



**Municipal Transportation Agency**



**REQUEST FOR PROPOSALS**

**PROFESSIONAL PROGRAM  
MANAGEMENT AND  
CONSTRUCTION MANAGEMENT  
SERVICES FOR  
CENTRAL SUBWAY  
THIRD STREET LIGHT RAIL PROJECT PHASE 2**

**RFP No. CS-149  
(CCO 08-993)**

Deadline for Submission: May 2, 2008 at 5:00 p.m.

## Official Advertisement

The San Francisco Municipal Transportation Agency (SFMTA) seeks to obtain Program Management and Construction Management services for the SFMTA's Central Subway Project, Phase 2 of the Third Street Light Rail Project. The contract ("Contract") for these services will be established initially for a period not to exceed five years, with option for the SFMTA to extend the term of the contract up to an additional five years.

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

Proposers must deliver 20 hard copies and 20 CD copies of their Proposals, together with completed forms as called for in Section III, "Submission Requirements," by 5:00 p.m. on May 2, 2008 at the following address:

**SFMTA Transportation Planning and Development Division  
Contract Management Office  
1 South Van Ness Avenue, 3<sup>rd</sup> Floor  
San Francisco, California 94103-1267  
Attention: Mr. Mario Gallardo**

Prospective proposers may obtain a copy of the RFP and additional information for this RFP No. CS-149, including the forms to be submitted with the Proposal, at the address given above or by calling Mr. Mario Gallardo at (415) 701-4348.

A pre-proposal conference will be held on March 10, 2008 at 1:30 PM at 1 South Van Ness Avenue, 3<sup>rd</sup> Floor, Civic Center Conference Room No. 3074, San Francisco, California, to discuss the RFP and the Small Business Enterprise (SBE)/Non-Discrimination Requirements. Although attendance at the pre-proposal conference is not mandatory, the SFMTA strongly urges all prospective proposers and subproposers to attend this conference. For questions regarding the Pre-proposal Conference, contact Mr. Mario Gallardo at (415) 701-4348.

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

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

A 30 percent SBE participation goal has been established for this Contract.

Questions concerning the Scope of Services or SBE/Non-Discrimination

Requirements should be submitted as per Section VI (A) of the RFP, Requests for Information or Clarification.

The selected Proposer, its key personal and its architectural, engineering subproposers will be precluded from participating in other elements of the Central Subway Program that are not within the scope of the PM/CM Contract.

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

## TABLE OF CONTENTS

### SECTION and TITLE

Glossary of Definitions, Terms, and Abbreviations	v
I. Introduction	
1.1 General	1
1.2 Project Goals	2
1.3 Integrated Program Management/Construction Management Team	2
1.4 Project Description	3
1.5 Project Planning and Project Schedule	5
1.6 Tentative Construction Contract Packages	12
1.7 Project Financing	12
1.8 Other Proposer Services	12
1.9 Minimum Qualifications	13
1.10 Notice to Proposers Regarding Conflicts of Interests	14
1.11 Attestation of Compliance	14
II. Scope of Services	
2.1 Instructions for Responses to Scope of Services of this RFP	18
2.2 Options	19
2.3 Proposer's Scope of Services	19
2.4 Contract Deliverables	33
2.5 Annual Work Plans and Task Orders	33
2.6 Staffing Requirements	34
2.7 Local Office Requirement	34
III. Submission Requirements	
3.1 Submittal of Proposals	35
3.2 Submittal Documents – Format	35
3.3 Submittal Documents – Content	36
IV. Evaluation and Selection Criteria	47
V. Tentative Schedule	50
VI. Terms and Conditions for Receipt of Proposals	51
VII. City Contract Requirements	60
VIII. Protest Procedures	62
IX. Appendices	63

**Appendices:**

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

**DEFINITIONS**

Award means authorization by resolution of the SFMTA Board of Directors for its staff to execute the Contract with the selected proposer, and (where required) approval of the Contract by the San Francisco Board of Supervisors. .

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

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

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

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

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

Proposer is the prime proposer firm selected to be awarded the Contract under this RFP.

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

Contract Compliance Office (CCO) is the SFMTA office that administers compliance with federal regulations governing the Disadvantaged Business Enterprises/Equal Employment and Non-Discrimination Programs, in addition to the Small Business Enterprise Program, and the city’s Human Rights Commission’s Local Business Enterprise/Non-Discrimination Program. The Contract Compliance reference number for this RFP is CCO No. 08-993.

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

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

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

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

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

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

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

San Francisco Municipal Transportation Agency ("SFMTA" or "Agency") is the agency of the City that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the San Francisco Municipal Railway and the Department of Parking and Traffic, and has exclusive authority over contracting, leasing and purchasing by the Municipal Railway and the Department of Parking and Traffic, subject to certain restrictions of the City's Charter. The Agency acts through its Board of Directors.

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

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

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

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

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

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

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

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

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

Small Business Enterprise or SBE is a for-profit, small business concern with a three (3) year average gross revenue not exceeding Twelve Million Dollars (\$12,000,000) and is certified under any of the following programs: the State of California's Small Business Program ("State Program"), the City and County of San Francisco's LBE Program ("City Program"), or the California Unified Certification Program ("Federal DBE program").

Subproposer refers to any firm under contract to the Prime Proposer for services under this RFP.

## **TERMS AND ABBREVIATIONS**

A&E	Architectural and Engineering
BART	San Francisco Bay Area Rapid Transit District
Board	Municipal Transportation Agency Board of Directors
CCO	Contract Compliance Office
CCSF	City and County of San Francisco
CER	Conceptual Engineering Report
CFR	Code of Federal Regulations
CPM	Critical Path Method
CPUC	California Public Utilities Commission
DBI	Department of Building Inspection
DOT	U.S. Department of Transportation
DPT	Department of Parking and Traffic
DTIS	Department of Telecommunications and Information Services
EEO	Equal Employment Opportunity
EIS / EIR	Environmental Impact Study / Environmental Impact Review
FFGA	Full Funding Grant Agreement
FTA	Federal Transit Administration
GO	General Order
HRC	Human Rights Commission
HVAC	Heating, Ventilation, and Air Conditioning
IOS	Initial Operating Segment of the Third Street Light Rail Project
LPA	Locally Preferred Alternative
LRV	Light Rail Vehicle
MTC	Metropolitan Transportation Commission
Modified LPA	Locally Preferred Alternative
Muni	San Francisco Municipal Railway
NOP	Notice of Preparation
NTP	Notice To Proceed
OCS	Overhead Catenary System
O&M	Operations and Maintenance
OSHA	Occupational Safety & Health Administration
QA / QC	Quality Assurance / Quality Control
PCO	Project Controls Oversight



RFI	Request For Information
RFP	Request For Proposals
ROD	Record of Decision
ROW	Right-of-Way
RTP	Regional Transit Plan
SCADA	Supervisory Control and Data Acquisition
SBE	Small Business Enterprise
SEIS/SEIR	Supplemental Environmental Impact Study / Supplemental Environmental Impact Report
SFCTA	San Francisco County Transportation Authority
SFFD	San Francisco Fire Department
SFMTA	San Francisco Municipal Transportation Agency
SFPD	San Francisco Police Department
TBM	Tunnel Boring Machine
TJPA	Transbay Joint Powers Authority
TVM	Ticket Vending Machine



REQUEST FOR PROPOSALS TO PROVIDE  
PROGRAM MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES  
FOR  
CENTRAL SUBWAY PROJECT (THIRD STREET LIGHT RAIL PROJECT PHASE 2)

**NOTICE:**

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

**I. INTRODUCTION**

**1.1 General**

The SFMTA seeks proposals from qualified proposers to provide Program Management and Construction Management services for Phase 2 of the Third Street Light Rail Project – Central Subway (Project). The estimated cost of the Project is \$1.29 billion. The Project is the single largest capital investment that the SFMTA has ever undertaken. The selected Proposer must have significant experience in complex public works projects, and must be able to commit substantial resources to the Project for its entire duration, understanding that the Project poses unique management, engineering and construction challenges.

SFMTA intends to enter into a Contract with a selected Proposer for an initial term not to exceed five years, with option to extend the Contract for up to an additional five years. The Proposer will provide Program Management and Construction Management services for the Preliminary Engineering, Final Design, Pre-construction and early Construction Phases of the Central Subway Project. At the SFMTA's option, the Proposer may also be required to continue to provide Program Management and Construction Management services during the rest of the Construction Phase of the Project.

The SFMTA's primary objective under this RFP is to obtain resources and expertise to supplement the Agency's staff by contracting with a professional services firm recognized for its ability to provide both program management and construction management services for large, complex projects. The minimum qualifications and selection criteria defined in

this RFP will be used to select a Proposer that can best achieve the SFMTA's objectives. The SFMTA will negotiate the Scope of Services for the Contract with the selected Proposer, based on this RFP, the Proposer's Proposal and expertise, and the needs of the City.

The SFMTA reserves the right to allocate funding to the Contract on a task-by-task and/or phase-by-phase basis. The SFMTA also reserves the right to modify or delete any task, identified in this RFP or in the Proposer's Proposal, at any time prior to award of the Contract. The SFMTA may also amend the Scope of Services for Construction Management tasks should the Agency exercise its option to extend the initial term of the contract to continue these services.

## **1.2 Project Goals**

The SFMTA has seven principal goals for the Project:

1. Travel and Mobility Goal: Improve transit service to, from, and within the Central Subway Corridor, thereby enhancing the mobility of Central Subway Corridor residents, business people and visitors.
2. Equity Goal: Bring transit service in the Central Subway Corridor to the level and quality of service available in other sections of the City.
3. Economic Revitalization/Development Goal: Design transportation improvements that support economic revitalization and development initiatives within the South of Market, Downtown and Chinatown Study Area.
4. Transit-supportive Land Use Goal: Ensure compatibility with City land use plans and policies and transportation improvements so that transit ridership can be maximized and the number of auto trips reduced.
5. Environmental Goal: Provide transit improvements that enhance and preserve the social and physical environment and minimize potential negative impacts during construction and operation of the line.
6. Financial Goal: Implement transit improvements that provide for the cost effective efficient use of limited financial resources.
7. Community Acceptance and Political Support Goal: Provide a transportation system that reflects the needs and desires of Central Subway Corridor residents and businesses and is compatible with the City's planning department.

## **1.3 Integrated Project Management/Construction Management Team**

The SFMTA intends to establish an integrated Program Management and Construction Management team that includes personnel from the SFMTA, other City departments, and

the selected Proposer. The Proposer must work closely and cooperatively with other agencies and the SFMTA's other proposer teams that will have responsibility for other aspects of Program delivery and implementation. The SFMTA will work with the successful Proposer to evaluate and restructure the organization into the most effective integrated team. The attached organization charts (provided for illustrative purposes only) show how this integrated team concept may work. Each Proposer must include in its Proposal organizational structures that have proven to be effective on past projects that may be effective for managing the Central Subway Project. (See Figures 1-6 & 1-7: Illustrative Organization Charts for Design Phase and Construction Phase, and the SFMTA Organization Charts under Appendix 9.)

An integrated Program Management and Construction Management team will present opportunities for staff development. The team will be an assembly of staff with multiple discipline and experiences. The staff will have the benefit to learn from each other. For example, to further this opportunity, the team will provide for the mentoring and development of engineers employed by the City and assigned to the Project. An integrated team will also present opportunities for City staff to take on leadership roles overseeing proposer support staff in areas where City staff may have more familiarity.

#### **1.4 Project Description**

After a lengthy and detailed planning process that commenced in 1995, the Agency selected a Project plan known as Modified Locally Preferred Alternative No. 3, Option B (the "Modified LPA"). The Modified LPA alignment is shown in Figure 1-1 and Modified LPA is consistent with the Project description in the SEIS/SEIR (see discussion in Section 1.5).

Construction of the Modified LPA will extend light rail service 1.7 miles north from the T-Third line terminus located at Fourth and King Streets via Fourth and Stockton Streets to the Central Subway terminus in Chinatown. After stopping at the station platform on Fourth at King Streets, light rail vehicles will continue above ground north on Fourth Street to a double-track underground portal between Bryant and Harrison Streets under I-80. (See Figures 1-1 and 1-2.)

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

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

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

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

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

Immediately north of Howard Street, the alignment will descend and continue in a side-by-side configuration to permit a deep crossing of the Market Street Subway and easements under the buildings on the north and south side of Market Street. There will be a combined Union Square/Market Street Station, located on Stockton between Geary and Market Streets, with a platform centered on O'Farrell Street (see Figure 1-4). It will have a common mezzanine (concourse) and one platform level that would serve both northbound and southbound trains.

The south end of the Market Street/Union Square Station will connect to the BART/Muni Metro Market Street Subways at the Powell Street Station using existing pedestrian entrances on Market Street and at the northwest corner entrance on Stockton and Ellis Streets. At the north end of the Station, the main entrance would be located at the southeast corner of Union Square on Geary Street just west of Stockton Street. The entry will include escalators and stairs. A second set of stairs may be located in the sidewalk on the north side of Geary Street, just east of Stockton Street, behind an existing Muni bus stop. An emergency exit is located on O'Farrell Street. Two emergency ventilation shafts will extend west of Stockton Street under Ellis Street, rising inside the existing vertical shaft of the Ellis/O'Farrell Garage at 123 O'Farrell Street to a height of 26 feet above the garage roof. The emergency ventilation will be designed in cooperation with BART so as not to impact ventilation in the existing Powell Street Station.

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

The Chinatown Station for Fourth/Stockton under the Modified LPA will be located on Stockton Street between Clay and Jackson Streets (see Figure 1-5). It will have a mezzanine (concourse) and one platform level for north and southbound trains. The main pedestrian entrance will be in a building that SFMTA will construct on the west side of Stockton Street south of Washington Street (933-9495 Stockton Street) to accommodate escalators, stairs, two elevators, and two emergency ventilation shafts. Emergency stairs will be provided by a sidewalk hatch located in an existing bulb-out on the west side of Stockton Street between

Washington and Jackson Streets. The bulb-out will be extended slightly to an overall length of approximately 38 feet.

Summary of Station Locations under the Modified LPA

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

CENTRAL SUBWAY FOURTH/STOCKTON ALIGNMENT OPTION B STATION LOCATIONS
---

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

North Beach Tunnel Construction Variant

There is an option to extend the twin bore running tunnels north of the original EIS/EIR terminus in Chinatown for construction purposes. This construction variant is an extension of Fourth/Stockton Alignment under Stockton Street for approximately 2,000 feet to a temporary construction shaft in the middle of Columbus Avenue near Washington Square in North Beach. An easement is required for the turn into Columbus Avenue. The initial shaft would be 35 to 60 feet wide by 30 feet long, located in the middle lanes of Columbus Avenue between Union and Filbert Streets, and would occupy two traffic lanes. Following excavation of the shaft, one half of the footprint would be decked over permanently. The remainder would be temporarily decked so the cover could be removed for construction activities. The latter shaft would be used to extract TBMs and could be used to deliver materials to Chinatown Station. At the conclusion of TBM extraction and material delivery, the shaft would be permanently decked, leaving no surface impacts. The running tunnels

would not be finished out with track and other facilities, but could be used to store materials.

## **1.5 Project Planning and Project Schedule**

The Final EIS/EIR on the Third Street Light Rail Project was completed in 1998. FTA issued a Record of Decision (ROD) on March 16, 1999, for the Phase 1 portion of the Project. Though no New Starts federal funds were used for the T-Third project phase, the ROD did permit acquisition of limited right-of-way for the Phase 2 Central Subway that was identified in the 1998 FEIS/FEIR. The ROD deferred approval of Phase 2 until the Central Subway was incorporated into the RTP and Project funding was identified.

In August 2002, the SFMTA received FTA approval to begin Preliminary Engineering for Phase 2 - Central Subway. In March 2003, the City approved a contract with the joint venture proposer firm of Parsons Brinckerhoff Quade & Douglas and PGH Wong Engineering (PB/Wong) to provide conceptual/preliminary engineering services. The Notice to Proceed was issued on June 4, 2003.

As a result of a series of engineering studies performed by PB/Wong and public input (see Sample List of Available References, Appendix 10), the SFMTA approved the designation of the Fourth/Stockton Alignment as the Locally Preferred Alternative on June 7, 2005. This designation allowed the Fourth/Stockton Alignment, rather than the 1998 EIS/EIR Alignment (an alignment along Third Street), to be evaluated as the Modified LPA in the FTA New Starts Program.

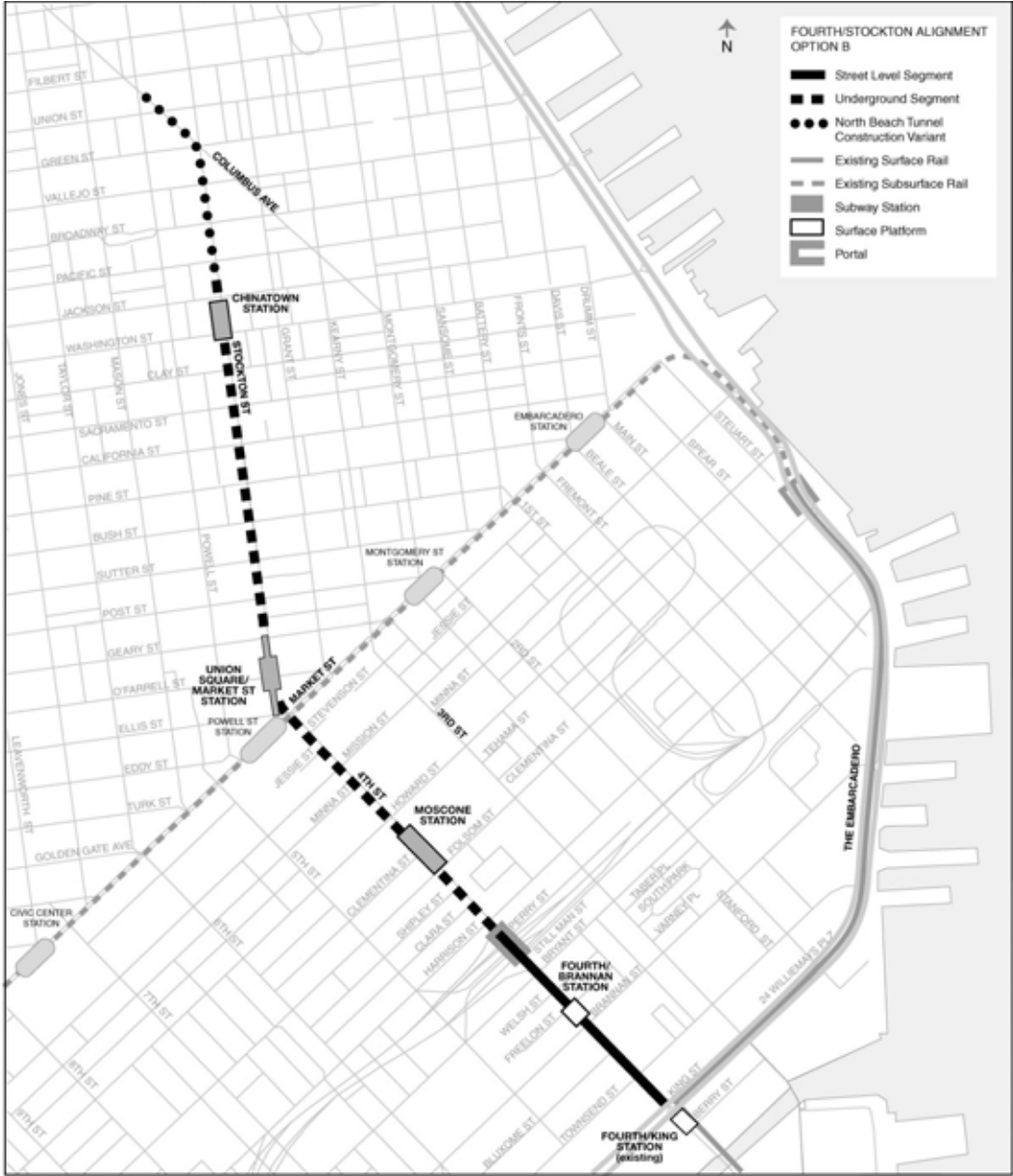
PB/Wong initiated preparation of a Supplemental EIS/Supplemental EIR (SEIS/SEIR) in 2005 for the Phase 2 Central Subway refined alternatives, and progressed along concurrently with the continual Preliminary Engineering efforts. Also, a panel of construction experts working with the Project design team undertook a cost reduction analysis to identify ways of reducing the cost of the Project without compromising its overall purpose and need. In response to public input during the scoping process and recommendations from the cost reduction effort, a new option for the Fourth/Stockton Alignment design was identified. The original Fourth/Stockton Alignment was designated Option A and a modified Fourth/Stockton Alignment, described below, was designated as Option B (Modified LPA).

In May 2006, the environmental team under PB/Wong re-initiated work on the SEIS/SEIR incorporating the refined alternatives. The SEIS/SEIR effort is continuing towards completion in parallel with preliminary engineering.

The SEIS/SEIR is scheduled to be adopted on or about August 2008 with the anticipation that the FTA will grant the Record of Decision soon thereafter to allow the SFMTA to enter into Final Design. The Preliminary Engineering efforts (not including any extended PE efforts for advanced tunnel design) should conclude at about the same time. Final Design will follow and is scheduled to start towards the end of the third quarter of 2008. The Final Design Phase is scheduled to be completed by 2010. The tentative plan is to let an advanced utility relocation contract and an advanced tunnel boring machine procurement contract out before all of the Final Design is completed. Heavy construction will need to begin in 2010

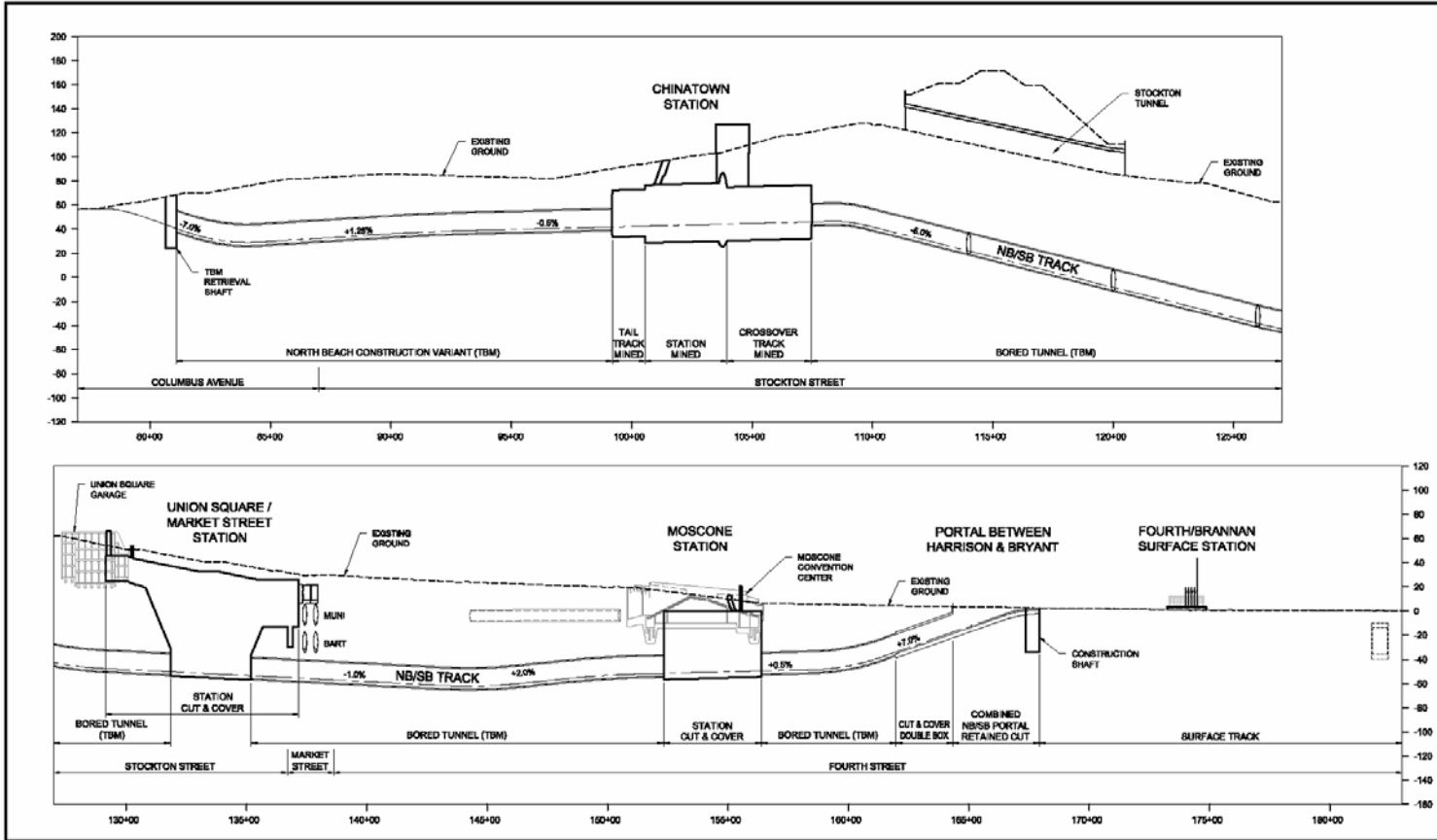
so as to allow all construction work to be completed by 2015. Under this schedule, the SFMTA anticipates that revenue service will begin in the early part of 2016.

