

THIS PRINT COVERS CALENDAR ITEM NO. _____

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco

DIVISION: TRANSPORTATION PLANNING AND DEVELOPMENT

BRIEF DESCRIPTION:

Requesting approval to award San Francisco Municipal Transportation Agency Contract CS-139, Professional Engineering Services for Radio Systems Replacement Project, to Booz-Allen Hamilton, Inc. (BAH) for an amount not to exceed \$3,626,921 and a term not to exceed 5 years.

SUMMARY:

- The San Francisco Municipal Transportation Agency (SFMTA) currently operates an antiquated and outdated radio communications system manufactured in the 1970's. The current radio communications system will essentially be inoperable in the year 2013 when the FCC narrows the bandwidth from 25 kHz to 12.5 kHz.
- SFMTA Board of Directors adopted Resolution No. 07-037 on March 20, 2007 authorizing the Executive Director/CEO to issue a Request for Proposal (RFP), receive proposals, select the highest ranked proposal, and negotiate a contract for an amount not to exceed \$3,500,000 and for a term not to exceed 5 years.
- SFMTA advertised the RFP on May 15, 2007 and completed contract negotiations with the selected firm in December 2007.
- The base contract for completion of Preliminary Engineering is for an amount of \$3,076,921 and a term of 18 months. This work includes the implementation of a Quality Assurance policy.
- An option to provide support during bid/award was negotiated for \$250,000. Another option to provide design review services during construction was negotiated for an allowance amount of \$300,000. These options may be exercised at the Agency's discretion. Additional construction support services will be negotiated after the completion of Preliminary Engineering when the scope of work can be better defined.
- The Contract Compliance Office has determined that the consultant will meet the established 10% Small Business Enterprise (SBE) goal for the contract and the City Attorney has reviewed this calendar item.

ENCLOSURES:

1. MTAB Resolution
2. Project Budget and Financial Plan
3. Consultant Team Organization
4. Consultant Agreement

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

Attn: Gigi Pabros

ASSIGNED MTAB CALENDAR DATE:

EXPLANATION:

Background

SFMTA currently operates revenue service with an antiquated and outdated radio communications system for its revenue and support vehicle fleets. Motorola manufactured the existing system in the 1970's and the system is no longer manufactured. SFMTA has limited parts and the current radio system cannot be upgraded. SFMTA has been actively seeking and purchasing spare parts from other transit agencies when their system is replaced. While it has served SFMTA well for 28 years, the existing system does not have the technical features to carry data traffic generated by modern "smart" vehicle applications, such as Automatic Passenger Counters, Vehicle Health Monitors, Automatic Vehicle Location (AVL) data, and Closed Circuit TV (CCTV). Many other features common to modern radio systems cannot be added. SFMTA radio system technicians estimate that the existing system can be maintained only until 2010. Due to these deficiencies, as well as recent advances in communications and intelligent transportation systems, SFMTA is undertaking an effort to replace this system.

Most importantly, the Federal Communications Commission (FCC) will narrow the bandwidth of the current system from 25 kHz to 12.5 kHz in the year 2013. The current system will be essentially inoperable and will have major impacts on revenue service including the safety and security of the transit system. A relatively new requirement is to meet the current Department of Homeland Security requirements. The new radio system needs to be interoperable with the adjacent local counties to improve communications during emergencies and major catastrophes.

Current Status

The SFMTA Board of Directors adopted Resolution No. 07-037 on March 20, 2007 authorizing staff to issue an RFP, select the highest ranked proposal, and complete negotiations. The Civil Service Commission authorized the SFMTA to contract with a consultant for this work in August 2007.

The RFP was advertised on May 15, 2007 and three proposals were submitted on August 14, 2007 in response to the advertisement. The three proposers included Booz-Allen Hamilton, Inc., Parsons, and Televent-Ferradyne, Inc. Proposals were evaluated by a selection committee comprised of members from various SFMTA divisions. BAH was selected as the highest ranked proposer.

SFMTA successfully negotiated a contract with BAH in December 2007 for a total amount of \$3,626,921. Conceptual Engineering and Preliminary Engineering services will be performed for an amount not to exceed \$3,076,921 including the Quality Assurance Program. An option will be established to provide support during bid and award in an amount not to exceed \$250,000. Another option to provide design review services during construction will be established for an allowance amount not to exceed \$300,000. Additional Construction Support services will be fully negotiated after completion of preliminary engineering when the scope of work can be defined more precisely. The negotiated contract amount is summarized below:

PAGE 3.

Conceptual Engineering	\$1,759,339
Preliminary Engineering	\$1,140,661
Quality Assurance Program	\$176,921
Bidding and Award Support (Option)	\$250,000
Design Review Services during Construction (Option)	<u>\$300,000</u>
Contract Total	\$3,626,921

The original engineer's estimate for the work was \$3,500,000, which is in the range of the negotiated amount.

The current schedule for the project is as follows:

Issue NTP for Consultant Services for Preliminary Engineering	February 2008
Advertise Radio Communications Systems Design Build Vendor	July 2009
Issue NTP to Radio Communications Systems Vendor	July 2010
Complete Installation and Cutover to new Radio Communications Systems	July 2013

The City Attorney and the Contract Compliance Office have reviewed this calendar item. The Contract Compliance Office has determined that the consultant will meet the established 10% Small Business Enterprise (SBE) goal for the contract and the City Attorney has reviewed this calendar item

This project addresses Goal 1 of the Strategic Plan to provide a safe, accessible, clean, and environmentally sustainable service to the public.

Staff recommends that the San Francisco Municipal Transportation Agency Board of Directors authorize the Executive Director to execute Contract CS-139, Professional Engineering Services for the Radio System Replacement Project, with Booz-Allen Hamilton, Inc. for an amount not to exceed \$3,626,921 and a term not to exceed 5 years

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. _____

WHEREAS, SFMTA currently operates an antiquated radio system built in the 1970's that is no longer manufactured, with limited parts availability that cannot support modern "smart" vehicle applications; and,

WHEREAS, SFMTA does not have sufficient expertise in the field of radio communications, and in its specific application to public transit; and,

WHEREAS, Consultant services need to be procured to provide SFMTA with the required radio communication expertise; and,

WHEREAS, The Municipal Transportation Agency Board of Directors adopted Resolution No. 07-037 on March 20, 2007 authorizing the Executive Director to issue a Request for Proposals (RFP) for Contract CS-139, Professional Engineering Services for the Radio System Replacement Project, evaluate proposals, select the highest-ranking proposal, and negotiate a contract with the selected consultant for an amount not to exceed \$3,500,000, and a period of up to 5 years; and,

WHEREAS, The Civil Service Commission authorized SFMTA to obtain these services through a consultant in August, 2007; and,

WHEREAS, Successful completion of this contract addresses Goal 1 of the Strategic Plan to provide a safe, accessible, clean, and environmentally sustainable service to the public; and,

WHEREAS, The SFMTA staff have completed the selection process and have negotiated a contract with the highest ranked consultant; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director to execute Contract CS-139, Professional Engineering Services for the Radio System Replacement Project, with Booz-Allen Hamilton, Inc. for an amount not to exceed \$3,626,921 and a term not to exceed 5 years.

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

Secretary, Municipal Transportation Agency Board

ENCLOSURE 2
Radio Systems Replacement Project
San Francisco Municipal Transportation Agency Contract CS-139
Project Budget and Financial Plan

PHASE 1 COST – Conceptual Engineering and Detailed Design	
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Category	Budget
Conceptual Engineering Phase	\$2,027,115
Preliminary Design Phase	\$512,810
Consultant Services	\$3,076,921
Contingency	\$1,567,830
Total Cost	\$7,184,676

PHASE 1 FUNDS – Conceptual Engineering and Detailed Design	
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Category	Budget
CA-90-X957 “ITS Earmark”	\$786,421
CA-90-X957 St. STP (share with DVAS \$2M)	\$610,550
CA-26-0045	\$206,830
USX Funds CPT319	\$151,066
Operating Funds	\$493,250
Section 115 GSA Grant	\$744,000
CA-15-X001	\$1,500,000
Proposition K sales tax	\$2,692,559
Total	\$7,184,676

PHASE II COST – Construction / Procurement	
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Category	Budget
Proposition K sales tax	\$69,023,870
CA-90-0348	\$2,219,510
Bridge Toll R05-3637-031	\$554,878
FTA Section 5307	\$4,017,066
Total	\$75,815,324

PHASE II FUNDS – Construction / Procurement
Subject to Federal / State / Local funding availability

ENCLOSURE 3
San Francisco Municipal Transportation Agency Contract CS-139
Radio System Replacement Project
Consultant Team Organization

Work under this contract will be performed by task orders on as-needed basis. The anticipated participation by each team member is as yet undetermined. The consultant team has affirmed its commitment to meeting the 10% Small Business Enterprise (SBE) participation goals of this contract.

Following is a summary of the consulting team members and their roles in this contract:

Booz Allen and Hamilton, Inc. (BAH)

Booz Allen and Hamilton, Inc. will be responsible for the project management and system integration aspects of the project. These roles include project reporting, cost estimating, schedule maintenance, and system safety certification.

Macro Corporation (Macro)

Macro will be providing the radio system and facilities-related design services for the project. They will be a key support in completing the conceptual engineering report and the design-build specification for the radio vendor.

EIGER TechSystems, Inc. (EIGER) - SBE

EIGER will be involved in the User Survey and Need-Assessment Report which includes gathering information to support the alternatives analyses. They will provide the functional design-build specifications for CAD/AVL and ITS components.

Railcar Quality Services, Inc. (Railcar) - SBE

Railcar will perform the quality assurance functions for the project. This includes developing the Quality Assurance/Quality Control Program plan and performing planned and periodic Quality Assurance audits/reviews during the Conceptual Engineering and Preliminary Design phases.

Redstone Group, LLC (Redstone) - SBE

Redstone will be responsible for document and drawing control, and project management support services.

AGREEMENT BETWEEN
CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO MUNICIPAL TRANSPORTATION
AGENCY
AND
BOOZ ALLEN HAMILTON, INC.
FOR
PROFESSIONAL ENGINEERING SERVICES FOR
RADIO SYSTEM REPLACEMENT PROJECT
(CONTRACT CS-139)

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

**Agreement between the City and County of San Francisco and
Booz Allen Hamilton, Inc.
for Professional Engineering Services for
the Radio Replacement Project**

This Agreement is made this 15th day of January, 2008, in the City and County of San Francisco, State of California, by and between: Booz Allen Hamilton, Inc. (“Consultant” or “Contractor”), and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its San Francisco Municipal Transportation Agency (“SFMTA”).

Recitals

A. SFMTA wishes to obtain services from a qualified consulting firm capable of analyzing the SFMTA’s requirements for radio systems, making recommendations to the SFMTA based on that analysis, designing a system to meet those needs, and assisting SFMTA in procuring, building, installing and configuring said radio system (“the Project”).

B. A Request for Proposal was issued in May 2007 (“the RFP”), and SFMTA selected Consultant as the highest ranked Proposer pursuant to a competitive selection process.

C. Consultant represents and warrants that it is qualified to perform the services required by SFMTA as set forth under this Contract.

D. Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Number 06-941 on August 20, 2007.

Now, THEREFORE, the parties agree as follows:

1. Definitions.

The definitions applicable to this Agreement and the services Consultant shall provide under this Agreement are set out in the Request for Proposals at Parts 1 through 3.

1a. 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. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be five years from the Effective Date of the Agreement.

3. Effective Date of Agreement

This Agreement shall become effective when the Controller first certifies to the availability of funds and Consultant is notified in writing.

4. Services Consultant Agrees to Perform

a. The City hereby engages Consultant to perform, under the terms and conditions in this Agreement, professional services for the design and construction of a replacement complex radio system, as those services are described in the Request for Proposal (RFP), Addendum #1 to the RFP issued on July 31st, 2007, Consultant's Proposal dated August 14th, 2007 and in Appendix A to this Agreement, "Description of Services," attached hereto.

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

Proposal shall control. Documents listed as Appendices to this Agreement are hereby incorporated by reference as though fully set forth herein.

c. SFMTA has an urgent and immediate need to replace its existing radio system to ensure its safe operation and the public's efficient use of the City's public transit system. Therefore, Consultant understands and agrees that its timely performance of all provisions of this Agreement and its conformance with all Project schedules are material requirements of this Agreement where 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. Consultant agrees to perform services described herein as per schedule attached in Appendix B.3. The parties acknowledge that delay is one of the greatest causes of waste and increased expense in any public project, and that delay may deprive the public the use and enjoyment of necessary services. Consultant shall act diligently in anticipating and performing its required tasks in a manner so as to not delay the prosecution of any services or work with respect to the Project. Consultant shall provide the City notice of delay of its performance and the causes thereof as soon as Consultant becomes aware of such delay. Delay on the part of the Consultant may constitute material breach that the SFMTA in its sole discretion may determine is grounds for termination.

d. Consultant shall comply with requirements of all applicable codes, regulations, and current written interpretation thereof published and in effect during Consultant's services. 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 Consultant and which result in a substantive change to the construction documents, 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. Consultant shall be responsible, however, to identify, analyze and report to the City 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 to adopt provisions of the International Building Code and other amendments.

e. The parties agree that this Agreement covers only Phase 1 and Phase 2 of the Project, as those Phases are described in the RFP. This Agreement may cover additional Phases of the Work and additional services by amendment, as set out in this Agreement.

4.1. Key Team Members

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Consultant.

The Consultant agrees to commit and assign Robert Gave to manage this Project for the Consultant and to serve as the single official contact and spokesperson on behalf of the Consultant in all matters related to the Project for the entire duration of both Phases 1 and 2 at a minimum, and Phases 3 and 4 if options for these phases are exercised by SFMTA. This Consultant Project Manager must have his permanent office for this Project located within the

San Francisco Bay Area for the entire assigned duration of the Project. The Consultant further agrees that the following key team members shall be committed and assigned to work on the Project to the level required by SFMTA for the duration of both Phases 1 and 2 at a minimum, and phases 3 and 4 if options for these phases are exercised by SFMTA and shall also be staffed at the local Consultant offices within the San Francisco Bay Area for all such time:

Name	Firm	Location
Robert Gave	Booz Allen Hamilton	Local Office
Janet Gallegos	Booz Allen Hamilton	Local Office
Kenneth Denmead	Booz Allen Hamilton	Local Office
Curtis Pierce	Booz Allen Hamilton	Local Office
Ging Ging Fernandez	Booz Allen Hamilton	Local Office
Richard Blake	Booz Allen Hamilton	Local Office
Robert James	Booz Allen Hamilton	Local Office
Joachim Pfeiffer	Booz Allen Hamilton	Local Office
Gregory Forrest	Macro Corporation	Local Office
John Eagler	Macro Corporation	Local Office
Lain Lee	Railcar Quality Services, Inc.	Local Office
Jane Chuey	Redstone Group, LLC	Local Office

Consultant shall advise SFMTA immediately any time one of the key members deviate from its committed role or time on the Project SFMTA may in turn require Consultant to provide a remedy and/or corrective actions for such deviations.

Other key Project team members are listed below. These key team members shall also remain on the Project during the entire duration of Phases 1 and 2 at a minimum, and Phases 3 and 4 if options for phases are exercised by SFMTA.

Name	Firm	Location
Wayne Gilles	Booz Allen Hamilton	Los Angeles, CA
Gita Sheth	Booz Allen Hamilton	Newark, NJ
David Jackson	Booz Allen Hamilton	Cedar Rapids, IA
William Hiller	Booz Allen Hamilton	Cedar Rapids, IA
Frank Smith	Macro Corporation	Chalfont, PA
Nelson Lee	EIGER TechSystems	Santa Monica, CA

If substitutions for any of the key members listed are required, the Consultant shall propose a replacement in writing to Senior Director of Transportation Planning and Development for approval. Substitutions will not be approved except for extenuating circumstances (e.g., illness or departure from company).

