

**THIS PRINT COVERS CALENDAR ITEM NO. : 10**

**MUNICIPAL TRANSPORTATION AGENCY  
City and County of San Francisco**

**DIVISION:** Safety, Security and Enforcement

**BRIEF DESCRIPTION:**

Authorizing the Executive Director/CEO to execute the Agreement for Armed and Unarmed Security Services with Cypress Security LLC for a three-year term and an amount not to exceed \$15.8 million.

**SUMMARY:**

- The current contract for Security Services was originally awarded in August 1, 2002 through the Office of Contract Administration (OCA), for a three-year term, and a not-to-exceed amount of \$8.5 million.
- There have been four modifications to the original agreement. The expiration date of the current agreement is August 31, 2008, with a not-to-exceed amount of \$13.6 million.
- The SFMTA issued an Invitation for Bids (IFB) on September 18, 2007 and awarded the new contract to King Security on December 4, 2007.
- The Board of Supervisors took no action on the contract, and due to this non-action the Executive Director/CEO rejected all bids on March 31, 2008, in order to conduct a new competitive solicitation process through a Request for Proposals (RFP), which was released after SFMTA Board approval on May 20, 2008 (Resolution 08-067) to more than 100 security firms listed with the OCA and the Human Rights Commission (HRC).
- The RFP process allowed the Panel to consider qualitative factors as well as cost factors. The qualitative factors included thoroughness of the firm in addressing agency goals with regard to security and safety, experience in both armed and unarmed security guard services, financial stability of the firm and scope of services provided for project of similar magnitude.
- Four firms responded to the RFP but only two of the firms were considered responsive. The other two firms did not qualify as they did not meet the required 5% subcontracting goal for the RFP and did not document compelling “good faith outreach” efforts in compliance with the RFP provisions.
- Based on a thorough evaluation process, the Panel ranked Comprehensive Security Services as the highest ranked bidder, however contract negotiations with Comprehensive Security came to an impasse over contract pricing. SFMTA then terminated negotiations with Comprehensive Security and entered into negotiations with Cypress Security, LLC, the second highest ranked proposer.
- It is recommended that the SFMTA Board approve a three-year contract with Cypress Security LLC for an amount not to exceed \$15.8 million.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Proposed contract for Armed and Unarmed Security Services.

<b>APPROVALS:</b>	<b>DATE</b>
DIRECTOR OF DIVISION PREPARING ITEM _____	_____
FINANCE _____	_____
EXECUTIVE DIRECTOR/CEO _____	_____
SECRETARY _____	_____
ADOPTED RESOLUTION	
BE RETURNED TO <u>Lorraine Fuqua</u> _____	

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

**EXPLANATION:**

**Background:**

The San Francisco Municipal Transportation Agency (“SFMTA”) collects more than \$230 million in annual revenue from transit fares, citation payments and sales of various fare media and has more than 15 facilities throughout the city, including transit stations, vehicle storage yards and service centers. These facilities require the services of security guards to act as a first deterrent for inappropriate activities and for the safety of the public and of SFMTA personnel, and the protection of SFMTA property from theft and vandalism. Security services are managed by the Director of Safety, Security and Enforcement, with the assistance of a security guard services contractor who provides personnel for various security-related functions.

Proposition E, Article 8A of the San Francisco Charter, allows the SFMTA to purchase materials, supplies and general services directly. After the passage of Proposition E, the Executive Director/CEO of the SFMTA delegated the purchasing authority to the City’s Office of Contract Administration (OCA). In 2002, OCA conducted a selection process for security services for the SFMTA, and entered into a contract for Security Guard Services (Armed and Unarmed) for the Revenue and Cost Accounting Sections of The San Francisco Municipal Railway for the Term August 1, 2002 through June 30, 2005 with King Security Services, Inc. (“Contract”, “current Contract”), with a not-to-exceed amount of \$8.5 million. The following modifications were made to the Contract:

- Contract Modification No. 1 extended the Contract term from June 30, 2005 to June 30, 2006 and increased the not-to-exceed amount by \$500,000 to \$9 million. (As a low-bid contract, the Contract was not required to go to the SFMTA Board or to the Board of Supervisors)
- Contract Modification No. 2 extended the Contract term from July 1, 2006 to December 31,

2007 and increased the not-to-exceed amount by \$2.75 million to \$11.75 million. (SFMTA Board Resolution 07-098; Board of Supervisors Resolution 440-07)

- Contract Modification No. 3 extended the Contract term from January 1, 2008 to February 29, 2008 and increased the not-to-exceed amount by \$490,000 to \$12.24 million. (No approval required from SFMTA Board or Board of Supervisors)
- Contract Modification No. 4 extended the Contract term from March 1, 2008 to August 31, 2008 and increased the not-to-exceed amount by \$1.36 million to \$13.6 million. (SFMTA Board Resolution 08-034; Board of Supervisors Resolution 079-08)

The SFMTA issued an Invitation for Bids (IFB) on September 18, 2007 for a new Armed and Unarmed Security Guard Services contract. After minimum requirements determined which contractors would be qualified to compete, cost was the sole consideration for contract award, as it had been for previous awards. King Security Services was selected as the lowest responsive and responsible bidder and the SFMTA Board approved a new contract with King Security Services, Inc. on December 4, 2007. The proposed contract was forwarded to the Board of Supervisors' Finance Committee on December 5, 2007, and was approved and forwarded to the full Board of Supervisors' for consideration on December 11, 2008.

The Board of Supervisors took no action regarding the proposed contract prior to the current Contract's then expiration date of February 29, 2008. The SFMTA Board of Directors requested that the OCA extend the Contract until August 31, 2008, and approved giving the Executive Director/CEO the option to reject all bids. On February 26, the Board of Supervisors approved the current Contract extension to August 31, 2008. On March 31, 2008, the SFMTA opted to reject all bids and conduct an alternate Request for Proposals (RFP) solicitation process.