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



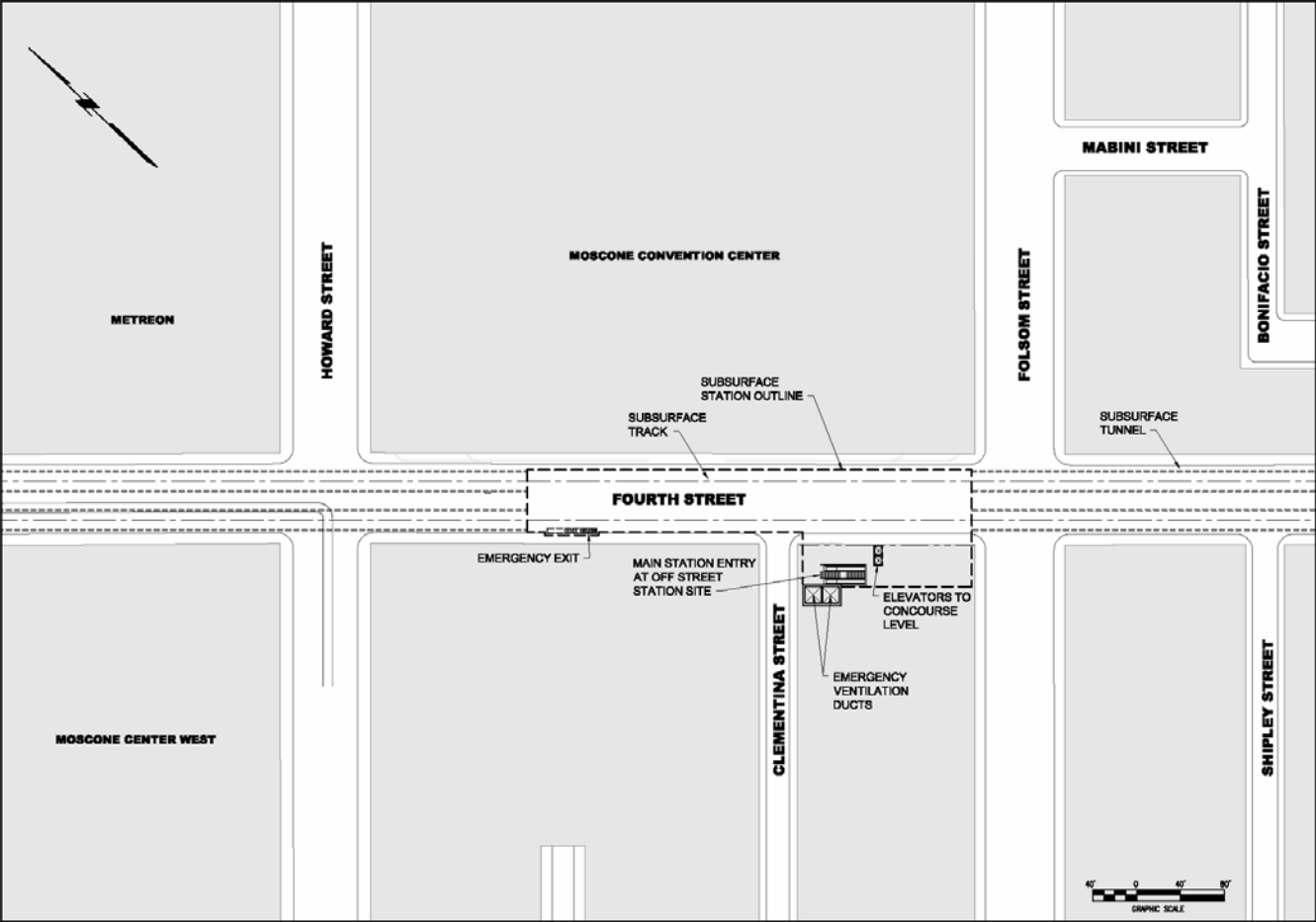


**FIGURE 1-2: FOURTH/STOCKTON ALIGNMENT OPTION B PROFILE**



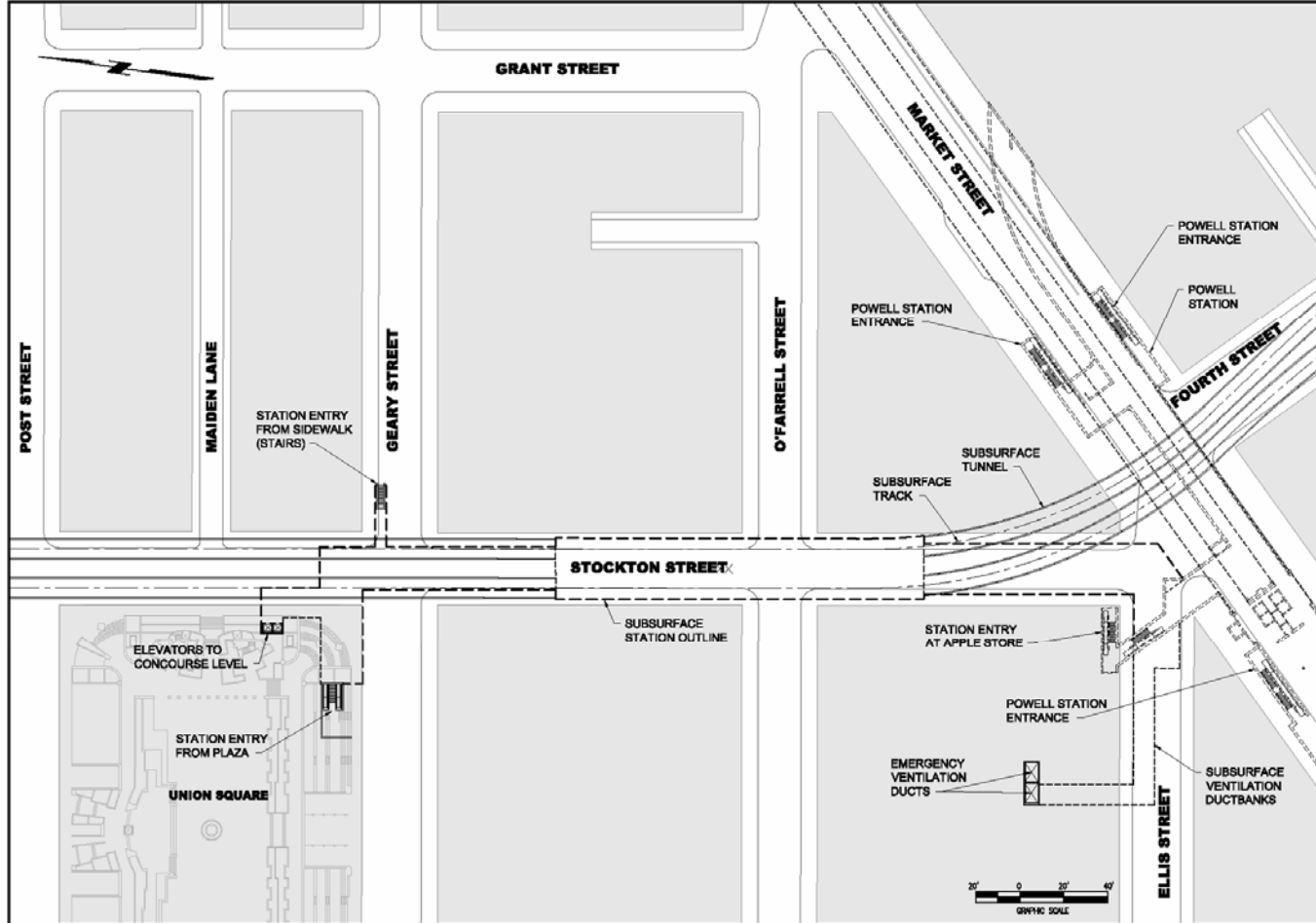
Source: PB Wong  
Not to scale

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



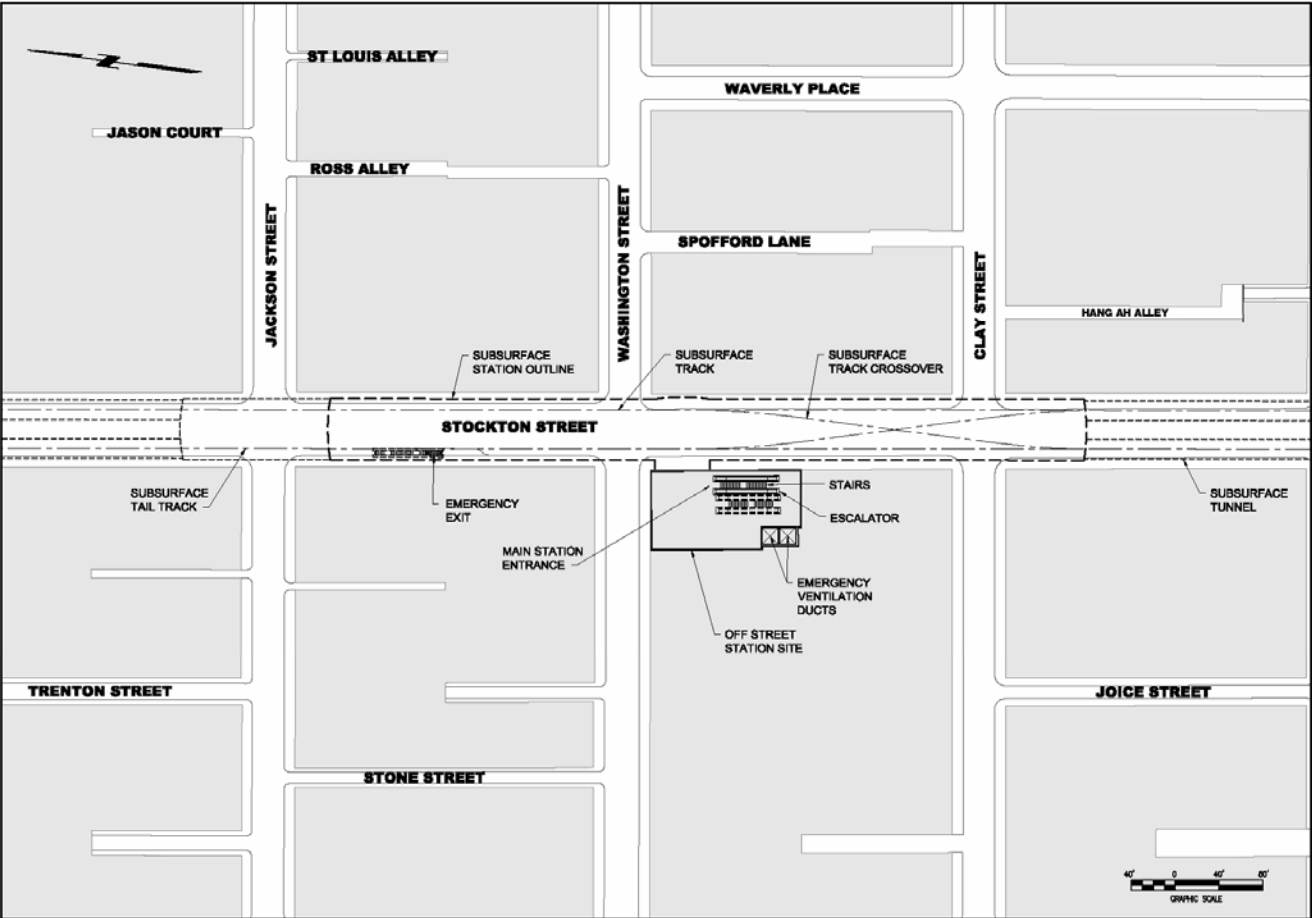
Source: PB Wong

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



Source: PB Wong

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



Source: PB Wong

## **1.6 Tentative Construction Contract Packages**

For this RFP, the proposer may assume that the SFMTA will proceed with the following construction contract packaging/strategy, which will be further refined during the Final Design Phase:

- The utility relocation and tunnel boring machine procurement contracts will most likely be issued during the Final Design Phase, based on traditional design-bid-build project delivery method.
- The tunnel, portal and shaft construction will be performed under a single construction contract, using a design-bid-build project delivery method.
- Each of the three subway stations - Union Square/Market Street Station, Moscone Station, and the Chinatown Station - will be built under separate construction contracts, using a design-bid-build project delivery method.
- Construction of the surface portion of the alignment, and surface and subway track work, systems work, start up and testing will be accomplished under a single combined contract. The specifications for the systems work will most likely be performance-based.
- There may be a separate civil and architectural finish work or follow-on contract.

## **1.7 Project Financing**

The SFMTA is currently seeking \$762.2 million in federal “New Starts” funding. The SFMTA began receiving New Starts funds in 2003. To date, the SFMTA has received \$45.3 million in New Starts funds. Separately, a total of \$527.5 million in state and local capital funding has been committed to the Central Subway Project.

## **1.8 Other Proposer Services**

The selected Proposer will coordinate its work with other SFMTA proposers. As described above, PB/Wong is providing conceptual and preliminary design services for the Project. The SFMTA plans to issue a separate RFP in the second/third quarter of 2008 to select a proposer to provide design services for the Final Design Phase of the Project and provide as-needed engineering support services during the Construction Phase. The SFMTA will issue another RFP about the same time period for Project Controls Oversight (PCO) services for the Program. The future PCO consultant will augment the Project Control staff within the Transportation Planning and Development Division of the SFMTA. Among other responsibilities, the PCO Consultant will be required to monitor the cost and schedule of this Program against established baselines and advise the Program Manager of deviations. The Proposer selected to provide Program Management and Construction Management services for this Program will not be relieved of its own responsibility, in its management capacity, to manage and control cost and schedule for the entire Program.

## 1.9 Minimum Qualifications

Each Proposer must meet each and every condition listed below in order for its Proposal to be considered:

1. The Proposer must demonstrate that it has sufficient experience and expertise to complete the Project by having the following Prerequisite Experience **by the time it submits its Proposal**:
  - a. The Proposer must have provided both program management and construction management services for project sponsor(s) for at least one transportation project/program **or** one transit tunneling project/program within the last ten years, involving actual construction cost of at least \$500 million with actual construction 50% or more completed; **OR**
  - b. The Proposer must have provided program management services for project sponsor(s) on at least one transportation project or transit tunnel project **AND** provided construction management services for the same or different project sponsor(s) on another transportation project or transit tunnel project, in which case both of the projects/programs must have each involved actual construction cost of at least \$500 million, with construction of both projects/programs at least 50% completed.

In providing the Prerequisite Experience information, the Proposer must list the project(s) it performed, the tasks for which it was responsible, and the project owner's references. A proposer may not claim projects that its staff worked on when they were employed by other firms. If the Proposer is a joint venture or association, then a partner of the joint venture/association firm must meet the Prerequisite Experience requirement. Alternatively, for joint venture or association, the above requirement could also be met by having one member firm meet the program management experience requirement and the other member firm meet the construction management experience requirement.

2. A Proposer must demonstrate financial capacity to perform the Work for the duration of the Program. A Proposer must demonstrate annual gross revenues of at least \$100 Million for each of the past five years (2002-2006), and must also demonstrate positive Earnings Before Income Tax, Depreciation and Amortization (EBITDA) for each of those years. If the Proposer is a joint venture or association, then the majority or lead partner of the joint venture/association firm must demonstrate financial capacity to perform the Work. A Proposer must provide audited financial statements to establish financial capacity. The City shall treat all such records as nonpublic, confidential, and proprietary to the Proposer.

***A PROPOSER THAT DOES NOT MEET THE MINIMUM CRITERIA DESCRIBED ABOVE WILL NOT BE CONSIDERED AND SHOULD NOT SUBMIT A PROPOSAL.***

### **1.10 Notice to Proposers Regarding Conflicts of Interest**

The Proposer will represent the SFMTA in managing and reviewing the work of other SFMTA proposers. Therefore, the Proposer, its key personnel, and any A&E subproposers selected pursuant to this RFP will be prohibited from pursuing other contracts with the City relating to the Central Subway and from being part of any other proposer or construction/contractor team engaged in other elements of the Program.

Specifically, to eliminate potential for conflicts of interest, perceived or otherwise, the selected Proposer, its affiliated, subsidiary or parent companies, the A&E subproposers (including any entity with a substantial ownership interest in or substantially owned by such subproposer), and the Proposer's proposed key personnel are all precluded from participating in the following:

1. Any other proposals or any RFQ or RFP for professional service contracts for the Central Subway Project, including Project Controls Oversight, and Final Design.
2. Bidding on or having any other financial interest or participation in the SFMTA's procurement or construction contracts for the Project at the prime contractor, subcontractor, material supplier, and/or all equipment vendor levels.

***Before submitting its proposal, every Proposer must notify all potential subproposers of this restriction.***

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

Depending on the final scope of the Contract, the employees of the Proposer to which this Contract is awarded, as well as its subproposers' employees, may be required to submit to the City, within 10 calendar days of the City notifying the successful proposer that the City has selected the proposer, a Statement of Economic Interest, California Fair Political Practices Commission Form 700, under the requirements of California Government Code section 7300 et seq. and San Francisco Campaign and Governmental Code section 3.1-102. A copy of the Form 700 may be found at the following website:

<http://www.fppc.ca.gov/index.html?id=36>

### **1.11 Attestation of Compliance**

It is the policy of the SFMTA that only employees identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from

Proposers or potential Proposers seeking to influence the contractor selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the SFMTA Board of Directors finally approves the contractor selection and, if required, by the San Francisco Board of Supervisors.

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

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

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

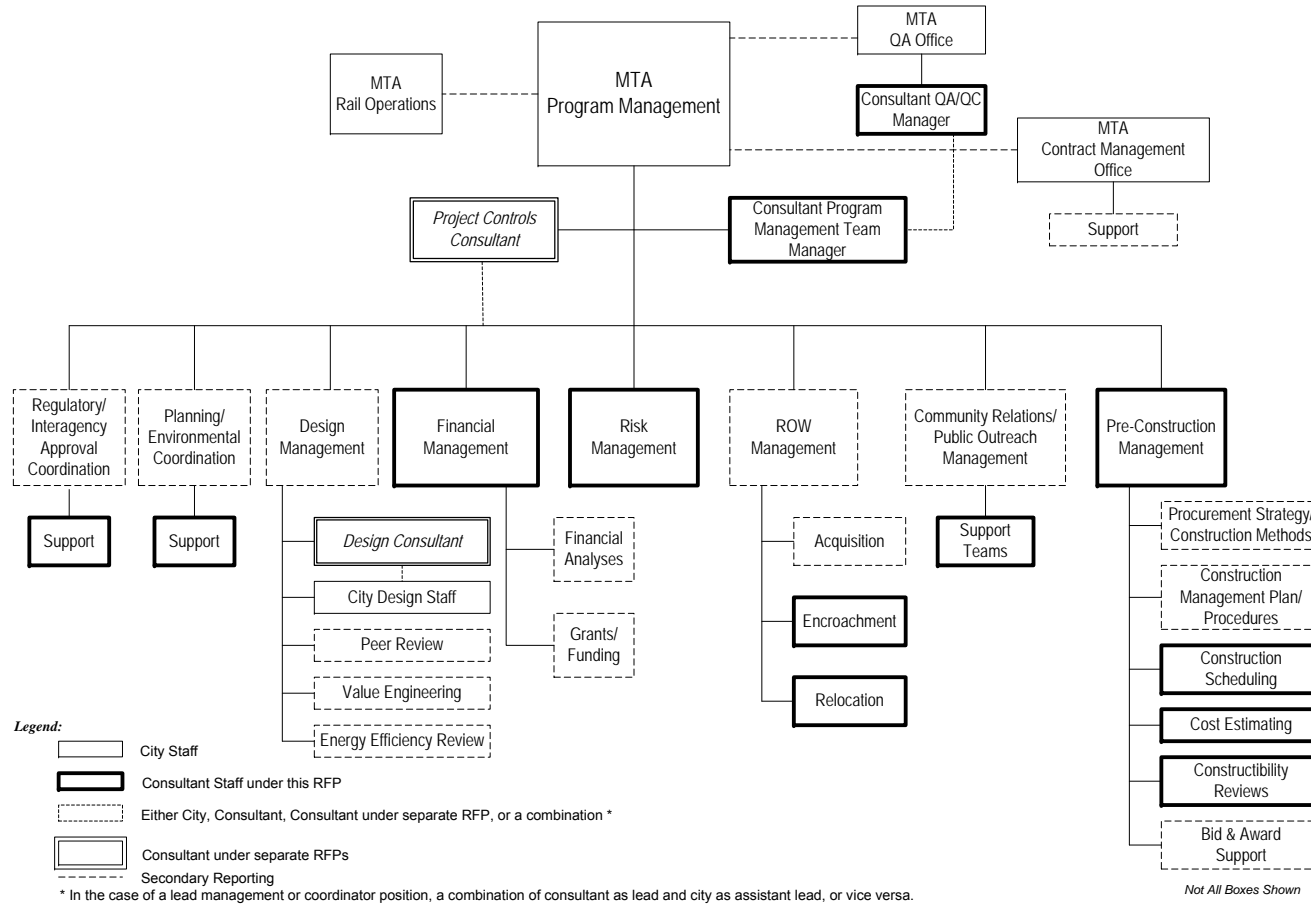
Additionally, the firms and subcontractor(s) responding to this RFP shall not provide any gifts, meals, transportation, materials or supplies or any items of value or donations to or on behalf of any SFMTA staff member from the date the RFP is issued to the date when the contract award is approved by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

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

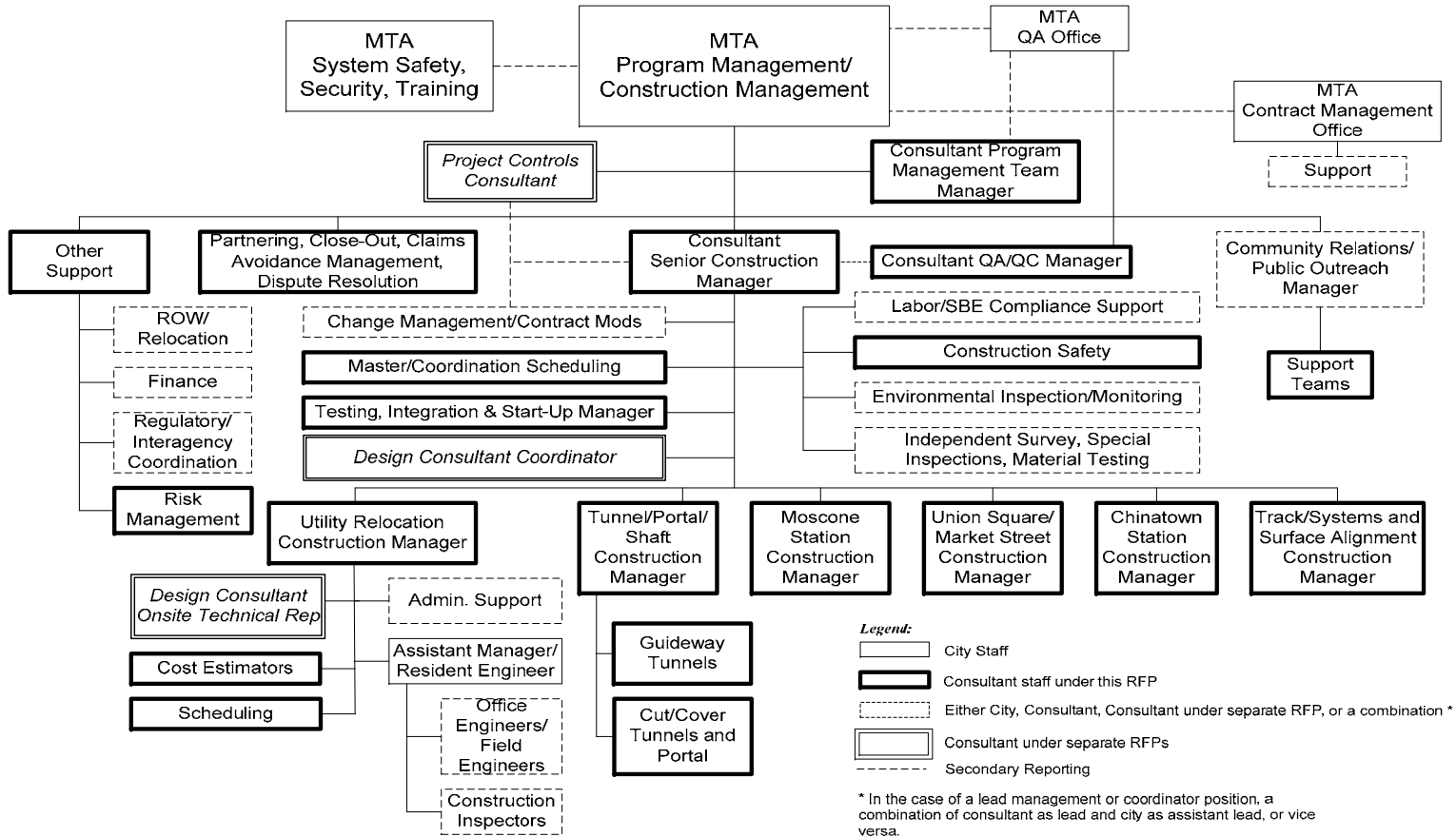
An executed Attestation of Compliance (Appendix 8) certifying compliance with this section of the RFP will be required to be submitted, signed by all firms and named subcontractor(s) as part of the response to the this RFP. Any proposal that does not include the executed Attestation of Compliance as required by this section will be deemed non-responsive and will not be evaluated. Any Proposer who violates the representations made in such Attestation of Compliance, directly or through an agent, lobbyist or subcontractor will be disqualified from the selection process.