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. Failure to replace a key team member shall be cause for the City to suspend invoice

payments. Furthermore, the Consultant shall not be relieved of its obligation for full performance of the Scope of Services as a result of any unfilled position. The Consultant shall be held fully responsible for any inefficiencies, schedule delays or cost overruns resulting in whole or in part from any team member departing from the Project or departing from his/her assigned role in the Project before the end of the committed duration. Consultant shall bear any additional costs incurred in substituting personnel. Such costs include relocation expenses, expenses related to recruiting and hiring, training and learning on the job, etc.

Consultant acknowledges that the consultant selection and the consultant fee were based, in part, on Consultant's proposed key team members as submitted in the response to the Request for Proposals and as negotiated for this Project. Therefore, SFMTA will not approve any requests for substitution of any key team members within nine (9) months after the issuance of NTP, until it has investigated thoroughly and fully the causes and reasons for such requests and/or until the Consultant agrees to reduce part of its fee or provide other compensation to reasonably compensate the City for the loss of the key team member.

5. Compensation

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Appendix B of this Agreement, that the Executive Director/CEO of SFMTA, in his sole discretion, concludes has been performed as of the last day of the immediately preceding month in accordance with the performance milestones and work delivery schedule attached to this Agreement as Appendix B, "Compensation and Payments", attached hereto and incorporated by reference as though fully set forth herein. In no event shall the amount of this Agreement exceed **Three Million Six Hundred Thousand Nine Hundred Twenty-One United States Dollars (U.S. \$3,626,921.00)** which amount includes a fixed fee of One Hundred Twenty Three Thousand Four Hundred Twenty Six Dollars (\$123,526) for Phase I, Seventy Nine Thousand Three Hundred Eighty Three Dollars (\$79,383) for Phase II, Sixteen Thousand Six Hundred Sixty Two Dollars (\$16,662) for Phase III, and Twenty Thousand Three Hundred Forty Eight Dollars (\$20,348) for Phase IV.

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

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

The Controller is not authorized to pay invoices submitted by Consultant prior to Consultant's submission of SFMTA Progress Payment Form (To be developed at a later date). 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.

Following City's payment of an invoice, Consultant has ten days to file an affidavit using SFMTA's Payment Affidavit (SFMTA SBE Forms 6 and 7 included in Appendix D) verifying that all subconsultants have been paid and specifying the amount.

6. Guaranteed Maximum Costs

a. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the 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.

c. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

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

7. Payment; Invoice Format

Invoices furnished by Consultant under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. All amounts paid by City to Consultant shall be subject to audit by City.

City shall make payment to Consultant at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code sections 6.80 to 6.83 and section 21.35, any Consultant, subconsultant 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 Consultant, subconsultant 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 Consultant, subconsultant or consultant will be deemed to have submitted a false claim to the City if the Consultant, subconsultant or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false

record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Disallowance

If Consultant claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Consultant shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Consultant under this Agreement or any other Agreement.

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

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Consultant.

b. 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:

(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;

(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.

(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 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) 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.

(5) Consultant shall provide a San Francisco Business Tax Registration to the SFMTA in order for the City to certify this Agreement.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by City, or the receipt thereof by Consultant, shall in no way lessen the liability of Consultant to replace unsatisfactory work, 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 Consultant without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Consultant or its subconsultants. Consultant's personnel and subconsultants shall comply with the licensing requirements of the State of California in their respective professional fields as Architects and/or Engineers. Persons employed by Consultant and its subconsultants who are not subject to licensing requirements of California law are exempt from the requirements of this Section 12. Consultant will comply with City's reasonable requests regarding assignment of personnel, but Consultant must supervise all personnel, including those assigned at City's request. Consultant shall commit adequate resources to complete the project within the project schedule specified in this Agreement. Consultant will request approval from the SFMTA on any substitution of any members of the team named in Section 4.1 of this Agreement. The approval request should include the basis for the substitution and the recommended replacement candidate.

13. Equipment

a. 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.

b. 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.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. **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.

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.

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

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

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Consultant shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Consultant is an employee for any other purpose, then Consultant agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Consultant was not an employee.

15. Insurance

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

- (1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident; and
- (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- (4) Professional liability (engineer's errors and omissions) insurance, as described in section 15.c. below.

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

- (1) Name as Additional Insured the City and County of San Francisco, its Officers 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. Without in any way limiting Consultant's liability pursuant to the "Indemnification" section of this Agreement, Consultant must maintain in force, during the full term of the Agreement, Professional liability (engineer's errors and omissions) insurance providing from the effective date of this Agreement, shall maintain practice insurance covering

the Consultant for its and their negligent acts, errors or omissions, with limits not less than \$10,000,000 per claim and in the aggregate arising from its and their performance of services under this Agreement.

Consultant shall require of Lloyds of London, and shall provide proof acceptable to the City of such requirement, that Lloyds of London shall notify the City if anytime during the term of this Agreement the Consultant's annual aggregate general coverage limit is exceeded by more than fifty (50) percent. If the value or number of active claims exceeds the Consultant's annual aggregate general coverage limit, Consultant shall obtain at its expense, retroactive to the effective date of this Agreement, a project professional liability insurance policy dedicated solely to the Project (the "Project Policy"). The Project Policy shall protect against any negligent act, error or omission arising out of the design or engineering activities with respect to the Project, including coverage for acts by subconsultants for whose work the Consultant is responsible under this Agreement. The Project Policy shall be endorsed to provide joint defense coverage against third party claims.

For purposes of this Agreement only, the City will accept Lloyds of London as Consultant's Professional Liability insurer, but only as long as Lloyds of London is listed as an approved carrier on the California Department of Insurance List of Eligible Surplus Line Insurers ("LESLI").

d. With the exception of professional liability coverage, all insurance policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Consultant shall provide thirty (30) days' advance written notice to the City of reduction or nonrenewal of coverage or cancellation of professional liability (architects and engineers errors and omissions) coverage for any reason. Notices of change or cancellation of insurance policies shall be sent via courier or U.S. Mail, first class, to the following persons:

Carter R. Rohan, R.A.
Senior Director of Transportation Planning and Development
San Francisco Municipal Transportation Agency
1 South Van Ness, 7th floor
San Francisco, CA 94103

and

Shahnam Farhangi
Acting Deputy Director of Transportation Development
San Francisco Municipal Transportation Agency
1 South Van Ness, 3rd floor
San Francisco, CA 94103

and

Risk Manager
Office of the City Administrator/General Services Agency
City Hall, Room 362
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

Phone: (415) 554-6171
Fax: (415) 554-6177

e. 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 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, Consultant shall do the following: (1) 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 coverage set forth above, and (2) furnish complete copies of policies promptly upon City request in the event of a claim and upon receipt of a signed non-disclosure agreement. Failure to maintain insurance shall constitute a material breach of this Agreement. Insurance certificates shall contain a statement that the referenced general liability and practice professional liability policies have been endorsed or otherwise provide coverage for Consultant and each of its subconsultants with respect to its work under this Agreement. Consultant may in the alternative, certify to the City that all subcontractors have named the City as an additional insured on all applicable insurance policies. In the event such proof of insurance or certification is not delivered as required or in the event such insurance is canceled at any time and no replacement coverage is provided, the City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this agreement and to pay the premium. Any premium so paid by the City shall be charged to and promptly paid by Consultant or deducted from sums due Consultant at Consultant's option. Consultant and City agree that any actual or alleged failure of the City to inform Consultant of non-compliance with any insurance requirement in no way imposes any additional obligations on the City nor does it waive any rights of the City under this Agreement.

i. Approval of the insurance by City shall not relieve or decrease the liability of Consultant hereunder.

j. 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 and shall

name the City and County of San Francisco, its officers and employees and the Consultant listed as additional insured.

16. Indemnification

a. General Indemnity

To the fullest extent permitted by law, 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 claims, 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, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

b. Limitations

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

Consultant assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

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

c. Copyright Infringement

Consultant shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in their performance of Consultant's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if determined by a court of competent jurisdiction not to be the basis for indemnification under the law, shall nevertheless be considered a material breach of contract which Consultant's failure to cure shall constitute default of this Agreement.

17. Incidental and Consequential Damages

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

18. Liability of City

City's payment obligations under this Agreement shall be limited to the payment of the compensation provided for in section 5 of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall city be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

19. Standard of Performance

Consultant shall perform all of its services in accordance with generally accepted standards of professional practice in the design and construction administration of projects of similar size and complexity in the San Francisco Bay Area.

20. Default; Remedies

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

(1) Consultant 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; Monetary Penalties), 10 (Taxes), 15 (Insurance), 24 (Proprietary or Confidential Information of City), 30 (Assignment, Successors, and Assigns), 37 (Drug-Free Workplace Policy), 53 (Compliance with Laws), 58 (Nondisclosure of Private Information), or 59 (Graffiti Removal).

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

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

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

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 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.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

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

b. 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:

- (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 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.

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

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

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

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

(1) The reasonable cost to Consultant, without profit, for all services and other work City directed Consultant 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 the prevailing rate authorized by the FTA or other United State Government auditing agency having jurisdiction for Consultant's direct costs for services or other work. Any overhead allowance shall be separately itemized. Consultant 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 Consultant can establish, to the satisfaction of City, that Consultant would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed ten (10) percent of such cost.

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

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

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

22. Rights and Duties Upon Termination or Expiration

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

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. 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.

23. Conflict of Interest

Through its execution of this Agreement, Consultant acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement. Consultant further acknowledges that it is aware of requirements concerning the filing of Statements of Economic Interest, California Fair Political Practices Commission Form 700, under the requirements of California Government Code section 7300 et seq. and the San Francisco Campaign and

Governmental Code section 3.1-102, and that Consultant shall ensure that its employees and subconsultants are aware of those requirements and comply with them.

24. Proprietary or Confidential Information of City

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

25. Notices to the Parties

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

To SFMTA: Carter R. Rohan, R.A.
Senior Director of Transportation Planning and Development
San Francisco Municipal Transportation Agency
1 South Van Ness, 7th floor
San Francisco, CA 94103
Tel: 415-701-4282
Fax: 415-701-4300
carter.rohan@sfmta.com

Shahnam Farhangi
Acting Deputy Director, Transportation Development
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

Ken Jew
Senior Project Manager
San Francisco Municipal Transportation Agency
1 South Van Ness, 3rd floor
San Francisco, CA 94103
Tel: 415-701-4284
Fax: 415-701-4300
ken.jew@sfmta.com

To Consultant: Gary Schulman

Vice President
Booz, Allen & Hamilton, Inc.
101 California Street, Suite
San Francisco, CA 94111
Tel: 703-377-0447
Fax: 415-627-4283
Shulman_Gary@BAH.com

Any notice of default must be sent by registered mail.

26. Ownership of Results

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

27. Works for Hire

If, in connection with services performed under this Agreement, Consultant or its subconsultants create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Consultant or its subconsultants under this Agreement are not works for hire under U.S. law, Consultant hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audits and Inspection of Records

a. Consultant agrees to maintain and make available to the City accurate books and accounting records relative to its activities under this Agreement. Consultant will permit the City to audit, examine and make excerpts and transcripts from such books and records and to make audits of all invoices, materials, payrolls, records or personnel and other data related to reimbursable expenses and additional services provided on an hourly basis, whether funded in whole or in part under this Agreement.

b. 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.

c. Consultant shall include the provisions of this Section 28 in all sub-agreements between Consultant and its subconsultants giving the City the same rights against the subconsultants. Canceled checks of payments to subconsultants must be maintained by Consultant and made available to the City upon request.

d. The City may initiate an audit under this Agreement by written notice, upon not fewer than seven (7) calendar days.

e. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting

a. Consultant is permitted to subcontract portions of the services to be performed under this Agreement only after the prior written approval by the City. Consultant shall be responsible for its subconsultants and other subcontractors throughout the course of the work to be performed under this Agreement. Execution of this Agreement shall constitute approval of the firms and individuals listed in Appendix E to this Agreement as subconsultants and/or subconsultants on this Project.

b. Substitutions may be made for any subconsultants or subcontractors listed in Appendix E, "Directory of Subconsultants", for: (1) failure to perform to a reasonable level of professional competence, (2) inability to provide sufficient staff to meet the Project requirements and schedules, or (3) unwillingness to negotiate reasonable contract terms or compensation.

c. The City will reserve the right to request specific subconsultants with specific expertise to be added to the team to provide Basic Services or Additional Services, if the City determines that specific expertise is lacking in the project team or if the City believes it is in the City's best interest to assign a particular subconsultant to the Consultant.

d. Consultant shall not substitute a subconsultant without the written approval of the City. Consultant shall hold harmless, indemnify and defend the City from any claim that may arise out of any approval of substitutions.

30. Assignment, Successors, and Assigns

The services to be performed by Consultant are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Consultant unless first approved by City by written instrument executed and approved as required by SFMTA policy and City ordinance. Consultant and the partners of any Joint Venture or Association that Consultant may establish for the Project, or any of the Consultant's subconsultants may incorporate or change their business names; provided such incorporation or change does not decrease their obligation or liability under this Agreement. This Agreement shall be binding upon the City and the Consultant and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any funds due or to become

due there under may be assigned by the Consultant without the prior written consent and approval of the City.

31. Non-Waiver of Rights

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

32. Earned Income Credit (EIC) Forms

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Consultant shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Consultant has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Consultant; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Consultant of the terms of this Agreement. If, within thirty 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 thirty 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.

c. 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.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Small Business Enterprise Participation and Prompt Payment of Subcontractors

a. Small Business Enterprise.

The services covered by this Agreement are substantially funded by federal grant monies. The San Francisco Municipal Transportation Agency ("SFMTA") is committed to a Small Business Enterprise (SBE) Program ("Program") for the participation of SBEs in contracting

opportunities. In addition, contractor must comply with all federal regulations regarding Disadvantaged Business Enterprise (DBE) participation, as set out in Title 49, Part 26 of the Code of Federal Regulations (49 CFR Part 26). More information on federal DBE requirements can be found on the internet at: <http://www.fta.dot.gov/library/admin/BPPM/ch7.html>.

Contractor shall comply with the SBE provisions contained in Appendix D, which are incorporated by reference as if fully set forth herein, including but not limited to achieving and maintaining the SBE goals set for the total dollar amount awarded for the services to be performed under this Agreement. Failure of Contractor to comply with any of these requirements shall be deemed a material breach of this Agreement.

The goal for SBE participation is ten (10) percent of the total dollar amount awarded for the services to be performed under this Agreement.

Pursuant to City and SFMTA policy, Contractor 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 Contractor's employment practices.

b. Prompt Payment of Subconsultants

In accordance with SFMTA's SBE Program and as required by San Francisco Administrative Code section 14.B, 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 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, Consultant shall release any retention withheld to the subconsultant. Satisfactory completion shall mean when all the tasks called for in the subcontract with subconsultant have been accomplished and documented as required by City. Within forty (40) days of satisfactory completion of all work required of the subconsultant, Consultant should release any retention withheld to the subconsultant.

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.

34. Nondiscrimination; Penalties

a. 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.

b. 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.

c. 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.

d. 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.

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. 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.

35. MacBride Principles—Northern Ireland

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

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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

38. Resource Conservation

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

39. Compliance with Americans with Disabilities Act

Consultant acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a Consultant, must be accessible to the disabled public. Consultant shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided

under this Agreement and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

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

41. 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.