### **RFP and Evaluation Process:**

The RFP solicitation process was chosen because it allows the Evaluation Panel to consider qualitative factors as well as cost factors. The qualitative factors include thoroughness of the firm in addressing agency goals with regard to security and safety, experience in both armed and unarmed security guard services, financial stability of the firm, references and scope of services provided for project of similar magnitude.

Because of the limited time to solicit and evaluate proposals and move the proposed contract through the approval process, the SFMTA, after consultation with the City Attorney's Office, issued a draft of the RFP on May 7, 2008. The RFP was advertised for five consecutive days in the City's Official Newspaper (May 7, 8, 9, 10 and 11), as required. The RFP was officially issued pursuant to SFMTA Board of Directors Resolution No. 08-079, which was adopted on May 20, 2008. No modifications were made to the draft RFP when it was finally issued. Proposals were received by the June 6, 2008 deadline from the following firms:

- Allied-Barton Security Services
- Comprehensive Security Services
- Cypress Private Security
- International Security Services

Two firms, Allied-Barton and International were found by the SFMTA’s Office of Contract Compliance to be non-responsive to the required 5% subcontracting goal for the RFP, and did not document compelling “good faith outreach” efforts as required by law.

An Evaluation Panel, consisting of the SFMTA’s Director and Deputy Director of Safety, Security and Enforcement Division and SFMTA’s Manager of Operations Administration, evaluated and scored the qualifications of the two remaining proposals submitted by Cypress Private Security and Comprehensive Security Services.

**Proposal and Cost Evaluation:**

The Evaluation Team reviewed the proposals, and scored them as follows:

Management Approach and Firm Experience: 35 points

- Demonstration of Proposer’s commitment and responsibility to contract deliverables through assignment of appropriate personnel.
- Experience and qualifications of firm personnel assigned to the project.
- Depth and breadth of firm experience with projects of similar type and complexity.
- Specificity and adequacy of training suggestions for Guards that fall outside SFMTA-required training.

Project Approach: 35 points

- Quality of controls and procedures described to ensure compliance with contract service responsibilities.
- How well the Proposer addresses and documents Guard performance issues, including conduct, evaluation, disciplinary actions and complaints.
- How well does Proposer address recruitment and retention of guard forces to be employed.
- Quality of response to education and advancement opportunities for Guards.

Based on the evaluation areas above, Cypress earned an average score of 45.67 points out of a possible 70 points, and Comprehensive earned an average score of 59.33 points.

Cost points were calculated as follows: The lowest cost proposal received earned the total possible 30 points. Each subsequent proposer received a portion of the 30 points, which was determined by dividing the lowest cost proposal by the other Proposer’s cost proposal, multiplied by the total possible points. Cost proposal and score results are listed below:

	<u>Cypress</u>	<u>Comprehensive</u>
Cost Proposal	\$4,630,217.70	\$5,210,839.15
Cost Proposal points	30.00	26.66

At the end of the Proposal and Cost Evaluation, Cypress had earned 75.67 points and Comprehensive had earned 85.99 points. With 40 points still available, both firms were still capable of achieving a final high score in the Oral Presentation evaluation.

## **Oral Presentation Evaluation:**

Both Cypress and Comprehensive were invited to make Oral Presentations to the Evaluation Team. Cypress scored a total of 25.33 points out of a possible 40 points; Comprehensive scored a total of 36.67 points.

The panel outlined the following strengths and weakness for each firm based on oral presentations and reference checks:

### Proposer #1 – Cypress Security Services

#### Strengths

- Scheduling System (Valiant)
- Organization Structure flat promoting teamwork and accessibility to management
- Demonstrated the ability to recruit quickly and retain employees (Day 1)
- Provided real example of teamwork and management style
- Quarterly meetings with clients (internal monthly meeting)
- Finances tightly controlled by CEO and CFO
- All management and utility officers are trained on each site
- Armed staff qualifies with company issued firearm
- Internal safety board
- Assigned appropriately trained personnel to a site upon request

#### Weaknesses

- Lack of detail regarding pool of armed resources
- Lack of detail regarding guard training specific to SFMTA assignments
- Did not address newly formed LLC for armed services
- Glossed over important training components and armed services due to poor presentation time management

### Proposer #2 – Comprehensive Security Services

#### Strengths

- Demonstrated experience in management personnel represent breadth and depth in security and security training
- Scenario based training and cultural diversity training and random measures training (addresses Homeland Security concerns)
- Financial stability (debt free) – reinvests in company, good internal controls
- Excellent response time of 30 minutes or less to request for emergency staffing
- Establish response time planning matrix
- Logistics capability for extended guard coverage due to changes in nation's threat levels (increasing staffing at PG&E remote sites)

- Team oriented management approach
- Met requested firearms requirement (.40)
- Guards qualify with company issued firearm
- Both armed and unarmed guard are from within
- Guard cards supplemented by post hiring 40-hour training

#### Weaknesses

- Did not identify the local Account Manager

#### **Final Scores and Recommendation:**

Scores from the Proposal/Cost and Oral Evaluations were combined for the following results:

- Comprehensive Security Services Inc: **122.66** out of 140 possible points
- Cypress Security, LLC: **101.00** out of 140 possible points

The SFMTA Contract Compliance Office reviewed and confirmed all points awarded during the RFP process. Based on final evaluations of all the proposals received, oral presentations, and discussions of the strengths and weaknesses of the firms who submitted proposals, the Evaluation Team recommended award of this contract to Comprehensive Security Services.

SFMTA entered into negotiations with Comprehensive Security Services but came to an impasse over contract pricing. SFMTA then terminated negotiations with Comprehensive Security by mutual agreement and entered into negotiations with Cypress Security, LLC.

#### **Contract Elements:**

The proposed contract is for a three-year term, with the option to extend for up to three additional years. The contract not to exceed amount is \$15.8 million, and includes two annual CPI adjustments and a 10% contingency for emergency services.