**Figure 1-6  
Illustrative Central Subway Design Phase Project Organization**



**Figure 1-7  
Illustrative Central Subway Construction Phase Project Organization**



Not All Boxes Shown

Similar for other Construction Contracts



REQUEST FOR PROPOSALS TO PROVIDE  
PROGRAM MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES  
FOR  
CENTRAL SUBWAY PROJECT

**II. SCOPE OF SERVICES**

**2.1 Instructions for Response to Scope of Services of this RFP**

The SFMTA will negotiate with the Selected Proposer a final Scope of Services to be incorporated into the Contract. However, the SFMTA reserves the right to determine which tasks, parts or phases of the Scope of Services it will assign to the Proposer.

So that the Agency may adequately consider the experience and expertise of each Proposer, each Proposer must address in its Proposal all of the services described in this RFP. A Proposal should identify all critical scope elements related to all the applicable disciplines necessary to perform the tasks and services described in this RFP. The scope of services listed in this RFP is not meant to be prescriptive or otherwise limiting. A Proposer may include in its Proposal tasks not listed below that it considers important for the successful execution of the Project, provided that a sound basis/rationale is provided.

The Agency anticipates that the Proposer will be involved in and may coordinate interagency aspects of the Project. A Proposal must identify the City departments and public agencies with which the SFMTA would need to coordinate action, and must identify the coordinated tasks that each department and agency would perform to complete the Project.

A Proposer may organize Project elements and tasks into any appropriate order or priority, and may group tasks and divide tasks into appropriate subtasks. A Proposer's organization of tasks must be logical, meaningful and manageable. Tasks must be organized so that the Proposer and the SFMTA may efficiently track cost and work performance.

For the tasks/services identified in its Proposal, the Proposer must recommend the appropriate number and type of qualified personnel for the successful execution of all the tasks, taking into consideration that City staff will need to be integrated as part of the team (the Proposer is again referred to the organization charts provided under Section 1 and under Appendix 9). The Proposer shall provide a rationale why certain lead positions or support positions are best filled by Proposer or by City staff. The classifications of qualified personnel to be provided by the Proposer under this RFP may include, but are not limited to, the following: program/project managers, engineers, planners, financial

analysts, risk analysts, real estate and relocation personnel, public relations experts, construction managers, cost estimators, schedulers, inspectors, start-up/commissioning specialists, claims analysts, and construction safety officers.

## **2.2 Options**

As explained above, the SFMTA reserves an option to continue the Program Management and Construction Management services beyond the initial five-year term of the Contract up to a maximum of 10 years. The SFMTA intends to exercise the option at least one year prior to the termination of the initial five-year term.

The SFMTA also reserves an option to amend the Construction Management services of the Contract. This could occur during the initial five-year term, and/or during any extension of the Contract beyond the five-year term.

The Proposer must respond to these option services both in its written proposal and in its cost proposal. The SFMTA will evaluate the written proposal on the entire Scope of Services, including the option services, to determine award.

## **2.3 Proposer's Scope of Services**

The following headings represent major tasks that the SFMTA may authorize during the Contract term and which the SFMTA foresees requiring special focus/assistance in order to bring about successful completion of the Program. Reiterating the instructions under Section 2.1, the tasks identified below are not meant to be all inclusive of all major or vital tasks. Should Proposer believe that there are other major tasks of equal importance or there are tasks that would hinder the Project from entering Construction Phase if not managed with focus, the Proposer may include these other tasks in its Proposal, along with a justification/rationale. The tasks below are not listed in any particular order of priority or importance, nor are they meant to be equal in weight. The bulleted items below each task heading are provided to illustrate a sample of what the services may entail. The Proposer is encouraged to propose its own description of services or subtasks under each major task heading.

### **2.3.1. Overall Program Management:**

The Proposer shall provide overall program management for the successful development and implementation of the Program. The services under this task may include the following:

- Update and implement a Program Management/Implementation Plan that addresses Program and Project organizational structure; Program and project team responsibilities and reporting relationships; work breakdown structure (WBS) for the implementation of the Program that will be used in managing cost, schedule, scope and resources; management systems and management approach for financial management, risk management, design management, construction management, community relations/public outreach management, right-of-way

acquisition, tenant and business relocation management, integration and interface management; Program coordination and reviews by stakeholders. The Plan will be updated and maintained current as required. At a minimum, updates are required for the Final Design Phase, at the outset of the Construction Phase and at the Start-Up Phase.

- Develop a Program master schedule based on the Program Management/Implementation Plan. Review and analyze overall Program progress during the design and construction phases. Review and analyze design and construction schedules for compliance with contractual and Program requirements. Update the Program master schedule regularly, but not less than monthly, to include current information regarding progress of the Project and the contracts. Identify areas of concern and provide input on corrective action plans as necessary.
- Develop and update each contract package schedule based on input from project team members, including designers and contractors. Provide current information regarding critical and near-critical activities, milestones, progress and outstanding issues affecting the schedule.
- Working with SFMTA Grant Administration and Finance/Accounting, and working with the Project Control Oversight proposer and team members, collect, analyze, track, monitor and separately report on a monthly basis the Program cost and budget information, including encumbrances, commitments, and actual expenditures. Develop earned value, trends, forecasts and variance information. Provide, implement and follow up on corrective/control measures where required.
- Participate in/conduct bi-weekly project progress review meetings and other related meetings as appropriate. The Proposer project manager will be responsible for the preparation of meeting agenda and meeting minutes of each meeting for SFMTA review and approval.
- Within two weeks of NTP, prepare templates/standard formats for all regular reports, invoices, for SFMTA approval. Prepare and submit progress reports to SFMTA on a monthly basis within two weeks of the close of the preceding month. Assist SFMTA in preparing its monthly and quarterly reports of the Program status to the SFMTA Board and funding agencies. All reports will at a minimum outline and update information with respect to progress, cost, budget, funding, schedule, QC/QA process, scope or contract changes, issues/corrective actions or resolutions, as well as a look-ahead for the upcoming month and quarter.

- Participate in/conduct project presentations and briefings on a periodic basis.
- Coordinate Proposer's resources and work so that milestones are met in an efficient manner. The Proposer's project manager will ensure that Proposer's employees performing tasks have appropriate skill levels and credentials.
- Provide contract compliance and contract administration support so as to ensure compliance with City and County of San Francisco requirements, and FTA procurement and contracting policies and procedures.

### **2.3.2. Planning/Environmental Coordination**

The services under this task may include the following:

- Assist SFMTA as necessary to coordinate the elements of the Program with City Planning and SFMTA Planning departments.
- Working with the design team and the construction management team, ensure implementation of all SFMTA-required environmental mitigations as outlined in the SEIS/SEIR. Provide oversight and tracking for implementation of the Mitigation Monitoring Plan and ensure that all activities identified are completed and documented in accordance with all local, state and federal regulations and guidelines.

### **2.3.3. Financial Management:**

The services under this task may include the following:

- Working with SFMTA Grant Administration and Finance/Accounting, and working with the Project Control Oversight proposer, develop and oversee a master funding plan/schedule for the Program. Assist the SFMTA in coordinating, tracking, and securing different sources of funding according to a set timetable included in the master funding plan, including assisting in securing of the FTA Full Funding Grant Agreement
- Working with the SFMTA Grant Administration and Finance/Accounting, and working with the Project Control Oversight proposer, provide technical support in establishing a Program cost accounting structure.
- Assist the SFMTA with regular financial analyses of the Project and assist SFMTA to develop and implement financing strategies.

- Analyze, prepare and maintain current and projected cash flow requirements for the Program.
- Assist the SFMTA in coordinating, tracking, and securing Program funding, including completing the FTA Full Funding Grant Agreement.

#### **2.3.4. Risk Management**

The services under this task may include the following:

- Establish a systematic risk management process for the Program and its component projects/contracts. Develop a framework by which these risks will be identified and assessed. Develop and implement response and control strategies to manage these risks.
- Perform risk analyses and prepare a Risk Management/Risk Mitigation Plan for the entire Program integrated with the Program master schedule, identifying, ranking and providing mitigation measures for all major risk elements.
- Develop and maintain a contingency management and tracking system as well as updating the Risk Mitigation Plan at least once every quarter.
- Provide technical assistance in developing and evaluating options for Program insurance provisions, including owner-controlled or "wrap-up" insurance programs.
- Evaluate and develop a risk management strategy with respect to claims avoidance.

#### **2.3.5. Right-of-Way Acquisitions/Tenant Relocations**

The SFMTA may lead this effort. Consultant services under this task may include the following:

- Assist SFMTA in the real estate acquisition process to meet Program needs while ensuring conformity with all applicable local, regional, state and federal requirements.
- Assist SFMTA relative to accelerating approvals of encroachment agreements/permits/easements as required to meet Program schedule requirements.
- Plan, manage and implement right-of-way acquisitions, tenant and/or business relocations.

### **2.3.6. Regulatory/Interagency and Other Approvals/Coordination**

The SFMTA may lead this effort. Consultant services under this task may include the following:

- Assist the SFMTA in coordination with regulatory agencies and other stakeholders, including BART and City departments that have an interest or are participants in the Program and facilitate resolution of issues related to design, construction and operations.
- Assist the SFMTA to secure required local, regional, state and federal permits, and regulatory and legislative approvals in a timely and efficient manner.
- Obtain the timely and cost effective relocation of utilities and vacation of sub-sidewalk spaces as needed to meet the project schedule.
- Provide technical assistance in performing all tasks required to secure agreements or “Memoranda of Understanding” with City departments and external agencies as required.

### **2.3.7. Community Relations/Public Outreach Management:**

The Agency views community relations/ public outreach as a critical element for the success of this project and places special importance on the overall proposed program as well as the team for this task. Proposers shall assemble a team comprised of entities with established roots in and significant demonstrable working experience with the affected communities along the project corridor. This community relations/ public outreach team shall include a consortium of community based organizations to the extent feasible and be responsible for directing all outreach efforts.

The SFMTA may lead and provide guidance for this task. Consultant services under this task may include the following:

- Develop and implement a master plan/schedule for a community relations/public outreach program for the period extending through and including initial revenue service.
- Provide public affairs coordinator/outreach teams to interact with the community participants/groups and the public in a manner designed to foster good communications and a general public understanding and support of the Program.



- Assist SFMTA in conducting public meetings; record meeting minutes, provide coordination and follow up on issues raised at public or community meetings.
- Provide community relations/public outreach management to include targeted community outreach/training for small businesses and job placement programs.
- Provide community relations/ public outreach to address construction impacts to residents and businesses.
- Subject to an approved master community relations/public outreach plan, retain community advocacy organization(s) to address community relations/ public outreach for (a) Program Management related functions and for (b) Construction Management related functions.

Note also that there will be separate community relations/public outreach task under the RFP for Final Design to deal mainly with design issues.

### **2.3.8. Design Management:**

The services under this task may include the following:

- Assist the SFMTA with oversight over the design team for Final Design.
- Develop procedures to ensure that the design team uses current design criteria. Coordinate and oversee design work for multiple projects to ensure design integration, interface, consistency and constructability. Ensure close communication of any changes to project design criteria or details so that changes approved are implemented consistently for all contract packages.
- Working with the design team, develop and maintain a design decision tracking system to assure timely decision-making. Perform comprehensive decision analyses as directed by the SFMTA. Facilitate and document major design decision processes.
- Provide oversight during construction to ensure that all approved changes are communicated to the design team and are implemented consistently throughout the Program.
- Establish and maintain a CADD database for the Program. Develop and implement procedures for ensuring timely and efficient flow of CADD documents and other design information among design and construction management teams and SFMTA staff.

- Organize independent technical design reviews of design submittal packages to ensure that design intent is properly implemented, project scope is accurately represented in contracts and QC/QA plans are effective. The Proposer must, at a minimum, conduct two reviews: intermediate and final completion reviews. The Proposer will also be responsible for tabulating all review comments and following up on all comments with reviewers. Each review comment approved by SFMTA will be incorporated into the document under review.
- Conduct peer review(s) with personnel from other public transit and/or government agencies at appropriate stage(s) of engineering design as determined by the Proposer. The focus of the review shall be on operational and maintenance issues relating to the design of the Project. The list of peer review participants will be developed jointly by the Proposer and SFMTA; participants will be technical personnel and/or users who have significant familiarity with projects similar to this Project. The Proposer will also be responsible for tabulating all review comments in a spreadsheet format and following up on all comments with reviewers. Each review comment approved by SFMTA will be incorporated into the document under review.
- Conduct value engineering review(s) at appropriate stage(s) of engineering design as determined by the Proposer. The Proposer will also be responsible for tabulating all review comments in a spreadsheet format and following up all comments with reviewers. Each review comment approved by SFMTA will be incorporated into the document under review.
- Conduct energy efficiency review(s) on the design at appropriate stage(s) of the final design in accordance with City Department of the Environment requirements.

### **2.3.9. Preconstruction Management**

The Proposer's tasks may include, but are not limited to:

- Review or prepare program/project phasing plans and procurement strategy proposals to ensure optimization of program delivery.
- Review or prepare construction methodologies and provide recommendations.
- Assess market conditions and potential bidder pool. Assist the SFMTA in marketing and advertising of procurement opportunities.

- Develop and maintain current compatible procurement schedule and project construction schedules, for all construction packages/contracts.
- Prepare detailed independent contractor type cost estimates. At a minimum, cost estimates will be prepared in conjunction with the intermediate and final completion review submittals for each construction contract package. The Proposer will also be required to update the detailed cost estimate as needed just prior to issuing the bid documents.
- Conduct constructability reviews at appropriate stages of the engineering design as determined by the Proposer. The Proposer will also be responsible for tabulating all review comments in a spreadsheet format and following up all comments with reviewers. Each review comment approved by SFMTA will be properly incorporated in the document under review.
- Review and evaluate cost estimates performed by others relating to construction, operations and maintenance of the Program to ensure that they conform to established guidelines and accurately reflect all project-related costs.
- Prepare procurement documents, including City boilerplate construction contract specifications and other contract documents as requested by the SFMTA, to support procurement activities related to Program implementation.
- Assist the SFMTA in compiling and issuing construction drawings and specifications for bid.
- Assist SFMTA in organizing and conducting Prebid Conferences, site tours; record and issue pre-bid conference meeting minutes.
- Coordinate the responses to bidders' questions with the SFMTA and A&Es and respond to all bidders. In coordination with the SFMTA and A&Es, prepare and issue addenda to all bidders concerning changes to the bid documents that may be required as a result of modifications or deficiencies discovered during the bidding period. After award, coordinate with SFMTA and A&Es to incorporate all addenda and conform contract documents.
- Assist the SFMTA in tabulating the bids; analyze bids (including performing price and cost analyses conforming to FTA standards), and advise the SFMTA concerning exceptions, deviations and non-conformance to the requirements of the bid documents; and make appropriate recommendations. Assist in evaluation of bidders'

prerequisite experience.

- Assist SFMTA in finalizing construction contract awards.

### **2.3.10. Construction Management**

In the Construction Phase, the Proposer will act on behalf of SFMTA as the Construction Manager of the Program under the oversight of the SFMTA Office of Construction Management. The Proposer will manage the execution of all construction contracts so as to lead to a successful start-up and commissioning and operation of all facilities. The services under this task may include:

- Develop and implement a Construction Management Program/Plan covering construction, testing and start-up phases of the Program, including Program specific processes, procedures and guidelines for aspects of Construction Management, e.g. for cost estimating, scheduling, and change orders.
- Develop and implement a project-specific Construction Management Procedure Manual, a project-specific Safety Manual, and project-specific Injury and Illness Prevention Program (IIPP).
- Develop staffing plans/budgets for administering each of the construction contracts, showing assignments to Proposer and City personnel.
- Evaluate and recommend for SFMTA approval contract management software used to administer construction contracts. Upon approval, procure, implement and support the software system for construction management use.
- Develop and implement a training program for all City and Proposer construction management staff involved in the Program, with special emphasis training in the areas of establishing and maintaining procedures, documentation, reports, and monitoring of safety.
- Conduct the pre-construction conferences, define the staff responsibilities and administrative procedures to be used for each construction contract, and highlight site constraints and site logistics.
- Oversee each of the selected construction contractors to ensure compliance with applicable specifications, standards, codes, regulations, and documentation requirements.

- Monitor the construction work and construction site for compliance with safety standards.
- Develop, coordinate, and implement a master CPM construction schedule for the Program across all construction contracts.
- Coordinate all construction activities with SFMTA Operations, Safety and Security, as well as other necessary City or governmental agencies.
- Provide technical, full-time, on-site inspection of the progress and quality of the construction work. Provide daily inspection reports on all disciplines of work.
- Provide environmental inspection for the contractors' compliance with environmental regulations.
- Develop and administer the construction materials testing plan and oversee all QC activities, including periodic reviews of test result trends with the A&E proposer and SFMTA; implement corrective actions as necessary. Retain special inspection services, certified independent testing laboratories and licensed surveyors as required. Coordinate the activities of the testing laboratories to ensure that the proper number and type of tests are being performed in a timely manner.
- Coordinate delivery and procurement of City-furnished materials and equipment with the contractors in a timely manner. Examine other materials and equipment incorporated into the work to ensure that they are handled, stored and installed properly.
- Schedule, attend, and direct weekly on-site progress meetings with the contractors and SFMTA to review construction progress. Prepare and distribute minutes and/or reports of these meetings.
- Assist in resolving technical design issues impacting construction in-progress work.
- Review contractors' construction work plan and schedules and prepare written recommendations for response. Review schedules for conformity to the specification, logic, task duration, critical activities, and submittal review periods. Review monthly updates including variance reports, cash flow curves and material status reports. Review requests for time extensions; analyze and submit written recommendations for action, including analyses of costs due to delays eligible for compensation, impacts to schedule, and alternatives for mitigating delays and impacts.

- Assist in developing alternative work plans and/or schedules to facilitate the progress of the project beyond any roadblocks and issues.
- Develop and implement community relations/public outreach events to address specific construction actions impacting the public.
- Assist in developing and/or implementing with the contractors' mitigation measures to minimize impacts to local businesses and residents during construction.
- Manage the submission of samples, shop drawings, O&M manuals, and other submittals among construction contractors and the A&E.
- Respond to requests for information. This includes maintaining a log of requests, preparing non-technical responses, and expediting technical responses from the appropriate parties.
- Manage and monitor exception activities from submittals, test reports, inspections reports, non-compliance reports, and meetings.
- Maintain the Project files, including data, correspondence, reports, contracts, project drawings, specifications, changes, photographs, and other records pertaining to the Project.
- Review and recommend contractors' monthly pay estimates based on approved daily reports and amount of incorporated work. Resolve any conflicts or discrepancies concerning monthly pay estimates with contractors prior to submittal to the SFMTA for payment.
- Prepare scope of work, justification analysis and independent cost estimates for owner-proposed contract changes in advance of issuing the proposed contract changes to the contractor.
- Administer the evaluation and negotiation of change order items including participating with SFMTA in the actual negotiations of cost and schedule changes with contractors. Prepare negotiation records and cost and price analyses of contract changes in conformity with FTA requirements.
- Verify that construction contractors maintain true and accurate "as-built" drawings and specifications that reflect the modifications and changes in the work. Following the receipt of the "as-built" documents, assist in review of as-built documentation and O&M manuals; coordinate with the A&E to prepare record drawings.

- Review/develop test program, including factory and integration testing. Review and/or prepare start-up test plan/system cutover plan and procedures. Participate in/preside over testing and start-up activities.
- Conduct final inspections prior to Project acceptance, notify the SFMTA in a timely manner of the results of the inspections, and administer acceptance procedures and tests for each phase of the Project.
- Review and/or prepare training plan and training material. Monitor training conducted by contractors to SFMTA operations and maintenance personnel.
- Assist SFMTA with the project specific safety and security system certification program and plan. Assist/participate in system safety and security certification activities and preparation of safety and security certification report(s) in accordance with federal, state and local requirements.
- Assist SFMTA in technical coordination with other City agencies and other governmental agencies.
- Compile closeout Program documents, including contract documents, test reports and testing and commissioning documentation, manuals and warranties. These documents will be transmitted to SFMTA's operating personnel and/or archives as appropriate. Assist in contract close outs, including preparation and submission of contract closeout reports, closeout contract modifications and calendar items to the SFMTA.
- Provide claims avoidance management and partnering and dispute resolution process for contractors. Assist in resolution of claims as directed by SFMTA.
- Compile and document lessons learned in the Program.

### **2.3.11. Start-up, Testing and Commissioning**

During start-up, testing and commissioning, the Proposer shall assist SFMTA to achieve operational readiness and establish initial revenue service on the Central Subway alignment. The Proposer's tasks may include, but are not limited to:

- Participate in weekly start-up meetings and other related meetings as appropriate. Prepare meeting agenda and meeting minutes of each meeting to establish status, progress, and task follow-up.

- Develop, monitor, and update a schedule to enable start-up, testing, and commissioning of the Central Subway Program. Identify activities, issues and millstones necessary to achieve initial revenue service.
- Manage and assist the SFMTA, the contractors, other City agencies and other governmental agencies in identifying and completing activities for start-up, testing, commissioning and initial revenue service.
- Define, develop, approve and manage testing and testing programs necessary to achieve commissioning and initial revenue service.
- Resolve issues impacting testing, start-up, testing, safety certification, commissioning and initial revenue service.

### **2.3.12. Quality Assurance/Quality Control (QA/QC) Program Procedures and Oversight**

The services under this task may include the following:

- Assist SFMTA staff in performing reviews of QA/QC programs proposed for the Project by the design teams and by the construction contractors to ensure these meet or exceed minimum Program standards and SFMTA requirements.
- Assist SFMTA staff in oversight of design and construction activities relative to implementation of the adopted QA/QC program. Identify areas needing improvement, recommend corrective action plans and provide oversight to ensure compliance.
- Develop a QC/QA Program that will set the minimum standards for all design and construction activities associated with the Program.

The Proposer shall comply with the existing SFMTA Quality Assurance Program and the Federal Transit Administration's Quality Assurance/Quality Control Guidelines, and develop and submit for SFMTA acceptance a Quality Assurance/Quality Control Program, within 45 days of receipt of the NTP, covering all Proposer's activities including, but not limited to: general tasks; systems integration; intra-discipline and inter-discipline review; design workshops; SFMTA design review process; design support during implementation/construction; procurement; cutover and start-up operations; and construction management, i.e. inspection, testing, document reviews, non-conformances and corrective actions. The Quality Assurance Program must describe the controls to be implemented



by the Proposer to verify compliance with SFMTA Quality Program and Project requirements.

As part of the Quality Assurance Program, the Proposer shall submit an organization chart, a Quality Assurance/Quality Control Plan and Quality Assurance / Quality Control Procedures for control of the following quality elements: Management Responsibility; Documented Quality System; Design Control; Document Control; Purchasing, Product Identification and Traceability; Process Control; Inspection and Testing; Inspection, Measuring and Test Equipment; Inspection and Test Status; Non-Conformance; Corrective Action; Quality Records; Quality Audits; and Training.

As an example, for Design Control, the Proposer shall establish and maintain design control procedures to control and verify the design and design changes, to ensure compliance with the design criteria, project requirements, and requirements of the relevant regulatory agencies. Design control includes ensuring that design requirements are identified and met, planning of design interfaces are complete including design reviews and verification activities, and design changes are controlled through Project completion.

The Proposer's Project Quality Assurance Manager will report to the SFMTA Quality Assurance Manager.

As determined by the SFMTA Quality Assurance Manager, perform planned and periodic internal QA audits and surveillance to verify implementation and effectiveness of Project procedures. Proposer's duties must include:

- (a) Maintenance of quality records. The SFMTA Quality Assurance or designated SFMTA staff shall have full access to Proposer's QA/QC documentation and records at all times.
- (b) Gathering and tracking of Quality Assurance audit/surveillance and discrepancy data for use in the analysis of deficiency trends and evaluation of corrective action effectiveness.