42. 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 or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer of the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either (1) the termination of negotiations for such contract or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

43. Requiring Minimum Compensation for Covered Employees

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. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Consultant agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Consultant shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Consultant shall pay a minimum of \$10.77 an hour beginning January 1, 2005 and for the remainder of the term of this Agreement; provided, however, that Consultants that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.

b. Consultant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Consultant's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

c. Consultant understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Consultant of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

d. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Consultant fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Consultant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

- (1) The right to charge Consultant an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
- (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Consultant under this Agreement;
- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by Consultant of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(5) The right to bar Consultant from entering into future contracts with the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

e. 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.

f. Consultant shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Consultant from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Consultant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subconsultants.

h. The Consultant shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

i. The City may conduct random audits of Consultant. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Consultant every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

j. Any subcontract entered into by 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. A subcontract means an agreement between the Consultant and a third party that requires the third party to perform all or a portion of the services covered by this Agreement. Consultant shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subconsultant of the obligations under the MCO and has imposed the requirements of the MCO on the subconsultant through the provisions of the subcontract. 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.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Consultant of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Consultant understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Consultant of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Consultant arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Consultant also understands that the MCO provides that if Consultant prevails in any such action, Consultant may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. If 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 (\$50,000 for nonprofits), 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 (\$50,000 for nonprofits) in the fiscal year.

44. 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.

a. 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.

b. 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 part (a) above.

c. 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 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 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.

d. 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.

e. 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.

f. 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.

g. 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.

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

i. 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.

j. 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.

k. 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.

l. City may conduct random audits of Consultant to ascertain its compliance with

HCAO. Consultant agrees to cooperate with City when it conducts such audits.

m. 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.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. 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.

b. First Source Hiring Agreement.

(1) Consultant will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time;

(2) Consultant will comply with requirements for providing timely, appropriate 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;

(3) Consultant agrees to use good faith efforts to comply with the First Source hiring requirements. A Consultant may establish its good faith efforts by filling: 1) its first available Entry Level Position with a job applicant referred through the First Source Program; and, 2) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Consultant's employment records.

c. Hiring Decisions.

Consultant 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

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 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.

46. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Consultant may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, “Political Activity”) in the performance of the services provided under this Agreement. Consultant agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City’s Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Consultant violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) 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.

47. Preservative-treated Wood Containing Arsenic

Consultant may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammonia copper zinc arsenate preservative, or ammonia 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.

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement, as required by San Francisco Administrative Code section 6.42.

49. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action, including but not limited to the Dispute Resolution Procedures set out in the Agreement, or resort to any other legal remedy, be referred to the SFMTA’s Executive Director, for final administrative interpretation of the Agreement.

50. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco 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 or San Mateo County.

51. Construction; Paragraph Captions; Precedence of Documents; Ambiguity

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

b. In the event of any conflict or inconsistency between the terms of the Agreement and any incorporated document, they shall be governed in descending order of precedence as follows:

- (1) This Agreement and the documents included as Appendices to this Agreement;
- (2) The RFP;
- (3) Consultant's Technical Proposal.

c. This Agreement has been drafted by both parties, which are of equal bargaining power and each of which have consulted counsel. Any ambiguity in this Agreement and the documents referenced therein shall not be attributed to either party for purposes of construing ambiguity against the drafter.

52. Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions and understandings. No warranties expressed or implied, representations, promises, or statements by either party have been made part of this Agreement unless set forth specifically in this Agreement, and no change or waiver of any provision hereof shall be valid unless made in writing and executed and approved in the same manner as this Agreement, as required by San Francisco Administrative Code section 6.42.

53. 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.

54. Services Provided by Attorneys

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

55. Left blank by agreement of the parties.

56. Disputes

a. For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within fifteen (15) days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with fourteen (14) days of delivery of the notice. The notice and response shall contain the following: (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.

b. Disputes arising in the performance of this Agreement that are not resolved by negotiation between the SFMTA Liaison and Consultant's shall be decided in writing by the SFMTA Deputy Director for Transportation Development. The decision shall be administratively final and conclusive unless within ten (10) days from the date of such decision, the Contract mails or otherwise furnishes a written appeal to the Director of Transportation Planning and Development, or his/her designee. In connection with such an appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Transportation Planning and Development shall be administratively final and conclusive. This section applies to all disputes unless a specific provision of this Agreement provides that the SFMTA Liaison's decision as to a particular dispute is final.

c. Pending final resolution of a dispute hereunder, the Consultant shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the SFMTA Liaison.

d. If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

e. 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.

f. The resolution of any contractual disputes related to Consultant's Joint Venture or Association partners (if any) shall be the sole responsibility of the Consultant. Each party of the Joint Venture or Association shall resolve all such disputes within thirty (30) calendar days of when the dispute first surfaced so as not to impact the performance of the contract with the City. Any such disputes which impact the Project and which are left unresolved for more than one month shall be cause for the City to withhold and/or reduce invoice payments to the Consultant's Joint Venture or Association firms until the dispute is resolved.

57. 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.

58. Nondisclosure of Private Information

Consultant agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Consultant agrees to all of the following:

a. Neither Consultant nor any of its Subconsultants shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subconsultant, person, or other entity, unless one of the following is true:

- (1) The disclosure is authorized by this Agreement;

(2) The Consultant received advance written approval from the Contracting Department to disclose the information; or

(3) The disclosure is required by law or judicial order.

b. Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

c. Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

d. Any failure of Consultant to comply with the Nondisclosure of Private Information Ordinance 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 this Agreement, debar Consultant, or bring a false claim action against Consultant.

59. 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.

60. Food Service Waste Reduction Requirements

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

61. Left blank by agreement of the parties.

62. Sole Benefit

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.

63. FTA Requirements

The provisions contained in "FTA Requirements for Personal Services Contracts," attached as Appendix C 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.

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

CITY

CONSULTANT

Approved by:

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.

By: _____
NATHANIEL P. FORD, SR.
Executive Director/CEO
San Francisco Municipal

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.

SFMTA Board of Directors
Resolution No. _____
Adopted: _____
Attest:

ROBERTA BOOMER, Secretary
SFMTA Board of Directors

GARY SCHULMAN
Vice President
Booz, Allen & Hamilton
101 California Street, Suite 3300
San Francisco, CA 94111

Approved as to Form:

DENNIS J. HERRERA
City Attorney

City Vendor Number

Federal Employer ID Number

By _____
ROBERT K. STONE
Deputy City Attorney

INCLUDED APPENDICES TO THIS AGREEMENT

- A: Services to be provided by Consultant
- B: Compensation and Payment
- C: FTA Requirements for Personal Services Contracts
- D: Small Business Enterprise (SBE) Program
- E: Directory of Subconsultants
- F: Clarification of Scope of Work
- G: 35% Design Documents

Appendix A

Services to be Provided by Consultant

1. Description of Services

Consultant agrees to perform the services described in this Agreement and the Included Appendices, the City's "Request for Proposals" (Professional Engineering Services for Radio System Replacement Project," issued May 2007 (the "RFP")), Addendum 1 to the RFP, the Clarifications of Scope of Work (attached to this Agreement as Appendix F), and the Consultant's Proposal submitted on August 15th, 2007 in response to the RFP. The Consultant's Proposal includes the latest Cost Proposal dated January 11, 2008.

Authorized representatives of the SFMTA and the Consultant met and extensively negotiated to clarify the terms of the Agreement. The parties' understandings as to the services Consultant shall perform under this Agreement are memorialized in this Agreement and its Included Appendices, including but not limited to the Clarification of Scope of Work, attached to the Agreement as Appendix F. Should the terms of this Agreement, the RFP or the Consultant's Proposal conflict, however, the terms of this Agreement and its Included Appendices shall govern. If this Agreement is silent as to any issue, then the terms of the RFP shall govern.

2. Reports

Consultant shall submit written reports as requested by the SFMTA. The report shall include a status report, cost report describing expenditures to date, the budget, the estimate to complete both in terms of time and cost, and the percent completed on each task. The consultant will include in the report an earned value assessment of the project and corrective action plan to maintain cost and schedule. The Consultant shall submit these reports monthly and the reports are required with every invoice requesting payment. Format for the content of such reports shall be determined by the SFMTA. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

3. Department Liaison

In performing the services provided for in this Agreement, Consultant's liaison with the SFMTA will be:

Ken Jew
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 3rd floor
San Francisco, CA 94103
tel: 415-701-4285
fax: 415-701-4300
ken.jew@sfmta.com

4. Work Phases

The work to be performed under this Agreement has been divided into four phases and a Quality Assurance program. Phase 1 (Conceptual Engineering), Phase 2 (Preliminary Engineering), and the QA Program constitute the base work of the Agreement. Phase 3 (Bid and Award Support) and Phase 4 (Construction Support Services) are Options that the SFMTA, in its sole discretion, may exercise by issuing notice to the Consultant prior to the completion of Phases 1 and 2. The parties will meet prior to the completion of work under Phases 1 and 2 to further clarify Consultant's work and services, if any, to be performed under Phases 3 and 4.

After Consultant completed the work for each Phase, and based on the approved work for that Phase, it may be necessary to revise the scope of work for the next Phase (s). In that event, SFMTA will negotiate with the Consultant regarding any such changes to the scope of work for next Phase (s) prior to proceeding with the work.

In its sole discretion, SFMTA may elect to reduce the scope of work in any task or phase of the contract. If the scope of work is reduced or increased for any task, the parties will renegotiate the fixed fee for that task.

Appendix B Compensation and Payment

1. Amount

The parties met and extensively negotiated the following compensation provisions. Consultant shall fully perform and complete the services as provided in the Agreement for an amount not to exceed Three Million Six Hundred Twenty-Six Thousand Nine Hundred Twenty-One Dollars (\$3,626,921), as further described below and set out this Appendix B.

Phase 1 - Conceptual Engineering	\$1,759,339
Phase 2- Preliminary Engineering	\$1,140,661
Quality Assurance Program	<u>\$176,921</u>
Base Contract Total	\$3,076,921

Should the City, in its sole discretion, exercise its options to have Consultant perform the services described in the Agreement as Phase 3 and Phase 4, Consultant shall perform said services in exchange for the compensation described below:

Phase 3 - Bidding and Award Support (Option)	\$250,000
Phase 4 - Design Review Services during Construction (Option)	<u>\$300,000</u>
Optional Work Total	\$550,000
Contract Total	\$3,626,921

2. Calculation of Compensation

a. Compensation for Phase 1 Services

For the full performance and completion of the services for Phase 1, Conceptual Engineering Services, the City shall compensate Consultant an amount not to exceed One Million Seven Hundred Thousand Fifty Nine Three Hundred Thirty-Nine Dollars (\$1,759,339) in allowable actual costs and fixed fee for Tasks 1 through Task 40 (as described in consultant's proposal and the schedule appended to the document at Appendix B.3). The Consultant's fixed fee for full performance and completion of said Tasks 1 through 40 shall not exceed One Hundred Twenty Three Thousand Four Hundred Twenty-Six Dollars (\$123,426).

b. Compensation for Phase 2 Services

For the full performance and completion of the services for Phase 2, Preliminary Engineering Services, the City shall compensate Consultant an amount not to exceed One Million One Hundred Forty Thousand Six Hundred Sixty-One Dollars (\$1,140,661) in allowable actual costs and fixed fee for Tasks 41 through 60 (as described in consultant's proposal and the schedule appended to the document at Appendix B.3). The Consultant's fixed fee for said Tasks 41 through 60 shall not exceed Seventy Nine Thousand Three Hundred Eighty-Three Dollars (\$79,383).

c. Compensation for Quality Assurance

For the full performance and completion of the services for Quality Assurance, the City shall compensate Consultant a fixed lump sum amount of One Hundred Seventy-Six Thousand Nine Hundred Twenty-One Dollars (\$176,921).

d. Compensation for Phase 3 Services

For the full performance and completion of work and services under Phase 3, Bid and Award Support, Tasks 61 through 68 (as described in consultant's proposal and the schedule appended to the document at Appendix B.3), the City shall compensate Consultant in an amount not to exceed Two Hundred Fifty Thousand Dollars (\$250,000) in allowable actual costs and fixed fee. The Consultant's fixed fee for full completion and performance of Tasks 61 through 68 shall not exceed Sixteen Thousand Six Hundred Sixty-Two Dollars (\$16,662).

e. Compensation for Phase 4 Services

For the full performance and completion of work and services under Phase 4, Construction Support Services, Tasks 69 through 75 (as described in consultant's proposal and the schedule appended to the document at Appendix B.3), the City shall compensate Consultant in an amount not to exceed Three Hundred Thousand Dollars (\$300,000) in allowable actual costs and fixed fee. The Consultant's fixed fee for full completion and performance of Tasks 69 through 75 shall not exceed Twenty Thousand Three Hundred Forty-Eight Dollars (\$20,348). Tasks 76 through 93 will be negotiated at a later date if the City chooses to proceed with the remaining tasks of this phase.

f. Recalculation of Compensation

In its sole discretion, SFMTA may elect to reduce the scope of work in any task or phase of the contract. If the scope of work is reduced or increased for any task, the parties will renegotiate the fixed fee for that task.

g. Method of Computing Compensation

Compensation for Consultant's services under this Agreement shall be based on costs plus fixed fee for Phases 1, 2, 3, and 4, and fixed lump sum price for the Quality Assurance task.

Compensation for services will be computed as follows:

- (1) Actual direct salaries paid by Consultant and subconsultants as per Appendix B.1 Schedule of Rates.
- (2) Overhead and burden of prime Consultant and subconsultants as per Appendix B.1 Schedule of Rates
- (3) Actual cost of approved out-of-pocket expenses for the Consultant and subconsultants

- a) Total Consultant and subconsultant (including independent reviewers) traveling costs, including transportation, meals, and lodging, billed to SFMTA shall not exceed Fifty Seven Thousand Six Hundred Forty Two Dollars (\$57,642) for the entire Phase 1 and Twenty Four Thousand Fifty Five Dollars (\$24,055) for the entire Phase 2.
 - b) Total Consultant and subconsultant for reproduction budget and miscellaneous cost including materials and billed to SFMTA shall not exceed Twenty Five Thousand Five Hundred Seventy Six Dollars (\$25,576) for Phases 1 and 2.
- (4) A fixed fee calculated as a prorated portion of Consultant's total fee for the task(s) for which Consultant seeks payment.

Computer usage, facsimile and telecommunications SFMTA locations expenses will not be tracked or reimbursed separately as out-of-pocket costs. The Consultant and subconsultant personnel relocation costs and entertainment or personal expenses of any kind will not be reimbursable under this Contract. Office and field supplies/equipment expenses, including licensing and usage cost for selected software (like AutoCAD) will also not be reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for this Project. Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis as listed in Appendix B.2 will not be reimbursable by SFMTA under this contract.

San Francisco is a transit-first city, and the Consultant is encouraged to use public transit in performance of its services to the maximum extent possible. The SFMTA will closely review the Consultant's requests for reimbursement of travel expenses. The Consultant should use public transit whenever possible and economical, especially within the City. Travel from and to airports must be by public transit to the maximum extent possible. Taxicabs and hired cars are not considered public transit. The City reserves the right to refuse to reimburse travel expenses that are not in accord with these policies.