The Scope of Services of the Security Contract will encompass approximately 98,336 hours of unarmed guard services and 43,125 of armed guard services annually. In addition, 28,736 hours have been scheduled for video surveillance and other miscellaneous security administrative tasks, and 7,500 hours will be scheduled for both Observers Programs. The SFMTA has reserved the right to adjust contract hours based on the needs of the agency.

The Contract has a 5% LBE subcontracting goal. The subcontractors identified by Cypress to meet this goal are:

- Smart Plotting (printing services)
- International Fire (equipment)

#### **Funding:**

Funding is included in the annual operations budget.

**Recommendation:**

Staff recommends that the Executive Director/CEO be authorized to execute the Agreement with Cypress Security LLC upon approval of the Board of Supervisors, for a three-year term and an amount not to exceed \$15.8 million.

**Benefit to the SFMTA 2008 – 2012 Strategic Plan**

The SFMTA will further the following goals of the Strategic Plan through adoption of the Armed and Unarmed Security Guard Services Contract:

- Goal 1 – Customer Focus: To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy.
  - 1.1 – Improve safety and security across all modes of transportation
  - 1.2 – Improve cleanliness of SFMTA stations and vehicles by providing a clean, comfortable experience
- Goal 4 – Financial Capacity: To ensure financial stability and effective resource utilization
  - 4.2 – Ensure efficient and effective use of resources
- Goal 5 – SFMTA Workforce: To provide a flexible, supportive work environment and develop a workforce that takes pride and ownership of the agency’s mission and vision and leads the agency into an evolving, technology-driven future.
  - 5.2 – Improve facilities in which people are working.

Both the Contract Compliance Office and the City Attorney’s Office have reviewed the item.

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

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

WHEREAS, The SFMTA collects more than \$230 million in annual revenue from transit fares, citation payments and sales of various fare media and has more than 15 facilities throughout the city, including transit stations, vehicle storage yards and service centers; and,

WHEREAS, Following a low-bid solicitation and evaluation process, King Security was awarded the new contract for Security Services on December 4, 2007; and,

WHEREAS, The Board of Supervisors did not approve the new contract before its February 29, 2008 expiration date; and,

WHEREAS, The SFMTA Board and the Board of Supervisors approved a six-month extension of the contract until August 31, 2008, with a new not-to-exceed amount of \$13.6 million; and,

WHEREAS, The SFMTA Board also granted the Executive Director/CEO authority to reject all bids based on the results of a pending staff evaluation of the bid process and consideration of an alternate Request for Proposal (RFP) contract solicitation process; and,

WHEREAS, The Executive Director/CEO authorized the rejection of all bids on March 31, 2008; and,

WHEREAS, The SFMTA conducted a competitive process through an RFP that allows the evaluations panel to consider qualitative factors as well as cost factors; and,

WHEREAS, The qualitative factors used for evaluation include thoroughness of the firm in addressing agency goals with regard to security and safety, experience in both armed and unarmed security guard services, financial stability of the firm and scope of services provided for project of similar magnitude; and,

WHEREAS, The evaluation panel chose Comprehensive Security Services as the highest responsive, responsible proposer and initiated negotiations with Comprehensive Security Services; and,

WHEREAS, Negotiations with Comprehensive Security Services came to an impasse over contract pricing and negotiations were terminated by mutual agreement of the parties; and,

WHEREAS, The SFMTA initiated and successfully completed negotiations with the second highest ranked proposer, Cypress Security, LLC; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute the Agreement for Armed and Unarmed Security Guard Services with Cypress Security, LLC, for a term not to exceed three years, and an amount not to exceed \$15.8 million dollars; and, be it

FURTHER RESOLVED, That the SFMTA Board of Directors requests that the Board of Supervisors approve the Agreements.

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

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

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

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

**Cypress Security, LLC**

This Agreement is made this **9th** day of **July, 2008**, in the City and County of San Francisco, State of California, by and between: **Cypress Security, LLC, 452 Tehama Street, San Francisco, CA 94103**, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA" or "Department").

**Recitals**



WHEREAS, the SFMTA wishes to contract for security services for its properties and transit facilities; and,

WHEREAS, a Request for Proposal (“RFP”) was issued on May 21, 2008 and City selected Contractor pursuant to the terms of the RFP; and

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

Now, THEREFORE, the parties agree as follows:

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

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

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

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

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

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

Subject to Section 1, the term of this Agreement shall be from the Effective Date to **August 31, 2011**.

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

This Agreement shall become effective when the Contractor has supplied a bond that meets the requirements of this Agreement and the Controller has certified to the availability of funds and Contractor has been notified in writing.

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

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

## **5. Compensation**

a. Compensation shall be made in monthly payments for work, as set forth in Section 4 of this Agreement, that the Executive Director/CEO, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed **\$15,800,000** (fifteen million, eight hundred thousand dollars). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

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

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

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

e. **Annual Billing Rate Adjustment**

On January 1 of each calendar year the then-current billing rates in Appendix B "Calculation of Charges" shall be adjusted by \$0.88 per hour. There shall be no other CPI or other billing rate increases during the term of this Contract.

## **6. Guaranteed Maximum Costs**

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

b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

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

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

## **7. Payment; Invoice Format**

a. Contractor shall submit monthly electronic and hard copy invoices and invoices to the SFMTA showing actual hours of Services provided, multiplied by the applicable hourly rate and subtotaled by Site. Contractor shall provide all invoices for a given month no later than the 21<sup>st</sup> day of the succeeding month. Hard copies of invoices shall be sent by first-class U.S. mail, postage pre-paid, to the following addresses:

Office of Deputy Director of Enforcement and Security  
San Francisco Municipal Transportation Agency  
875 Stevenson Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94103

Electronic copies shall be provided by email to the email address(es) to be provided by SFMTA.

b. Invoices shall at a minimum include the following information:

- i. Name of Guard assigned
- ii. Location of Guard's assignment (invoices shall subtotal the hours and charges grouped by Site)
- iii. Hours assigned to work
- iv. Status of Guard (armed, unarmed, Supervisor, etc.)
- v. Supervisor's name attesting to the hours and location worked
- vi. Pay rate/hour
- vii. Hire date

c. Payments to Contractor shall be made by SFMTA no later than 30 days from the date of receipt of a complete and accurate invoice that complies with all requirements of this Agreement.