**The requirements of the Proposer's QA Program and supporting procedures shall also apply to its subproposers.**

### **2.3.13. Document Management and Administrative Support:**

The services under this task may include the following:

- Assist the SFMTA with the implementation of document control procedures and policies and to ensure that all Program team members have access to all documents at all times.

- Provide administrative support to the SFMTA, including, but not limited to, documentation of meetings, report writing, preparation of presentations, and preparation of correspondence.
- Establish and maintain a system of document management and control and change control functions to ensure that all Program team members have current and accurate information available.
- Provide data, graphics and other materials as required by SFMTA for internal, external and public presentation.
- Assist the SFMTA in selecting and implementing program and project management software tools to facilitate collection and management of information related to cost, schedule, scope, issue tracking, document control, contract administration, project status and other related activities.
- Assist the SFMTA in developing and maintaining Program web sites and selecting and implementing other software tools to facilitate team communication and manage exchange of information during design and construction.
- Provide support to the SFMTA Contract Compliance Office, including but not limited to, prompt payment, modifications and change orders, and labor compliance.
- Establish and maintain a system of document management to ensure that the Contract Compliance Office has current and accurate information available.
- Assist SFMTA in selecting and implementing program and project management software tools to facilitate the Contract Compliance Office in collection and management of information related to payment of subcontractors, modifications, change orders and labor compliance.

#### **2.3.14. Configuration Management**

Develop a Configuration Management System and procedures to ensure complete, accurate and consist project baseline documents, and to ensure changes in design and construction are controlled in accordance to contract documents and/or controlling procedures.

#### **2.4 Contract Deliverables**

As part of the project scope of services, the Proposer will provide SFMTA all the deliverables that are products/results of the tasks. As part of the Proposal, Proposers are to propose the number, the type and title of all major deliverables for all proposed tasks

and major subtasks by phases (design phase vs. preconstruction phase vs. construction phase). Deliverables will be subject to review and approval by the SFMTA.

## **2.5 Annual Work Plans and Task Orders**

All work performed under this Contract will be authorized by the SFMTA through the issuance of Annual Work Plans or Task Orders or a combination of these documents. The procedure for developing Annual Work Plans and Task Orders and obtaining authorization to proceed with the work will comply with the following:

- The SFMTA, with the assistance from the Proposer, will prepare a detailed description of the scope of required services for an annual work plan or task order from the Contract Scope of Services, including specific deliverables, along with the expected time of completion for each specific task and/or deliverable;
- Proposer shall respond by preparing and submitting a detailed proposal for each assignment that will include:
  - a. A description by task and subtask of the work to be performed and the means and methods that will be used to perform it;
  - b. Milestones for completion of each deliverable;
  - c. Proposer and subproposer personnel assigned to each part of the work, along with a brief justification of why such personnel are qualified to perform the work; together with their prior experience in performing work of this nature;
  - d. A cost estimate for each task or subtask showing:
    - (i) Breakdown of estimated hours and direct salaries by individual for each activity required to complete all tasks and subtasks;
    - (ii) Overhead, including salary burden costs;
    - (iii) Estimated out-of-pocket expenses;
    - (iv) Fixed fee.
- Proposer and SFMTA will negotiate the scope of services, staff assignments, deliverables, schedule requirements and budget for all tasks and subtasks included in the Annual Work Plan or Task Order;
- The SFMTA will issue a Notice to Proceed for the Annual Work Plan or Task Order, including the agreed upon scope, deliverables, schedule requirements and budget.

## **2.6 Staffing Requirements**

The Proposer and each of its subproposers must have adequate professional staff or shall fulfill its commitment to increase professional staff where required so as to perform all tasks described in the Scope of Services of this RFP.

SFMTA reserves the right to require Proposer to reassign any individual on the Proposer's project team if SFMTA is unsatisfied with that person's performance or that person fails to demonstrate the required qualifications or expertise. The SFMTA reserves the right to review and approve replacement team members.

## **2.7 Local Office Requirement**

There is no restriction as to where the Proposer and subproposer firms must be headquartered. However, all of the managerial staff, lead coordinators, and other persons proposed as key personnel by the Proposer and subproposers for any portion or tasks under the Scope of Services of this RFP must maintain and work out of its own local offices within the San Francisco Bay Area for the duration of the Project.



REQUEST FOR PROPOSALS TO PROVIDE  
PROGRAM MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES  
FOR  
CENTRAL SUBWAY PROJECT

**III. SUBMISSION REQUIREMENTS**

**3.1. Submittal of Proposals**

All Proposers must submit twenty (20) hard copies and twenty (20) CD copies of their Proposals by the deadline, delivered to the address stated below. Partial or total omission of any of the required items under Section 3.3 from a Proposal may disqualify proposals from further consideration. Late submittal of Proposals will not be accepted.

All Proposals must be received at SFMTA by: **May 2, 2008 at 5:00 pm.**

Proposals must be delivered to:

Attn: Mr. Mario Gallardo  
Contract Management Office  
SFMTA Transportation Planning and Development Division  
One South Van Ness Avenue, 3<sup>rd</sup> Floor  
San Francisco, California 94103  
(415) 701-4348

Proposals not timely received or not following submission requirements will not be considered. Postmarks will not be accepted as meeting the submission deadline.

**3.2 Submittal Documents - Format**

The Proposal must be clear, concise and complete. The Proposal must total no more than 100 pages on double sided paper (50 sheets). All pages must be 8-1/2" x 11", minimum size 12 font, unless otherwise noted in this RFP. Size 10 font and 11"x17" page size are allowed for preparing table/spreadsheet, chart, or schedule. Each 11"x17" page will be counted as two pages towards the 100-page limit.

Documents requested in Items 3.3 (H), 3.3 (I) of this Section, along with team members' references and resumes and other reference materials such as QA program manual and procedures, must be placed in the appendices and will not be counted as part of the 100-page limit. The Cost Proposal, Item 3.3 (G), will also not be counted towards the 100-page limit. All documents submitted must be bound in a binder with each section separated by tabbed dividers. Distinct documents enclosed in the appendix must be separated by tabbed dividers as well.

Each copy of the proposal must include a CD-ROM containing an electronic version of the Proposal, EXCLUDING the cost proposal.

### **3.3 Submittal Documents - Content**

The content required under subsections 3.3(A), 3.3(B), 3.3(C), 3.3(D), 3.3(E) and 3.3(F) below constitute the written Proposal that is to be submitted in accordance with Sections 3.1 and 3.2 above. The items required under 3.3(H), 3.3(I) and references and resumes are also to be included as part of the written Proposal submission, under appendices.

#### **A. Introduction**

##### **1. Letter of Introduction**

The Proposer is required to submit a letter of introduction. The introductory letter must be signed by a person or persons authorized to obligate your firm (or firms in the case of a joint venture) to honor the commitments set forth in the Proposal in accordance with RFP requirements. Submission of the letter will constitute a representation by your firm or joint venture that it is willing and able to successfully fulfill Project requirements.

##### **2. Executive Summary**

Each Proposer must furnish an executive summary briefly describing the qualifications and organization of the consulting team (prime proposer, subproposers, and key personnel), highlighting the key points of the proposal, and verifying that the consulting team will be able to meet all requirements in the RFP.

##### **3. Exceptions to the Form of Agreement**

Proposers shall be prepared to accept the terms and conditions of the Form of Agreement (Appendix 3 to this RFP), including insurance requirements. If the Proposer is unable or unwilling to comply with any requirements of the standard contract agreement, then identify the requirements and explain why the Proposer cannot comply with them in this Introduction section of the Proposal. A Proposer's unwillingness to accept those Contract provisions

that the SFMTA determines are non-negotiable [to be added] will render the Proposal non-responsive.

**B. Organization and Management**

1. For a joint venture or association, provide the full names, addresses and inception dates of the prime firms and member firms. For an association, also provide the type of arrangement and describe the contractual relationship. Provide the same information for each subproposer.
2. Provide the name(s), title(s), address(es), including email address(es), telephone and facsimile numbers of individual(s) who have authority to bind the firm, joint venture, or association.
3. Identify one individual, empowered by the Proposer and representing the Proposer's entire team, as the Proposer Program Management Team Manager who for this specific Project has the authority to make binding decisions and commitments for the Proposer and for the entire project team for this Project, and whose responsibility it is to manage the entire team, regardless of the authority of the other member firms (in case of joint venture or association) or authority of other key personnel provided, and who has the expertise to manage the work defined herein. The Project Manager must have sole signature authority to execute all agreements and change orders and modifications.
4. Briefly describe the prime proposer firm, joint venture, or association and the recognized area(s) of expertise. Describe in detail the functions/roles/responsibilities and the services it will undertake under this RFP. If the prime is a joint venture or association, describe in detail for each member firm.
5. Briefly describe each subproposer including the recognized area(s) of expertise. Describe in detail the functions/roles/responsibilities and the services that each subproposer will undertake under this RFP.
6. Describe in detail how the Proposer's team will be organized and identify the relationships among all the subproposers and all the key personnel. Describe in detail how the Proposer plans to allocate responsibilities/lead roles and work between Proposer/subproposers and City staff for the various tasks. Indicate/illustrate how the organization and/or relationships will change (if they do change) for the different phases of the Program.

In addition to a written description, which shall include rationale for proposed organization and rationale for proposed City staff integration, also include organizational chart(s) on 8-1/2x11 or 11x17 inch paper to show the proposed organization and the relationships. (Also provide a copy of the

current corporate organization chart depicting the reporting relationship of those responsible for QA/QC).

7. Describe in detail how the Proposer and each subproposer within the proposed organization will interface with each other and interface with City staff and communicate effectively across tasks/activities.
8. Describe in detail the proposed management approach, methods and tools to manage Program staffing and tasks so as to consistently provide quality, cost effective and timely services for all phases of the Program.

### **C. Services and Staffing**

1. Describe in detail the Proposer and each subproposer's ability and plan to provide the services and staffing to meet project demands as demands fluctuate during the project implementation and as personnel needs change with schedule changes. Illustrate the depth of resources of the Proposer and each subproposer with respect to the services it proposes to provide.
2. Comprehensive Project Roster: Provide spreadsheets (11"x17" maximum size paper and minimum size 10 font are acceptable) showing the names of all individuals (including all key personnel) proposed for each task and each subtask (if the individual is to be hired at a later date, so indicate). In addition, list their current employers, the number of years with current employer, employment arrangement (e.g. currently temporary status or full time employee or to be hired), a highlight/summary of their qualifications, experience and relevant projects worked on in the recent past, their present job assignments including brief descriptions of their titles, projects, construction contract amounts, locations, duties, and assignment start and end dates, and their proposed job assignments under this RFP including brief descriptions of the proposed titles/positions, tasks/subtasks, primary duties and responsibilities, proposed work location for duration of service, proposed start and end date.
3. Separately, provide a clear identification of all key personnel by phase, by task, by firm/subproposer and a clear statement of commitment from each firm/subproposer as to a) their average time commitment to this Project for the first five years; b) term of commitment during the first five years; c) work location during the first five years. In addition, propose a list of back up key personnel to step up to the respective responsibilities in the event of emergencies or unforeseen circumstances.



## **D. Relevant Experience and References**

### **1. Qualifications and Experience**

Briefly describe relevant qualifications, experience and major or unusual accomplishments for the following:

- The companies involved: prime firm and each of the subproposers
- The management personnel directly involved and having an important role with the Contract
- All other key personnel proposed for the tasks in the Proposal.

Describe in detail the project or projects that qualify the Proposer to meet the prerequisite conditions described in Section 1.9, including information on dates, locations. Include references if not included under D.2 below.

### **2. References**

In a spreadsheet format as an appendix to the Proposal, provide a minimum of three different client references for Proposer (each member firm if joint venture or association) and for each subproposer, including contact person, his/her title, address, phone number and e-mail address, starting with the most recent projects undertaken by firm, with description of the projects including details on the roles/responsibilities that the firm/subproposer undertook and approximate dollar value and term of the related professional service contract(s).

In a spreadsheet format as an appendix to the Proposal, provide a minimum of three different client references for each proposed key personnel, including contact person, his/her title, address, phone number and e-mail address, starting with the most recent projects undertaken by the individual, with description of the projects including details on the roles/responsibility that the individual undertook and approximate duration of service.

Client references are preferred from public transit agencies, government agencies, or large transportation enterprises with which the firm/subproposer or individual has worked for within the past 10 years.

Reference information will not count towards the 100-page limit.

### **3. Specific Relevant Experience**

Provide detailed descriptions of the Proposer team's experience with different facets of program management and construction management of large, complex projects with challenges similar to the Central Subway Project. For example:

- a. Describe, with specific examples, the Proposer team's experience and success in managing large complex programs that are susceptible to multiple risks including risks of major cost overruns. Include all relevant experience in the following areas over the last 10 years: (i) tunneling projects; (ii) construction in congested urban retail and business districts; and (iii) management of environmental mitigation, monitoring and reporting plans.
- b. Describe, with specific examples, the Proposer team's experience and success in assisting project sponsor(s) in the timely receipt of funding for projects of similar size and complexity. Discuss past experience with innovative means of financing large programs. Experience with successful FTA full funding grant applications/agreements is especially relevant.
- c. Describe, with specific examples, the Proposer team's experience and success in working with community, neighborhood/interest groups on major, complex projects.
- d. Describe, with specific examples, the Proposer team's experience and success in coordinating with large city departments, external government agencies, and utility companies, and in securing permits and regulatory approvals. Specify whether any such experience has been in San Francisco.
- e. Describe, with specific examples, the Proposer team's experience and success in assisting project sponsors with land acquisitions that involve relocations of tenants and businesses, and negotiating for land acquisition and encroachment permits in compliance with federal regulations.
- f. Describe, with specific examples, the Proposer team's experience and success in managing large design team to complete and package construction documents for large, complex construction projects that are broken down into several distinct and yet integrated segments or construction contracts.
- g. Describe, with specific examples, the Proposer team's experience and success in managing contractors, construction support staff to complete large, complex construction projects that are broken down into several distinct and yet

integrated segments or construction contracts.

- h. Describe, with specific examples, the Proposer team's experience and success with construction safety programs, owner managed wrap-up insurance programs, partnering, and disputes resolution.
- i. Describe, with specific examples, the Proposer team's experience and success in presiding over testing, start up of major complex construction projects.
- j. Describe, with specific examples, the Proposer team's experience and success in working in mixed or integrated program management and/or construction management teams that include government and private sector employees.
- k. Describe, with specific examples, the Proposer team's experience and success involving Quality Assurance (QA) and Quality Control (QC) programs for similar projects, including auditing, sampling, inspection, and testing and reporting services, assurance and quality control to the Project and Corporate Management. Submit, as appendix for reference, a copy of your company's Quality Assurance Program manual and Project Quality Assurance procedures manual from a previous similar project. (Note: The Quality Assurance Program manual and Project Quality Assurance procedures manual provided will not be included in the 100-page limit).

4. Specific Relevant Experience and Resumes of Key Personnel:

Provide resumes of qualified managerial and lead coordinator personnel who would be assigned to program management tasks of this Project, especially clearly indicating their experience on similar recent projects.

Provide resumes of qualified individuals who will be assigned to manage/oversee construction contracts/contractors and manage/supervise in house field staff, especially indicating their experience on similar recent projects.

Provide resumes of qualified individuals who will serve as other key personnel function, especially indicating their experience on similar recent projects.

Resumes submitted for the above shall adhere to the format described below:

- Resumes must first identify relevant experience, starting with the most recent, including titles/positions held, dates employed, names of companies, names of supervisors/managers with phone numbers, types and size (including dollar value) of projects worked on with specific roles/responsibilities, etc.
- Resumes must also list education training received (degree earned, name of school, etc.)
- Resumes must also list any other pertinent credentials, including licenses (state registered, date acquired)

Resumes for each key personnel shall be limited to a maximum of two pages. Resumes will not be counted toward the 100-page limit.

## **E. Approach**

1. The tasks outlined in Section II, Scope of Services, present SFMTA's view and general description of the work to be accomplished. As noted in Section II, Proposers should address and expand as necessary upon the tasks described in this RFP. The Proposer may propose additional tasks and revisions to task descriptions from those specified in this RFP, within the limits of accomplishing the project goals.

At a minimum, a Proposer's description of its approach must describe the following:

- The Proposer's understanding of the nature and extent of the services required for each task.
- The Proposer's plan, program, and methods for executing each task (work plan).
- Special issues, problems, risk and constraints, and the approach towards mitigating and resolving them.

In addition to written description, the above may also be summarized in table (s) on 11"x17" paper(s), 10 point font size, but must be legible.

2. Describe how your firm and subproposers will jointly update and implement an overall Program Management/Implementation Plan for the Program. Discuss the time relationship/sequence of key elements of the Plan. Include an outline of the Program Management/Implementation Plan.
3. Describe how your firm and subproposers will jointly develop and implement an overall Construction Management Plan for the Program. Discuss the time relationship/sequence of key elements of the Plan. Include an outline of the Construction Management Plan.

4. Describe the firm's proposed project-specific approach towards financial management, value management, cost containment, schedule management, risk management, change management, contingency management.
5. Describe the team's approach and procedures for developing and maintaining quality and cost control, and for correcting quality and budget deviations. Describe the types of reports that the consulting team will provide.
6. Describe the firm's proposed project-specific approach towards building community relations and achieving consensus through outreach. Identify the key stakeholders and the how the approach may vary with the interest groups.
7. Describe the firm's proposed project specific approach towards interagency coordination, and whether the approach differs with respect to different agencies and organizations and with the different phases of the Project.

**F. Proposed Schedule**

Proposer must include a detailed schedule in narrative, tabular and bar chart formats, for the execution of the Scope of Services by tasks and by phases. The Proposer may assume the Project schedule to follow the description provided under Section 1.6 and Section V. Proposer's schedule shall include proposed major intermediate milestone dates. The narrative shall include rationale for the proposed schedule for completing each task and for the proposed intermediate milestones.

Current Milestones are as follows:

FTA Record of Decision	September 2008
Project Management Plan Update	November 2008
Project Readiness	November 2008
FTA Approval to Enter Final Design	March 2009
FTA Approval Letter of No Prejudice for TBM's	April 2009
Utility Relocation Prejudice	December 2009
FTA Full Funding Grant Agreement Approval	July 2010

## **G. Cost Proposal**

The Proposer shall submit three copies of its Cost Proposal for all phases of the work including optional services beyond the base five-year term. Proposers shall submit Cost Proposals no later than seven calendar days after the due date of the Proposal. The Proposers should complete the Cost Proposal at the same time as the written Proposal to ensure consistency. The extra seven days are meant for final assembly of the Cost Proposal, separate from the written Proposal. The Cost Proposal shall be in a sealed envelope clearly labeled as "Contract No. CS -149- Confidential Cost Proposal."

The Cost Proposal shall be submitted to:

Attn: Mario Gallardo  
Contract Management Office  
SFMTA Transportation and Development  
One South Van Ness Ave., 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
(415) 701-4348

Cost Proposals will be kept sealed and strictly confidential until after selection of the highest ranked proposer. Cost Proposals will not be a factor in the selection of the Proposer. Information provided in the Cost Proposals will be used as a basis for negotiating an agreement with the selected Proposer.

1. In preparing and submitting their Cost Proposals, Proposers shall adhere strictly to the requirements described in this Section and shall include a detailed work plan for all tasks and all phases, including the optional Construction Management task, any additional Program Management tasks beyond the initial five-years term of the Contract, and any tasks not listed in the Scope of Service that are important for the successful execution of the Project. In the work plan, the Proposer may sort, group, delete, combine, and separate the proposed tasks, subtasks and deliverables. The work plan shall facilitate the determination of the cost of the services.
2. The Proposer must carefully review all requirements of the Agreement in Appendix 3 of this RFP prior to preparation of its Cost Proposal. In the preparation of its Cost Proposal, the Proposer must assume that the SFMTA will not make modifications to the terms of the contract as attached.

The Cost Proposals must include the following:

1. Direct hourly rates by position of all personnel involved or proposed for the prime proposer and all subproposers. The rates shall reflect typical adjustment (living cost increase, pay raises.) for the first five years.
2. Most recent, audited overhead rates for prime proposer and all subproposers. (A copy of the most recent independent audit of overhead rates for all firms shall

be included.) The overhead rates shall assume that City staff and Proposer staff will collocate in one office both during the design phase and during the construction phase. Proposers shall identify in their cost proposal the incremental increase in the hourly overhead field office rate in the case in which City staff collocates in an office provided by Proposer and the portion of the reduced overhead field office rate in the case in which Proposer staff collocates to an office provided by the City.

3. A detailed breakdown of labor hours for each task and each subtask by phase, by firm, by discipline and by personnel classifications/grades.
4. A detailed cost breakdown for each task and each subtask by phase, by firm, by discipline, by personnel classifications/grades.
5. Summary of each firm/subproposer's direct cost and indirect costs for each task and each subtask, including a breakdown of the other direct reimbursable costs.
6. Fixed lump sum cost proposal for tasks or subtasks that the Proposer proposes to complete on a fixed lump sum basis.
7. Proposed fixed fee profit for each task and subtask.
8. Vehicle use or mileage rates and any other applicable rates.
9. Total not-to-exceed budget for first five years, broken down on an annual basis.
10. Total not-to-exceed budget for optional additional five years of services, broken down on an annual basis.

Clearly state all assumptions, *i.e.*, what items are included or excluded in the cost estimates.

Please note that the following expenses will not be tracked or reimbursed separately as Other Direct Costs or Out-of-Pocket Costs under this Contract:

1. Computer usage
2. Facsimile and telecommunication expenses

The SFMTA will not reimburse the Proposer for any of the following expenses:

1. Proposer and subproposers' personnel relocation costs.
2. Purchases of office and field supplies/equipment, unless the supplies or equipment are not ordinary/typical supplies and equipment AND uniquely required of this Project AND serving only this Project, in which case the costs shall be separately identified in the Cost Proposal. These items will then need to be turned over to SFMTA at the end of project, where applicable.
3. Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis.
4. Any travel expenses, including transportation, meals, lodging costs that are beyond the limit set forth in the attached Professional Services Agreement under Appendix 3.
5. Any overnight FedEx or similar type of courier services extending outside of the Bay Area between Proposer offices or that are beyond the limit set forth in the attached Professional Services Agreement under Appendix 3.

6. Any personal or entertainment expenses.
7. Expenses not reimbursable under federal grant provisions. See, in particular, OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments," 2 CFR Part 225.

On the assumption that SFMTA awards the Contract to the selected Proposer for all phases of work based on the Scope of Services described in Section II above, the cost of the Contract will be negotiated for all phases at the same time and concluded before the Contract is to be awarded. However, the Proposer will not start work on the optional work until SFMTA exercises the option and authorizes the work.

**H. SBE Forms Required to be Submitted with Proposal (Note: SBE Forms provided in Appendix 2 to this RFP)**

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

1. Proposer/Joint Venture and Subproposer Participation Report (SFMTA SBE Form 1)
2. SBE Proposer/Proposer Participation – Good Faith Efforts (SFMTA SBE Form 2)
3. Bidders List (SFMTA SBE Form 2A)
4. SBE Proposer/Joint Venture Partners/Subproposer – Gross Revenue Declaration (SFMTA SBE Form No. 2B)
5. SFMTA Questionnaire on Recruitment, Hiring and Training Practices for Proposers (SFMTA SBE Form 3)
6. Subproposer Participation Declaration (SFMTA SBE Form 4)
7. Small Business Enterprise Acknowledgement Declaration (SFMTA SBE Form 5)
8. A Copy of the firm's Nondiscrimination Program or EEO Policy Statement (if any)

Note: Forms described in this paragraph are not included in the proposal page limit specified in Paragraph 3.2.

Both Proposer and subproposers will need to submit Items 3, 4 (if applicable), 5, and 8.

Items 1, 2 and 6 of this paragraph apply to the prime proposer only. Item 7 applies to the SBE subproposer only. Information about all firms submitting quotes or proposals to the prime and subproposers must be included on Item 3 (Bidders List). Directions for completing Items 1 through 6 can be found in the SBE Program in Appendix 2.

**I. Standard City and County of San Francisco Forms. Required to be submitted with the proposal.**



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

Both Proposer and subproposers will need to submit forms for items 1, 2, 4, 5 described in this paragraph, which are not included in the page limit specified in Paragraph 3.2. Only the prime Proposer needs to submit forms for item no. 3 above.



REQUEST FOR PROPOSALS TO PROVIDE  
PROGRAM MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES  
FOR  
CENTRAL SUBWAY PROJECT

**IV. EVALUATION AND SELECTION CRITERIA**

**1. Selection Process**

The selection process used by SFMTA generally follows City and FTA procurement guidelines. All proposals will be evaluated by a Selection Committee comprised mainly of SFMTA staff. SFMTA will be the sole judge as to which proposal is best and, in ascertaining the best proposal, will take into consideration the financial resources, reputation, experience in similar situations and facilities for providing services of the proposers, all as described below.