The Consultant's compensation under this Agreement will be based on and shall not exceed the overhead and salary burden rates as shown on the Schedule of Rates attached as Appendix B.1. The rates in Appendix B.1 shall be fixed and continue at those levels for not less than six (6) months after the effective date of this Agreement. Direct Salary Rates in Appendix B.1 may be adjusted twelve (12) months after the effective date of this Agreement, and thereafter, at twelve (12) month intervals but each increase shall be no more than five percent (5%). Any individual salary adjustments above five percent (5%) will require the Deputy Director's prior written approval. The Consultant shall not submit requests to SFMTA asking for salary adjustments for the same individual more than once within any 12-month period. Rate increases requiring SFMTA approval shall only be effective for work performed after approval by SFMTA. The Consultant's and subconsultants' combined overhead and salary burden rates will be audited for conformance with Federal Requirements. All payment requests must include back-up documentation of costs and expenditures at the prime and subconsultant level.

Compensation for material and expenses shall be at direct cost, without any markups.

Compensation will be paid in accordance with the cost breakdown in Appendix B.2 and shall not exceed the amount shown for each subtask or task. Consultant may request the 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 subtask from which the funds are transferred out of is at least ninety-five percent (95%) complete and provided the main reason for the subtask requiring additional funds is not due to Consultant's poor management or planning. Such request must be made in writing to the SFMTA Project Manager at least 15 calendar days in advance of the need to transfer funds across subtasks. The City's approval of subtask amount changes will not be unreasonably withheld. The City will not allow fund transfer between labor costs and other direct costs unless it can be demonstrated that third tier subconsultants with labor charges were part of the other direct costs. If the parties determine that additional work must be performed in any Phase or on any Task, the parties may negotiate an increase to the costs allowance for said work, but Consultant's fee shall not be increased.

h. Subconsultant Administration

The Consultant is responsible for the accuracy, detail, and supporting documentation of all subconsultant invoices. The cost of subconsultant administration shall not be included in the direct salaries charged by the Consultant.

i. Payment; Invoice Format

(1) Payment

The City shall make payment to Consultant at the address specified in the section entitled "Notices to the Parties." In no event shall the City be liable for interest or late charges for any late payments. Upon written request of the Consultant, and provided the Consultant furnishes the City with the necessary routing information, the City shall make payments to the Consultant's account by electronic transfer.

(2) Submittal of Invoices

Invoices furnished by the Consultant under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. The Consultant and SFMTA shall agree to the exact invoice format and detail attachments within three weeks of NTP. Invoices shall be mailed or delivered to the Contract Management Section, Transportation Planning and Development Division, San Francisco Municipal Transportation Agency, 1 South Van Ness Ave., San Francisco, CA 94103.

The Consultant shall submit invoices in quadruplicate for all allowable charges incurred in the performance of the Agreement. Invoices shall be submitted together with the Monthly Progress Reports, Monthly Cost Control Report and Monthly Update Schedule, and shall be submitted by the 25th day of each month for work performed in the preceding month.

Additional information shall be provided to justify all charges incurred since the previous billing to the satisfaction of the SFMTA Project Manager. Within forty-five (45) days of the receipt of satisfactory monthly invoice package and any additional requested information, the Project Manager shall review the monthly invoice, schedule, progress report, and cost control report, and recommend the invoice to the SFMTA Accounting Unit for appropriate payment. This forty-five (45) day limit shall not apply to any invoices covering more than one month, invoices containing errors or any invoices submitted late, all of which will require additional review time.

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.

(3) Documentation for Payment

The Monthly Cost Control Report required in subsection ii). above shall include the current complete percentages for each task and subtask, the current estimated labor hours and cost for each discipline to complete each of the tasks, current and projected design cost overrun, an itemized breakdown of dollars and hours by employee and by subtask for all 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. 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. Each invoice must be complete to include all labor charges. SFMTA will allow two (2) months for the Consultant to provide justification for any missed charges. SFMTA will also not pay for other direct charges dating back more than nine (9) months unless it can be demonstrated that extraneous circumstances prevented these charges from being billed earlier.

In addition to the above, the SFMTA Project Manager may, prior to authorization for payment of invoices, require delivery of either a complete or partial set of current work products or deliverables as evidence of the status of the Consultant's work.

If the evidence of production, the quality of the work, or relationship of labor and costs expended are not consistent with the budgets and the schedules for an assigned task, the Consultant shall justify to the SFMTA Project Manager the time and expenses invoiced. The Project Manager will review the justification offered and adjust the monthly payment as deemed necessary. These requirements shall apply to work by subconsultants.

j. Retention-Escrow Agreement

The City will retain ten percent (10%) of each invoice submitted by the Consultant. An escrow agreement may be established at a bank approved by the Consultant and the City for security deposits in lieu of the City retaining a percentage of contract earnings. In that event, ten percent (10%) of each invoice paid by the City shall be deposited with the escrow agent at the

time of payment.

At the end of each quarter and upon satisfactory review of Consultant's performance for the quarter, the City, at the discretion of its Project Manager, may release up to seventy-five (75) percent of the retention amount previously withheld.

Any remaining retention will be released at the end of the entire Contract and not at the end of a phase of the Contract. Therefore, the retention withheld for Phase 1 will be continually withheld up to the end of Phase 2, should SFMTA choose to continue Phase 2 work with the Consultant. However, even in the case where SFMTA continues Phase 2 work with the Consultant, SFMTA may unconditionally release all remaining retention withheld from the subconsultants upon close out of Phase 1 work. SFMTA may also elect to advance the release of all remaining Phase 1 retention withheld from the Consultant at the end of six months after commencement of Preliminary Engineering, provided the work products from Phase 1 have proved to be of sufficient quality and completeness for use in the Preliminary Engineering Phase.

k. Letter of Credit

In lieu of retention as required in subsection j., above, the Consultant may provide SFMTA, prior to City's execution of this Agreement, with a letter of credit in the amount of ten percent (10%) of the value of the full amount certified under this Agreement. Whenever an additional amount is certified by the City's Controller for this Agreement, prior to notice to proceed on the additional amount, the Consultant shall increase the letter of credit and have a new or amended letter of credit issued by the bank in the amount of ten percent (10%) of the then value of the full amount certified. The letter of credit shall be issued by a United States banking institution that is acceptable to the City's Treasurer and Risk Manager, and approved by the Securities Valuation Office of the National Association of Insurance Commissioners. The letter of credit shall be clean, unconditional, irrevocable, and evergreen. The beneficiary of the letter of credit shall be the City and County of San Francisco Municipal Transportation Agency (SFMTA).

SFMTA in its sole discretion may authorize a reduction value of the letter of credit during its term by notifying the issuing bank and the Consultant by letter signed by the Senior Director of Transportation Planning and Development or the Deputy Director of Transportation Development.

The letter of credit may be for a one-year term; provided, however, that the letter of credit shall automatically renew for additional terms of one year until the SFMTA has accepted all work to be performed by Consultant under the Agreement. Consultant shall at its own expense renew the letter of credit, no later than thirty (30) days prior to its expiration, by paying any premiums, performing any other obligations and satisfying any conditions required by the bank for renewal of the letter of credit.

If the letter of credit is cancelled, no later than thirty (30) days before the letter of credit expires, Consultant shall deliver to SFMTA a substitute letter of credit that complies with the requirements set forth above. The substitute letter of credit shall take effect no later than the date

of termination of the expiring letter of credit. The Consultant's duty to maintain such a letter of credit shall continue until it is satisfied all its obligations under this Agreement. If the Consultant fails to submit a qualifying substitute letter of credit as indicated above, the City may draw upon the existing letter of credit in full.

The City may draw on the letter of credit in full or in part at any time prior to the close of business on the expiration date for any reason or no reason at all. The City may make an unlimited number of draws on the letter of credit. The City may draw on the letter of credit by presenting to the bank a sign draft executed by the Senior Director of Transportation Planning and Development of SFMTA. Said sight draft shall be in a form substantially similar to the sight draft attached hereto as Appendix B.5. There shall be no other conditions to drawing on the letter of credit. The City shall give noticed to Consultant of any draw on the letter of credit. Said notice shall be accomplished in writing as provided by Section 25 or facsimile.

The letter of credit shall provide that the bank will honor each draft drawn under and in compliance with the terms of credit if duly presented at its offices before the close of business on the expiration date. The bank will pay the amount specified on the sight draft immediately upon due presentation thereof, by cashier's check payable to the City and County of San Francisco Municipal Transportation Agency.

In the event that the City draws on the letter of credit, the proceeds therefrom shall be deposited in an escrow trust account as describe in subsection j. above; provided, however, that upon resolution of the parties' dispute by order of a court of proper jurisdiction or by a mutually agreed settlement, the City may retain proceeds from the letter of credit pursuant to an order of court under the preceding sentence notwithstanding the pendency of any appeals filed by the Consultant. Any costs associated with the disposition of letter of credit proceeds into an escrow account shall be borne by the Consultant.

Included to Appendix B:

Appendix B.1	Schedule of Rates
Appendix B.2	Project Cost Summary by Phases of Work Schedule
Appendix B.3	Project Schedule
Appendix B.4	Project Organization
Appendix B.5	Sight Draft

NOTE: THE ABOVE APPENDICES ARE NOT INCLUDED IN THIS PACKAGE, BUT ARE AVAILABLE FOR REVIEW AT SFMTA TRANSPORTATION PLANNING AND DEVELOPMENT DIVISION OFFICE AT 1 SOUTH VAN NESS AVE., THIRD FLOOR, SAN FRANCISCO, CALIFORNIA 94103.

APPENDIX C

FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

1. 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. **Consultant** 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** is the current designation for the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration shall be deemed a reference to the Federal Transit Administration.

E. **Federal Transit Administrator** is the current designation for the former Urban Mass Transportation Administrator. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administrator shall be deemed a reference to the Federal Transit Administrator.

F. **FTA** is the acronym for the Federal Transit Administration, one of the operating administrations of the U.S. DOT. FTA replaces the acronym UMTA.

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

H. **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.

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

J. **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.

K. **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.

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

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

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

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

2. **FEDERAL CHANGES**

Consultant 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 Agreement (Form FTA MA(3) dated October, 1996) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

3. **AUDIT AND INSPECTION**

A. The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

B. The Consultant 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 Consultant 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 Consultant 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).

4. DEBARMENT AND SUSPENSION

The Consultant agrees as follows:

A. The Consultant shall supply certifications on debarment and suspension and otherwise comply with the requirements of Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101; and U.S. DOT regulations on Debarment and Suspension at 49 CFR Part 29.

B. (Applicable to contracts in excess of \$100,000) Consultant agrees to refrain from awarding any third party subcontract of any amount (at any tier) to a debarred or suspended subconsultant.

C. Before entering into any third party subcontract in excess of \$100,000, Consultant agrees to obtain a debarment and suspension certification from each prospective third party subconsultant (at any tier). The certificate shall contain information about the debarment and suspension status and other specific information about the subconsultant and its “principals,” as defined at 49 CFR § 29.105(p). An example of the appropriate certification is contained in 49 CFR Part 29, Appendix B.

D. Consultant shall provide City with a copy of each conditioned debarment or suspension certification provided by a prospective third party subconsultant (at any tier).

5. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

A. The City and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Consultant 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 subconsultant who will be subject to its provisions.

6. CIVIL RIGHTS

A. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant 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 Consultant 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 Consultant agrees to comply with any implementing requirements FTA may issue.

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

7. PATENT RIGHTS

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 Consultant 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 Consultant's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Consultant 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 Consultant 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.

8. RIGHTS IN DATA AND COPYRIGHTS

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, Consultant may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Consultant 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 Consultant using Federal assistance in whole or in part provided by FTA.

(3) **FTA Intention.** When FTA awards Federal assistance for a 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant and incorporated into the work carried out under this Agreement, provided that the City or Consultant identifies the data in writing at the time of delivery of the work.

(7) **Application to Subconsultants.** Unless FTA determines otherwise, the Consultant 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 Consultant's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Consultant 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 Consultant 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.

9. EMPLOYEE PROTECTIONS

A. **Overtime requirements** - No Consultant or subconsultant 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 Consultant and any subconsultant responsible therefore shall be liable for the unpaid wages. In addition, Consultant and subconsultants 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 Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.

D. **Subcontracts** - The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in this section.

E. **Payrolls and basic records** - Payrolls and basic records relating thereto shall be maintained by the Consultant during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Consultant shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Consultants employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

10. ENERGY CONSERVATION REQUIREMENTS

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

11. CLEAN WATER REQUIREMENTS *(The Clean Water requirements apply to all contracts in excess of \$100,000.)*

A. 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. Consultant 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 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.

12. CLEAN AIR *(The Clean Air requirements apply to all contracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.)*

A. Consultant 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 Consultant 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 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.

13. METRIC SYSTEM

To the extent practicable and feasible, the City will accept products and services with dimensions expressed in the metric system of measurement.

14. PRIVACY

If Consultant or its employees administer any system of records on behalf of the Federal Government, Consultant 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, Consultant agrees to obtain the express consent of the Federal Government before it or its employees operate a system of records on behalf of the Government. Consultant acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals administering a system of records for the Federal Government under the Project, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Consultant 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.

15. DRUG AND ALCOHOL TESTING

To the extent Consultant, its subconsultants or their employees perform a safety-sensitive function under the Agreement, Consultant agrees to comply with, and assure compliance of its subconsultants, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Prohibited Drug Use in Transit Operations," 49 CFR Parts 653 and "Prevention of Alcohol Misuse in Transit Operations," 49 CFR Part 654.

16. TERMINATION FOR CONVENIENCE OF CITY

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

18. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

A. The Consultant 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 Consultant 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 Consultant 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 Consultant to the extent the Federal Government deems appropriate.

B. The Consultant 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 Consultant, to the extent the Federal Government deems appropriate.

C. 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.

19. 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 4220.1D, dated April 15, 1996, 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 City request that would cause the City to be in violation of the FTA terms and conditions.

20. FLY AMERICA REQUIREMENTS - The Consultant 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 sub-recipients of Federal funds and their Consultants 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 Consultant 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 Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

APPENDIX D
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
SMALL BUSINESS ENTERPRISE (SBE) PROGRAM REQUIREMENTS

ARCHITECTS, ENGINEERS, PLANNERS, ENVIRONMENTAL SCIENTISTS AND OTHER
PROFESSIONAL SERVICES

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**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
SMALL BUSINESS ENTERPRISE PROGRAM REQUIREMENTS**

**ARCHITECTS, ENGINEERS, PLANNERS, ENVIRONMENTAL SCIENTISTS AND OTHER
PROFESSIONAL SERVICES**

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**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
SMALL BUSINESS ENTERPRISE PROGRAM REQUIREMENTS**

**ARCHITECTS, ENGINEERS, PLANNERS, ENVIRONMENTAL SCIENTISTS AND OTHER
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SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
Small Business Enterprise Program Requirements

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

POLICY

The San Francisco Municipal Transportation Agency ("SFMTA") is committed to a Small Business Enterprise (SBE) Program ("Program") for the participation of SBEs in contracting opportunities in accordance with the federal regulations in 49 CFR Part 26, issued March 4, 1999, as amended from time to time (the "Regulations"). The Regulations are incorporated into this Program as though fully set forth herein. It is the intention of the SFMTA to create a level playing field on which SBEs can compete fairly for contracts and subcontracts relating to the procurement and professional services activities of the SFMTA.

A. Applicability

Under 49 CFR Sections 26.3 and 26.51, and in response to the Federal Transit Administration's ("FTA") March 23, 2006, publication of the Department of Transportation's ("DOT") guidance concerning the federal Disadvantaged Business Enterprise ("DBE") program that applies to grant recipients within the Ninth Circuit, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement race-neutral means of facilitating DBE participation. The SFMTA's SBE Program is in accordance with DOT's guidance that, absent a disparity study, the SFMTA must meet its overall annual DBE goal using race-neutral means. This Program applies to the following types of SFMTA contracts that are funded, in whole or in part, by DOT financial assistance: 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; Surveying and Mapping; Drafting (design services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

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 CFR 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 the SFMTA is responsible for adherence to this policy. The Contract Compliance Office (CCO) shall be responsible for the development, implementation and monitoring of this program. All SFMTA personnel shall adhere to the provisions and the spirit of the program.