SFMTA may not deduct any liquidated damages amounts from invoices unless the such liquidated damages amount is unpaid 60 days from the date of the notice of violation.

d. Invoices submitted by Contractor must be in a form approved by SFMTA. All amounts paid by SFMTA to Contractor shall be subject to audit by SFMTA.

## **8. Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

## **9. Left blank by agreement of the parties.**

## **10. Taxes**

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

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

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

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

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

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

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

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

#### **12. Qualified Personnel**

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

#### **13. Responsibility for Equipment**

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

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

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

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same.

Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

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

**b. Payment of Taxes and Other Expenses.**

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

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

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

**15. Insurance**

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

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

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

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 and SFMTA, 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.

B. All policies shall provide thirty (30) days' advance written notice to SFMTA of reduction or non-renewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

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

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

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

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

Office of Deputy Director of Enforcement and Security  
San Francisco Municipal Transportation Agency  
875 Stevenson Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94103

AND

Office of Contract Procurement  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103

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

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

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

g. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

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

j. The Contractor shall furnish and maintain throughout the term of this Contract the following bonds, on forms furnished by City (copies attached) and at no expense to SFMTA:

(1) A corporate surety bond, in a sum not less than \$800,000 to guarantee the faithful performance of this contract.

(2) A corporate surety bond, in the sum of \$800,000, to guarantee the payment of labor, materials, supplies, and equipment used in the performance of the Contract.

A. Corporate sureties issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best rating not less than "A-, VIII" or as otherwise approved by the City's Risk Management and Controller.

B. The bonds shall be renewed annually for multi-year contracts. SFMTA shall be given a minimum of thirty (30) days advance notice in the event that the surety intends to cancel or not renew the bond by the surety as well as the Contractor. In such event, Contractor shall, prior to the effective date of cancellation or termination, substitute another, and sufficient, surety to be approved by City. During the period covered by the Contract, if any of the sureties upon the bond become insolvent or, in the opinion of City, unable to pay promptly the amount of such bond to the extent to which the surety might be liable, Contractor, within thirty (30) days after notice given by City to Contractor, shall buy supplemental bond or otherwise, substitute another and sufficient surety approved by City in place of the surety becoming insolvent or unable to pay.

C. If, due to cancellation, failure to renew, or insolvency, Contractor fails to substitute another and sufficient surety within the applicable time period, City, in addition to any other remedies available to it under law, and notwithstanding any other provision of this agreement to the contrary, shall have the option to immediately declare a material breach of this Contract, terminate the Contract, and/or bring any proper suit or proceeding against monies then due or which thereafter may become due Contractor under the Contract.



(3) A blanket position bond insuring each employee for a maximum amount of \$10,000 or a scheduled fidelity bond covering employees who perform tasks relating to the SFMTA Revenue Unit for \$2,500 and a Blanket Crime Policy (Employee Dishonesty Coverage) covering all officers and employees in an amount of not less than \$100,000 with any deductible not to exceed \$5,000 and including SFMTA as additional obligee or loss payee as its interest may appear.

## **16. Indemnification**

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

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

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

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

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

## **18. Liability of City**

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

## **19. Liquidated Damages.**

By entering into this Agreement, Contractor agrees that in the event that Contractor commits any of the contract violations described in Appendix A, Section 13, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sums specified in Appendix A, Section 13 do not constitute penalties, but are reasonable estimates of the loss that City will incur based on the contract violation, established in light of the circumstances existing at the time this contract was awarded. Prior to assessing any amounts against Contractor pursuant to Appendix A, Section 13, SFMTA shall provide notice of the violation in writing within five working days of the violation, or within 5 working days of SFMTA's discovery of the violation, whichever is later. Liquidated damages shall be invoiced to Contractor by separate demand and not by deduction from an otherwise proper and complete invoice except as provided in Section 7(c). Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with contractual requirements. In no event shall liquidated damages be assessed pursuant to this Contract in a cumulative amount of more than \$250,000 per calendar year, or a proportional amount for a portion of a calendar year. Failure by City to impose liquidated damages for specified violations shall not be a waiver of the right to enforce this Section for subsequent violations, nor shall it constitute a waiver of any other right of City under this Agreement. Written notice by City of a violation in accordance with this Section shall constitute enforcement of this Section even though the City may not assess liquidated damages at the time of such initial written notice of violation.

## **20. Default; Remedies**

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

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

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor. If such default is not capable of cure within ten days, then the Contractor shall have 30 days to cure, provided that Contractor diligently works toward curing the violation during the 30 day period.

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

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take

advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

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

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

## **21. Termination for Convenience**

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

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

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

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

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

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

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

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

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

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

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

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

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

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

## **22. Rights and Duties upon Termination or Expiration**

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

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

**23. Conflict of Interest**

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

**24. Proprietary or Confidential Information of City**

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

**25. Notices to the Parties**

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

To City:

Office of Deputy Director of Enforcement and Security  
San Francisco Municipal Transportation Agency  
875 Stevenson Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94103

AND

Office of Contract Procurement  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103

To Contractor:

Nils Welin

Cypress Security, LLC  
452 Tehama Street  
San Francisco, CA 94103

Phone #: 415-240-4495  
e-mail: [nwelin@cypress-security.com](mailto:nwelin@cypress-security.com)  
Fax #: 415-352-1910

AND

Kes Narbutas  
Cypress Security, LLC  
452 Tehama Street  
San Francisco, CA 94103

Phone #: 415-240-4500  
e-mail: [knarbutas@@cypress-security.com](mailto:knarbutas@@cypress-security.com)  
Fax #: 415-352-1910

Any notice of default must be sent by registered mail.