Step One: The SFMTA will evaluate each written proposal based on the evaluation criteria listed in Section IV (2), items A through E, using a 100-point rating system. Each member of the Selection Committee will separately score each firm's written proposal. The Selection Committee's scores for each firm will be totaled, and the result will be divided by the number of Selection Committee members to obtain an averaged written evaluation score for each firm, which will be a maximum of 100 points.

Based on the average score for each proposer's written proposal, the SFMTA will determine which firms are within the competitive range (the "short list"). Those firms in the short list will be invited to attend an oral presentation/interview with the Selection Committee.

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

additional information prior to or at the interview.

Using the evaluation criteria in Section IV.2.F, each member of the Selection Committee will separately score each firm's oral interview and presentation (40 point maximum). The SFMTA will total individual evaluation scores from all Selection Committee members and then divide the total by the number of Selection Committee members, to obtain an average interview evaluation score per firm.

Step Three: The SFMTA will multiply the scores for each firm from the evaluation of the written proposal (Step 1) by 60 percent; and add the total to the score received from the evaluation of the oral interview (Step 2). The result will determine the ranking of the Proposers.

$$\text{Proposer Score} = [\text{avg}(A + B + C + D + E) \times 0.60] + \text{avg}(F)$$

The firm with the highest total combined score in Step 3 shall be ranked the highest and will be invited to negotiate a contract with SFMTA. At that time, SFMTA will open the sealed envelope containing the Cost Proposal from the highest-ranking firm for the purpose of negotiating an agreement.

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

## 2. Evaluation Criteria

### Written Proposal:

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

- A. **Proposal (5 points maximum):** Responsiveness to all items requested in the RFP, overall organization and clarity of proposal.
- B. **Organization and Management (20 points maximum):** Effectiveness of the consulting team's organizational structure managing the subproposers and tasks; management approach in providing quality, cost effective and timely services.
- C. **Service and Staffing Ability (20 points maximum):** Ability of the Proposer to provide timely/readily available qualified and adequate staffing and services to support Project demands, especially personnel with expertise in transit tunnel/station projects. The Evaluation Committee reserves the right to visit the

- local offices of the Proposer and subproposers as part of its evaluation.
- D. **Relevant Experience (30 points maximum):** This criterion includes capability, specific relevant experience, qualifications of each firm and each subproposer, especially the proposed key personnel for each task, and client references as to past project performance. The Selection Committee retains the right to independently verify and evaluate relevant experience and client references, including any sources not mentioned in the Proposal.
- E. **Approach (25 points maximum):** Proposers will be evaluated on their understanding of the services for each task; effectiveness of their plan, program and method of execution; understanding of special issues, risks, problems and constraints, and approach towards mitigating and resolving them.

**Oral Interview/Presentation:**

The SFMTA Selection Committee will conduct oral interviews at the Bay Area office of each short-listed Proposer. Prior to the interviews, SFMTA will notify the short-listed candidates in writing as to the time and length of the interview, the general format of the interview as well as a more detailed descriptions of the scoring criteria, where applicable.

- F. **Oral Interview/Presentation (40 points maximum):** In general, the oral interview will consider the Proposer's overall presentation, communication skills and ability to explain and answer questions from the Selection Committee regarding the Proposer's written proposal. The Selection Committee will score the Oral Interview/Presentation based on the quality of responses provided and the quality of the team attending and presenting at the interview, including their expertise, communication skills, knowledge of the Proposal and Program, and the overall quality of their presentation.



REQUEST FOR PROPOSALS TO PROVIDE  
PROGRAM MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES  
FOR  
CENTRAL SUBWAY PROJECT

**V. TENTATIVE SCHEDULE**

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

Advertise RFP .....	February 2008
Pre-Proposal Conference .....	March 10, 2008
Civil Service Commission Approval .....	April 2008
Proposals Due .....	May 2, 2008
Evaluation & Notify Short-Listed Firms .....	May 2008
Interviews.....	June 2008
Send out letter on first ranked firm .....	June 2008
Negotiations .....	July 2008
Send out Letter of Intent to Award to All Proposers .....	July 2008
SFMTA Board Approval of Contract Award .....	August 2008
Board of Supervisors Approval .....	September 2008
City Controller Certification of Funds.....	October 2008
Notice to Proceed.....	October 2008



REQUEST FOR PROPOSALS TO PROVIDE  
PROGRAM MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES  
FOR  
CENTRAL SUBWAY PROJECT

**VI. TERMS AND CONDITIONS FOR RECEIPT OF PROPOSALS**

**A. Validity of Proposal/Errors and Omissions in RFP/Requests for Information or Clarification**

The proposals (including cost proposal) shall be valid for at least 150 calendar days from the date of receipt of proposals.

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

Questions regarding this RFP should be addressed in writing to:

Mr. Mario Gallardo  
Contract Management Office  
SFMTA Transportation Planning and Development Division  
One South Van Ness Avenue, 3<sup>rd</sup> Floor  
San Francisco, California 94103  
(415) 701-4300 fax

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

**B. Addendum/Addenda**

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

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

**C. Revisions to Proposals**

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

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

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

**D. Reservation of Rights by City**

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

1. Waive any defect or informality in any response, proposal, and proposal procedure;
2. Reject any or all proposals;
3. Accept any proposals in whole or in part;
4. Reissue a Request for Proposals;
5. Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
6. Procure any service specified in this RFP by any other means; or

7. Determine that no project/contract will be pursued.

SFMTA will be the sole judge as to which proposal is best and, in ascertaining the best proposal, will take into consideration the financial resources, reputation, experience in similar situations and facilities for providing services of the Proposers.

**E. Award and Certification Required**

In accordance with San Francisco Administrative Code Chapter 6, no proposal may be accepted and no contract in excess of \$100,000 may be awarded by the City and County of San Francisco until such time as (a) the Executive Director/CEO recommends the Contract for award and (b) the San Francisco Municipal Transportation Agency adopts a resolution awarding the Contract. Under Charter Section 9.118(b), the Board of Supervisors must approve contracts with anticipated expenditures in excess of \$10,000,000. Pursuant to Charter Section 3.105, all contract awards are subject to certification by the Controller as to the availability of funds.

**F. Objections to RFP Terms**

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

**G. Errors and Omissions in Proposal**

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

**H. Financial Responsibility**

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

**I. Small Business Enterprise (SBE)/Non-Discrimination Requirements**

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



## 1. Policy

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

## 2. Questions

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

Mr. Mario Gallardo  
Contract Management Office  
SFMTA Transportation Planning and Development Division  
One South Van Ness Avenue, 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
Telephone: (415) 701-4348

## 3. 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.

## 4. SBE Goal

The Contract Compliance Office has established a 30 percent 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: 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.

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 Proposer/Subproposer – 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.

**J. Nondiscrimination In City Contracts-Benefits Ordinance**

1. Chapter 12B and 12C of the Administrative Code are incorporated by reference as though fully set herein. Chapter 12B and 12C prohibit discrimination by city contractors in employment, the use of property and the provision of employee benefits.
  - a. Please refer to Appendix 7, Exhibit C regarding the Non-discrimination Program mandated by Chapter 12B of the San Francisco Administrative Code. Documentation regarding Charter 12B and 12C compliance must be on file with or submitted to the CCSF Human Rights Commission (HRC). For further information, contact Mr. Yong K. Lee at (415) 252-2514.
  - b. The successful Proposer must agree to abide by the following standard contract provisions regarding Chapter 12B and 12C.
2. Nondiscrimination; Penalties
  - a. Contractor Shall Not Discriminate. In the performance of this contract, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments, or organizations operated by Contractor.
  - b. Subcontracts. Contractor shall incorporate by reference in all subcontractors the provision of Sections 12B.2(a), 12B.2(c)-

12B.2(k) and 12C.3 of the San Francisco Administrative Code, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with obligations in this subsection shall constitute a material breach of this Agreement.

- c. Nondiscrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations within the United States, discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.
- d. Condition to Contract. As a condition to this Agreement, Contractor shall execute the "Nondiscrimination in Contracts and Benefits" form and secure the approval of the form by the SF Human Rights Commission.
- e. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 12B and 12C of the San Francisco Administrative Code are incorporated by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under Chapter 12B and 12C of the Administrative Code, including but not limited to remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payment due Contractor.

**K. San Francisco Sunshine Ordinance**

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

**L. Public Access to Meetings and Records**

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

**M. Proposer's Obligations under the Campaign Reform Ordinance**

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

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

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

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

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts

include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

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

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

**N. Resource Conservation**

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

**O. San Francisco Business Tax Certificate**

San Francisco Ordinance No. 345-88 requires that, in order to receive an award, a firm located in San Francisco or doing business in San Francisco must have a current Business Tax Certificate. Since the work contemplated under the proposed Agreement will be performed in San Francisco, a San Francisco Business Tax Certificate will be required. The Business Tax Declaration (Appendix 4) should be completed and submitted with the proposal.

**P. Certification Regarding Lobbying**

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

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

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

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

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

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

**R. Notification of Limitations on Contributions**

This paragraph applies if your proposal exceeds \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the “Conduct Code”) Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who have discretion to approve and do in fact approve this contract from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are “public benefit recipients” of the contract. Public benefit recipients of the contract are defined as: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

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

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

**S. No Waiver**

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



REQUEST FOR PROPOSALS TO PROVIDE  
PROGRAM MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES  
FOR  
CENTRAL SUBWAY PROJECT

**VII. CITY CONTRACT REQUIREMENTS**

**A. AGREEMENT FOR PROFESSIONAL SERVICES**

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

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

**B. MINIMUM COMPENSATION ORDINANCE (MCO)**

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

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



Additional information regarding the MCO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse).

**C. HEALTH CARE ACCOUNTABILITY ORDINANCE (HCAO)**

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

**D. FIRST SOURCE HIRING PROGRAM**

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

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at [www.sfgov.org/moed/fshp.htm](http://www.sfgov.org/moed/fshp.htm).



REQUEST FOR PROPOSALS TO PROVIDE  
PROGRAM MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES  
FOR  
CENTRAL SUBWAY PROJECT

**VIII. PROTEST PROCEDURES**

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



REQUEST FOR PROPOSALS TO PROVIDE  
PROGRAM MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES  
FOR  
CENTRAL SUBWAY PROJECT

**IX. APPENDICES**

The following appendices accompany this Request for Proposals (RFP) and are incorporated thereto by reference.

Appendix 1	SFMTA Form PM3
Appendix 2	Small Business Enterprise (SBE) Program for Professional and Technical Services for Federally Funded Projects
Appendix 3	Form of Agreement: City and County of San Francisco Professional Services Contract Agreement
Appendix 4	Business Tax Registration Declaration
Appendix 5	Protest Procedures For the Bidding and Award of Federally Assisted Third Party Contracts
Appendix 6	Certification Regarding Lobbying
Appendix 7	San Francisco Administrative Code, 12Band12C Declaration Form
Appendix 8	Attestation of Compliance
Appendix 9	SFMTA Organization Charts
Appendix 10	Sample List of Available References



## Appendix 1

SFMTA Form PM3

**SFMTA**  
FORM  
**PM 3**  
**Architect-Engineer**  
Related Services  
For Specific Project

1. Project Name/Location for which Firm is Filing:

2. Year Present Firm  
Established:

3. Date Prepared:

4. Type of ownership:

4a. Minority Owned                      yes                       no

1. Firm (or Joint-Venture) Name & Address:

5. Name, Title & Telephone Number of Principal to Contact

1a. Submittal is for  Parent Company                       Branch or Subsidiary Office

5a. Address of office to perform work, if different from Item 1

6. Name of Parent Company, if any:

6a. Former Firm Name(s), if any, and Year (s) Established:

7. Present Offices: City/State/Telephone No./Personnel Each Office

7a. Total Personnel \_\_\_\_\_

8. Personnel by Discipline:

___ Administrative	___ Electrical Engineers	___ Oceanographers	_____
___ Architects	___ Estimators	___ Planners: Urban/Regional	_____
___ Chemical Engineers	___ Geologists	___ Sanitary Engineers	_____
___ Civil Engineers	___ Hydrologists	___ Soils Engineers	_____
___ Construction Inspectors	___ Interior Designers	___ Specification Writers	_____
___ Draftsman	___ Landscape Architects	___ Structural Engineers	_____
___ Ecologists	___ Mechanical Engineers	___ Surveyors	_____
___ Economists	___ Mining Engineers	___ Transportation Engineers	_____ Total Personnel

9. Brief Resume of Key Persons, Specialists, and Individual Consultants Anticipated for the Project

a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years exprience: With This Firm____                      With Other Firms____	d. Years experience    With this Firm:____                      With Other Firms____
e. Education: Degree(s)/Years/Specialization	e. Education: Degree(s)/Years/Specialization
f. Active Registration: Year First Registration/Discipline:	f. Active Registration: Year First Registration/Discipline:

g. Other Experience and Qualifications relevant to the proposed project::	g. Other Experience and Qualifications relevant to the proposed project:
---	--

10. Outside Key Consultants/Associates Anticipated for this Project (Attach PM3 for Consultants/Associates Listed, if not already on file with the SFMTA)		
Name & Address	Specialty	Worked with Prime before (Yes or No)
1)		
2)		
3)		
4)		
5)		

6)		
7)		
8)		
9)		

11. Use this space to provide any additional information or description of resources supporting your firm's qualifications for the proposed project  
(Attach additional sheets  
if more space is needed)



12. If submittal is by Joint-Venture, list participating firms and outline specific areas of responsibility (including administrative, technical and financial) for each firm:  
(Attach PM3 for each if not on file with SFMTA)

13. Use this space to provide any additional information or description of resources supporting your firm's qualifications for the proposed project  
(Attach additional sheets  
if more space is needed)

14. If submittal is by Joint-Venture, list participating firms and outline specific areas of responsibility (including administrative, technical and financial) for each firm:  
 (Attach PM3 for each if not on file with SFMTA)

15. Work by Firm or Join Venture which Best Illustrates Current Qualifications Relevant to this Project (List not more than 10 projects)

a. Project Name & Location	b. Nature of Firm's Responsible Responsibility Individual	c. Owner's Name & Address	Completion Date (Actual or Estimated)	e. Estimated Cost (In thousands) Entire work for which Project firm was/is responsible	
1)					
2)					

3)					
4)					
5)					
6)					
7)					
8)					
9)					
10)					
11)					
12)					

The foregoing is a statement of facts.

Signature: \_\_\_\_\_ Typed Name and  
Title \_\_\_\_\_

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



## Appendix 2

# Small Business Enterprise (SBE) Program for Professional and Technical Services for Federally Funded Projects

**CITY AND COUNTY OF SAN FRANCISCO**  
**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**  
**SMALL BUSINESS ENTERPRISE PROGRAM**  
**FOR PROFESSIONAL AND TECHNICAL SERVICES**

**REQUEST FOR PROPOSALS (RFP)**

**FOR**

**CS-149: Professional Program Management  
And Construction Management Services for Central Subway  
Third Street Light Rail Project Phase 2**

**CCO NO. 08-993**

**FTA FUNDED**

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

**Appendix 2**

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

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

**FOR FEDERALLY-FUNDED PROJECTS**

<b><u>SECTIONS</u></b>	<b><u>CONTENTS</u></b>	<b><u>PAGE</u></b>
I.	POLICY	SBE - 1
	A. Applicability	SBE - 1
	B. Objectives	SBE - 1
	C. Administration of Program	SBE - 2
	D. Prohibited Discrimination	SBE - 2
	E. Non-Discrimination in Employment	SBE - 2
II.	DEFINITIONS	SBE - 3
	A. Small Business Enterprise (SBE)	SBE - 3
	B. Contractor	SBE - 3
III.	SBE PARTICIPATION AND SUBCONSULTING REQUIREMENTS	SBE - 3
	A. SBE Participation Goal	SBE - 3
	B. SBE Income Thresholds For Certain Types of Contracts	SBE - 4
	C. SBE Participation	SBE - 4
	1. Nature of SBE Participation	SBE - 4
	2. Function	SBE - 4
	3. Determining the Amount of SBE Participation	SBE - 4
	a. SBE Prime Consultant	SBE - 5
	b. SBE Subconsultant	SBE - 5
	c. SBE Joint Venture Partner	SBE - 5
	d. SBE Regular Dealer	SBE - 5
	e. Other SBEs	SBE - 5
	f. Materials or Supplies	SBE - 5

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

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

**FOR FEDERALLY-FUNDED PROJECTS**

<b><u>SECTION</u></b>	<b><u>CONTENTS</u></b>	<b><u>PAGE</u></b>
	D. Meeting the SBE Participation Goal	SBE - 6
	E. Submission of Certification for SBEs	SBE - 6
IV.	TRAINEES – San Francisco Municipal Transportation Agency (SFMTA) Employment Training Program	SBE - 7
V.	EVALUATION OF PROPOSALS	SBE - 9
	A. CCO Evaluation	SBE - 9
	1. Evaluation of Proposals	SBE - 9
	2. Determination of Amount of SBE Participation	SBE - 9
	3. Evaluation of SBE Certification Status	SBE - 10
	4. Good Faith Efforts	SBE - 10
	B. Recommendation for Award of Contract	SBE - 12
	1. SFMTA CCO’s Recommendation for Award	SBE - 12
	C. Successful Proposer	SBE - 12
	1. Substitution of Subconsultants & Suppliers	SBE - 12
	2. Addition of Subconsultants and Suppliers	SBE - 12
	3. Prompt Payment to Subconsultants	SBE - 12
	4. Reporting Requirements	SBE - 13
	D. Administrative Remedies	SBE - 13
	1. Monitoring SBE Participation	SBE - 13
	2. Enforcement Mechanisms	SBE - 14
	E. Confidentiality	SBE - 14
VI.	SUBMISSION OF FORMS AND INSTRUCTIONS	SBE -14
	A. Required Forms	SBE - 14
	B. FORMS Submitted WITH PROPOSAL	SBE - 15
	• SFMTA SBE Form No. 1 – Consultant/Joint Venture Partner and Subconsultant Participation Report ( <i>See Page SBE-17</i> )	

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

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

**FOR FEDERALLY-FUNDED PROJECTS**

<b><u>SECTION</u></b>	<b><u>CONTENTS</u></b>	<b><u>PAGE</u></b>
B. FORMS Submitted WITH Proposal (CONTINUED)		SBE - 15
	<ul style="list-style-type: none"><li>• SFMTA SBE Form No. 2 – SBE Consultant Participation – Good Faith Efforts (<i>See Page SBE-18</i>)</li><li>• SFMTA SBE Form No. 2A – Bidders List (<i>See Page SBE-20</i>)</li><li>• SFMTA SBE Form No. 2B –SBE Consultant/Joint Venture Partner/Subconsultant –Gross Revenue Declaration (<i>See Page SBE-21</i>)</li><li>• SFMTA SBE Form No. 3 – Questionnaire on Recruitment, Hiring, and Training Practices for Contractors (<i>See Page SBE-22</i>)</li><li>• SFMTA SBE Form No. 4 – SBE Subconsultant Participation Declaration (<i>See Page SBE-28</i>)</li><li>• SFMTA SBE Form No. 5 – Small Business Enterprise Acknowledgment Declaration (<i>See Page SBE-29</i>)</li><li>• SCHEDULE B – IF APPLICABLE</li></ul>	
C. FORMS SUMMITTED AT POST-AWARD		SBE - 16
	<ul style="list-style-type: none"><li>• SFMTA SBE Form No. 6 – Progress Payment Report (<i>See Page SBE-31</i>)</li><li>• SFMTA SBE Form No. 7 - Subconsultant Payment Declaration (<i>See Page SBE-33</i>)</li><li>• SFMTA SBE Form No. 8 – Amendment/Modification Declaration Professional Services &amp; Construction Contracts (<i>See Page SBE-35</i>)</li><li>• SFMTA SBE Form No. 9 – Contractor Exit Report and Declaration (<i>See Page SBE-37</i>)</li></ul>	



**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 with the Department of General Services ("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 thirty percent (30%) Small Business Enterprise 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 with the Department of General Services ("State Program"), the California Unified Certification Program with a U.S. Department of Transportation recipient ("Federal DBE program"), or the City and County of San Francisco's LBE program with the Human Rights Commission ("City Program"). This SBE goal will apply to the following types of contracts or scope of work in the contract: Architecture & Engineering Services (to include professional and technical 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 SBE 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.

NOTE: Website links for finding Certified DBEs/SBEs/LBE :

- Certified Disadvantaged Businesses Enterprises ("Federal DBE Program")  
<http://www.dot.ca.gov/ucp/GetLicenseForm.do> (or  
[http://www.dot.ca.gov/hq/bep/dbe\\_query.htm](http://www.dot.ca.gov/hq/bep/dbe_query.htm))
- Certified Small Businesses Enterprises ("State Program")  
<http://www.pd.dgs.ca.gov/smbus/sbdvbelist.htm>
- For Certified HRC Local Business Enterprises ("City Program")  
[http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS\\_1.htm](http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS_1.htm)

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 SBE 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 (f)(1), 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 SBE 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 VI.

**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 the other programs and assistance with accessing the databases:

San Francisco Municipal Transportation Agency (SFMTA)  
Contract Compliance Office  
One South Van Ness Avenue, 3<sup>rd</sup> 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. Certification applications can be obtained by downloading from website [http://www.dot.ca.gov/hq/bep/business\\_forms.htm](http://www.dot.ca.gov/hq/bep/business_forms.htm) or by calling (415) 701-4436. A list of certifying agencies is provided on the DBE certification application.

State Program:

California Department of General Services  
Office of Small Business and DVBE 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  
[http://www.sfgov.org/site/sfhumanrights\\_page.asp?id=45141](http://www.sfgov.org/site/sfhumanrights_page.asp?id=45141)

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. SFMTA requires all consultants to comply with the SFMTA 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
(> = \$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 Program Management/Construction Management Trainee Program consists of participation of individuals as on-the-job trainees based on the project cost. The trainee program will be 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 program management/construction management 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, where 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. A trainee qualified in this program 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 Program Management/Construction Management 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.
8. The Consultant shall provide the necessary tools and/or office equipment (i.e., computers, desks and chairs) for trainees to perform the assigned duties. The Consultant shall provide travel costs if the individual has to travel 50 miles or more from his/her assigned work site for the purpose of getting the job done.
9. 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.
10. 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.
11. 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 the specific skills/disciplines for the job.



- d. A college degree is not a requirement for a trainee and the job description should so indicate.
- E. The Consultant shall submit to SFMTA on a monthly basis a Workforce information report on the status of the trainees.
- F. The SFMTA Contract Compliance Office will monitor the contract trainee requirements for compliance.
- G. 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.
- H. The Consultant Team is responsible for sponsoring the trainee(s). Each team member's contribution toward the cost of a trainee should be based on the contract percentage amount received.

## **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 SBE 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 SBE 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 Consultant/Subconsultant 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 subconsultant submitted by the prime consultant 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 pre-proposal 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 SBE 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 SBE 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**

**a. 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 SBE 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.

**E. 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:

#### FORMS SUBMITTED WITH PROPOSAL

SFMTA SBE Form No. 1	Consultant/Joint Venture Partner and Subconsultant Participation Report	SBE - 17
SFMTA SBE Form No. 2	SBE Consultant/Subconsultant – Good Faith Efforts	SBE – 18
SFMTA SBE Form No. 2A	Bidders List	SBE – 20
SFMTA SBE Form No. 2B	SBE Consultant/Joint Venture Partner/Subconsultant Gross Revenue Declaration	SBE – 21
SFMTA SBE Form No. 3	Questionnaire on Recruitment, Hiring, and Training Practices for Consultants	SBE – 22
SFMTA SBE Form No. 4	Subconsultant Participation Declaration	SBE – 28
SFMTA SBE Form No. 5	Small Business Enterprise Acknowledgment Declaration	SBE – 29
SCHEDULE B	Joint Venture Participation Form	From CCO, if needed.

#### FORMS SUBMITTED AT POST AWARD

SFMTA SBE Form No. 6	Progress Payment Report	SBE – 31
SFMTA SBE Form No. 7	Subconsultant Payment Declaration	SBE - 33
SFMTA SBE Form No. 8	Declaration – Modification of Professional Service Contracts	SBE - 35
SFMTA SBE Form No. 9	Consultant Exit Report and Declaration	SBE - 37

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. FORMS SUBMITTED WITH PROPOSAL:

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 PARTICIPATION – GOOD FAITH EFFORTS**

Each Proposer shall submit with its proposal a written report (SFMTA SBE 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 SBE 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 SBE 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 SBE 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. FROMS SUBMITTED AT POST AWARD**

- ❑ **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 SBE 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 SBE 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 SBE 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 SBE FORM No. 9 and have it executed by all SBE joint venture partners and all subconsultants.**

SFMTA SBE FORM No. 1 – CONSULTANT/JOINT VENTURE PARTNER AND SUBCONSULTANT PARTICIPATION REPORT

PROPOSER \_\_\_\_\_

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 AND/OR \$ AMOUNT 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 % AND/OR \$ :		

**SFMTA SBE FORM No. 2**

**SBE CONSULTANT/SUBCONSULTANT 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 subconsultant submitted by the prime consultant 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.