D. Prohibited Discrimination

SFMTA does 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 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 does 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 CFR Section 26.13.

E. Non-Discrimination In Employment

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

Should SFMTA deem it necessary, the SFMTA will seek a written commitment from the proposer to use good faith efforts to provide equal employment opportunities during the term of the contract. One measure of such a commitment would be comparing utilization of women and minorities with the relevant labor market in order to improve parity between the

composition of the proposer's workforce and the available labor market. The proposer may be required to provide the SFMTA with the relevant data regarding its labor market.

DEFINITIONS

Any terms used in this Program shall have the meaning set forth below:

A. 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 dollars 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").

B. Contractor

The term "Contractor" includes consultants.

III. SBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

A. SBE Participation Goal

The Contract Compliance Office has established a **ten percent (10%)** SBE participation goal for this contract. Small business firms may qualify for this program by enrollment in either the State of California's Small Business Program, the Federal DBE program, or the City and County of San Francisco's LBE program. This SBE goal will apply to the following types of contracts or scope of work in the contract: Architecture & Engineering Services, Computer Programming and Design, (Drafting (design services); Landscape Architecture; Building Inspection; Public Relations; Telecommunications; Merchant Wholesalers, Durable Goods, and Machinery and Equipment Rental (construction) ("SBE Work".)

To be determined responsive, a proposer must demonstrate in its submittal that it will meet this goal in the performance of this contract; or if it is unable to meet the goal, the proposer must submit documentation (SFMTA Form 2 – SBE Consultant/Subconsultant – Good Faith Efforts) with its proposal that it performed good faith efforts, prior to submission of the bid or proposal, to meet this goal. A proposer that is not responsive shall be ineligible for award of the contract.

If no goal has been set for this contract, SFMTA encourages proposer to use good faith efforts to solicit SBEs for this contract if available.

The database of certified SBEs includes enrollment in either 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").

Contact Sheila Evans-Peguese at (415) 701-4436 should you need assistance with accessing the databases.

B. SBE Income Thresholds For Certain Types of Contracts

The total average gross revenue thresholds for the past three years for the types of SBE work listed in Section III.A. above is \$12 million.

For these categories, the proposer needs to collect and submit to SFMTA with its proposal the SBE Consultant/Joint Venture Partner/ Subconsultant Gross Revenue Declaration(s) (SFMTA SBE Form No. 2-B) from all potential SBE participants listed on its SFMTA Form No. 1. Each SBE must declare that its total average gross revenues for the past three years are equal to or below the income threshold stated above.

C. SBE Participation

The SFMTA requires the prime contractor to make every good faith effort to include SBEs to perform meaningful work in all aspects of the project. To accomplish these efforts, the following guidance is provided:

1. Nature of SBE Participation

SBE participation includes contracts (other than employee contracts) with SBEs for any goods or services specifically required for the completion of the SBE Work. An SBE may participate as a prime contractor, subcontractor, joint venture partner with a prime contractor, or a supplier of other services, e.g., machinery/equipment rental, to fulfill the SBE goal for the SBE Work.

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, a SBE may contract out a portion of the work if it is considered to be a normal industry practice.

If a SBE consultant 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.

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 individual SBE work in dollars and the percentage of the total contract bid price for the SBE Work. The Contractor shall achieve the SBE participation goal specified for the entire SBE Work, including any amendments to the SBE Work.

a. SBE Prime Consultant

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 Consultant.

b. SBE Subconsultant

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 Consultant or supplier) and reasonable fees and commissions charged for the services. Do not count any work subcontracted by an SBE subconsultant to another firm as SBE participation by said SBE subconsultant. If the work has been subcontracted to another SBE, it will be counted as SBE participation by that other SBE.

c. 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.

d. 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. This applies whether an SBE is a prime contractor or subcontractor.

e. 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.

f. Materials or Supplies

Count expenditures with SBEs for materials or supplies toward SBE goals as provided in the following:

- (1) If the materials or supplies are obtained from a SBE manufacturer, count 100 percent of the cost of the materials or supplies toward SBE goals.
- (2) For purposes of this paragraph (e)1(i), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- (3) If the materials or supplies are purchased from a SBE regular dealer, count 60 percent of the cost of the materials or supplies toward SBE goals.
- (4) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the material, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

D. Meeting the SBE Participation Goal

By submitting **SFMTA FORM No. 1 –CONSULTANT/JOINT VENTURE PARTNER AND SUBCONSULTANT PARTICIPATION REPORT**, a proposer certifies that it is committed to using the identified SBEs in the performance of the contract. Detailed instructions for completing this and other required forms are found in Part V.

E. Submission of Certification for SBEs

1. Prime Contractors and subcontractors must be certified under the State Program, City Program, or the Federal DBE Program on the **proposal/bid due date** to qualify to meet the SBE subconsulting/subcontracting goal(s). Firms may obtain information on how to become certified as SBEs from either SFMTA or from the State or City at the following addresses:

Federal DBE Program, or general information about other programs and assistance with accessing the databases:

San Francisco Municipal Transportation Agency (SFMTA)
Contract Compliance Office
One South Van Ness Avenue, 3rd Floor
San Francisco, California 94103
(415) 701-4436
Attn: Sheila Evans-Peguese, CCO Certification Unit

Firms that wish to be certified as DBEs can obtain DBE certification applications from SFMTA at the above address. Completed DBE certification applications can be returned to SFMTA or another certifying agency. A list of certifying agencies can be obtained by calling 415-701-4443 or by going to the following website:
<http://www.dot.ca.gov/hq/bep/ucp.htm>

State Program:

California Department of General Services
Office of Small Business and DBE Services, Room 1-400
P.O. Box 989052
West Sacramento, CA 95798-9052
(916) 375-4940
<http://www.pd.dgs.ca.gov/smbus/certapps.htm#RenReq>

City Program:

Human Rights Commission
25 Van Ness Ave. #800
San Francisco, CA 94102
Attn: Certification Unit
(415) 252-2500
www.sfhrc.org

2. Project by project certification will not be required; however, if the status of the SBE changes during the certification period, the certification may no longer be valid. In such cases, a newly completed certification application should be submitted.

IV. TRAINEES – San Francisco Municipal Transportation Agency (SFMTA) Employment Training Program

- A. **Training Requirements:** SFMTA requires all consultants to comply with SFMTA’s Employment Training Program which fosters employment opportunities for economically disadvantaged individuals. Consultants are required to notify the SFMTA of all open, entry-level positions and consider all program referrals fairly and equally. In addition, the City requires consultants to hire a minimum number of professional service trainees in the area of the consultant’s expertise. Trainees shall be obtained through the City’s First Source Hiring Program ‘One Stop Employment Center’, which works with various employment and job training agencies/organizations or other employment referral sources.

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

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

- B. The intent of this Program is to provide technical training and job opportunities in a professional office environment for economically disadvantaged individuals as on-the-job trainees. These training opportunities will be executed through the duration of this contract. In hiring prospective trainee, the Consultant shall comply with the non-discrimination provisions pursuant to local, state and federal laws.
- C. Trainees shall be obtained through First Source Hiring Program. Outreach should be done to include individuals from the communities that have experienced high rates of unemployment. A list of the designated resources may be obtained from SFMTA.
- D. The Employment Training Program is based on the project fee will consist of participation of individuals as on-the-job trainees which are implemented by the Consultant for this project. The individuals will be hired as regular employees of the firms(s) and shall receive any benefits that they may be entitled to under State labor laws.
 - 1. The trainee must be hired in a discipline related to professional services or meaningful support or technical position by the Consultant.
 - 2. No existing employee may be counted towards meeting the trainee goal. However, the new trainees can be part of the pool of new employees that the Consultant may have to hire anyway for a new project of this magnitude and therefore need not be an “extra” cost to the Consultant or to the City.
 - 3. The Consultant may utilize trainees on other projects it has within San Francisco Bay Area or trainees can execute work for other projects after the effective date of the Notice to Proceed.
 - 4. The Consultant is responsible for providing On-The-Job Training (OJT). The Consultant shall hire the trainee on a full-time basis for at least 12 months or on part-time basis for 24 months, offering him/her OJT, which allows the trainee to progress on a career path. The Consultant may hire the trainee(s) for the duration of the project.
 - 5. The Consultant should submit to SFMTA for approval a job description and summary of the training program for each trainee, with the proposed rate of pay (commensurate with the job requirements).
 - 6. The trainee is defined as a socially and economically disadvantaged individual who:
 - a. Is unemployed, has a history of unemployment, or who is currently in a job training program; and
 - b. Will receive training in a non-trade discipline associated with the Professional Engineering Services industry.

7. The term “socially and economically disadvantaged individual” shall have the meaning, as the term is defined in 49 CFR Section 26.5, and shall also include persons with disabilities.
- E. The Consultant shall provide additional office equipment (i.e., computers, desks and chairs) for trainees. The Consultant shall provide travel costs if the individual has to travel 50 miles or more to get to the job.
- F. The Consultant shall design a training program specifically for the trainee. The program shall include, but not be limited to company’s personnel policy procedures manual, benefit package and OJT duties and responsibilities. The trainees are not permitted to work in trade positions performing covered work.
- G. The Consultant can replace a trainee if there is documentation to demonstrate that the trainee did not perform satisfactorily the key requirements as identified in the job descriptions. The Consultant can apply the time accumulated by the original trainee toward satisfying the contract requirement.
- H. The Consultant shall provide SFMTA within thirty (30) working days of Notice to Proceed, the following information in order to expedite time in securing the appropriate person to participate during the project.
 - a. Indicate number of trainees to be hired. The hiring of trainees can be phased in over a period of time.
 - b. Provide the name and telephone number of Consultant’s contact person.
 - c. The Consultant shall provide a job description used to recruit the trainee(s). Indicate specific skills/disciplines for job.
 - d. A college degree is not a requirement for a trainee and the job description should so indicate.
- I. The Consultant shall submit to SFMTA on a monthly basis a Workforce Information report regarding the status of the trainees.
- J. SFMTA’s Contract Compliance Office will monitor the contract trainee requirements for compliance.
- K. The Consultant agrees that the City may withhold pending and future progress payments should the Consultant not demonstrate good faith efforts toward satisfying the required number of trainee hours.

V. Evaluation of proposals

A. CCO Evaluation

As stated in Section III. A., above, a proposer that fails to demonstrate that it achieved the contract-specific SBE participation goal or fails to demonstrate that it made good faith efforts prior to submission of the proposal to meet the goal shall be deemed non-responsive. A proposer found to be non-responsive shall be ineligible for award of the contract.

1. Evaluation of Proposals

After the receipt of proposals, the CCO shall evaluate all proposals with regard to the SBE requirements. Should the CCO determine that additional information is needed to evaluate a proposer's submission, the CCO shall request said proposer or listed SBE to submit the required information, which shall be due within five (5) days of the request.

2. Determination of Amount of SBE Participation

The CCO shall review the total dollar value of the work and the percentage of the total contract bid price reported on the proposer's Consultant/Joint Venture and Subconsultant Participation Report (SFMTA FORM No. 1) for accuracy and shall compare it to the contract-specific goal, if any, established for the contract.

3. Evaluation of SBE Certification Status

SFMTA requires that any SBEs listed by proposers for participation in the contract be certified by proposal due date. The CCO shall review the proposer's Consultant/Joint Venture and Subconsultant Participation Report (SFMTA FORM No. 1) to confirm the certification status of each SBE. SFMTA will accept current certifications by (a) SFMTA and other DOT recipients in California authorized under the federal DBE regulations; (b) the State Program, or (c) the City Program.

The SBE threshold for consultants and subconsultants is \$12 million. The SBE consultant and listed SBE Subconsultants or suppliers must declare under penalty of perjury under the laws of the State of California that its total average gross revenues for the past three years are equal to or below the \$12 million threshold (see SFMTA SBE FORM 2B).

4. Good Faith Efforts

If the amount of SBE participation does not meet the SBE goal, the CCO shall review the good faith efforts report (SFMTA SBE Form 2) submitted by the proposer with its proposal. A proposer must submit a report explaining the steps taken and the reasons the efforts were not successful to obtain SBE

participation. The CCO shall determine whether, prior to submission of the proposal, the proposer has performed the quality, quantity and intensity of efforts that demonstrate a reasonably active and aggressive attempt to meet the established SBE goal.

Proposers must submit the SBE Contractor/Subcontractor Participation – Good Faith Efforts Form (SFMTA SBE Form No. 2) with its proposal. Even if proposers' SFMTA SBE Form No. 1 indicates the SBE goal has been met, proposers should still submit SFMTA SBE Form No. 2 to protect their eligibility for the contract. This is because SFMTA's Contract Compliance Office may determine that proposers have not met the goal for various reasons, e.g., if an SBE subcontractor submitted by the prime contractor was not properly certified on the proposal due date. In these cases, SFMTA's SBE Form No. 1 will not normally provide sufficient information to demonstrate that the proposer made good faith efforts.

The following is a list of types of actions that the proposer should consider as part of its good faith efforts to obtain SBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- a.** Soliciting through all reasonable and available means (e.g. attendance at preproposal meetings, advertising and/or written notices) the interest of all certified SBEs who have the capability to perform the work of the contract. The proposer must solicit this interest within sufficient time to allow the SBEs to respond to the solicitation. The proposer must determine with certainty if the SBEs are interested by taking appropriate steps to follow up initial solicitations.
- b.** Selecting portions of the work to be performed by SBEs in order to increase the likelihood that the SBE goal(s) will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate SBE participation, even when the prime consultant might otherwise prefer to perform these work items with its own forces.
- c.** Providing interested SBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- d.** (i) Negotiating in good faith with interested SBEs. It is the proposer's responsibility to make a portion of the work available to SBE subconsultants and suppliers and to select those portions of the work of material needs consistent with the available SBE subconsultants and suppliers, so as to facilitate SBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of SBEs that were considered; a description of the information provided regarding the plans and specifications for the

work selected for subcontracting; and evidence as to why additional agreements could not be reached for SBEs to perform the work.

(ii) A proposer using good business judgment would consider a number of factors in negotiating with subconsultants, including SBE subconsultants, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for a proposer's failure to meet the contract SBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime consultant to perform the work of a contract with its own organization does not relieve the proposer of the responsibility to make good faith efforts. Prime consultants are not, however, required to accept higher quotes from SBEs if the price difference is excessive or unreasonable.

- e. Not rejecting SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The consultant's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the consultant's efforts to meet the project goal.
- f. Making efforts to assist interested SBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- g. Effectively using the services of available small business community organizations; small business consultants' groups; local, state, and Federal small business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of SBEs.

B. Recommendation for Award of Contract

1. SFMTA CCO's Recommendation for Award

The CCO shall review all of the information submitted by proposers to determine a recommendation to the Executive Director/CEO for award of the contract to the highest-ranked proposer. The proposer shall cooperate with the CCO if a request for additional information is made during this evaluation process.

Following the determination of the highest-ranked proposer, the CCO will prepare a report on the proposer's compliance with the SBE Program requirements for submission to the SFMTA Board of Directors or other awarding authority. SFMTA will follow the award of contract and protest procedures described in the Request for Proposals.