## **26. Ownership of Results**

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

## **27. Works for Hire**

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

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

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The

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

**29. Subcontracting**

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

**30. Assignment**

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

**31. Non-Waiver of Rights**

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

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

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

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

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

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

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

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

**a. The LBE Ordinance**

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

**b. Compliance and Enforcement**

**(1) Enforcement**

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

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

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

**(2) Subcontracting Goals**

The LBE subcontracting participation goal for this contract is five percent (5%). Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the



amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor.

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

**(3) Subcontract Language Requirements**

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

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

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

**(4) Payment of Subcontractors**

Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount.

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

**34. Nondiscrimination; Penalties**

**a. Contractor Shall Not Discriminate**

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national

origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

**b. Subcontracts**

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

**c. Nondiscrimination in Benefits**

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

**d. Condition to Contract**

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

**e. Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

**35. MacBride Principles—Northern Ireland**

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

**36. Tropical Hardwood and Virgin Redwood Ban**

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

**37. Drug-Free Workplace Policy**

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

**38. Resource Conservation**

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

**39. Compliance with Americans with Disabilities Act**

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

#### **40. Sunshine Ordinance**

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

#### **41. Public Access to Meetings and Records**

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

#### **42. Limitations on Contributions**

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

#### **43. Requiring Minimum Compensation for Covered Employees**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating

in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

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

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

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

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

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

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

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

#### **45. First Source Hiring Program**

##### **a. Incorporation of Administrative Code Provisions by Reference**

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

##### **b. First Source Hiring Agreement**

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract.

Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

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

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

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

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

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



(6) Set the term of the requirements.

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

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

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

**c. Hiring Decisions**

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

**d. Exceptions**

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

**e. Liquidated Damages**

Contractor agrees:

- (1) To be liable to the City for liquidated damages as provided in this section;
- (2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- (3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- (4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;
- (5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:
  - A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and
  - B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source hiring program face far fewer barriers to employment than

their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

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

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

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

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

#### **f. Subcontracts**

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

#### **46. Prohibition on Political Activity with City Funds**

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

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

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

ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### **48. Modification of Agreement**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

#### **49. Administrative Remedy for Agreement Interpretation**

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

#### **50. Agreement Made in California; Venue**

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

#### **51. Construction**

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

#### **52. Entire Agreement**

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

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

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

#### **54. Services Provided by Attorneys**

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

**55. Left blank by agreement of the parties.**

**56. Severability**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**57. Protection of Private Information**

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

**58. Graffiti Removal**

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

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is

visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

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

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

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

#### **60. Change of Contractor**

Should the SFMTA award a contract for the Services provided under this Agreement, Contractor shall cooperate with SFMTA and the new contractor to implement a systematic and orderly transition of Services to the new contractor.

#### **61. Displaced Worker Protection Act**

a. Contractor shall comply with all applicable requirements of the Displaced Worker Protection Act (DWPA), San Francisco Police Code Article 33C as both a successor contractor, and, upon termination of this Agreement, as a terminated contractor.

b. In the event that either party gives notice of the termination of this Agreement, within ten (10) days of giving or receiving such notice Contractor shall provide to the successor contractor the name, date of hire, and employment occupation classification of each employee employed at the Sites for which Services will be provided by the successor contractor as of time of contract termination. If Contractor does not have contact information for the successor contractor ten (10) days after the contract termination notice, Contractor shall immediately notify the SFMTA in writing that it requires the successor contractor's contact information in order to comply with this Section 61, and shall provide the information required by this section to the successor contractor immediately upon receipt of the successor contractor's contact information.

Where a subcontractor has been terminated prior to the termination of the contract, the terminated subcontractor shall be deemed a terminated contractor for purposes of the DWPA.

c. As successor contractor, Contractor shall retain, for a 90-day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for the preceding eight months or longer at the Sites covered by this Agreement.

d. If Contractor determines that fewer employees are required to perform this Agreement than were required by the terminated contractor (and subcontractors, if any), Contractor shall retain employees by seniority within job classifications.

e. During such 90-day period, Contractor (or any subcontractor to which the DWPA applies) shall maintain a preferential hiring list of eligible covered employees not retained by Contractor (or a subcontractor) from which Contractor (or subcontractor) shall hire additional employees.

f. Except as provided in subsection (d) of this section, during such 90-day period, Contractor (or subcontractor, where applicable) shall not discharge without cause an employee retained pursuant to the DWPA. "Cause" for the purpose of this Section 61 shall include, but not be limited to, the employee's conduct while in the employ of the terminated contractor or subcontractor that contributed to any decision to terminate the contract or subcontract for fraud or poor performance, excluding permissible union-related activity.

g. At the end of such 90-day period, Contractor (or subcontractor, where applicable) shall perform a written performance evaluation for each employee retained pursuant to the DWPA. If the employee's performance during such 90-day period is satisfactory, the successor Contractor (or subcontractor) shall offer the employee continued employment under the terms and conditions established by Contractor (or subcontractor) or as required by law.

h. Contractor is required to include this provision in any subcontracts for Services to which the DWPA applies.

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

<p><b>CITY</b></p> <p>Municipal Transportation Agency</p> <hr/> <p>Nathaniel P. Ford, Sr. Executive Director/CEO</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Deputy City Attorney</p>	<p><b>CONTRACTOR</b></p> <p><b>Cypress Security, LLC</b></p> <p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p>
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	Name: _____  Title: _____ 452 Tehama Street San Francisco, CA 94103  City vendor number: _____

