

12.11	12.11.C4.10 Mechanical Plumbing-- Const. Cont. Pkg 4 (UMS Station) (Optional Services) 12.11.C4.20 Mechanical -- Fire Safety and Suppression (UMS) (Optional Services) 12.11.C4.30 Mechanical -- Mechanical – Ventilation and HVAC (UMS) (Basic Services) 12.11.C5.10 Mechanical – Plumbing (CTS) (Optional Services) 12.11.C5.20 Mechanical -- Fire Safety and Suppression (CTS) (Optional Services) 12.11.C5.30 Mechanical – Ventilation - HVAC (CTS) (Basic Services) 12.11.C6.10 Mechanical – Plumbing (MOS) (Optional Services) 12.11.C6.20 Mechanical -- Fire Safety and Suppression (MOS) (Optional Services) 12.11.C6.30 Mechanical – Ventilation – HVAC (MOS) (Basis Services)	65, 90 and 100%
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Task Leader

Gerry Cruz (CP-4)

Jose Herrera (CP-5)

Ray Keane (CP-6)

Assumptions and Exceptions –

- Plumbing and Fire Protection system design is by City staff and will be coordinated and incorporated by Consultant. It is anticipated that the design will follow the CSP design criteria and the drawings will be prepared in accordance with the CSP CADD standards.
- UMS Station emergency ventilation, fire dampers, doors, etc. shall be designed so that smoke from a fire in UMS Station will not enter the Powell Street Station.
- Fire testing and analysis of materials used in a typical SFMTA LRV and the establishment of the fire heat release and growth rates will be done by others
- SES and CFD analyses will be done by DP3 Consultant and the results will be provided in a timely manner to meet Consultant's design schedule.
- SCADA will be done by DP3 team. Consultant's role is to support and provide interfacing connections for the SCADA designer.
- Coordination with DP3 will be per subtask 2.40

12.12 Electrical (See below for Basic and Optional Services)

Services

The electrical design for each station will include:

- Station lighting for all three stations including location, type of luminaries and lighting fixture schedules.
- Design AC power and electrical distribution systems for all three stations.
- Consultant will design fire detection system for the stations in all occupied rooms and the public areas. Fire alarm indications shall be provided at the Emergency Command Panel and Post. The fire detection system will interface with SCADA system. Consultant will coordinate with DP3 Design team on SCADA interfacing. Design of SCADA System is by others.
- Emergency ventilation fans shall have local control panels and be designed for both emergency and maintenance modes. Emergency ventilation fan Programmable Logic Controllers shall be remotely monitored / controlled from the Emergency Command Panel and through the SCADA system. Annunciate emergency ventilation fan activity and alarms in agent booths.
- Fire detection, elevator, escalator, intrusion, Agent's emergency and sump pump alarms shall be annunciated in agent booths and provided to

SCADA systems. Consultant will coordinate with DP3 Design team on SCADA interfacing. Design of SCADA System is by others.

- o Communications systems, including two-way intercom for Patron / Agent communication, CCTV, PA, ACS, and Courtesy, Fire, Emergency and other station phones and LANs.

All systems that are monitored / controlled remotely shall have indications and controls wired to interface terminals in the room designated by DP3.

Deliverables

12.12	12.12.C4.10 Power and Lighting – UMS 12.12.C4.20 ACS \ CCTV (Optional Services) \ IDS \ PA \ Telephone (Optional Services) -- UMS 12.12.C4.30 Fire Detection – UMS (Basic Services) 12.12.C4.40 Grounding and Bonding (UMS) (Basic Services) 12.12.C5.10 Power and Lighting – CTS (Basic Services) 12.12.C5.20 ACS \ CCTV (Optional Services) \ IDS \ PA \ Telephone (Optional Services) -- CTS 12.12.C5.30 Fire Detection – CTS (Basic Services) 12.12.C5.40 Grounding and Bonding – CTS (Basic Services) 12.12.C6.10 Power and Lighting – MOS (Basic Services) 12.12.C6.20 ACS \ CCTV (Optional Services) \ IDS \ PA \ Telephone (Optional Services) -- MOS 12.12.C6.30 Fire Detection – MOS (Basic Services) 12.12.C6.40 Grounding and Bonding MOS (Basic Services)	65, 90 and 100%
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Task Leader

- Ed Wong (CP-4)
- Dennis Dias (CP-5)
- Ben Judilla (CP-6)

Assumptions and Exceptions

- Excluded from this work is any system-wide electrical work such as traction power, communication, signal, etc
- All communications systems connected to tunnel systems shall be connected to interface terminals in panels located in collaboration with the DP3 team.
- Emergency ventilation fan and fire alarm status indications for UMS Station shall be brought to a location in Powell Street Station designated by BART for monitoring.
- SCADA design will be done by DP3 team. Consultant’s role will be to support and provide interfacing connections for the SCADA designer.
- Coordination with DP3 will be per subtask 2.40.
- ACS is Access Control System.
- IDS is Intrusion Detection System.