C. Successful Proposer

1. Substitution of Subconsultants and Suppliers

The Consultant shall not terminate an SBE subconsultant or supplier for convenience and then perform the work with its own forces. The Consultant must make good faith efforts to substitute another SBE for an original SBE subconsultant or supplier when the original SBE subconsultant or supplier is terminated or fails to complete the work on the contract. The Consultant shall notify SFMTA in writing of any request to substitute a SBE subconsultant or supplier and provide the CCO with any documentation requested to support the substitution. The CCO must approve the request in writing in order for the substitution to be valid. The substitution may also have to be approved by the SFMTA Board of Directors.

2. Addition of Subconsultants and Suppliers

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

3. Prompt Payment to Subconsultants

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 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.

4. Reporting Requirements

The Consultant 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 Consultant 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 Consultant shall submit a final summary SBE report to the CCO.

D. Administrative Remedies

1. Monitoring SBE Participation

The CCO will monitor and track the actual SBE participation through consultant and subconsultant reports of payments, site visits and other appropriate monitoring. The CCO will ensure that SBE participation is counted towards contract goal(s) and the overall annual goal in accordance with the Regulations.

The CCO will require prime consultants to maintain records and documents of payments to SBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of SFMTA or DOT. This reporting requirement also extends to any certified SBE subconsultant.

The CCO will keep a running tally of actual payments to SBE firms for work committed to them at the time of contract award.

The CCO will perform interim audits of contract payments to SBEs. The audit will review payments to SBE subconsultants to ensure that the actual amount paid to SBE subconsultants equals or exceeds the dollar amount stated in the schedule of SBE participation.

2. Enforcement Mechanisms

i. Reporting to DOT

SFMTA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the Program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Section 26.109. Consultant may also be subject to penalties and/or a debarment action under the San Francisco Administrative Code. Failure to comply with the requirements of the DBE Program constitutes a material breach of contract and will be grounds for termination of the contract. Funds may also be withheld under the Contract pending investigation of a complaint of violation of the SBE Program.

ii. Confidentiality

SFMTA will safeguard from disclosure from third parties information that may reasonably be regarded as trade secrets, consistent with federal, state, and local laws. Notwithstanding any contrary provisions of state or local law, SFMTA will not release personal financial information submitted in response to the personal net worth requirement to a third party other than DOT without the written consent of the person submitting the information.

VI. SUBMISSION OF FORMS AND INSTRUCTIONS

A. Required Forms

PROPOSERS ARE WARNED that failure to comply with the requirements for submission of forms, within the times prescribed, may RESULT IN REJECTION OF THE PROPOSAL, unless a later time is authorized by the CCO. The following forms are included in the RFP:

SFMTA SBE Form No. 1	Consultant/Joint Venture Partner and Subconsultant Participation Report	SBE - 18
SFMTA SBE Form No. 2	SBE Consultant/Subconsultant – Good Faith Efforts	SBE – 19
SFMTA SBE Form No. 2A	Bidders List	SBE – 21
SFMTA SBE Form No. 2B	SBE Consultant/Joint Venture Partner/Subconsultant Gross Revenue Declaration	SBE – 22

SFMTA SBE Form No. 3	Questionnaire on Recruitment, Hiring, and Training Practices for Consultants	SBE – 23
SFMTA SBE Form No. 4	Subconsultant Participation Declaration	SBE – 29
SFMTA SBE Form No. 5	Small Business Enterprise Acknowledgment Declaration	SBE – 30
SCHEDULE B	Joint Venture Participation Form	From CCO, if needed.
POST AWARD FORMS		
SFMTA SBE Form No. 6	Progress Payment Report	SBE – 32
SFMTA SBE Form No. 7	Subconsultant Payment Declaration	SBE - 34
SFMTA SBE Form No. 8	Declaration – Modification of Professional Service Contracts	SBE - 36
SFMTA SBE Form No. 9	Consultant Exit Report and Declaration	SBE - 38

Note: The following instructions are included for the convenience of proposers in preparing their proposals and for consultants to monitor SBE participation appropriately. If there are any conflicts between these instructions and the provisions elsewhere in the specifications or with federal, state, or city statutory requirements, the latter will prevail.

B. To be submitted on PROPOSAL SUBMISSION day:

The following forms must be executed in full and submitted with the proposal package, or as otherwise specified; if not, the proposal may be rejected.

☐ SFMTA SBE FORM No. 1 - CONSULTANT/JOINT VENTURE AND SUBCONSULTANT PARTICIPATION REPORT

All proposers are required to complete this form and include the names of the SBEs being used, a description of the work they will perform, the services or supplies which will be provided by each and the dollar value of each SBE transaction.

This completed form must be submitted with the proposal or the proposal shall be rejected.

☐ SFMTA SBE FORM No. 2 - SBE CONSULTANT/SUBCONSULTANT PARTICIPATIO – GOOD FAITH EFFORTS

Each Proposer shall submit with its proposal a written report (SFMTA Form No. 2) with supporting documentation covering all actions taken by the proposer to

meet the SBE goal prior to the submittal of the proposal. This form must be submitted regardless whether or not the proposer's Consultant/Joint Venture and Subconsultant Participation Report (SFMTA Form No. 1) indicates that the SBE goal has been met. If the CCO requires further information following its review of the report, the proposer shall submit such information within five days of the request.

❑ **SFMTA SBE FORM No. 2A - BIDDERS LIST**

Pursuant to 49 CFR Section 26.11, SFMTA will create and maintain a “Bidders List” consisting of all firms bidding or quoting on prime contracts and bidding, or quoting on subcontracts on DOT-assisted projects. For every firm, the following information will be included: firm name, firm address, firm status as a DBE or non-DBE, the age of the firm, and the annual gross receipts of the firm.

All proposers shall complete the “Bidders List” to the maximum extent feasible, supplying the requested information on all firms quoting on this contract (including the proposer submitting the form).

❑ **SFMTA SBE FORM No. 2B - SBE CONSULTANT/JOINT VENTURE PARTNER/SUBCONSULTANT – GROSS REVENUE DECLARATION**

An SBE consultant/joint venture partner and listed SBE subconsultants or suppliers, including lower tier subconsultants or suppliers, must complete this form. The prime shall collect the completed forms and submit them with its proposal on the proposal due date. The SBE consultant and listed SBE subconsultants or suppliers will need to submit this form declaring, under penalty of perjury, that their total average gross revenues for the past three years are equal to or below the \$12-million income threshold for the specific category of the contract.

❑ **SFMTA SBE FORM No. 3 - QUESTIONNAIRE ON RECRUITMENT, HIRING, AND TRAINING PRACTICES FOR CONSULTANTS**

To be completed by proposers, joint venture partners and subconsultants.

❑ **SFMTA SBE FORM No. 4 - SUBCONSULTANT PARTICIPATION DECLARATION (to be submitted by the prospective prime consultant and subconsultant, as appropriate):**

To confirm and identify the use of SBEs, all proposers shall submit a completed SFMTA FORM No. 4, with the proposal, unless a request for an extension of time is granted by CCO.

Subconsultants using SBEs as lower tier subconsultants, suppliers or service agents shall also submit SFMTA FORM No. 4. The form may be submitted with the proposal unless an extension of time is granted by CCO.

❑ **SFMTA SBE FORM No. 5 - SMALL BUSINESS ENTERPRISE ACKNOWLEDGEMENT DECLARATION (to be submitted by each listed SBE consultant)**

Every listed SBE subconsultant or supplier, including lower tier subconsultants, must submit the completed declarations to the proposers. The proposers shall submit the completed declarations to CCO with the proposal unless an extension of time is granted by CCO.

❑ **Schedule B - Joint Venture Participation Form (If applicable)**

Joint Ventures formed at either the prime consultant level or subconsultant level must submit a Joint Venture Participation Form (Schedule B) plus a joint venture agreement. To obtain this form, please contact the CCO.

C. Consultant Post-Award Forms

❑ **SFMTA SBE FORM NO. 6 - PROGRESS PAYMENT REPORT**

This form shall be completed by Consultant, including each joint venture partner, if applicable, and submitted to the Project Manager (copy to CCO) with its monthly progress payment applications after award of Contract. Consultants must provide complete information and documentation on SFMTA FORM No. 6 for the immediately preceding period for SBE joint venture partners and all subconsultants that are utilized on the Contract.

❑ **SFMTA SBE FORM No. 7 - Subconsultant Payment Declaration**

Consultant shall complete SFMTA FORM No. 7 and submit it to CCO (copy to Project Manager) within five (5) working days following each payment to subconsultants in compliance with prompt payment requirements: This form shall provide evidence that the Consultant has complied with the prompt payment provisions of the Contract.

❑ **SFMTA SBE FORM No. 8 - DECLARATION – AMENDMENTS OF PROFESSIONAL SERVICES CONTRACTS**

This form shall be completed when processing all modifications, supplements or change orders that cumulatively increase the original amount of the contract. All prime consultants, individual joint venture partners, subconsultants and any other vendors participating in the modification must be listed.

❑ **SFMTA SBE FORM No. 9 – CONSULTANT EXIT REPORT AND DECLARATION**

Consultant, including all joint venture partners, if any, shall complete SFMTA FORM No. 9 and submit it to the Project Manager (copy to CCO) with its final progress payment application. Consultant must provide complete and accurate information on SFMTA FORM No. 9 and have it executed by all SBE joint venture partners and all subconsultants.

PROPOSER _____ PROPOSAL DUE DATE SUBMISSION
SFMTA SBE FORM No. 1 - CONSULTANT/JOINT VENTURE PARTNER AND SUBCONSULTANT PARTICIPATION
REPORT

NAME OF FIRMS, ADDRESS, TELEPHONE NO. AND CONTACT PERSON; FEDERAL I.D. NO. (or STATE I.D. NO.)	SBE		NON-SBE		SCOPE OF WORK & CERTIFICATION TYPE & CERT. NO.	ANTICIPATED PERCENTAGE OF PARTICIPATION
	MALE	FEMALE	MALE	FEMALE		
Name & Signature: Authorized Officer of Consultant Firm				Total SBE (Male)		
				Total SBE(Female)		
Print or Type Name:				Total Non-SBE (Male)		
Date				Total Non-SBE(Female)		
				TOTAL %:		

SFMTA SBE FORM No. 2

SBE CONTRACTOR/SUBCONTRACTOR PARTICIPATION – GOOD FAITH EFFORTS

This form must be completed and submitted along with compelling documentation detailing the good faith efforts made to meet the SBE participation goal if the information submitted on SFMTA SBE Form No. 1 indicates that the SBE goal has not been met.

If the SBE participation goal is not met, and if this form, along with compelling documentation detailing the good faith efforts made to meet the goal, is not completed and returned with the proposal, **the proposal shall be deemed non-responsive and rejected.**

Even if proposers’ SFMTA SBE Form No. 1 indicates the SBE goal has been met, proposers **should still submit** the following information to protect their eligibility for the contract. This is because SFMTA’s Contract Compliance office may determine that proposers have not met the goal for various reasons, e.g., if an SBE subcontractor submitted by the prime contractor was not SBE/DBE/LBE certified on the proposal due date. In these cases, SFMTA’s SBE Form No. 1 will not normally provide sufficient information to demonstrate that the proposer made good faith efforts.

Contract Number:		Contract Name:	
Proposer’s		CCO Staff	

Please supply the following information:

1. Attending any presolicitation or proposal meetings scheduled by the awarding department to inform all proposers of SBE Program requirements for the project for which the contract is awarded.
2. List below the names and dates of all certified SBEs solicited by direct mail for this project or print out a list of SBE contacted via the States’ SBE website, City’s HRC website, or UCP DBE website. List the dates and methods used for following up initial solicitations to determine with certainty whether the SBEs were interested. Attach copies of letters and supporting documentation.
3. Summarize below the items of work for which the Proposer requested subcontractor services supplied by SBEs, the information furnished interested SBEs regarding work requirements and any breakdown of tasks into economically feasible units to facilitate SBE participation. Where there are SBEs available for doing portions of the work normally performed by the proposer with its own staff, the proposer will be expected to make portions of such work available for SBEs.

4. List below the names of SBEs solicited for any of the work indicated above and which were not utilized, and a summary of the proposer's discussions and/or negotiations with them.

a. List the names of rejected SBEs:

b. Summarize below discussions and/or negotiations:

5. List the names of subcontractors that were selected over the rejected SBEs listed above and the reasons for that choice.

6. Summarize below assistance that the Proposer has extended to rejected SBEs identified above to remedy the deficiency in their sub-proposals.

7. If insurance is a reason for rejecting any potential SBE, a complete explanation must be provided as follows.

a. List the names and phone numbers of insurance firms contacted by the proposer and/or other involved parties:

b. List the names and phone numbers of public assistance agencies contacted and their responses (for example, the City's Bonding and Insurance Assistance Program):

NOTE: Use additional sheets of paper if necessary. Appropriate documentation such as copies of newspaper ads, letters soliciting bids, & telephone logs should accompany this form.

Signature of Proposer		Date:	
Print Name of Proposer:		Phone Number:	
Name of Company:		email:	
Address, City, ST, Zip:			

CONSULTANT: _____

PROPOSAL DUE DATE SUBMISSION

SFMTA SBE FORM No. 2B

**SBE CONSULTANT/JOINT VENTURE PARTNER/SUBCONSULTANT GROSS REVENUE
DECLARATION**

(To be completed by SBE Consultant/Joint Venture Partner/Subconsultant)

An SBE consultant and every listed SBE subconsultant or supplier, including lower tier subconsultants, must submit the completed declarations to the Prime Consultant. The Prime Consultant shall submit completed declarations with its proposal to the Contract Compliance Office. In order to be counted towards the SBE goal, the SBE must declare, under penalty of perjury, that its total average gross revenues for the past three years are equal to or below the \$12 million threshold.

Contract Number: _____ Contract Title: _____

SECTION I

Name: _____ Vendor Number: _____

Address: _____

Phone: _____ Type of Consultant's License(s): _____ Federal I.D. No.: _____

SECTION II

(Check Ownership and Certification Type check all that apply)

- | | |
|----------------------------------------------------------|------------------------------------------------------------------------------------|
| <input type="checkbox"/> Sole Proprietor | <input type="checkbox"/> DBE (Issued by Calif. Unified Certification Prog.) |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> SBE (Issued by Calif. Dept. of General Services) |
| <input type="checkbox"/> Corporation, s-Corp, LLC | <input type="checkbox"/> LBE (Issued by SF Human Rights Commission) |

DECLARATION

The undersigned declares under penalty of perjury under the laws of the State of California that its total average gross revenues for the past three years are equal to or below the \$12 million threshold.

Name and Title (Print)

Signature Date

**SFMTA SBE FORM No. 3
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
QUESTIONNAIRE
NONDISCRIMINATION REQUIREMENTS**

Professional or Technical Services

Instructions

1. Please complete and return the attached Nondiscrimination Questionnaire, Workforce Data forms and Participation Form with a copy of your entire proposal directly to the awarding Department.
2. Please complete the questionnaire for the office that will ultimately perform the project work.
3. The questionnaire must be completed by:
 - a. All prime consultants
 - b. All joint venture partners and subconsultants
4. Support firms (e.g., printers, photographers, etc.) need not complete any part of the questionnaire.
5. Approved State or Federal Nondiscrimination Programs may be substituted for those items where the information requested in the questionnaire is identical to that contained in the State or Federal Programs.
6. If the questionnaire(s) is/are not correctly and fully completed, SFMTA will not consider your proposal. For firms selected as finalists, all SBEs participating in the project must be certified prior to contract award.