**Appendices**

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**Appendix A**  
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B.	Regular Locations.....	Error! Bookmark not defined.
C.	Future Sites.....	Error! Bookmark not defined.
8.	PERSONNEL .....	Error! Bookmark not defined.
A.	Contractor Responsible For Personnel.....	Error! Bookmark not defined.
B.	Removal without Cause.....	Error! Bookmark not defined.
C.	Removal with Cause.....	Error! Bookmark not defined.
D.	Reassignment, Augmentation, Reduction of Workforce.....	Error! Bookmark not defined.
E.	Drug and Alcohol Screening .....	Error! Bookmark not defined.
F.	Qualified Employees.....	Error! Bookmark not defined.
G.	Training Requirement.....	Error! Bookmark not defined.
9.	TYPES OF SERVICES.....	Error! Bookmark not defined.
A.	Armed Personnel.....	Error! Bookmark not defined.
i.	Armed Revenue Escort Security Officer Guards.....	Error! Bookmark not defined.
ii.	Armed Revenue Guard Supervisor.....	Error! Bookmark not defined.
B.	Unarmed Personnel.....	Error! Bookmark not defined.
i.	Revenue Tower Officers.....	Error! Bookmark not defined.
ii.	Senior Console Supervisor.....	Error! Bookmark not defined.
iii.	Security Control Console Monitors.....	Error! Bookmark not defined.
iv.	Field Supervisor.....	Error! Bookmark not defined.
v.	Graffiti Unit Supervisor.....	Error! Bookmark not defined.
vi.	Graffiti Unit Guards.....	Error! Bookmark not defined.
C.	Supervisor Duties.....	Error! Bookmark not defined.
D.	Contract Security Administrative Support.....	Error! Bookmark not defined.
E.	As-Needed and Emergency Guard Service.....	Error! Bookmark not defined.
F.	Account Manager.....	Error! Bookmark not defined.
G.	Observer Program.....	Error! Bookmark not defined.
H.	Cable Car Observer's Program.....	Error! Bookmark not defined.
10.	TIMES OF SERVICE.....	Error! Bookmark not defined.
A.	Time Records.....	Error! Bookmark not defined.
B.	Hours of Service.....	Error! Bookmark not defined.
i.	Shift Schedule.....	Error! Bookmark not defined.
ii.	Limitation on Overtime.....	Error! Bookmark not defined.
C.	Holidays.....	Error! Bookmark not defined.
D.	Special Events.....	Error! Bookmark not defined.
11.	REPORTS AND MEETINGS .....	Error! Bookmark not defined.

- A. **Quarterly Meetings**.....**Error! Bookmark not defined.**
- B. **Reports**.....**Error! Bookmark not defined.**
  - i. **General Report Requirements**.....**Error! Bookmark not defined.**
  - ii. **Incident Reports**.....**Error! Bookmark not defined.**
  - iii. **Annual Summary Reports**.....**Error! Bookmark not defined.**
  - iv. **Other Required Reports**.....**Error! Bookmark not defined.**
- 12. **MATERIALS TO BE PROVIDED BY SFMTA** ..**Error! Bookmark not defined.**
- 13. **LIQUIDATED DAMAGES** .....**Error! Bookmark not defined.**

Exhibit A – SECURITY HOURS CHART

**1. DEFINITIONS**

For the purpose of the Special Conditions in this Contract Proposal, the following terms shall have the following meanings:

- A. **Agreement, Contract.** The contract to be negotiated and executed by the SFMTA and the successful proposer, which shall include this Request for Proposals, the Contractor's proposal, the Post Orders, Staffing Plan, Facility Patrol Plan, Training Plan and Standard Operating Procedures, and all other attachments and appendices to those documents.
- B. **Americans with Disabilities Act, ADA.** The Americans With Disabilities Act of 1990, as amended, including all relevant regulations adopted by the U.S. Department of Justice and the U.S. Department of Transportation.
- C. **Armed Guard Card.** An identification card issued by the State Department of Consumer Affairs that provides proof of weapons certification.
- D. **As Needed Guard Services.** Armed and unarmed Guard requests that are not a part of the regular schedule, as set forth in the current monthly Staffing Plan, where SFMTA has provided at least four (4) hours notice.
- E. **CCTV.** Closed circuit television.
- F. **Central Control.** The SFMTA's operational dispatch center for all revenue vehicles, located at 151 Lennox St.
- G. **Contract, Agreement.** The contract to be negotiated and executed by the SFMTA and the successful proposer, which shall incorporate by reference this Request for Proposals, the Contractor's proposal, the Post Orders, Staffing Plan, Facility Patrol Plan, Training Plan and Standard Operating Procedures, and all other attachments and appendices to those documents..
- H. **Days.** Calendar days, unless otherwise specified.
- I. **Deputy Director of Enforcement and Security.** The city employee appointed to the position of Deputy Director of Enforcement and Security by the SFMTA, or his or her designee.

- J. **Effective Date.** The effective date of the Agreement between the Contractor and SFMTA shall be the date on which the last required approval is received and all contract documents are executed.
- K. **Emergency Guard Service.** Armed or Unarmed Guard Services that are requested by the SFMTA with less than four (4) hours notice.
- L. **Emergency Report.** A written report required to be submitted by Contractor to SFMTA following the occurrence of an Unavoidable Delay, a sudden and unanticipated event that results in injury, death or property damage, or any other circumstances requiring an Emergency Report as specified in the Agreement.
- M. **Executive Director/CEO.** The Director of Transportation for the San Francisco Municipal Transportation Agency, or his/her designee.
- N. **Fare Media.** Items issued by the SFMTA to users of public transit and parking to provide evidence of payment for use of services.
- O. **Graffiti.** 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, shelters, kiosks, 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" does 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.).
- P. **Guard.** Trained, equipped and qualified employees of Contractor assigned to security Guard duties as required by this Contract.
- Q. **Guard Card.** An identification card that verifies that a person has completed the required classes and clearances to work as a security guard, as issued by the State Department of Consumers Affairs (see Business and Professions code section 7583.11).
- R. **Incident Report.** The report required to be filed to document events or conditions on SFMTA Property that represent a security concern, as further defined in Section 11.B.
- S. **Mobile Patrol Guards.** Guards assigned to the Graffiti Unit with orders to patrol unstaffed SFMTA Sites such as LRV platforms, kiosks and bus shelters using a vehicle supplied by Contractor.
- T. **Observers.** Personnel hired by the Contractor to assist with the Americans With Disabilities Act Observer's Program and the Cable Car Observer Program.