12.13 Systems

Services

This task is part of consultant of DP3 scope of work.

12.14 Operations Control Center (OCC) Facilities - 131 Lenox

Services

This task is part of DP3 Consultant scope of work.

12.15 Verification / Validation Report

Services

Assumptions and Exceptions

- This work is included in other subtasks above.

12.16 Design Reports

Services

Consultant will prepare as part of the transmittal a design letter report accompanying the 65% and the 90% submittals for each contract package. The report describes the level of completion, decisions made, incorporation of comments, and changes from previous submittal.

Deliverables

12.16	12.16.C4 Design Report UMS 12.16.C5 Design Report CTS 12.16.C6 Design Report MOS	65, and 90%
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Task Leader

Dan Yavorsky (CP-4)

Denis Henmi (CP-5)

Michael Willis (CP-6)

Assumptions and Exceptions - None

12.17 Historic Architectural Services

Services

Consultant will provide Historic Building Survey documentation of the existing building on the Chinatown Station site in accordance with the project Mitigation Monitoring and Reporting Program. Consultant shall identify significant architectural elements and specify that they be disassembled in a manner that minimizes damage.

The architectural historian will assist in the development of a design of the above ground portion of the Chinatown Station that is culturally appropriate to the setting and the Chinatown community.

Consultant shall prepare plans to incorporate salvaged architectural features from the demolished building in an education exhibit. (Optional Services)

Deliverables

12.17	12.17.C5 Historic Building Survey -- Const. Cont. Pkg 5 (Chinatown Station) Specification for preservation of significant architectural elements Plans for Educational Exhibit (Optional Services)	65% 65%, 90% & 100%
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Task Leader

Alice Carey

Assumptions and Exceptions

Historic surveys at other station locations are not anticipated.

12.18 Safety and Security

Services

This work is included in other tasks above.

12.19 Other Tasks (Optional Services)

Additional Services and deliverables requested by SFMTA needed to obtain approval or complete construction documents and not included in other subtasks.

Deliverables

13.0 CONSTRUCTION PACKAGING AND SCHEDULES

The current contract packaging strategy is the result of prior studies and scheduling efforts conducted by SFMTA and documented in the Construction Contracting Strategy Plan documented in the RFP.

13.10 Construction Contracting Strategy Review and Comment

Services

During the Early Work phase, Consultant will review the Project schedule and contracting strategy plan considering the proposed construction methods, staging and sequencing plans, contract interfaces, market conditions, and risk management issues and prepare a report documenting its observations and recommendations.

Deliverables

13.10	Construction Contracting Strategy Plan Observations and Recommendations Report	2 Months after NTP
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Task Leader

Lisa Avestedt

Assumptions and Exceptions –

- It is assumed that Contract packaging, Project Master Schedule, and contract interfacing will be done by the others. Consultant role is limited to review and provide comments.
- This work will be combined in Subtasks 1.10

13.20 Construction Schedule Review

Services

Assumptions and Exceptions-

This work has been combined with subtask_10.10

14.0 OUTREACH SUPPORT

Managing stakeholder expectations requires clear explanations of planned construction methods, equipment and sequence. Consultant will support stakeholder outreach program that will be led by others. Consultant will be available when requested on a work order basis to prepare models, figures, simulations, renderings etc.

14.10 Graphics Support for Outreach

Services

To support stakeholder outreach, Consultant will use state-of-the-art software to develop graphics and simulations to help inform stakeholders and elicit input and obtain concurrence as final design progresses.

Deliverables

14.10	14.10.C4 Graphics Support – Const. Cont. Pkg 4 (UMS) 14.10.C5 Graphics Support – Const. Cont. Pkg 5 (Chinatown) 14.10.C6 Graphics Support – Const. Cont. Pkg 6 (Moscone station)	At SFMTA Discretion
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Task Leader

Mona Tamari

Assumptions and Exceptions

- Effort is limited to providing presentation materials for stakeholder outreach.
- Limited budget was assumed for this effort and will be used on a work order basis.
- Participation in meetings and responding to questions, etc. is included in Subtasks 2.60 and 2.70.
- Budget does not assume physical modeling or animations (Fly through or walk through).