SFMTA FORM No. 3

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
QUESTIONNAIRE ON RECRUITMENT, HIRING, AND TRAINING PRACTICES FOR
CONSULTANTS**

NOTE: The term "minority" refers to the following groups: American Indian or Alaskan Native, Asian or Pacific Islander, African-American, Filipino, and Hispanic.

(Please answer all questions. Use additional sheets if necessary.)

Name of Company: _____

Address: _____

Location of Company Workforce (Check one):

_____ San Francisco

_____ Other Location, provide address:

-
1. Name, title, telephone number of company official at the establishment who is responsible for recruitment and hiring and who will provide information concerning this matter.

 2. Name, title, and telephone number of senior managing official at the establishment if not the person named in the answer to question 1.

 3. Describe briefly the basic business activity at the establishment (i.e., identify the product produced or the services performed.)

 4. Describe briefly how employees at various levels are hired (see Workforce Breakdown #8).
 - A. Technicians and/or others.

B. Support Staff (accounting, reception, and clerical).

5. Describe in full, Nondiscrimination programs in the past two years. (Consultants may submit one (1) copy of their Nondiscrimination Program directly to SFMTA Contract Compliance Office, One South Van Ness Ave., 3rd Floor, San Francisco, CA 94103, (415) 701-4443.

-- Participation in training programs.

-- Participation in apprenticeship programs.

-- Participation in any summer hire program or own program.

-- Paid educational leave or tuition to improve skills and level.

-- Participation in scholarship fund.

-- Participation in clerical training programs.

-- Participation in "other" programs.

6. If minorities and/or women are underutilized explain steps to ensure the firm is not discriminating.

7. Describe joint ventures or subconsulting arrangements in past projects. If there is a company policy on this issue, include it.

8. Complete workforce breakdown. (Separate form, Page SBE-27.)

- 8a. Hires in last 12 months. (Complete separate form, Page SBE-28.)

SFMTA SBE FORM NO. 3

Workforce Data SPREADSHEET #1

8. Please fill out this workforce breakdown

Name of firm: _____

Address: _____

EMPLOYEE * CATEGORIES	TOTAL EMPLOYEE		AFRICAN AMERICAN		HISPANIC		ASIAN/ PAC. ISL.		AMER. IND./ ALAK. NTV.		TOTAL MINORITY		PERCENTAGE WHITE		PERCENTAGE MINORITY	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Officials																
Managers																
Professionals																
Technicians																
Admin. Support																
Trainees																
Others																
Full-time																
Part-time																
TOTAL																

3/30/95

COMPLETED BY Name: _____ Title: _____ Date: _____

* If the list of occupations on the left side of the workforce data form does not match your occupation titles, please modify the data form to indicate occupations peculiar to your organization.

SFMTA SBE FORM NO. 3

Workforce Data SPREADSHEET #2

8a. Hires in the last 12 months

Name of firm: _____

Address: _____

EMPLOYEE * CATEGORIES	TOTAL EMPLOYEE		AFRICAN AMERICAN		HISPANIC		ASIAN/ PAC. ISL.		AMER. IND./ ALAK. NTV.		TOTAL MINORITY		PERCENTAGE WHITE		PERCENTAGE MINORITY	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Officials																
Managers																
Professionals																
Technicians																
Admin. Support																
Trainees																
Others																
Full-time																
Part-time																
TOTAL																

3/30/95

COMPLETED BY Name: _____ Title: _____ Date: _____

* If the list of occupations on the left side of the workforce data form does not match your occupation titles, please modify the data form to indicate occupations peculiar to your organization.

PROPOSER _____

PROPOSAL DUE DATE SUBMISSION

SFMTA SBE FORM No. 4

SBE SUBCONSULTANT PARTICIPATION DECLARATION

(To be submitted by the prospective prime consultant or subconsultant, as appropriate, to the Contract Compliance Office with its proposal, unless an extension of time is requested and granted.)

(Name and Title)

declares as follows: That contingent upon award of _____
(Name of Project)

_____ will award subcontracts or pursue
(Name of Prime Consultant)

orders to the following Small Business firms: (If the firm is a joint venture, you must attach a copy of the joint venture agreement.)

Name and Address of SBE	Type of SBE Certification	Lic.#	Gender		Ethnicity	Type of Work (Describe)	% of Contract
			M	F			

Total percent value of SBE work: _____ = _____ % of SBE Participation
Total percent value of Proposal Price 100%

I declare under penalty of perjury under the laws of the State of California, that the above information is true and correct.

Owner or Authorized Representative (Signature)

Dated: _____
PROPOSER: _____

PROPOSAL DUE DATE SUBMISSION

SFMTA SBE FORM No. 5

SMALL BUSINESS ENTERPRISE ACKNOWLEDGMENT DECLARATION

Every listed SBE subconsultant or supplier (including lower tier subconsultant) must submit the completed declarations to the Prime Consultant. The Prime Consultant shall submit completed declarations with its proposal to the Contract Compliance Office, unless an extension of time is requested.)

(Owner or Authorized Representative and Title)

declares that _____ will award
(Name of Prime Consultant)

_____ (% percent), of subcontract or

_____ (% percent of a purchase order of the total value of the prime contract to
_____(Name of your firm).

License No. _____. **Type of SBE Certification:** _____

Nature of work to be performed by SBE: _____

FORM OF OWNERSHIP FOR SMALL BUSINESS ENTERPRISE

Sole Proprietorship _____ Partnership _____ Joint Venture ___ Corporation _____

Limited Liability Partnership _____ Limited Liability Corporation _____

LIST OWNERS

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Percentage of SBE Stockholders: _____

*Ethnic Codes: AI/AN = American Indian or Alaskan Native, A/PI = Asian or Pacific Islander, B = Black, F = Filipino, H = Hispanic, and W = White.

LIST INSURANCE POLICIES AND BONDING ARRANGEMENTS

Name of Policy _____ Party Insured _____

Name of Policy _____ Party Insured _____

Name of Policy _____ Party Insured _____

For Prime Consultants and Subconsultants Only:

List the firm's annual gross receipts for the last three fiscal years:

20_____ \$ _____, 20_____ \$ _____, 20_____ \$ _____

For Suppliers or Manufacturers Only:

List the number of employees for the last three fiscal years:

20_____ Number _____, 20_____ Number _____, 20_____ Number _____

ADDITIONAL SUBCONTRACTING BY SUBCONSULTANTS:

a. _____ We will not subcontract any portion of work to another subconsultant.

b. _____ We will subcontract _____% of our work to _____
(Name of Subconsultant)

Indicate owners' ethnicity and gender _____

I declare under penalty of perjury under the laws of the State of California that the above information is true and correct; and that our firm is a certified SBE as defined under the San Francisco Municipal Transportation Agency's SBE Program.

Owner/Authorized Representative (Signature)

Name & Title (Please Print)

Address

Telephone No.

END OF SFMTA SBE FORM NO. 5

POST AWARD SUBMITTAL

**SFMTA SBE FORM No. 6
PROGRESS PAYMENT REPORT**

To be completed by Consultant and submitted to Project Manager with its monthly progress payment application (transmit and copy to all of the following.)

TRANSMITTAL To: Project Manager Copy: Contract Compliance Office

From: Consultant _____ Date Transmitted: _____

PART 1: Fill in all blanks and check the box below.

Contract Number: _____	Contract Title: _____
------------------------	-----------------------

Reporting Period (Month and Year): _____

Corresponding Progress Payment No.: _____

Note: The information submitted on Parts 1 and 2 of this form is accurate for the progress payment period immediately preceding that of the current payment application attached herewith.

1.	Amount of Prime Contract	\$ _____
2.	Amount of Change Orders, Amendments and Modifications to Date	\$ _____
3.	Total Contract to Date including Change Orders, Amendments and Modifications (Line 1 + Line 2)	\$ _____
4.	Amount Invoiced this Reporting Period	\$ _____
5.	Total Amount Paid to Date including Retention (excluding Line 4)	\$ _____
6.	Amount of Progress Payment Requested to Date (Line 4 + Line 5)	\$ _____
7.	Percent Complete (Line 6 ÷ Line 3)	_____

8. Reporting Period – From (date): _____ To _____
(date): _____

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name & Title (Please Print) Date

Name & Title (Please Print) Date

Firm Name

Firm Name

Telephone Fax

Telephone Fax

PART 2: Provide complete information in the following table for Consultant, each SBE joint venture partner and all subconsultants. Make copies of this sheet as needed. Attach copies of all invoices from subconsultants supporting the information tabulated on this form and Consultant's invoice and Contract Payment Authorization for the immediately preceding progress payment period.

Note: Failure to submit all required information may lead to partial withholding of progress payments. See 49 CFR Sections 26.29, 26.37.

A Name of Firm (List consultant, including each joint venture partner, and all subconsultants, and indicate if firm is a SBE.)	B Portion of Work	C Amount of Subcontract or Purchase Order	D Amount of Change Orders to Date	E Total Amount Subcontract or Purchase Order to Date + Change Orders (C + D)	F Amount Invoiced this Reporting Period	G Amount of Progress Payments Paid to Date	H Percent Completed to Date [F + G] / E
TOTALS							

**POST AWARD SUBMITTAL
SFMTA SBE FORM No. 7
SUBCONSULTANT PAYMENT DECLARATION**

(To be completed and submitted by Consultant, including all joint venture partners, if any, and submitted to the Contract Compliance Office within 5 working days following actual payment to subconsultant. Payments to subconsultant shall be made no later than 3 working days following receipt of progress payment from the City).

TRANSMITTAL TO: Contract Compliance Office

COPY TO: Project Manager

From: Prime Consultant: _____ Date Transmitted: _____

Provide the following information for each progress payment received from SFMTA. Use additional sheets to include complete payment information for all subconsultants and vendors utilized on this Contract including each joint venture partner. Failure to submit all required information may lead to partial withholding of progress payment.

Contract No. _____ Contract Title: _____

Contract Awarding Department: _____

Progress Payment No.: _____ Period Ending: _____

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

Prime JV/Subconsultant/ Vendor Name	Business Address	Amount Paid	Payment Date	Check Number

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

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

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name (Please print/type)

Name (Please print/type)

Title (Please print/type) Date

Title (Please print/type) Date

Firm Name

Firm Name

Telephone Fax

Telephone Fax

**POST AWARD SUBMITTAL
SFMTA SBE FORM NO. 8**

DECLARATION – AMENDMENTS OF PROFESSIONAL SERVICE CONTRACTS

This section is to be completed for all modifications to this contract. All prime consultants, individual joint venture partners, subconsultants and any other vendors participating in the modifications must be listed.

CONTRACT NO.:		CONTRACT MOD NO.:	
CONTRACT TITLE:			
ORIGINAL AMOUNT:	\$	SBE GOAL:	
CONTRACT MODIFICATION AMOUNT:	\$		
CONSULTANT:			
CONTACT PERSON:		PHONE:	
ADDRESS:			
CITY:	STATE:	ZIP CODE:	

JV/P/S: Indicate if consultant is Joint Venture Partner, Prime or Sub.

JV/P/S	NAME	SERVICES PERFORMED	% of Total Mod	MODIFICATION AMOUNT	% SBE

I declare, under penalty of perjury under the laws of the State of California, that the information contained on this form is true and correct.

Owner/Authorized Representative (Signature):

Date:

Owner/Authorized Representative (Print):

Title:

POST AWARD SUBMITTAL

SFMTA SBE FORM NO. 8

DECLARATION – AMENDMENTS TO PROFESSIONAL SERVICE CONTRACTS

Information is needed for each firm listed on Page 1 (prime consultants, joint venture partners, subconsultants and suppliers). Firms that have previously worked on City contracts may already have a vendor number. You may enter the vendor or federal I.D. number instead of completing the rest of the information. Use additional sheets if necessary.

FIRM NAME			
ADDRESS:			
CITY:		<u>FEDERAL I.D. NO.:</u>	VENDOR NO.
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		
FIRM NAME			
ADDRESS:			
CITY:		<u>FEDERAL I.D. NO.:</u>	
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		
FIRM NAME			
ADDRESS:			
CITY:		<u>FEDERAL I.D. NO.:</u>	
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		
FIRM NAME			
ADDRESS:			
CITY:		<u>FEDERAL I.D. NO.:</u>	
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		

ETHNIC OWNERSHIP: Asian, Black, Hispanic, Native American, White, Other (please state) _____.

END OF SFMTA SBE FORM No. 8

POST AWARD SUBMITTAL

SFMTA SBE FORM No. 9

CONSULTANT EXIT REPORT AND DECLARATION

To be completed by Consultant, including all joint venture partners if any, and submitted to Resident Engineering (copy to Contract Compliance) with its final progress payment application (transmit and copy to all of the following.)

TRANSMITTAL To: Project Manager Copy: Contract Compliance Office

From: Consultant: _____

Date Transmitted: _____

Consultant must complete SFMTA Form 9, Page 2 and have it executed by all SBE joint venture partners and all subconsultants.

Reporting Date: _____

I/We declare under penalty of perjury under the laws of the State of California, that the information on Page 2 of this form is complete, that the tabulated amounts paid to date are accurate and correct, and that the tabulated amounts owing will be paid within forty (40) days after the date of SFMTA's final payment under the Contract.

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

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name (Please print/type)

Name (Please print/type)

Title (Please print/type) Date

Title (Please print/type) Date

Firm Name

Firm Name

() ()

Telephone Fax

() ()

Telephone Fax

Note: Failure to submit all required information may lead to partial withholds of progress payment. See 49 CFR Sections 26.29, 26.37.

Name of Firm (List Consultant, including each joint venture partner, and all subconsultants, and indicate if the firm is a SBE.)	Portion of Work	Amount of Progress Payments Paid to Date	Amount Owing under the Contract including all Change Orders, Amendments and Modifications	Owner/Authorized Representative Signature (Consultant, including each joint venture partner, and all subconsultants)
TOTALS				

END OF SFMTA SBE FORM No. 9

See RFP Appendix 2

**APPENDIX E
 DIRECTORY OF SUBCONSULTANTS**

Firm	Contact
Macro Corporation 429 Ninth Street, Suite 360 Oakland, California 94607 Phone: 510-763-5000	Forrest, Gregory
Aura Management Consulting, LLC (SBE) P.O. Box 20210 El Sobrante, CA 94820 Phone: 510-223-7006	Smothers, Fay
EIGER TechSystems, Inc. (SBE) 621 Strand Street, Suit 005 Santa Monica, CA 90405 310-396-2959	Lee, Nelson
Railcar Quality Services, Inc. (SBE) 47b Union Way Vacaville, CA 95687 Phone: 707-452-8910	Lee, Lain
Redstone Group, LLC (SBE) 111 City Limits Circle Emeryville, CA 94608 Phone: 415-608-1926	Chuey, Jane

Note: SBE-Small Business Enterprise

APPENDIX F
Clarification of Scope of Work

RFP Section	Agreement	
Scope of Work	Deliverables/Subject	
Contract Phase 1		
§ II. C.1.e	Meeting agendas and meeting minutes	Consultant shall comply with § II. C.1.e. Consultant and City shall participate in/conduct bi-weekly project progress review meetings.
§ II.C.2	Consultant's Quality Assurance/Quality Control Program and Procedures Manual	Consultant shall comply with § II.C.2 and submit for City acceptance a Quality Assurance/Quality Control Program, within 45 days of receipt of the NTP.
§ II. C.3.f	Standards and progress metrics for software development	Consultant shall comply with § II. C.3.f. including the development of the functional specifications for the entire software lifecycle for design, development, testing, and configuration control.
§ II. D.1	Operational Concept Document (OCD) for Muni's Operations Control Center	Consultant shall complete the OCD within three months of NTP.
§ II. D.3.w	Analysis of AVL system and recommendations	. Consultant shall be able to assess the NextBus system prior to expiration of the contract in August 2008.
Contract Phase 2		
§ II. C.1.e	Meeting agendas and meeting minutes	Consultant shall comply with § II. C.1.e. Consultant and City shall participate in/conduct bi-weekly project progress review meetings.
§ II. E.5.b.(28)	Test program plan	Consultant shall comply with § II. E.5.b.(28). Consultant shall develop a complete set of requirements for the test program as part of the system functional, performance, and implementation requirements.
§ II. E.5.b.(31)	System survivability, reliability and functionality evaluation report	Consultant shall comply with § II. E.5.b.(31). Consultant shall develop reports for survivability, reliability, and functionality as part of Phase 1. Based on the recommendations presented in these reports, Consultant shall develop a complete set of requirements for Phase 2 design build package.