- U. **Records.** All documents created, received or maintained by Contractor in connection with performance under this Agreement, including, but not limited to, books, accounts, invoices, maintenance and service logs, database information, contracts, construction documents, payroll information, maintenance, construction and service logs and other documents, whether or not kept in electronic format.
- V. **Relief.** A Guard assigned to cover an authorized break, sick leave or vacation of a Guard who is regularly assigned to the Site.
- W. **Security Office.** The SFMTA security office located at 875 Stevenson Street, Room 224.
- X. **Services.** The Security Guard services to be provided by Contractor in accordance with the requirements and specifications of this Contract.
- Y. **SFMTA.** The Municipal Transportation Agency of the City and County of San Francisco, acting by and through its Executive Director/CEO or his or her designee.
- Z. **SFMTA Properties.** The Sites listed in Section 7, and any other real property in which the SFMTA has a property interest or acquires such interest during the duration of this Contract.
- AA. **Site.** A property or facility to which Guards are assigned pursuant to this Contract or which may be established during the term of this Contract. Current Sites are listed in Section 7.
- BB. **Standard Operating Procedure (SOP).** Written procedures, policies and guidelines used by the Contractor in day to day operations that will be provided by the SFMTA.
- CC. **Supervisor.** An employee of Contractor whose primary job duties include oversight, supervision, scheduling and managing assigned Guards on duty, certifying Guard time records and collecting Guard reports for each shift. Specific duties of Supervisors under this Contract are further defined in Section 9.
- DD. **Revenue Section, Revenue.** The Division of SFMTA that handles Fare Media and Fare Collection, located at One South Van Ness.
- EE. **Unavoidable Delay.** A delay in Contractor's performance of its duties under the Contract that Contractor demonstrates within 10 Days of City demand could not have been avoided by Contractor's exercise of due care, prudence, foresight, or diligence and that arises directly from: an act of God; fire; flood; windstorm; tornado; earthquake; war; riot; insurrection; epidemic; quarantine restrictions; acts of terrorism; inability of Contractor to procure labor to the extent that such inability is not caused by disputes related to collective bargaining; inability of Contractor to procure material; accident; the prevention by the City of Contractor from commencing or prosecuting any of its duties under the Contract; inability of Contractor to obtain applicable permits and licenses from relevant governmental authorities; or failure of public utility service.

## **2. CONTRACTOR RESPONSIBILITIES-OVERVIEW**

Contractor agrees that the Services to be performed, including the locations where and the hours during which Services are to be performed, and the number of Guards to be furnished by the Contractor, shall be subject to the approval of the SFMTA. Contractor agrees that the schedules set forth in a staffing plan may be changed at any time, without any penalty to the SFMTA, provided the SFMTA gives at least ten (10) business day's notice of the change.

The Contractor will provide and supervise Guards for all shifts as directed by the SFMTA in writing. Contractor will provide Guards for assignment to duties and locations as described in the Scope of Services or other times or locations designated by the SFMTA. . Contractor agrees that the schedules set forth in a staffing plan may be changed at any time, without any penalty to the SFMTA, provided the SFMTA gives at least ten (10) business day's written notice of the change.

## **3. INITIAL CONTRACT DELIVERABLES**

### **A. Post Orders.**

Within fifteen (15) Days of the Effective Date, Contractor shall deliver to SFMTA draft comprehensive Post Orders for all designated Sites for SFMTA review and approval. SFMTA shall review and return same to Contractor with instructions for revisions. Contractor will prepare completed and approved Post Orders and submit them to the SFMTA within ten (10) days of receipt of SFMTA revisions. Final Post Orders approved by SFMTA are incorporated by reference and shall become part of the Contract as though fully set forth. Post Orders shall include, but are not limited to:

- i. General Safety Procedures
- ii. Emergency Procedures (including contact lists)
- iii. Investigation, Incident and Emergency Report Procedures and Forms
- iv. Shift Patrol Procedures
- v. Communication Procedures
- vi. Dress and Grooming Standards
- vii. Training Procedures including harassment training
- viii. Photographs and diagrams of each Site.
- ix. Human Resources Policies and Hiring and Disciplinary Procedures
- x. Templates for required reports as listed in Section 11.B.

### **B. List of Assigned Guards.**

Contractor, prior to starting any work, must furnish SFMTA with a complete list of all Guards assigned, their assignment and a copy of their application for

employment. Records of criminal convictions, driving history, parking citations, military service, education and prior employment must be checked by Contractor prior to the assignment of any Guard

**C. Training Plan.**

No later than ten (10) Days after the Effective Date, Contractor shall provide the SFMTA with a draft Training Plan consisting of the following: (i) the proposed curriculum for each required subject matter listed in Section 8.H below, (ii) the dates, times, and location of each block of instruction, and (iii) a resume for each instructor must be submitted seven days prior to the commencement of training. SFMTA shall review and return the draft Training Plan to Contractor with any instructions for revisions. Contractor shall deliver the completed Training Plan to the SFMTA for its approval prior to the commencement of training required by this Contract. The final approved Training Plan is incorporated by reference and shall become part of the Agreement as though fully set forth herein.

In addition to the initial training required above, Contractor will provide 24 hours of training each year of the Contract to all Guards used in performance of the Contract. Training shall include but is not limited to components as described in Section

**D. Proof of Training.**

**i. Individual Guards.**

Prior to assignment of any Guard, Contractor shall provide proof of required training for that Guard. Such proof shall include an affidavit of training, on a form to be approved by the SFMTA, signed by the Contractor and the Guard certifying that each type of training required by this Contract has been completed.

**ii. All Guards.**

Within thirty (30) Days of the Effective Date of the Agreement, Contractor must provide proof of having completed required training of each and every Guard assigned to this Contract.

**iii. Training.**

Contractor shall provide proof of attendance for at least 24 hours of annual training with attendance sheets signed off by Guards participating in training, along with the day, time, duration and training subject matter. Proof of attendance shall be submitted quarterly to the SFMTA. See Section 8.H for further information on training requirements.