<b>Contract Number:</b>		<b>Contract Name:</b>	
<b>Proposer's Name:</b>		<b>CCO Staff Assigned:</b>	

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 subconsultant 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:

Empty response box for rejected SBE names.

b. Summarize below discussions and/or negotiations:

Empty response box for discussion summary.

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

Empty response box for subconsultant selection.

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

Empty response box for assistance summary.

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:

Empty response box for insurance firms.

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):

Empty response box for public assistance agencies.

*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:			



PROPOSER: \_\_\_\_\_

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

PROPOSER: \_\_\_\_\_

**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-26.)
  
- 8a. Hires in last 12 months. (Complete separate form, Page SBE-27.)

**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																
<b>TOTAL</b>																

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.

WORKFORCE DATA SPREADSHEET #2

8a. Hires in 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																
<b>TOTAL</b>																

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 \_\_\_\_\_

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)	% and/or \$ Amount of Contract
			M	F			

Total dollar value of SBE work: \$ \_\_\_\_\_ = \_\_\_\_\_ % of SBE Participation  
Total dollar 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: \_\_\_\_\_

**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 and/or (\$) amount], of subcontract or

\_\_\_\_\_ [(%) percent and/or (\$) amount] 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 \_\_\_\_\_ [% and/or \$ amount] 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

**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: \_\_\_\_\_

<b>PART 1: Fill in all blanks and check the box below.</b>	
Contract Number:	Contract Title:
Reporting Period (Month and Year): _____	
Corresponding Progress Payment No.: _____	
<b>Note:</b> 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):

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

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

\_\_\_\_\_  
Owner/Authorized Representative

\_\_\_\_\_  
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
<b>TOTALS</b>							

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

**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:

**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**

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 SBE 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)**

\_\_\_\_\_  
Name (Please print/type)

\_\_\_\_\_  
Title (Please print/type) Date

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

( ) ( )  
\_\_\_\_\_  
Telephone Fax

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

\_\_\_\_\_  
Name (Please print/type)

\_\_\_\_\_  
Title (Please print/type) Date

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

( ) ( )  
\_\_\_\_\_  
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.**

<b>Name of Firm</b> (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)
<b>TOTALS</b>				



## Appendix 3

# Form of Agreement City and County of San Francisco Professional Services Contract Agreement



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

**and**

**[Name of Consultant]**

**for Program Management/Construction Management  
Services for**

**the Central Subway Project**

## TABLE OF CONTENTS

		<u>Page</u>
I.	Definitions.....	Error! Bookm
II.	Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.....	Error! Bookm
III.	Term of the Agreement.....	Error! Bookm
	A. Initial Term .....	Error! Bookm
	B. Option Period.....	Error! Bookm
	C. Effective Date .....	Error! Bookm
IV.	Services Consultant Agrees to Perform .....	Error! Bookm
	A. General Orientation and Scope of Agreement .....	Error! Bookm
	i. Phase One .....	Error! Bookm
	ii. Phase Two .....	Error! Bookm
	B. Priority of Documents.....	Error! Bookm
	C. Time is of the Essence .....	Error! Bookm
	D. Compliance with Laws .....	Error! Bookm
	E. Extra Work.....	Error! Bookm
	F. Key Team Members.....	Error! Bookm
	iii. Designated Key Team Members .....	Error! Bookm
	iv. Substitutions of Key Team Members .....	Error! Bookm
	G. Current Workload and Available Resources.....	Error! Bookm
	H. Information and Data .....	Error! Bookm
	I. Consultant's Performance .....	Error! Bookm
	J. Transmittal of Work Product .....	8
	K. Reproduction of Work Product.....	Error! Bookm
	L. Agency's Responsibilities Regarding Submittals.....	Error! Bookm
V.	Compensation .....	Error! Bookm
	A. Amount .....	Error! Bookm
	v. Change in Scope of Work .....	Error! Bookm
	vi. Phase Two .....	Error! Bookm
	B. Method of Computing Compensation.....	Error! Bookm
	vii. Non-Reimbursable Expenses .....	Error! Bookm
	viii. Use of Public Transportation .....	Error! Bookm

	ix. Overhead and Salary Rates	<b>Error! Bookm</b>
	x. Transfer of Unused Funds	<b>Error! Bookm</b>
VI.	Payment.....	<b>Error! Bookm</b>
	A. General.....	<b>Error! Bookm</b>
	B. Invoices.....	<b>Error! Bookm</b>
	xi. Form of Invoice	<b>Error! Bookm</b>
	xii. Progress Payment Form	<b>Error! Bookm</b>
	C. Documentation for Payment.....	<b>Error! Bookm</b>
	D. Payment of Invoices.....	<b>Error! Bookm</b>
	xiii. Monthly Payments	<b>Error! Bookm</b>
	xiv. Final Payment	<b>Error! Bookm</b>
	xv. No Interest on Late Payments	<b>Error! Bookm</b>
	E. Payment of Subconsultants.....	<b>Error! Bookm</b>
	F. Retention -- Escrow Agreement.....	<b>Error! Bookm</b>
VII.	Guaranteed Maximum Costs.....	<b>Error! Bookm</b>
VIII.	Submitting False Claims; Monetary Penalties.....	<b>Error! Bookm</b>
IX.	Disallowance.....	<b>Error! Bookm</b>
X.	Taxes.....	<b>Error! Bookm</b>
	A. Obligation of Consultant.....	<b>Error! Bookm</b>
	B. Possessory Interest.....	<b>Error! Bookm</b>
XI.	Payment Does Not Imply Acceptance of Work.....	<b>Error! Bookm</b>
XII.	Qualified Personnel.....	<b>Error! Bookm</b>
XIII.	Equipment.....	<b>Error! Bookm</b>
	A. Responsibility for Equipment.....	<b>Error! Bookm</b>
	B. Ownership of Equipment.....	<b>Error! Bookm</b>
XIV.	Independent Contractor; Payment of Taxes and Other Expenses.....	<b>Error! Bookm</b>
	A. Independent Consultant.....	<b>Error! Bookm</b>
	B. Payment of Taxes and Other Expenses.....	<b>Error! Bookm</b>
XV.	Insurance.....	<b>Error! Bookm</b>
	A. Coverages.....	<b>Error! Bookm</b>
	B. Requirements of Insurance Policies.....	<b>Error! Bookm</b>
	C. Notice.....	<b>Error! Bookm</b>
	D. Claims-Made Form.....	<b>Error! Bookm</b>
	E. General Annual Aggregate Limit.....	<b>Error! Bookm</b>

	F. Lapse of Insurance .....	<b>Error! Bookm</b>
	G. Proof of Insurance.....	<b>Error! Bookm</b>
	H. No Decrease of Liability .....	<b>Error! Bookm</b>
	I. Subconsultant Insurance .....	<b>Error! Bookm</b>
XVI.	Indemnification .....	<b>Error! Bookm</b>
	A. General Indemnity .....	<b>Error! Bookm</b>
	B. Limitations .....	<b>Error! Bookm</b>
	C. Intellectual Property Infringement.....	<b>Error! Bookm</b>
XVII.	Incidental and Consequential Damages .....	<b>Error! Bookm</b>
XVIII.	Liability of City.....	<b>Error! Bookm</b>
XIX.	Standard of Performance.....	<b>Error! Bookm</b>
XX.	Default; Remedies.....	<b>Error! Bookm</b>
	A. Event of Default .....	<b>Error! Bookm</b>
	B. Remedies.....	<b>Error! Bookm</b>
	C. No Preclusion of Remedies.....	<b>Error! Bookm</b>
XXI.	Termination for Convenience .....	<b>Error! Bookm</b>
	A. Exercise of Option to Terminate for Convenience .....	<b>Error! Bookm</b>
	B. Duties of Consultant Upon Notice of Termination.....	<b>Error! Bookm</b>
	C. Invoice for Service Performed .....	<b>Error! Bookm</b>
	D. Non-Recoverable Costs .....	<b>Error! Bookm</b>
	E. Deductions .....	<b>Error! Bookm</b>
	F. Survival of Payment Obligation.....	<b>Error! Bookm</b>
XXII.	Rights and Duties Upon Termination or Expiration .....	22
	A. Survival of Provisions.....	22
	B. Duties Upon Termination .....	22
XXIII.	Conflict of Interest .....	22
XXIV.	Proprietary or Confidential Information of City .....	23
XXV.	Notices to the Parties .....	23
XXVI.	Ownership of Work Product .....	23
XXVII.	Works for Hire .....	24
XXVIII.	Audit and Inspection of Records.....	24
	A. Access to Records .....	24
	B. Maintenance of Records .....	24

	C. Flowdown to Subconsultants .....	24
	D. Audit .....	24
	E. Rights of State or Federal Agencies.....	24
XXIX.	Subcontracting .....	24
	A. Approval of City .....	24
	B. Substitutions of Subconsultants .....	24
	C. Additions of Subconsultants .....	25
	D. SBE Firms.....	25
XXX.	Assignment .....	25
XXXI.	Non-Waiver of Rights.....	25
XXXII.	Earned Income Credit (EIC) Forms .....	25
	A. Provision of Forms to Eligible Employees .....	25
	B. Failure to Comply .....	25
	C. Flowdown to Subconsultants .....	26
	D. Terms .....	26
XXXIII.	Small Business Enterprise Program.....	26
	A. General.....	26
	B. Compliance with SBE Program .....	26
	C. SBE Goal .....	26
	D. Non-Discrimination in Hiring.....	26
XXXIV.	Nondiscrimination; Penalties .....	26
	A. Consultant Shall Not Discriminate .....	26
	B. Subcontracts.....	27
	C. Nondiscrimination in Benefits .....	27
	D. Condition to Contract.....	27
	E. Incorporation of Administrative Code Provisions by Reference .....	27
XXXV.	MacBride Principles--Northern Ireland .....	28
XXXVI.	Tropical Hardwood and Virgin Redwood Ban .....	28
XXXVII.	Drug-Free Workplace Policy .....	28
XXXVIII.	Resource Conservation .....	29
XXXIX.	Compliance with Americans with Disabilities Act.....	29
XL.	Sunshine Ordinance .....	29
XLI.	Public Access to Meetings and Records .....	29

XLII.	Limitations on Contributions .....	30
XLIII.	Requiring Minimum Compensation for Covered Employees .....	30
XLIV.	Requiring Health Benefits for Covered Employees.....	33
XLV.	First Source Hiring Program.....	36
	A. Incorporation of Administrative Code Provisions by Reference .....	36
	B. First Source Hiring Agreement .....	36
	C. Hiring Decisions .....	38
	D. Exceptions.....	38
	E. Liquidated Damages .....	38
	F. Subcontracts.....	39
XLVI.	Prohibition on Political Activity with City Funds .....	40
XLVII.	Preservative-treated Wood Containing Arsenic.....	40
XLVIII.	Modification of Agreement.....	40
XLIX.	Administrative Remedy for Agreement Interpretation .....	40
L.	Agreement Made in California; Venue.....	41
LI.	Construction.....	41
LII.	Entire Agreement .....	41
LIII.	Compliance with Laws .....	41
LIV.	Services Provided by Attorneys.....	41
LV.	Prompt Payment of Subconsultants .....	41
	A. Progress Payments .....	41
	B. Retention.....	41
	C. Interest on Unpaid Amounts .....	42
LVI.	Disputes.....	42
	A. Notice of Dispute .....	42
	B. Resolution of Disputes.....	42
	C. No Cessation of Work.....	42
	D. Alternative Dispute Resolution.....	42
	E. Claims for Additional Compensation .....	42
	F. Disputes among Consultant Partners .....	42
LVII.	Severability .....	42
LVIII.	Protection of Private Information .....	43
LIX.	Graffiti Removal .....	43

LX.	Food Service Waste Reduction Requirements.....	44
LXI.	Sole Benefit.....	44
LXII.	FTA Requirements.....	45
LXIII.	Definitions.....	<b>Error! Bookm</b>
LXIV.	Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.....	<b>Error! Bookm</b>
LXV.	Term of the Agreement.....	<b>Error! Bookm</b>
	A. Initial Term.....	<b>Error! Bookm</b>
	B. Option Period.....	<b>Error! Bookm</b>
	C. Effective Date.....	<b>Error! Bookm</b>
LXVI.	Services Consultant Agrees to Perform.....	<b>Error! Bookm</b>
	A. General Orientation and Scope of Agreement.....	<b>Error! Bookm</b>
	xvi. Phase One.....	<b>Error! Bookm</b>
	B. Phase Two.....	<b>Error! Bookm</b>
	C. Priority of Documents.....	<b>Error! Bookm</b>
	D. Time is of the Essence.....	<b>Error! Bookm</b>
	E. Compliance with Laws.....	<b>Error! Bookm</b>
	F. Extra Work.....	<b>Error! Bookm</b>
	G. Key Team Members.....	<b>Error! Bookm</b>
	xvii. Designated Key Team Members.....	<b>Error! Bookm</b>
	xviii. Substitutions of Key Team Members.....	<b>Error! Bookm</b>
	H. Current Workload and Available Resources.....	<b>Error! Bookm</b>
	I. Information and Data.....	<b>Error! Bookm</b>
	J. Consultant's Performance.....	<b>Error! Bookm</b>
	K. Transmittal of Products.....	8
	L. Reproduction of Products.....	<b>Error! Bookm</b>
	M. Agency's Responsibilities Regarding Submittals.....	<b>Error! Bookm</b>
LXVII.	Compensation.....	<b>Error! Bookm</b>
	A. Amount.....	<b>Error! Bookm</b>
	xix. Change in Scope of Work.....	<b>Error! Bookm</b>
	xx. Phase Two.....	<b>Error! Bookm</b>
	B. Method of Computing Compensation.....	<b>Error! Bookm</b>
	xxi. Non-Reimbursable Expenses.....	<b>Error! Bookm</b>
	xxii. Use of Public Transportation.....	<b>Error! Bookm</b>
	xxiii. Overhead and Salary Rates.....	<b>Error! Bookm</b>

xxiv.	Transfer of Unused Funds	<b>Error! Bookm</b>
LXVIII.	Payment.....	<b>Error! Bookm</b>
A.	General.....	<b>Error! Bookm</b>
B.	Invoices.....	<b>Error! Bookm</b>
xxv.	Form of Invoice	<b>Error! Bookm</b>
xxvi.	Progress Payment Form	<b>Error! Bookm</b>
C.	Documentation for Payment .....	<b>Error! Bookm</b>
D.	Payment of Invoices.....	<b>Error! Bookm</b>
xxvii.	Monthly Payments	<b>Error! Bookm</b>
xxviii.	Final Payment	<b>Error! Bookm</b>
xxix.	No Interest on Late Payments	<b>Error! Bookm</b>
E.	Payment of Subconsultants .....	<b>Error! Bookm</b>
F.	Retention -- Escrow Agreement.....	<b>Error! Bookm</b>
LXIX.	Guaranteed Maximum Costs.....	<b>Error! Bookm</b>



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

**Agreement between the City and County of San Francisco and  
[Name of Consultant]  
for Program Management/Construction Management Services for  
the Central Subway Project**

This Agreement is made this [insert day] day of [insert month], 20 [insert year], in the City and County of San Francisco, State of California, by and between: [insert name and address of Consultant] ("Consultant" or "Consultant"), 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").

**1.0 Recitals**

**A.** The SFMTA wishes to obtain services from a qualified consulting firm capable of providing Program Management and Construction Management Services for the Central Subway Project, Phase 2 of the SFMTA Third Street Light Rail Project ("the Project").

**B.** A Request for Proposal was issued on [insert date] ("the RFP"), and the SFMTA selected Consultant as the highest qualified scorer pursuant to the RFP.

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

**D.** Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number [insert Personal Services Contract Number] on [insert date of Civil Service Commission action].

Now, THEREFORE, the parties agree as follows:

**I. Definitions**

**A.** Agreement or Contract refers to this Agreement for Program Management/Construction Management Services and all referenced Exhibits to this Agreement, which are incorporated by reference as though fully set forth herein..

**B.** Award means authorization by resolution of the SFMTA Board of Directors for its staff to execute the Contract with the selected proposer, and (where required) approval of the Contract by the San Francisco Board of Supervisors. .

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

**D.** Controller means the Controller of the City.

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

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

**G. Consultant or Contractor** is \_\_\_\_\_.

**H. Contract Compliance Office** (CCO) is the SFMTA office that administers compliance with federal regulations governing the Disadvantaged Business Enterprises/Equal Employment and Non-Discrimination Programs, in addition to the Small Business Enterprise Program, and the city's Human Rights Commission's Local Business Enterprise/Non-Discrimination Program. The Contract Compliance reference number for this RFP is CCO No. 08-993.

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

**J. Days** refers to working days of the City and County of San Francisco (unless otherwise indicated). The use of the term "days," "working days" or "business days" in this Request for Proposals shall be synonymous.

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

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

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

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

**O. Key Personnel Team Members** are those participants on a project who contribute in a substantive, measurable way to the project's development. These personnel can be Consultant personnel or City personnel. Consultant's Key Team Members are listed in Section 4.F.

**P. Municipal Transportation Agency** ("SFMTA" or "Agency") is the agency of the City that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the San Francisco Municipal Railway and the Department of Parking and Traffic, and has exclusive authority over contracting, leasing and purchasing by the Municipal Railway and the Department of Parking and Traffic, subject to certain restrictions of the City's Charter. The Agency acts through its Board of Directors.

**Q. Notice to Proceed**; (NTP) refers to a letter from the SFMTA advising the Consultant of the day when work is to commence on the Project or a phase of the Project.

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

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

**T. Proposal** refers to the Consultant's written response/submittal to the RFP.

**U. Request for Proposals**; (RFP) refers to the Request for Proposals for Program Management/Construction Management Services, issue by the SFMTA on \_\_\_\_\_.

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

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

**X. Scope of Services** are the services, tasks, and deliverables that the Consultant will provide to the SFMTA under this Contract.

**Y. Small Business Enterprise** or SBE is a for-profit, small business concern with a three (3) year average gross revenue not exceeding Twelve Million Dollars (\$12,000,000) and is certified under any of the following programs: the State of California's Small Business Program ("State Program"), the City and County of San Francisco's LBE Program ("City Program"), or the California Unified Certification Program ("Federal DBE program").

**Z. Subconsultant** refers to any firm under contract to the Consultant for services under this Agreement.

**AA.**

**BB. Work Product** includes, but is not limited to, all reports, studies, data, specifications, design criteria, graphs, tape recordings, pictures, memoranda, letters, computer-generated data, calculations, estimates, summaries and such other information and materials as may have been accumulated or generated by the Consultant or its subconsultants, in connection with the services performed under this Agreement, whether completed or in process.

**II.** 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.

### **III. 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.

### **IV. Term of the Agreement**

**A. Initial Term;** Subject to Section 1, the initial term of this Agreement shall be from [insert day] to [insert day].

**B. Option Period.** At the sole discretion of the City, the City may exercise an option to extend this Agreement for up to an additional five (5) years to perform services described in Section 4.A and Exhibit A.

**C. Effective Date.** This Agreement shall become effective when the Controller has certified to the availability of funds and Consultant has been notified in writing.

## **V. Effective Date of Agreement**

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

## **VI. Services Consultant Agrees to Perform**

**A. Engagement General Orientation and Scope of Agreement.** The City hereby engages Consultant to perform, under the terms and conditions in this Agreement, professional services related to the Program Management and Construction Management of the Central Subway Project, as those services are described in the RFP, Consultant's Proposal and in Appendix Exhibit A to this Agreement, "Description Scope of Services,." attached hereto.

**1. Phase One.** For the Initial Term of this Agreement (see Section 3.A), the Consultant will perform Program Management and Preconstruction Management services, as described in Exhibit A.

**2. Phase Two.** During the Option Period (see Section 3.B), the Consultant may perform Construction Management services and extended Program Management services, as described in Exhibit A.

**B. Priority of Documents.** 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 Exhibits to this Agreement are hereby incorporated by reference as though fully set forth herein.

**C. Time is of the Essence.** Consultant agrees that time is of the essence of this Agreement with respect to the performance of all provisions of this Agreement and with respect to all Project schedules, in which a definite time for performance by Consultant and Consultant's subconsultants is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace period provided for in this Agreement. The parties acknowledge that delay is one of the greatest causes of waste and increased expense in any construction project. Consultant shall act diligently in anticipating and performing their required tasks in a manner so as to not unreasonably delay the prosecution of any services or work with respect to the Project.

**D. Compliance with Laws.** 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 initially covers Program Management and Preconstruction Management services with an option for SFMTA at its sole discretion to extend the term of the Agreement to also cover Construction Management services and extended Program Management services.

**F. Extra Work.** If the Consultant considers any work to be outside the defined scope of work, the Consultant shall notify the SFMTA Project Manager in writing within five (5) working days of discovering such work. Neither Consultant nor any subconsultant shall be reimbursed for out-of-scope work performed without first obtaining approval of SFMTA's Project Manager in accordance with the following procedures set forth below.:

If the City desires the Consultant to perform work additional to the defined scope of work or if the Consultant discovers any work to be out-of-scope and necessary to the Project, the following shall apply:

- 1.** The Consultant shall prepare and submit a proposal for the task to the SFMTA Project Manager showing:
  - a.** A detailed description by subtask of the work to be performed and the means and methods that will be used to perform it;
  - b.** Milestones for completion for each subtask and deliverables at each milestone;
  - c.** Personnel and the subconsultants assigned to each part of the work along with a justification as to why such personnel are qualified to perform the work;
  - d.** A detailed cost estimate for each subtask showing:
    - i.** Estimated hours and Direct Salaries by employee;
    - ii.** Overhead of prime consultant and subconsultants;
    - iii.** Proposed profit;
    - iv.** (iv) Reasonable out-of-pocket expenses.
- 2.** The City will review the proposal and promptly negotiate with the Consultant the cost and time to perform the additional work.
- 3.** Upon completion of negotiation, the City will direct the Consultant in writing to proceed with the additional work after obtaining appropriate City approvals.
- 4.** In the event that City and Consultant cannot reach agreement on the terms of any additional task order, City may either cancel the task order and have the work accomplished through other available sources, or City may direct the Consultant to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances may the Consultant refuse to undertake a City-ordered task that the Consultant is qualified to perform. The City and the Consultant shall continue to negotiate any outstanding terms under provisions of Section 56 of this Agreement while the additional task order is being performed. The City shall not deny the Consultant reasonable compensation for the approved additional task order performed.
- 5.** If the Consultant proceeds to do work that it perceives to be out-of-scope without first obtaining City's written approval in accordance with the above procedures, regardless of the amount or value of the work, the City shall have no obligation to consider reimbursement at a later date for the work thus performed. Eagerness to respond to the City's comments or concerns, expediency, schedule constraints, . will not be acceptable reasons to proceed with out-of scope work without City's prior written approval.
- 6.** The following shall not be considered out-of-scope work, but shall be considered incidental to the "Scope DescriptionScope of Services" outlined in Exhibit A, and Consultant shall receive no additional compensation for performing said work:
  - a.** Except as provided in Section 4.D, aAll work required to comply with local, state and federal codes, regulations and standards, as interpreted by local or state agencies having approval or sign-off authority for this Project.
  - b.** All work related to addressing review comments and/or incorporating appropriate review comments into the deliverable documents.

c. Unless specifically stated in Exhibit A as excluded from the “ Scope DescriptionScope of Services.”, all implied work required to complete the technical portion of the scope of work, which are is consistent with the intent of the requirements of this Agreement and which are is absolutely essential in order to achieve the purposes of scope of services as stated in the Request for Proposals.

d. All work required to correct deficiencies and errors, including work related to resubmittals of work products that are evaluated reasonably by the City to be incomplete or inadequate.

**G. Key Team Members.** Work under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant.

**1. Designated Key Team Members.** The Consultant agrees to commit and assign [insert name] 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 the Final Design Phase, and if the SFMTA exercises the option to extend the Agreement is exercised by SFMTA, the Construction Phase as well. This Consultant Project Manager must have his/her permanent office for this Project located within the San Francisco Bay Area for the entire assigned duration of the Project. The Consultant further agrees that the following key team members shall be committed and assigned to work on the Project to the level required by SFMTA for the term of the Agreement, including the option period, and shall also be staffed at the local Consultant offices within the San Francisco Bay Area for all such time: [insert names].

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

Other Key Project Team Members are listed below. These key team members shall also remain on the Project during the entire term of the Agreement. They shall also be staffed in local offices within the San Francisco Bay Area, unless they are not involved in the production of technical documents and are not required to be locally based, as determined by the SFMTA.