RFP Section		Agreement
Scope of Work	Deliverables/Subject	
§ II. E.5.c.(1) thru (4)	Technical specifications for facility improvements	<p>Consultant shall perform all Conceptual Engineering work related to the improvement of existing or new construction of radio facilities.</p> <p>The City will develop the technical specifications for the electrical, mechanical (e.g. HVAC), architectural, and civil engineering work related to the improvement of existing or new construction of radio facilities including but not limited to the Lenox Street facility, radio antennae, and transmitter facilities. The City retains the option to require consultant to perform that work for a cost plus fixed fee, as provided in the Consultant's Cost Proposal submitted January 11, 2008.</p>
§ II. E.5.c.(1) thru (4)	Radio base station site topography and survey drawings	Consultant shall assume the radio base station sites are limited to the existing locations.
§ II. E.5.c.(1) thru (4)	Radio base station site utility survey and composite utility maps	Consultant shall assume the radio base station sites are limited to the existing locations.
§ II. E.5.c.(1) thru (4)	Geotechnical investigation and report with design parameters and recommendation	Consultant shall assume the radio base station sites are limited to the existing locations.
§ II. E.5.c.(1) thru (4)	Environmental studies, including studies and investigations on hazardous waste, and site remediation plans	Consultant shall assume the radio base station sites are limited to the existing locations.
Contract Phase 3		
§ II. C.1.e	Meeting agendas and meeting minutes	Consultant shall comply with § II. C.1.e. Consultant and City shall participate in/conduct bi-weekly project progress review meetings.
Contract Phase 4		
§ II. C.1.e	Meeting agendas and meeting minutes	City and Consultant shall participate in/conduct bi-weekly project progress review meetings.
§ II. G.1.g	Assist SFMTA in managing contract closeout	As directed by the SFMTA, the Consultant shall assist the SFMTA in managing contract close out including but not limited to review of as-built document, completion of training, system testing, and conditional acceptance.

RFP Section		Agreement
Scope of Work	Deliverables/Subject	
§ II. G.3.g	Cost and price analysis of contract changes	Consultant shall prepare cost and price analysis of contract changes during construction as required by FTA requirements.
§ II. G.3.i	Safety and Security Certification reports	Consultant shall assist in the construction safety and security certification activities and prepare reports as necessary.
§ II. G.3.j & k	As-Built documentation and O&M manuals	Consultant shall specify requirements in Phase 2 design build specifications and review submittals for as-built documentation and O&M manuals submitted by the Radio Design-Build Contractor
§ II. G.3.p	Training plan and training material	<p>Consultant shall specify requirements in Phase 2 design build specifications and review Radio Design-Build Contractor submittals for training, training plan and training materials.</p> <p>In addition, Consultant shall assume one staff member shall attend the Radio Design-Build Contractor's training and report back on quality of training, applicability, class participation, and overall presentation.</p>
§ II. G.3.u	Radio coverage evaluation and auditing report	Consultant shall develop coverage models as part of the Conceptual Engineering Report. Consultant shall then review the Radio Design-Build Contractor's coverage simulations, coverage test plan and procedures, witness testing, and review test reports during the construction phase.
§ II. G.3.y	RAM demonstration plan	Consultant shall specify functional requirements for the Reliability, Availability, Maintainability (RAM) demonstration plan in Phase 2 bid document, participate in the RAM demonstration, and review the Radio Design-Build Contractor's RAM demonstration report.
Other Comments		
§ II. E.5.c(4), p. 36 of 87	Proposers shall state in their proposals the tasks, reports, and other documents that constitute 35 percent design.	Drawings and reports shall be stamped by the appropriate professionally licensed Consultant team member. See Appendix G for the list of 35 percent design deliverables.

RFP Section		Agreement
Scope of Work	Deliverables/Subject	
§ II. A.5, P 12 of 87	... SFMTA estimates that Contract Phase 3 & 4 could commence within 1 year from the completion of Contract Phase 2	In order to complete the project by January 2013 (FCC re-farming deadline),, City agrees to issue the RFP package for the Radio Design-Build Contractor approximately 4 months after the completion of Phase 2. This also assumes a January 2008 NTP for the Consultant and 100% package completion by June 2009 (18 months after NTP). Consultant recognizes that City may take more than 4 months to continue Phases 3 and 4 and shall ensure key staff is available at that time.
§ II. D.4	... the City staff may take over the engineering responsibility and perform Conceptual Engineering Report (CER)for all facilities....	<p>Consultant shall perform all Conceptual Engineering work related to the improvement of existing or new construction of radio facilities.</p> <p>The City will develop the technical specifications for the electrical, mechanical (e.g. HVAC), architectural, and civil engineering work related to the improvement of existing or new construction of radio facilities including but not limited to the Lenox Street facility, radio antennae, and transmitter facilities. The City retains the option to require consultant to perform that work for a cost plus fixed fee, as provided in the Consultant’s Cost Proposal submitted January 11, 2008.</p>
§ II. C.2	Consultant shall comply with existing SFMTA QA Program and the FTA QA/QC Guidelines.	Consultant shall perform Quality Assurance (QA) audits, inspections, record keeping, and related QA work for this contract.
§ II. D.1	RFP II.D.1, p 21, Consultant shall “ provide recommended alternative for the new Central Control Facility – expand or relocate”	<p>Consultant shall comply with § II.D.1. Consultant shall identify the needs and requirements for a new Central Control Facility or expansion of the existing Lenox location, as well as new or modified radio base station sites. If additional sites are necessary, Consultant shall identify suitable potential sites.</p> <p>Consultant shall not act as a commercial real estate agent representing CITY. However, Consultant shall provide technical support to City’s real estate staff to evaluate potential sites for suitability.</p>

RFP Section		Agreement
Scope of Work	Deliverables/Subject	
§ II. E.5.a(13)	The Consultant's Phase 2 preliminary engineering and procurement contract specification document tasks shall include, but are not limited to: . (13) Project schedule....	Consultant shall comply with § II. E.5.a (13). The baseline cost and resource loaded project schedule developed, as part of the CER in Phase 1 shall be refined in Phase 2 based on the final Preliminary Design package.
Revised Cost Proposal-January 11, 2008		
§ II. C.1.a	Appoint a full-time Project Manager who shall be the single point of contact to SFMTA for the project. The Project Manager shall work out of the local project office, defined below in item K (paragraph II.C.1K)	Phase 1 and Phase 2 - Consultant Project Manager hours shall be at 80 percent Full Time Equivalent. The Project Manager shall work out of the local project office.
§ II. C.1.a	Appoint a full-time Project Manager who shall be the single point of contact to SFMTA for the project. The Project Manager shall work out of the local project office, defined below in item K (paragraph II.C.1K)	Phase 3 - Consultant Project Manager hours shall be at 50 percent Full Time Equivalent. The Project Manager shall work out of the local project office.

RFP Section		Agreement
Scope of Work	Deliverables/Subject	
§ II. C.1.b	At project inception, within 21 days of receipt of Notice to Proceed (NTP), produce a Critical Path Method (CPM) project schedule for Contract Phases 1 and 2 that includes milestones and a work plan, for SFMTA review and approval. The approved CPM project schedule shall be the baseline schedule. The schedule must be updated on a quarterly basis. The approved CPM project schedule shall be formally revised whenever there are major scope changes to the contract.	Consultant shall provide monthly schedule updates using Microsoft Project software.
§ II. D.2.1	Initiate preliminary interoperability/interlink agreements with other City agencies, and public transit and public safety agencies of the neighboring counties (by SFMTA with assistant of the Consultant).	Phase 1 – Costs do not include negotiation of interoperability agreements but Consultant shall participate in meetings in Phases 1 and 2 to initiate discussions with other City agencies, public transit organizations, and public safety agencies of the neighboring counties. Final interoperability agreement negotiations are proposed to begin after NTP to the Radio Design-Build Contractor.

	RFP Section	Agreement
Scope of Work	Deliverables/Subject	
§ II. D.3.c	Survey SFMTA's operating and equipment environment and obtain relevant information on SFMTA's existing radio system facilities, vehicles and associated communications and information technology systems. The survey shall also include miscellaneous voice and data telecom equipment; i.e.: cell phone, pager, 800 MHz radio, and low band radio.	Phase 1 and 2 – Where available, the City shall provide hardcopy drawings (plans and as-built drawings) of existing City facilities that the Consultant shall use to develop conceptual and preliminary design drawings.
§ II. E.5.c (1) through (4)	<p>Technical specifications for facility improvements.</p> <p>Radio base station site topography and survey drawings</p> <p>Radio base station site utility survey and composite utility maps</p> <p>Geotechnical investigation and report with design parameters and recommendation</p> <p>Environmental studies, including studies and investigations on hazardous waste, and site remediation plans</p>	<p>Consultant shall perform all Conceptual Engineering work related to the improvement of existing or new construction of radio facilities.</p> <p>The City will develop the technical specifications for the electrical, mechanical (e.g. HVAC), architectural, and civil engineering work related to the improvement of existing or new construction of radio facilities including but not limited to the Lenox Street facility, radio antennae, and transmitter facilities. The City retains the option to require consultant to perform that work for a cost plus fixed fee, as provided in the Consultant's Cost Proposal submitted January 11, 2008.</p>

RFP Section		Agreement
Scope of Work	Deliverables/Subject	
§ II. E.5.g,h,i	<p>(g) Conduct constructability review at an appropriate stage of the engineering design as determined by the Consultant.</p> <p>(h) Conduct a peer review with personnel from other public transit and/or government agencies at an appropriate stage of engineering design as determined by the Consultant.</p> <p>(i) Conduct a value engineering review at an appropriate stage of engineering design as determined by the Consultant.</p>	Consultant shall perform Industry Review as Apart of the separate reviews described in § II.E. 5.g.,h,i
§ II. G	In Contract Phase 4, the Consultant shall be responsible to assist SFMTA in managing the execution of the system procurement and installation contract (such as shop drawings review, periodic site visits, project meetings, response to RFIs and change orders) that leads to a successful replacement of the radio and communication and CAD systems.	Consultant's scope of work for Phase 4 Year 1 is limited to design review only. Additional cost may be negotiated at a later date for the remaining scope of work for this phase.

RFP Section		Agreement
Scope of Work	Deliverables/Subject	
§ III(3.3)(G), p. 56	At a minimum, the Consultant shall provide fixed lump sum cost proposals for the Baseline Schedule and updates as per Section II (C) (1) (b) and Quality Assurance Program requirements of Section II (C) (2).	Consultant shall develop the Quality Assurance Program for the project at a fixed price lump cost. Consultant shall provide the Baseline schedule and the schedule updates shall be provided monthly.

Appendix G

35% Design Documents

The Consultant shall provide, but not limited to, the following 35% designed documents, approved and stamped by a California licensed professional engineer (preferably in electrical discipline):

1. Complete Procurement document (including vendor selection criteria)
2. Channel configuration plan
3. Cut over plan
4. Test program plan
5. Survivability evaluation
6. System architecture and block diagrams
7. Facility improvement requirements
8. *Base station site and survey drawings, utility maps
9. *Geotech report as required
10. Engineering cost estimates
11. System safety and security plan
12. Constructability report
13. Peer review
14. Value engineering report
15. Provide complete CAD/AVL requirements to the radio system design-build contractor with the necessary guidelines to develop a radio system that will fully support this functionality and allow for a smooth integration process with the existing transit system

35% design drawing list:

1. Project identification / Title page
 2. Drawing index, General Notes and Legend
 3. SFMTA Geographic Service Area
 4. System Architecture Schematic
 5. Functional block diagram
 6. System interface diagram
 7. LAN block diagram
 8. Networking Geographic
 9. CAD interface to upgraded radio network
 10. CAD interface to existing network system
 11. Typical mobile configurations
 12. Typical radio and microwave configuration, if required
 13. Conceptual dispatch/radio switch configuration
 14. Networking details (for each site)
 15. OCC miscellaneous data
 16. *OCC floor plan
 17. *OCC architectural modifications
 18. *OCC civil modifications
 19. *OCC UPS, electrical and lighting plan
- repeat for backup OCC, as required
repeat for backup OCC, as required
repeat for backup OCC, as required
repeat for backup OCC, as required
repeat for backup OCC, as required
repeat for backup OCC, as required

- | | |
|-------------------------------------------------------------------|------------------------------------|
| 20. *OCC mechanical and HVAC plan | repeat for backup OCC, as required |
| 21. OCC work station, console furniture layout and wall displays | repeat for backup OCC, as required |
| 22. OCC communication equipment room floor plan | repeat for backup OCC, as required |
| 23. OCC comm. equipment rack elevations | repeat for each radio site |
| 24. OCC comm. telephone and networking cabling with radio site | repeat for each radio site |
| 25. Recorder system block diagram | |
| 26. *Dispatch console plan view | |
| 27. *Supervisors console plan view | |
| 26. Radio site floor plan (new or renovations) | repeat for each radio site |
| 27. Radio site miscellaneous data | repeat for each radio site |
| 28. Radio site RF schematic & cabling plan | repeat for each radio site |
| 29. RF site link budget & other RF parameters | repeat for each radio site |
| 30. *Radio site tower/ rooftop provisions, as needed | repeat for each radio site |
| 31. Radio site equipment rack elevation | repeat for each radio site |
| 32. *Radio site UPS & electrical plan | repeat for each radio site |
| 33. *Radio site lighting plan | repeat for each radio site |
| 34. *Radio site mechanical & HVAC plan | repeat for each radio site |
| 35. Radio site networking connections detail | repeat for each radio site |
| 36. Typical grounding details | |
| 37. Subway coverage plan | |
| 38. Subway site equipment floor plan | repeat for each subway site |
| 39. Subway site RF schematic & link budget | repeat for each subway site |
| 40. Subway site tunnel cabling plan | repeat for each subway site |
| 41. Subway site off-air antenna plan (if used) | repeat for each subway site |
| 42. Garage fixed end systems for vehicle support | repeat for each vehicle type |
| 43. Vehicle logic diagram specified for bus | repeat for each vehicle type |
| 44. Electric trolley bus installation Type 1 | repeat for each vehicle type |
| 45. Motor coach installation Type 1 | repeat for each vehicle type |
| 46. Subway surface LRV installation Type 1 | repeat for each vehicle type |
| 47. Cable car installation Type 1 | repeat for each vehicle type |
| 48. Historic Street Car installation Type 1 | repeat for each vehicle type |
| 49. Car and light truck installation Type 1 | repeat for each vehicle type |
| 50. Line and heavy truck installation Type 1 | repeat for each vehicle type |
| 51. Security police cruiser installation Type 1, (if applicable) | |
| 52. Other miscellaneous vehicle installation Type 1 | |

*City shall complete these documents and drawings but Consultant may be requested to complete this work at a later date.