15.0 BID SUPPORT SERVICES

15.10 Bid Support

Services

After public advertising for bidding, support services will be provided to SFMTA during the pre-bid period and during bid evaluation and award. These services may include preparation of addenda, responding to questions from bidders, providing engineering support including modifications to drawings and specifications, participating in pre-award conferences, and conforming contract documents to reflect pre-award changes.

Deliverables

15.10	15.10.C4 Bid Support – Const. Cont. Pkg 4 (UMS) 15.10.C5 Bid Support – Const. Cont. Pkg 5 (Chinatown) 15.10.C6 Bid Support – Const. Cont. Pkg 6 (Moscone)	[As needed]
15.20	Conformed Contract drawings and specs 15.20.C4 Conformed Contract drawings and specs Const. Cont. Pkg 4 (UMS) 15.20.C5 Conformed Contract drawings and specs Const. Cont. Pkg 5 (CTS) 15.20.C6 Conformed Contract drawings and specs Const. Cont. Pkg 6 (Moscone)	[As needed]

Task Leader

Dan Yavorsky (CP4)

Denis Henmi (CP5)

Jeff Tusing (CP6)

Assumptions and Exceptions –

- A level of effort was assumed for this service.
- Consultant will participate in the review of the bids on the Construction Packages .

16.0 DESIGN SERVICES DURING CONSTRUCTION

Consultant will support SFMTA throughout construction on as needed basis. A level of effort is assumed for these services. Services provided for each of the three construction packages include:

- Prepare and submit for approval a Construction Support Strategic Execution Plan that details Consultant’s roles and procedures in supporting SFMTA and the PM/CM.

- Review shop drawings, contractor working drawings, catalog cuts, etc.
- Respond to RFIs, technical submittals and contractor-proposed changes.
- Maintain logs and track progress of received RFIs, submittals and proposed changes
- Post site visit reports to document design discipline leads involvement in design verification or issue resolution.
- Prepare conformed drawings and specifications
- Prepare O&M manuals for systems included in respective construction contracts.
- Revise and reissue contract drawings and specifications to reflect contract changes
- Provide quantity estimates for proposed changes in the work.
- Return reviewed product data and catalog cut submittals within 5 working days of availability of the submittal to the Consultant. Additional time will be provided if the submittal package is large.
- Return reviewed Requests for Information (RFI) within 5 working days of availability of the RFI to the Consultant. Additional time may be required if the RFI warrants.
- Return reviewed submitted shop drawings, calculations, and samples within 10 working days of availability of the submittal to the Consultant. Additional time will be provided if the submittal package is large..
- Return reviewed substitutions and contractor requested changes within 15 working days of availability of the substitution or change to the Consultant. Additional time will be provided if the substitutions and contractor requested changes are complex.

16.10 Construction Support Strategic Execution Plan

Services

Prepare a strategic execution plan for each station to delineate the roles and responsibilities, procedures, and management approach for the Consultant’s services during construction

Deliverables

16.10	Const. Support Strategic Exec. Plan for each package	
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Task Leader

Dan Yavorsky (CP4)

Denis Henmi (CP5)

Jeff Tusing (CP6)

Assumptions and Exceptions –

Consultant will be provided with Contractor’s schedule of submittals for review.

16.20 Design Team Support

Services

Consultant will provide a single full time design team representative in the field during construction of all three stations. The representative will act as a liaison between the Consultant design staff, the CM, and SFMTA.

For Chinatown Station, Consultant will provide two full time field engineers experienced in sequential excavation to provide services during the station excavation. For UMS Station an experienced sequential excavation person will be made available on as needed basis during the sequential excavation of the bulb in the station invert.

Deliverables

16.20	16.20.C4 Design Team Representative – Const.Cont.Pkg 4 (UMS) 16.20.C5 Design Team Representative – Const.Cont.Pkg 5 (Chinatown) 16.20.C6 Design Team Representative – Const.Cont.Pkg 6 (Moscone station)	
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Task Leader

(TBD)

Assumptions and Exceptions

- It is assumed that three construction contracts will be issued (one for each station)
- The SEM field engineering representatives’ time budgeted for Chinatown Station excavation is assumed to be 30 months, two shifts per day, and 6 days a week.