[insert names]

**2. Substitutions of Key Team Members.** Substitutions of key team members will not be approved except for extenuating circumstances (e.g., illness or departure from the firm). If it is necessary to substitute a Key Team Member, substitutions for any of theKey Team Members listed are require the Consultant shall propose a replacement in writing to the 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 Key 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. 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. The Consultant acknowledges and agrees that the replacement of Key Team Members during the course of the Project is extremely disruptive and damaging to the City, the cost of which is difficult, if not impossible, to calculate. The Consultant, therefore, accepts not as penalties but as liquidated damages, a charge of \$250,000 for each Key Team Member whom the Consultant replaces without written approval by the City.

**H.** Therefore, SFMTA will not approve any requests for substitution of any key team members within eighteen (18) 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.

**4.3 Current Workload and Available Resources.** The Consultant covenants that its current workload and the workload of its subcontractorconsultants will not affect the commencement and the progress of the work under this Contract Agreement. The Contractor Consultant shall have all the necessary professional, technical and support personnel, including those of the subcontractors, available, ready and mobilized to perform actual work within two (2) weeks of the receipt of NTP. In addition, the Contractor Consultant shall make good faith efforts to have all contracts signed with subcontractors within three (3) weeks of NTP. Consultant shall provide copies of said subcontracts to the SFMTA upon request.

**4.4 Information and Data.** The Contractor Consultant shall request in writing any information and data it will require from the Agency for its work. The Contractor Consultant shall identify the timing and priority for which this information and data will be required in its draft Program Management/Implementation Plan. The Contractor Consultant and Agency shall reach agreement as to the availability and delivery time for this information and data prior to finalizing the Plan.

**4.5 Contractor's Consultant's Performance.** The Contractor Consultant shall meet with Agency on a quarterly basis to evaluate Contractor's Consultant's performance under the Contract with respect to the following:

1. Contractor's Consultant's adherence to this Agreement
2. Quality of performance of Key Personnel Team Members and other staff assigned to the Project
3. Quality of performance of subcontractors
4. Management of authorized budget for each Task
5. Adherence to agreed schedule
6. Quality of deliverables
7. Monitoring, reporting and updating of progress of assigned work
8. Timeliness in resolving issues, including issues arising from performance evaluations
9. Working relationship between Contractor's Consultant's team and other Agency agencies

Should Agency be dissatisfied with more than two of the above categories of Contractor Consultant performance in the same evaluation, Agency will render a negative evaluation on the Contractor's Consultant's performance for that preceding quarter. In such cases, the Contractor Consultant shall be required to formulate and deliver to Agency within five

(5) working days a corrective action and schedule plan to be followed by the Contractor/Consultant with results reported to Agency on a monthly basis until the problem areas have been resolved or brought under control. Contractor/Consultant's receipt of more than two negative quarterly performance evaluations during the term of this Agreement shall be a major factor to be considered by Agency when determining whether to authorize the Contractor/Consultant to proceed with future work of under the Agreement.

**4.6 Transmittal of Work Products.** At a time when requested by Agency's Project Manager, and after completion of each task and subtask, the Contractor/Consultant shall transmit to Agency all documents and Work Products (duplicates and originals) produced or accumulated in the course of its and its subcontractor/consultant's work on this Agreement. The Consultant's Project Manager and Key Personnel shall have thoroughly reviewed and approved all Work Product and signed off as such prior to transmitting them to Agency. Documents and work products include, but are not limited to, all reports, studies, data, specifications, design criteria, graphs, tape recordings, pictures, memoranda, letters, computer-generated data, calculations, estimates, summaries and such other information and materials as may have been accumulated or generated by the Contractor or its subcontractors, in connection with the services performed under this Agreement, whether completed or in process. The Contractor may retain at its own expense a copy of the documents and work products for recordkeeping purposes.

**I.** The Contractor's Project Manager and Key Personnel shall have thoroughly reviewed and approved all products and deliverables and signed off as such prior to transmitting to Agency.

**a. Reproduction of Work Products.** The Contractor/Consultant shall arrange and provide for all printing (or other required reproduction) of work Work Products produced in the course of its and its subcontractors work.

#### **4.7 Agency's Responsibilities Regarding Submittals**

**a. Submittals.** Agency will review and comment on Contractor/Consultant's submittals generally within four calendar weeks of submittal. The Agency and Contractor/Consultant will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the Program Management/Implementation Plan.. Agency's review and comments of Contractor/Consultant submittals shall in no way relieve the Contractor/Consultant of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the Agency relieve the Contractor/Consultant of its independent responsibility to provide submittals and deliverables in full compliance with local, state and federal codes, regulations and standards.

If Contractor/Consultant considers certain Agency review comments or directives, either written or oral, to require work efforts not included in approved Program Management/Implementation Plan, the Contractor/Consultant shall provide Agency with either a written request for clarification of intended work or a proposal to proceed with additional work within five (5) working days of discovering the perceived extra work, in strict accordance with procedures elsewhere in this Agreement in Section 4.E (Extra Work) of this Agreement.



## VII. Compensation

**A.** 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 the 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.

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

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

**D.** The Controller is not authorized to pay invoices submitted by Consultant prior to Consultant's submission of the SFMTA Progress Payment Form. If the Progress Payment Form is not submitted with Consultant's invoice, the Controller will notify the SFMTA and Consultant of the omission. If Consultant's failure to provide the SFMTA Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold twenty percent (20%) of the payment due pursuant to that invoice until the SFMTA Progress Payment Form is provided.

**E.** Following City's payment of an invoice, Consultant has ten days to file an affidavit using SFMTA's Payment Affidavit verifying that all subconsultants have been paid and specifying the amount.

**F. Amount.** Compensation under this Agreement shall be based on a cost-plus-a-fixed fee payment basis or a fixed lump-sum payment basis, or some combination thereof. For the full performance and completion of the services for Final Design Phase and Construction Phase One and Phase Two as required under this Agreement and described in Appendix Exhibit A, the City agrees to pay the Consultant and the Consultant agrees to receive from the City an amount not to exceed \_\_\_\_\_ (\$\_\_\_\_\_).

**1. Change in Scope of Work.** If the scope of work is reduced, then the fixed fee will be reduced in proportion to the percentage of the overall reduction of work. If the scope of work is increased, then the fixed fee will be negotiated. In its 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, then the fixed fee for that task will be re-negotiated.

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

**G. b. Method of Computing Compensation.** Compensation will be paid in accordance with the cost breakdown in Appendix Exhibit B, and shall not exceed the amount

shown for each subtask or task. Compensation for cost-plus-fixed-fee items will be computed as follows:

- Actual direct salaries paid by prime Consultant and subconsultants as shown in Appendix Exhibit B;
- Overhead and burden of prime Consultant and subconsultants as shown in Appendix Exhibit B.
- Actual cost of approved out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups. Except as provided below, the City will reimburse Consultant for only those expenses that are authorized to be reimbursed under Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments."
- Except as provided below, the City will reimburse Consultant for only those costs that are authorized to be reimbursed under Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments."
- A fixed fee invoiced as a proportionate share of the total fixed fee for the task.

**1. Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, cComputer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Consultant and subconsultant personnel relocation costs and entertainment or personal expenses of any kind will not be reimbursable under this Contract. Office and field supplies/equipment expenses will also not be reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for this Project. Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis as listed in Appendix Exhibit B will also not be reimbursable by the SFMTA under this Contract.

**2. Use of Public Transportation.** San Francisco is a transit-first city, and the SFMTA encourages Consultant and subconsultantsis 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.

**3. Overhead and Salary Rates.** Compensation under this Agreement will be based on the overhead and direct salary rates as shown on the Schedule of Rates attached as Appendix Exhibit B. The direct salary rates in Appendix Exhibit B may be adjusted at twelve- (12-) month intervals, but each increase shall be no more than the lesser of the Consumer Price Index (CPI) or five percent (5%). The CPI shall be defined as the Consumer Price Index for San Francisco-Oakland-San Jose, All Items, 1982-84=100 for All Urban Consumers. Any individual salary adjustments above five percent (5%) will require the Senior Director's prior written approval. The Consultant shall not submit requests to the SFMTA asking for salary adjustments for the same individual more than once within any 12-month period. Rate increases requiring SFMTA approval shall only be effective for work performed after approval by SFMTA. The overhead rates in Appendix Exhibit B may be adjusted at twelve- (12-) month intervals, and shall reflect the actual overhead rates incurred by the Consultant. The Consultant and subconsultants' overhead rates will be audited for conformance with Federal requirements; alternatively, Consultant and subconsultant may provide to the SFMTA evidence that their rates that have been audited by the federal government.

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

**5. Transfer of Unused Funds.** Consultant may request City's approval to transfer unused funds from one subtask to another subtask within the same main task to cover the unexpected shortfall of another subtask provided that the 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. Consultant may request City's approval to transfer unused funds from one task(s) to other tasks to cover the unexpected shortfall of the other tasks, provided that (1) the task(s) from which the funds are transferred out of (including all subtasks within the task(s)) is at least ninety-five percent (95%) complete; (2) the funds are no longer necessary for the original task(s) for which the funds were allotted; and (3) the main reason for the task(s) requiring additional funds is not due to Consultant's poor management or planning. Such request must be made in writing to the SFMTA Project Manager at least 15 calendar days in advance of the need to transfer funds across subtasks. City's approval of subtask or task amount changes will not be unreasonably withheld. City's approval shall be by the SFMTA Project Manager.

### **VIII. Payment ; Invoice Format**

**A. General.** No charges shall be incurred under this Agreement nor shall any payments become due to Consultant until reports, services, or both, required under this Agreement are received from Consultant and approved by the SFMTA as being in accordance with this Agreement. City may withhold payment to Consultant in any instance in which Consultant has failed or refused to satisfy any material obligation provided for under this Agreement. If the evidence of production, the quality of the work, or relationship of labor and costs expended are not consistent with the budgets and the schedules for an assigned task, the Consultant shall justify to the Agency's Project Manager the time and expenses invoiced. The Project Manager will review the justification offered and adjust the monthly payment as deemed necessary. These requirements shall also apply to work by subconsultants.

#### **B. Invoices.**

a. **Submittal of Invoices** 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.

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

**2. Form of Invoice.** 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. The Consultant shall submit invoices in quadruplicate for all allowable charges incurred in the performance of the Agreement. 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. Progress Payment Form.** The Controller is not authorized to pay invoices submitted by Consultant prior to Consultant's submission of the SFMTA Progress Payment Form. If the Progress Payment Form is not submitted with Consultant's invoice, the Controller will notify the SFMTA and Consultant of the omission. If Consultant's failure to provide the SFMTA Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold twenty percent (20%) of the payment due pursuant to that invoice until the SFMTA Progress Payment Form is provided..

**C. Documentation for Payment.** Invoices shall be submitted together with the Monthly Progress Reports, Monthly Cost Control Report and Monthly Update Schedule, and shall be submitted by the 21st day of each month for work performed in the preceding month. The Monthly Cost Control Report shall include the current completed percentages for each task and subtask, the current estimated labor hours and cost for each Discipline to complete each of the tasks, an itemized breakdown of dollars and hours by employee and by subtask for all prime 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.

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

**D. Payment of Invoices.**

**1. Monthly Payments.** Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Appendix B of this Agreement, that the Executive Director/CEO of the 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. City shall make payment to Consultant at the address specified in the section entitled "Notices to the Parties." All amounts paid by City to Consultant shall be subject to audit by City.

**2. Final Payment.** Upon receipt of the final invoice for the completion of the services set forth in Section 4, and after services have been certified by Agency's Project Manager as having been satisfactorily performed, City shall promptly, but in no event later than forty-five (45) calendar days after the receipt of the last invoice, pay Consultant the balance of any allowable costs incurred in the performance of services of this Agreement.

**3. No Interest on Late Payments.** In no event shall City be liable for interest or late charges for any late payments.

**E. Payment of Subconsultants** Following City's payment of an invoice, Consultant has ten (10) days to file an affidavit using SFMTA's Payment Affidavit verifying that all subconsultants have been paid and specifying the amount.

**F. 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 21st day of each month for work performed in the preceding month.**

**G. No invoice shall be rendered if the total work done under this Agreement since the last invoice**

**H. 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.**

**I. c. Documentation for Payment**

**J. The Monthly Cost Control Report required in subsection b. above shall include the current completed percentages for each task and subtask, the current estimated labor hours and cost for each Discipline to complete each of the tasks, an itemized breakdown of dollars and hours by employee and by subtask for all prime 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.**

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

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

**d. Retention – Escrow Agreement.** The City will retain ten percent (10%) of each invoice submitted by 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 in accordance with Section 4.I of this Agreement, the City, at the discretion of its Project Manager, may release up to fifty (50%) of the retention amount previously withheld.

## **IX. 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.

A. 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.

**X. The City will retain ten percent (10%) of each invoice submitted by 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.**

**XI. At the end of each quarter and upon satisfactory review of Consultant's performance for the quarter in accordance with Section 4.g of this Agreement, the City, at the discretion of its Project Manager, may release up to fifty (50%) of the retention amount previously withheld.**

**e. Final Payment**

**XII. Upon receipt of the final invoice for the completion of the services set forth in Section 4, and after services have been certified by Agency's Project Manager as having been satisfactorily performed, City shall promptly, but in no event later than forty-five (45) calendar days after the receipt of the last invoice, pay Consultant the balance of any allowable costs incurred in the performance of services of this Agreement.**

**XIII. Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code sections 6.80 to 6.83 and section 21.35, any Consultant or subconsultant 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 or subconsultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A Consultant, or subconsultant or consultant will be deemed to have submitted a false claim to the City if the Consultant or, 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.

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

**B. Possessory Interest.** Consultant recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Consultant to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

- (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 it and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(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. 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. 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.

**C. 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.

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. Coverages.** 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 injury or illness; and

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

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

(4) Professional liability insurance as follows:

(a) From the effective date of this Agreement, each partner of the joint association constituting the Consultant shall maintain professional liability insurance coverage with limits not less than \$5,000,000 each claim/annual aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement. Such insurance shall be maintained a claim reporting period for a period not less than three (3) years following completion of services.

### **D. Requirements of Insurance Policies.**

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

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

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

**E. Notice.** All policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent via courier or U.S. Mail, first class, to the following persons:

Carter R. Rohan, R.A.  
Senior Director of Transportation Planning and Development  
San Francisco Municipal Transportation Agency

1 South Van Ness, 7<sup>th</sup> floor  
San Francisco, CA 94103

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

Mario Gallardo  
Contract Management Office  
San Francisco Municipal Transportation Agency  
1 South Van Ness, 3<sup>rd</sup> floor  
San Francisco, CA 94103

**F. Claims-Made Form.** d. 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.

**G. General Annual Aggregate Limit.** e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

**H. Lapse of Insurance.** f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance. 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.

**I. Proof of Insurance.** g. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement. 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 coverages set forth above, and (2) furnish complete copies of specific policy language promptly upon City request. 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. In the event such proof of insurance 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 in this or any other regard.

**J. No Decrease of Liability.** h. Approval of the insurance by City shall not relieve or decrease the liability of Consultant hereunder.

**K. Subconsultant Insurance.** i. 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, agents and employees and the Consultant listed as additional insureds.

## **16. Indemnification**

**a. General Indemnity** To the fullest extent permitted by law, Consultant shall assume the defense of, indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Consultant or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees and costs of investigation), that arise directly nor indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Consultant and subconsultant to the Consultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

### **L. Limitations**

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

**2.** Consultant assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnatee or the Consultants of any Indemnatee.

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

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

## **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. Event of Default.** 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, 10, 15, 24, 30, 37, 53, 55, 57, or 58.

(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 (Aa) is generally not paying its debts as they become due, (Bb) 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, (Cc) makes an assignment for the benefit of its creditors, (Dd) 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 (Ee) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (Aa) 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, (Bb) 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 (Cc) ordering the dissolution, winding-up or liquidation of Consultant.

**b. Remedies** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Consultant any Event of Default; Consultant shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Consultant under this Agreement or any other agreement between City and Consultant all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Consultant pursuant to the terms of this Agreement or any other agreement.

c. **No Preclusion of Remedies.** All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## 21. Termination for Convenience

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

### B. Duties of Consultant Upon Notice of Termination.

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

- (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. **Invoice for Service Performed.** Within 30 days after the specified termination date, Consultant shall submit to City an invoice, which shall set forth each of the following as a separate line item:

- (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 a total of 10% of 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 (1i), 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 5% 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. Non-Recoverable Costs.** In no event shall City be liable for costs incurred by Consultant or any of its subconsultants after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (cC). 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 (cC).

**E. Deductions.** In arriving at the amount due to Consultant under this Section, City may deduct: (1i) all payments previously made by City for work or other services covered by Consultant's final invoice; (2ii) any claim which City may have against Consultant in connection with this Agreement; (3iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (dD); and (4iv) 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. Survival of Payment Obligation.** f. City's payment obligation under this Section shall survive termination of this Agreement.

## **XVI. 22. Rights and Duties Upon Termination or Expiration**

**A. Survival of Provisions.** 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, 5657, and 5758.

**B. Duties Upon Termination.** b. Subject to the immediately preceding subsection (aA), 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.

## **XVII. 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.

#### **XVIII. 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.

#### **XIX. 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, 7<sup>th</sup> floor  
San Francisco, CA 94103  
Tel: 415-701-4282  
Fax: 415-701-4300  
[cCarter.rohan@SFMTA.com](mailto:cCarter.rohan@SFMTA.com)

Mario Gallardo  
Contract Management Office  
San Francisco Municipal Transportation Agency  
1 South Van Ness, 3<sup>rd</sup> floor  
San Francisco, CA 94103  
Tel: 415-701-4348  
Fax: 415-701-4300  
[mMario.gGallardo@SFMTA.com](mailto:mMario.gGallardo@SFMTA.com)

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

Any notice of default must be sent by registered mail.

26.

#### **XX. Ownership of Results Work Product**

Any interest of Consultant or its Subconsultants, in its Work Product 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.

#### **XXI. 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.

#### **XXII. 28. Audits and Inspection of Records**

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

**B. b. Maintenance of Records.** Consultant shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later.

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

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

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

#### **XXIII. Subcontracting**

**A. Approval of City.** Consultant is permitted to subcontract portions of the services to be performed under this Agreement only after the prior written approval by the City. Consultant shall be responsible for its subconsultants 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 Exhibit E D to this Agreement as subconsultants and/or subconsultants on this Project.

**B. Substitutions of Subconsultants.** Substitutions may be made for any subconsultants or subcontractors listed in Exhibit ED, "Directory of Subconsultants," for: (i) failure to perform to a reasonable level of professional competence; (ii) inability to provide sufficient staff to meet



the Project requirements and schedules; or (iii) unwillingness to negotiate reasonable contract terms or compensation.

**C. Additions of Subconsultants.** 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 Sservices under this Agreement, 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.???

Comment [RR1]: I would delete the "best interest" language.

**D. SBE Firms.** d. 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. Substitutions of SBE firms shall be made on equal basis upon written request and recommendation by the Consultant and written approval by the City. Consultant shall hold harmless, indemnify and defend the City from any claim that may arise out of any approval of substitutions.

#### **XXIV. 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 joint Venture venture or Association 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.

#### **XXV. 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.

#### **XXVI. 32. Earned Income Credit (EIC) Forms**

Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

**A. Provision of Forms to Eligible Employees.** 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.** b. Failure to comply with any requirement contained in subparagraph (aA) of this Section shall constitute a material breach by Consultant of the terms of this Agreement. If, within thirty 30 days after Consultant receives written notice of such a

breach, Consultant fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty 30 days, Consultant fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

**C. Flowdown to Subconsultants.** c. Any Subcontract 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. Terms.** 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.

## **XXVII. Small Business Enterprise Program.**

**A. General. 33.** 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 ("SBE Program") for the participation of SBEs in contracting opportunities. In addition, contractor the Consultant must comply with all applicable federal regulations regarding Disadvantaged Business Enterprise (DBE) participation, as set out in Title 49, Part 26 of the Code of Federal Regulations (49 CFR Part 26), with respect to DBEs performing work under this Agreement. More information on federal DBE requirements can be found on the internet at: <http://www.fta.dot.gov/library/admin/BPPM/ch7.html>.

**B.**

**C. Compliance with SBE Program.** ContractorConsultant shall comply with the SBE provisions contained in the attached Exhibit CSection XXII and Attachment 2 of this the Request for Proposals, which are incorporated by reference as if though 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 ContractorConsultant to comply with any of these requirements shall be deemed a material breach of this Agreement.

**D.**

**E. SBE Goal.** The goal for SBE participation is 30 percent of the total dollar amount awarded for the services to be performed under this Agreement.

**F.**

**G. Non-Discrimination in Hiring.** Pursuant to City and SFMTA policy, ContractorConsultant 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 ContractorConsultant's employment practices.

## **XXVIII. 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.**

**C. 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.

**D.** 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.

**E. 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.

**F. 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.

**G.** 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.

**H. d. Condition to Contract**

**I.** 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.

**J. 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.

**XXIX.** 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.

**XXX. 36. 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.

**XXXI.**

**XXXII.** 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.

**XXXIII. 37. 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.

**XXXIV. 38. 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.

**XXXV. 39. 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.

**XXXVI. 40. 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.

**XXXVII. 41. 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.

**XXXVIII. 42. 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.

**XXXIX. 43. Limitations on Contributions**

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (A) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (B) a candidate for the office held by such individual, or (C) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. 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.

**XL. 44. Requiring Minimum Compensation for Covered Employees**

**A.**

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

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

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

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

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

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

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

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

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

**J.** If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

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](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 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.

#### **XLI. 45. Requiring Health Benefits for Covered Employees**

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by

reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

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

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

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

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

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

**H.** Contractor shall keep itself informed of the current requirements of the HCAO.

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

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

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

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

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

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](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, 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.

## **XLII. 46. First Source Hiring Program**

### **A.**

**B. 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.

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

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

**2.** Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole

discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

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

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

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

6. Set the term of the requirements.

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

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

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

D.

**E. 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.**

F.

G. b. First Source Hiring Agreement.

H.

**I. (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;**

**J.**

**K. (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;**

**L.**

**M. (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.**

**N.**

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

**P.**

**Q. Consultant shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.**

**R.**

**S. 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.

**T.**

**U. 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.**

**V.**

**W. 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. Contractor agrees:

- 1.** To be liable to the City for liquidated damages as provided in this section;
- 2.** To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- 3.** That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious

but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

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

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

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

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

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

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

X.

Y.

**Z. 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.**

AA.

**BB. 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.

**XLIII.**

**XLIV. 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.**

**XLV. 47. 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, (iA) terminate this Agreement, and (iiB) 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.

**XLVI. 48. Preservative-treated Wood Containing Arsenic**

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

**XLVII. 49. 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 law, as required by San Francisco Administrative Code section 6.42.

**XLVIII. 50. 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 (or designee), for final administrative interpretation of the Agreement.



**XLIX. 51. 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.

**L. 52. Construction**

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

**LI. Entire Agreement<sup>53</sup>. Entire Agreement**

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

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 have been made by either party 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

**LII. 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.

**LIII. 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.

**LIV. 55. Prompt Payment of Subconsultants**

**A. Progress Payments.** In accordance with SFMTA's SBE Program, no later than three (3) working days from the date of Consultant's receipt of progress payments by the City, the Consultant shall pay any subconsultants for work that has been satisfactorily performed by said subconsultants, unless the 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.

**B.**

**C. Retention.** Consultant may withhold retention from subconsultants if City withholds retention from Consultant. Should retention be withheld from Consultant, within thirty (30) days of City's payment of retention to Consultant for satisfactory completion of all work required of a subconsultant, Consultant shall release any retention withheld to the subconsultant. Satisfactory completion shall mean when all the tasks called for in the subcontract with subconsultant have been accomplished and documented as required by City. Within forty (40) days of satisfactory

completion of all work required of the subconsultant, Consultant should release any retention withheld to the subconsultant.

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

#### **L.V. 56. Disputes**

**A. Notice of Dispute.** 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: (ai) a statement of the party's position and a summary of the arguments supporting that position, and (bii) any evidence supporting the party's position.

**B. Resolution of Disputes.** 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 Manager of Project Management. The decision shall be administratively final and conclusive unless within ten (10) days from the date of such decision, the Contract Consultant 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. No Cessation of Work.** 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. Alternative Dispute Resolution.** d. If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

**E. Claims for Additional Compensation.** 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. Disputes among Consultant Partners.** 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.

#### **L.VI. 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.

**LVII. 58. Nondisclosure of Private Information**

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

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.

**LVIII. 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.

#### **LIX. 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.

#### **LX. 60. 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..

**LXI. 61. FTA Requirements**

The provisions contained in “FTA Requirements for Personal Services Contracts,” attached as Appendix Exhibit C B 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

City and County of San Francisco  
Municipal Transportation Agency

By \_\_\_\_\_  
Nathaniel P. Ford, Sr.  
Executive Director/CEO

SFMTA Board of Directors  
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:

\_\_\_\_\_  
ROBERTA BOOMER, Secretary  
SFMTA Board of Directors

Approved as to Form:

Dennis J. Herrera  
City Attorney

By \_\_\_\_\_  
Deputy City Attorney

CONSULTANT

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

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

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

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name

**CITY VENDOR NUMBER**

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, ZIP

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Federal Employer ID Number

**APPENDICESEXHIBITS**

- A:** Scope of Services to be Provided by Consultant
- B:** FTA Requirements for Personal Services Contracts
- C:** Small Business Enterprise (SBE) Program
- D:** Directory of Subconsultants

## Appendix Exhibit A

### SCOPE OF SERVICES

#### Services to be Provided by Consultant

#### 1. Description of Services

Consultant agrees to perform the services described below. Services shall be provided in conformance with the City's "Request for Proposals, Program Management and Construction Management Services for Central Subway Project," issued \_\_\_\_\_ 2008, the Proposal submitted by the Consultant on **[insert date]**, and as required under this Agreement.

**[insert complete description of the scope of services]**

#### 2. Reports

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

#### 3. Department Liaison

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

**[insert name and title]**  
San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 3<sup>rd</sup> floor  
San Francisco, CA 94103  
tel: **[insert telephone number]**  
fax: **[insert fax number]**



## Exhibit B

### 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, .), 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.

Exhibit C

SMALL BUSINESS ENTERPRISE (SBE) PROGRAM

To be inserted (see Appendix 2 of the RFP)

Exhibit D

DIRECTORY OF SUBCONSULTANTS

To be inserted



## Appendix 4

# Business Tax Registration Declaration



## **Business Registration Certificate Requirement**

Unless you have previously submitted this form, failure to complete the Declaration on the reverse and return this form to Purchasing with your bid will be a basis for rejection of the bid, and Purchasing will assume that your company does not intend to apply for a Business Tax Certificate.

## General

To receive an award, a vendor must have a current Business Registration Certificate or else not be required to register. The registration fee is \$25, \$150, \$250 or \$500, depending on the type and size of your business. The fee (except the \$25 fee) is pro-rated for new registrations, depending on when during the year you started your business in San Francisco, and is based on estimated tax liability for your payroll expense. To determine the registration fee due, you can check the website at "<http://sfgov.org/tax/busfaq.htm#reg>".

### Who must obtain a registration certificate?

Any business located, or conducting business, in San Francisco.

### What is "conducting business in San Francisco"?

Briefly, it means having employees or a place of business in San Francisco, or having employees visit San Francisco regularly. Questions 1-4 on the reverse specifically relate to "conducting business."

### Are there exceptions?

Yes. A non-profit, tax-exempt business need not register or pay the registration fee. See Question 5 on reverse. Government agencies, banks and insurance companies are exempt. See Question 6.

My business is not located in San Francisco. Is a registration certificate still required?

Yes, if the business "conducts business in San Francisco," unless it is non-profit and tax-exempt, or a bank, or an insurance company.

All businesses, including those which do not "do business in San Francisco" but excluding government agencies, must sign and return the Declaration.

Businesses whose computed tax is \$2,500 or less do not have to pay the tax, but are required to file an annual statement with the Tax Collector to qualify for this Small Business Exemption. However, all businesses are subject to the annual Business Registration fee, which varies depending on the type and size of business.

### What's involved in obtaining a registration certificate?

Obtaining a certificate is easy, but not automatic. Once the Tax Collector receives an application, the office must check the payment status of other taxes (Unsecured Personal Property Tax, Payroll/ Business Tax) and licenses or permits. If any tax or license/permit fee is delinquent, the certificate cannot be issued. Only when all taxes and fees are paid in full will the certificate be issued.

### Where do I obtain the certificate?

At the Tax Collector's Office. You would obtain an application form from, and submit it and the registration fee to:

Tax Collector's Office  
Taxpayer Assistance  
City Hall, Room 140  
San Francisco, CA 94102-4696  
(415) 554-6718 or (415) 554-4400

P-25 (6-01)

Do Company Divisions, Parents and Subsidiaries have to register separately? That depends on a company's individual situation. Contact the Tax Collector at (415) 554-6718 or 554-4400 for more information.

### Can I do business with the City without a certificate?

Not if you "conduct business in San Francisco." The City can make purchases from businesses only in the following situations:

- The business conducts business in San Francisco and has registered.

- The business does not conduct business in San Francisco and has signed the Declaration.
- The business is non-profit and tax-exempt, has signed the Declaration and has submitted an IRS exemption letter.
- The business is a government agency, bank, or insurance company.
- There is an emergency. Although Purchasing can award the contract, the vendor may be subject to business taxes and required to possess a certificate.

These requirements cover service contracts, construction contracts and product purchases.

### What if my application is pending during a bid evaluation?

If you are the low bidder on a City contract, and have applied for the certificate but your application has not yet been approved, the City may make the award to you if you sign the Declaration. If you have a receipt from the Tax Collector for the registration fee, submit a **copy** of the receipt with this form.

### What if I currently "do not conduct business in San Francisco," but if I win this bid, I will?

You may answer the questions based on your current status, and you should not register at this time. If you win the bid, you should register with the Tax Collector.

### For more information

For information on how to apply for the certificate, call the Tax Collector's Office. For information on your eligibility to receive a particular award, call Purchasing. See the bottom of the reverse of this form.

### Completing the Declaration; Failure to do so

Unless you previously submitted this form, complete the Declaration and, if possible, return it **with your bid or quotation** in the envelope provided. If you submit this form separately, see the mailing address under "Routing" near the bottom of the reverse of this form.

If you do not complete and return this form, that will be a basis for Purchasing's rejecting the bid, and for assuming that your company should register but will not and therefore that the City cannot do business with you.

### If you submitted this form previously

If you submitted this form for an earlier transaction, and if your business tax status has not changed, please discard this form.

**Business Tax Declaration**

Please answer Yes or No to Questions 1-6, based on your company's situation *as of now*. If any answers would change if your company won a bid that is pending, you may submit a new form later.

**Conducting Business in San Francisco**

Yes No

This person, business, or person's or business's employee:

- 1. maintains, owns or leases a fixed place of business within San Francisco.
- 2. regularly maintains a stock of tangible personal property in San Francisco for sale in the ordinary course of business.
- 3. in the ordinary course of business, loans capital on property within San Francisco.
- 4. is physically present within San Francisco through property (e.g., trucks or inventory) or employees (e.g., sales representatives) during **7 or more separate days per year** (e.g., 4 employees in San Francisco for 2 days each constitute 8 separate days, and require a "yes" answer to this question). If a manufacturer does not conduct business in San Francisco but the manufacturer's independent representative does, only the representative must register.

If you answered "no" to Questions 1-4, ordinarily you are not conducting business in San Francisco, need not register with the Tax Collector and may omit items 5-10 below, but you must sign and return this Declaration. However, this is subject to review by the Tax Collector. **If you answered "yes" to any of the questions**, you must answer the remaining questions in this Declaration and, unless an exemption applies **must register**.

**Tax-Exempt Businesses, Banks, Insurance Companies**

Yes No

- 5. This business is non-profit, tax-exempt. If "yes," you need not register and may omit items 6-10, but you must sign the declaration and submit proof of tax-exempt status to Purchasing. Proof is usually an exemption letter from the IRS, noting §501(c) or (d) of the Internal Revenue Code.
- 6. This business is a bank or an insurance company. (Please indicate on this form your type of business.)

**Applying for a Business Registration Certificate**

If you answered "yes" to any of Questions 1-4, and "no" to Questions 5 and 6, check item 7, 8, or 9 and complete any applicable blanks. If no item is checked, or if the Declaration is not signed, this will constitute a basis for Purchasing to reject the bid.

- 7. This company has registered with the Tax Collector. Certificate # \_\_\_\_\_ (6 digits, e.g., "123456").
- 8. This company applied for a Certificate by mailing the application and fee to the Tax Collector, or by submitting the application in person, on \_\_\_\_\_, 20\_\_\_\_. The application is pending. (NOTE: Completing this Declaration is not the same as applying for a Certificate.) If you submitted the application in person, please submit with this Declaration a copy of the fee receipt you received from the Tax Collector.
- 9. This company does not intend to apply for a certificate.
- 10. If, as a result of winning this bid, this company is required to register, we will do so.



I understand that my representation, if any, that I am not engaged in business in San Francisco is subject to review by the Tax Collector. If the Tax Collector determines that I am conducting business in San Francisco, the City may either cancel the contract or withhold payment ten days after written notification by the Tax Collector.

I declare (or certify) under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.  
(City) (State)

_____ Name of Company (please print)	General Address {	_____ Mailing Address for General Corresp., Purchase Orders, etc.
_____ Signature		_____ City, State, ZIP
_____ Name of Signatory (please print)	Remit Address {	_____ Remittance Address, if different
_____ Title		_____ City, State, ZIP
_____ Telephone Number		_____ Federal ID or Social Security Number

**Routing**

If you are registering, send the application to the Tax Collector (address on obverse). **Do not send this form to the Tax Collector.** We encourage you to send this form **with your bid or quotation** in the envelope provided. If you submit this form separately, send it to: Purchasing Department, Business Tax Compliance, City Hall, Room 430, San Francisco, CA 94102-4685. If you submitted this form previously and if your business tax status has not changed, discard this form.



## Appendix 5

# Protest Procedures for the Bidding and Award of Federally Assisted Third Party Contracts

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

**PROTEST PROCEDURES  
FOR THE  
BIDDING AND AWARD OF  
FEDERALLY ASSISTED  
THIRD PARTY CONTRACTS**

(Construction, public improvements, personal services,  
negotiated procurement and other major procurement contracts)

REVISED: April 2007

1. Policy

**In the event that any protests, discrepancies, or legal questions arise during the bidding and award process of federally assisted construction, public improvements, personal services, negotiated procurement and other major procurement contracts, the Contract Manager shall report unresolved protests to the Executive Director/CEO, who shall review the protest and recommend its resolution to the San Francisco Municipal Transportation Agency. These procedures shall be incorporated by reference in all bid packages.**

2. Definitions

**Contract Manager (CM) refers to the San Francisco Municipal Transportation Agency engineer in charge of administering the contract that is the subject of the protest. CM also refers to the Project Manager for the project when there is no engineer administering the contract.**

**Award shall mean authorization by resolution of the San Francisco Municipal Transportation Agency Board of Directors or authorization by the Executive Director/CEO, for contracts under the Executive director/CEO's authority, for its staff to contract with a bidder or proposer, or recommendation by resolution of the SFMTA Board of Directors that the City's Board of Supervisors approve a contract with a bidder or proposer.**

**Award Process includes the pre-award, award and post-award phases of a negotiated procurement, a request for proposals (RFP) and a sealed bid.**

**Bid includes the terms “offer” or “proposal” as used in the context of negotiated procurements, requests for proposals and sealed bids.**

**City means the City and County of San Francisco, acting through the San Francisco Municipal Transportation Agency.**

**Contract Compliance Office (CCO) is the SFMTA office that administers compliance with federal regulations governing Disadvantaged Business Enterprises, as well as SFMTA's program governing Small Business Enterprises.**

**Days refers to working days of the City and County of San Francisco (unless otherwise indicated).**

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

**Department of Parking and Traffic (DPT) refers to the Department of Parking and Traffic of the San Francisco Municipal Transportation Agency.**

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

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

**San Francisco Municipal Transportation Agency (SFMTA or Agency) is the agency of the City and County of San Francisco that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the San Francisco Municipal Railway and the Department of Parking and Traffic, and has exclusive authority over contracting, leasing and purchasing by the**

**Municipal Railway and the Department of Parking and Traffic, subject to certain restrictions of the City's Charter. The Agency acts through its Board of Directors.**

**Protest is a complaint by a bidder or proposer regarding a bid or the award process which arises prior to award and is formally communicated to the Director, as provided below.**

**Post-Award Protest is a complaint by a bidder or proposer when San Francisco Municipal Transportation Agency awards a contract, or recommends that the Board of Supervisors award a contract, to other than the bidder or proposer recommended for award by SFMTA staff.**

**San Francisco Municipal Railway refers to the San Francisco Municipal Railway of the San Francisco Municipal Transportation Agency.**

**Small Business Enterprise (SBE) refers to a for-profit, small business concern that qualifies for the program by being certified under any of the following programs: the State of California's Small Business Program, the City and County of San Francisco's LBE Program, or the Federal DBE program.**

3. Responsibilities:

- 3.1 **The Contract Manager (CM) obtains the response to issues not related to DBE compliance and coordinates the resolution of all protest issues.**
- 3.2 **The Contract Compliance Office (CCO) resolves issues regarding DBE compliance.**
- 3.3 **In the event that a protest is not resolved by the CM, the Director shall review the protest and make a recommendation to the Agency for final action.**

4. Implementation

4.1. Submit Protest

**A protest describing the nature of the disagreement must be submitted in writing to SFMTA no later than five (5) days following notification of proposed award. A post-award protest describing the nature of the disagreement must be submitted in**

**writing to SFMTA no later than five (5) days following the Notification of Award of the contract. If the bid procedure requires submission of documents in separate phases and bidders may be disqualified at the end of a phase prior to the final award, then protests regarding a phase of the procedure (including protests concerning documents received by bidders during the phase) must be submitted in writing with a description of the disagreement to SFMTA no later than five (5) days following receipt of notification of the results of that phase.**

**Protests shall be addressed to:**

**Executive Director/CEO  
San Francisco Municipal Transportation Agency  
One South Van Ness Ave, 7<sup>th</sup> Floor  
San Francisco, CA 94103**

**with a copy to:**

**Senior Director  
Transportation Planning And Development Division  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103**

#### 4.2 Coordination Efforts

**With direction from the Executive Director/CEO, and following the requirements of FTA Circular 4220.1E, the AE shall determine the nature of the disagreement and coordinate resolution efforts.**

#### 4.3. DBE or SBE Requirements

If the protest involves meeting DBE or SBE requirements, the Contract Manager shall forward a copy of the protest to the Contract Compliance Office for review and recommendations. The CM shall also send a copy to the City Attorney for information.

**The CCO shall review DBE or SBE requirements for the project and examine whether the protest has merit. Based on the examination, the CCO shall notify the Director and the CM of its decision. The CM shall provide copies of the decision to the Senior Director of Transportation Planning and Development Division. The CM shall then inform the protester, in writing, of the decision, responding at least generally to each material issue raised in the protest. The CM's letter to the protester shall state that (a) the protester may contact the CM to discuss the response, (b) the protester has the right to appeal his decision to the Director pursuant to Section 4.5, and (c) the protester has the right to address the Agency on the date when the matter is calendared to be heard if the Director denies the appeal.**

**Regarding the issue of whether a bidder has met its DBE or SBE goal or demonstrated good faith efforts in reaching the contract-specific DBE or SBE goal, the CCO's determination will be administratively final except when the CCO has determined that an apparent low bidder has failed to meet its goal or make the required good faith efforts. In that situation, the procedures in Section V.D.3.v of the Agency's DBE or SBE Program apply to requests for reconsideration from the apparent low bidder. Neither the Executive Director/CEO nor the SFMTA Board of Directors will have jurisdiction to hear administrative appeals or requests for reconsideration of the CCO's decision on good faith efforts.**

#### 4.4 Issues Not Related to DBE or SBE Requirements

**If the protest concerns complaints regarding discrepancies in the bid documents, missing or required documentation, or the selection process, and is not related to DBE or SBE requirements, the CM or designee shall prepare a memorandum to the City Attorney's Office requesting an opinion on the protest. The CM shall attach a copy of the bidder's protest and all documentation from the bid package and any other document deemed necessary by the attorney.**

**Upon receipt of the memorandum, the City Attorney's Office will investigate and respond with an opinion to the Executive Director/CEO and the CM for review and evaluation. The CM shall provide copies of the opinion to the Senior Director of Transportation Planning and Development Division, and the CCO. The CM shall inform the protester in writing of the CM's recommendation, stating the reasons for the recommendation, and responding at least generally to each material issue raised in the protest. The CM's letter to the protester shall state that (a) the protester may**

**contact the CM to discuss the response, (b) the protester has the right to appeal the decision to the Executive Director/CEO pursuant to Section 4.5, and (c) the protester has the right to address the Agency on the date when the matter is calendared to be heard if the Director denies the appeal.**

4.5 Disagreement by Protester

**Except as provided in Section 4.3, in the event that the protester disagrees with the recommendations or decisions rendered, the protester may submit a written request to the Executive Director/CEO for review of the decision within five (5) days of receipt of the CM's letter responding to the protest. The Executive Director/CEO shall review the decision and make a recommendation to Agency for final action. The CM shall inform the protester of the Executive Director/CEO's recommendation, the date when the Agency will consider the item, and the protester's opportunity to address the Agency regarding the matter.**

4.6 Incorporate Legal Opinion/Recommendation

**The CM shall incorporate appropriate language reflecting the outcome of the protest in the calendar item and resolution for approval of the contract by the Agency. However, in the event of a multi-phased bid procedure as described in Section 4.1 above, the protest may be considered by the Agency prior to the meeting when final award is determined.**

4.7 Final Action

**The protester shall be notified in writing of the Agency decision regarding the protest and/or award of the contract. The action of the Agency is final. Subject to the provisions of Section 4.8, the protester may seek a remedy in State or Federal court, as appropriate, from the final action of the Agency.**

4.8 Protest to FTA

**FTA may only entertain a protest that alleges that the Agency (1) failed to have written protest procedures; (2) failed to follow its written protest procedures; or (3) failed to review a complaint or protest. A protest to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) days of the date the protester knew or should have known of the violation. A protester must exhaust all administrative remedies with the Agency before pursuing a protest with FTA.**







## Appendix 6

# Certification Regarding Lobbying

# APPENDIX A, 49 CFR, PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements  
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant/Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant/Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, *et seq.*, apply to this certification and disclosure, if any.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
(signature of authorized official)

\_\_\_\_\_  
(title of authorized official)



## Appendix 7

# San Francisco Administrative Code 12B and 12C Declaration Form



**CITY AND COUNTY OF SAN FRANCISCO  
HUMAN RIGHTS COMMISSION**

**S.F. ADMINISTRATIVE CODE CHAPTERS 12B & 12C  
DECLARATION: NONDISCRIMINATION IN CONTRACTS AND BENEFITS**

(HRC-12B-101)

DATE & TIME RECEIVED BY HRC  
(FOR HRC USE ONLY)

► **Section 1. Vendor Information**

Name of Company: \_\_\_\_\_

Name of Company Contact Person: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Vendor Number (if known): \_\_\_\_\_

Federal ID or Social Security Number: \_\_\_\_\_

Approximate Number of Employees in the U.S.: \_\_\_\_\_

Are any of your employees covered by a collective bargaining agreement or union trust fund?  Yes  No

Union name(s): \_\_\_\_\_

► **Section 2. Compliance Questions**

**Question 1. Nondiscrimination – Protected Classes**

A. Does your company agree to not discriminate against your employees, applicants for employment, employees of the City, or members of the public on the basis of the fact or perception of a person's membership in the categories listed below? **Please note:** a "YES" answer means your company agrees it will not discriminate; a "NO" answer means your company refuses to agree that it will not discriminate. Please answer yes or no to each category.

- |                   |                              |                             |  |                              |                             |
|-------------------|------------------------------|-----------------------------|--|------------------------------|-----------------------------|
| • Race            | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Sex                                  | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Color           | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Sexual orientation                   | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Creed           | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Gender identity (transgender status) | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Religion        | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Domestic partner status              | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • National origin | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Marital status                       | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Ancestry        | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Disability                           | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Age             | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • AIDS/HIV status                      | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Height          | <input type="checkbox"/> Yes | <input type="checkbox"/> No | • Weight                               | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

B. Does your company agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract you have with the City? **Please note:** you must answer this question even if you do not intend to enter into any subcontracts.

Yes  No

**Question 2. Nondiscrimination – Equal Benefits for Employees with Spouses and Employees with Domestic Partners**

A. Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees?

Yes  No

B. Does your company provide or offer access to any benefits to employees with (same or opposite sex) domestic partners\* or to domestic partners of employees?

Yes  No

*Questions 2A and 2B should be answered YES even if your employees must pay some or all of the cost of spousal or domestic partner benefits.*

\*The term "Domestic Partner" includes both *same-sex* and *opposite-sex* couples who have registered with a state or local government domestic partnership registry. See S.F. Admin. Code Chapter 12B.1(c).

**If you answered "NO" to both** Questions 2A and 2B, go to Section 4 (on the back of this form), complete and sign the form, filling in all items requested.

**If you answered "YES" to either** or both Questions 2A and 2B, please continue to Question 2C.

(OVER)

**Question 2. (continued)**

C. Please check all benefits that apply to your answers above and list in the "other" section any additional benefits not already specified. **Note** : some benefits are provided to employees because they have a spouse or domestic partner, such as bereavement leave; other benefits are provided directly to the spouse or domestic partner, such as medical insurance.

BENEFIT	Yes for Employees with Spouses	Yes for Employees with Domestic Partners	No, this Benefit is Not Offered	Documentation of this Benefit is Submitted with this Form
• Health	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Dental	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Vision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Retirement (Pension, 401(k), etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Bereavement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Family Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Parental Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Employee Assistance Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Relocation & Travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Company Discount, Facilities & Events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Credit Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Child Care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Note:** If you can't offer a benefit in a nondiscriminatory manner *because of reasons outside your control*, (e.g., there are no insurance providers in your area willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form (HRC-12B-102) with all necessary attachments, and have your application approved by the HRC. For more information, see Rules of Procedure section II B or contact the HRC.

➤ **Section 3. Required Documentation**

**YOU MUST SUBMIT SUPPORTING DOCUMENTATION**

to verify each benefit marked in Question 2C. Without proper documentation, your company cannot be certified as complying with Chapter 12B. For example, to document medical insurance submit a statement from your insurance provider or a copy of the eligibility section of your plan document; to document leave programs, submit a copy of your company's employee handbook. If documentation for a particular benefit does not exist, attach an explanation. For more information see the Quick Reference Guide at [www.ci.sf.ca.us/sfhumanrights/quickref.htm](http://www.ci.sf.ca.us/sfhumanrights/quickref.htm) or contact the HRC.

Have you submitted supporting documentation for each benefit offered?  Yes  No

➤ **Section 4. Executing the Document**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_  
(City) (State)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Mailing Address

\_\_\_\_\_  
Name of Signatory (please print)

\_\_\_\_\_  
City, State, Zip Code

\_\_\_\_\_  
Title

➔ **Return this form to:** HRC, 25 Van Ness Ave., Suite 800, San Francisco, CA 94102-6033, or to the City department that sent it to you if the department so requests.

✓ **Resource Materials** and additional copies of this form may be found at: [www.ci.sf.ca.us/sfhumanrights/12b.htm](http://www.ci.sf.ca.us/sfhumanrights/12b.htm)

☎ **For assistance** please contact the Human Rights Commission at 415-252-2500.



## Appendix 8

# Attestation of Compliance

**Professional Program Management and  
Construction Management Services  
For Central Subway**



**APPENDIX 8**

**ATTESTATION OF COMPLIANCE**

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

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

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

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

Name of RFP: **Professional Program Management and Construction Management  
Services for Central Subway**

1. I attest that I and all members of the firm listed above will and have complied to date with Section 1.11 of the above RFP  Yes
2. I understand that if my firm or any members of the firm listed above are found to be in violation of the 1.11 of the above RFP, this will disqualify my firm and bidding consortium for further consideration  Yes

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

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

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





## Appendix 9

# SFMTA Organization Charts





## Appendix 10

### Sample List of Available References

## **Sample List of Available References**

Recommended Tunnel Construction Methods Report, March 16, 2004

Portal and Surface Station Locations Study, December 23, 2004

Special Alignment and Validation Studies, June 30, 2005

Hazardous Material Phase 1 ESA & Site History, January 12, 2004

Addendum 1 to Phase 1 ESA & Site History, April 1, 2005

Addendum 2 to Phase 1 ESA & Site History, February 27, 2007

Phase II HMI Report for 4<sup>th</sup> / Stockton Alignment, May 18, 2006

Preliminary Phase 1A GDR & Geologic Profile, November 19, 2003

Phase 1A GDR & Geologic Profile – Volume 1 & 2, February 27, 2004

Addendum to GDR & Geologic Profile for 4<sup>th</sup> / Stockton Alignment, March 30, 2005

Phase 1B GDR & Geologic Profile for 4<sup>th</sup> / Stockton Alignment , May 1, 2006

Design Criteria – Compilation (Revision 0), September 29, 2006

Draft SEIS/SEIR, 2008

Draft Preliminary Engineering Report/Drawing, 2008

Central Subway – Third Street Light Rail Phase 2, FY2009 Section 5309, New Starts Criteria Report

Central Subway Third Street Light Rail, Phase 2, Preliminary Engineering Intermediate Review Task 2.60-00 In Progress Drawings, January 2, 2008