16.30 Shop Drawings Review and Consultation during construction

Services

- Review shop drawings, Contractor working drawings, catalog cuts, etc.
- Respond to RFIs, technical submittals and contractor-proposed changes.
- Maintain logs and track progress of received RFIs, submittals and proposed changes
- Provide geotechnical support as needed during construction of the three stations

Deliverables

16.30	16.30.C4 Shop Drawings Reviews and RFI – Const. Cont. Pkg 4 (UMS) 16.30.C5 Shop Drawings Reviews and RFI – Const. Cont. Pkg 5 (Chinatown) 16.30.C6 Shop Drawings Reviews and RFI – Const. Cont. Pkg 6 (Moscone)	
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Task Leader

Dan Yavorsky (CP4)
 Denis Henmi (CP5)
 Jeff Tusing (CP6)

Assumptions and Exceptions –

None

16.40 Field Visits / Meetings

Services

Conduct site visits by Consultant staff and prepare site visit reports to document observations and verification of or issue resolution.

Deliverables

16.40	16.40.C4 Field Visits / Meetings – Const. Cont .Pkg 4 (UMS) 16.40.C5 Field Visits / Meetings – Const. Cont. Pkg 5 (Chinatown) 16.40.C6 Field Visits / Meetings – Const. Cont. Pkg 6 (Moscone station)	
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Task Leader

Dan Yavorsky (CP4)
 Denis Henmi (CP5)
 Jeff Tusing (CP6)

Assumptions and Exceptions –

A level of effort budget was assumed for this task.
 All site visits will be coordinated with the Resident Engineer.

16.50 Change Proposals / Value Engineering

Services

Prepare revised drawings, specifications, and/or quantity estimates for SFMTA and other requested changes. Support SFMTA in reviewing change proposals.

Deliverables

16.50	16.50.C4 Change Proposals / Value Engineering – Const. Cont. Pkg 4 (UMS) 16.50.C5 Change Proposals / Value Engineering – Const. Cont. Pkg 5 (Chinatown) 16.50.C6 Change Proposals / Value Engineering – Const. Cont. Pkg 6 (Moscone Station)	
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Task Leader

Dan Yavorsky (CP4)

Denis Henmi (CP5)

Jeff Tusing (CP6)

Assumptions and Exceptions

- A level of effort budget was assumed for this task.

16.60 Conformed Contract Documents

Services

Prepare conformed drawings and specifications based on contractor (or CM) prepared redlined drawings. Identify contractor provided drawings to be retained by SFMTA for O&M.

Deliverables

16.60	16.60.C4 Conformed Contract Documents – Const. Cont. Pkg 4 16.60.C5 Conformed Contract Documents – Const. Cont. Pkg 5 16.60.C6 Conformed Contract Documents – Const. Cont. Pkg 6	
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Task Leader

Dan Yavorsky (CP4)

Denis Henmi (CP5)

Jeff Tusing (CP6)

Assumptions and Exceptions

- It is assumed that SMTA will provide the redlined drawings and the conformed drawings will be prepared based on these redlined drawings. No field verification to their accuracy will be made.

16.70 Operations and Maintenance Manuals

Services

Provide integrated O&M manuals to enable SFMTA to maintain the sustainability of each station. Include advanced commissioning data and results of testing and startup.

Deliverables

16.70	16.70.C4 O&M Manuals: UMS Station 16.70.C5 O&M Manuals: Chinatown Station 16.70.C6 O&M Manuals: Moscone Station	
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Task Leader

Dan Yavorsky (CP4)

Denis Henmi (CP5)

Jeff Tusing (CP6)

Assumptions and Exceptions

- Contractor provided O&M manuals will form the core of the integrated O&M manuals.
- O&M Manuals will cover all DP2 scope including architectural finishes and fixtures and mechanical and electrical systems. O&M manuals for systemwide communications, train control, OCS, will be done by others.

16.80 Warranty Services (Optional Services)

Services

- In the event that systems, components, equipment, or finishes fail to meet the specified performance criteria prior to the Final Warranty Inspection, the Consultant may be requested to review the condition of work, and provide recommendations to the City for Corrective Warranty work.
- The Consultant shall assist the City personnel in conducting the Final Warranty. Inspections at the end of the two year warranty period following Final Completion of each construction contract.
- A level of effort budget was assumed for this task.

Attachments

ATTACHMENT 1 -- DELIVERABLE MATRIX

ATTACHMENT 2 -- DESIGN SCHEDULE