**iv. Affidavits.**

Falsified affidavits of training shall be grounds for immediate removal and replacement of a Guard. Contractor is responsible for verifying the truth and accuracy of each affidavit. Contractor agrees that failure to verify training affidavits is a material breach of the Agreement.

**E. Facility Patrol Plan.**

Contractor shall provide Guards to patrol bus yards and subway and rail tracks to minimize trespassing, vandalism, and exposure to liability. On the Effective Date of the Agreement, Contractor shall provide a Facilities Patrol Plan to identify specific measures to prevent and minimize theft, graffiti, vandalism, sabotage and trespassing at Sites to be patrolled, and procedures for Guards to respond to such incidents. The Facility Patrol Plan shall be subject to SFMTA approval. The final approved Facility Patrol Plan is incorporated by reference and shall become part of the Agreement as though fully set forth herein.

**F. Proposed Uniform Design.**

Contractor shall submit proposed Guard uniform designs to SFMTA for approval within ten (10) Days of the Effective Date.

**G. Supervisor Contact List.**

Upon the Effective Date Contractor shall provide a contact list with 24-hour contact information (phone or pager) for all Supervisors.

**H. Proposed form of Emergency Report.**

Upon the Effective Date Contractor shall provide a proposed form of Emergency Report for SFMTA approval.

**I. Report Templates.**

Upon the Effective Date, Contractor shall provide to SFMTA templates for all reports that are required by this Contract (Emergency Reports, Training Affidavits, Incident Reports, Guard Timesheets, Lost/Stolen Item Reports, a Daily Security Report (DSR), Radio Logs, Armed Guard Daily Report, Observer Reports, monthly invoice, and an Excel matrix of Planned/Unplanned Scheduled Events to track date/time of event, location, number of guards, hours of service, etc.) for SFMTA approval. The final approved report templates are incorporated by reference and shall become part of the Agreement as though fully set forth herein.

## **4. CONTRACTOR DUTIES**

**A. General Guard Duties.**

The Contractor shall provide and supervise Guards to provide Services for all shifts and Sites for which Guards are required by this Contract or requested by the SFMTA. Except in the Revenue Section, Contractor shall make best efforts to assign Guards consistently to certain Sites so that Guards become more familiar with the procedures and authorized persons associated with that Site. Guards shall be provided to perform the following duties at all Sites in accordance with the Standard Operating Procedures unless otherwise provided in the Contract or as instructed by SFMTA:

- i. Protect the safety of persons on the Site
- ii. Prevent and minimize fire, theft, damage and trespass on SFMTA properties;
- iii. Prohibit entry into secure Sites by anyone other than persons carrying valid SFMTA identification or as otherwise instructed by SFMTA;

- iv. Report any unusual incidents or hazardous conditions;
- v. Maintain a daily log for each shift in accordance with all policies for the Site (**e.g.** sign in and sign out requirements for visitors);
- vi. Complete rounds of assigned facilities as required for each Site to ensure that all access doors are secure;
- vii. Maintain log of all security violations and report occurrences to SFMTA Security as quickly as possible considering the nature of the violation;
- viii. Monitor security desk consoles (**i.e.**, employee access control and alarm computer, CCTV video monitors, DVRs); as well as:
  - (a) Be familiar with and implement emergency fire or fire alarm procedures including familiarity with floor plans with locations of fire alarm pull boxes, fire extinguishers, fire alarm monitoring panel and other life/safety systems;
  - (b) Be familiar with and implement emergency intrusion alarm procedures including the use of computer programs, closed circuit television monitors, voice intercom systems, alarms and alarm enunciator panels and other equipment required for monitoring and control of building access;
  - (c) Guards shall be responsible for all building and systems keys in their possession and shall account for the whereabouts of keys at all times. Keys shall not be loaned to anyone for any reason. If keys are lost or stolen, Guards shall notify Contractor no later than the end of the shift during which the keys were lost or stolen, and Contractor shall notify SFMTA immediately upon receiving the Guard's report so that appropriate action can be taken to safeguard the premises. Contractor is responsible for the cost of replacement of lost, stolen or damaged keys;
- ix. Be familiar with and implement procedures and protocols for responding to medical emergencies, bomb threats, riots, fires, earthquakes, hazardous spills, floods and other emergencies;
- x. Be familiar with and implement procedures for receiving and forwarding requests for maintenance;
- xi. Guards shall not use cell phones except as required to perform their duties, and may not use or be in possession of any personal electronic devices or reading materials not related to Guard duties at a Site; and
- xii. Guards shall, at all times, be polite, courteous, respectful, and responsive to any person authorized to be on the Site.



- xiii. Guards shall not be engaged in or conduct any personal business or business outside those described in this Contract at any time while assigned to perform Services except for authorized breaks.
- xiv. Guards shall comply with all FCC rules and regulations when using the SFMTA's radio frequency, radio base station and handheld radio equipment.

**B. Facility Patrols**

Guards shall patrol the grounds of SFMTA Property as required by this Contract and as requested by SFMTA, including subways and rail tracks, to prevent trespassing, vandalism, sabotage, injury and liability in accordance with the Facility Patrol Plan.

**C. Employee Access Controls**

Guards shall monitor the access of employees and members of the public to SFMTA Property as required by this Contract and as requested by SFMTA. During business hours, most facilities allow employees access to all work areas except for secured areas (e.g. Revenue offices, the money counting room, various Revenue storage areas), and restricted areas (e.g. certain parts or tools storage areas, dispatch offices, and Central Control). Control of employee access to restricted areas during and after work hours is accomplished through a card access / reader system. Guards shall notify Contractor no later than the end of the shift during which any cards in the possession of Guards at the Site are lost or stolen or if any card reader is not working properly and Contractor shall notify SFMTA immediately upon receiving the Guard's report. Contractor is responsible for the cost of replacement of lost, stolen or damaged cards in the possession of Contractor's employees.

**D. Revenue Security**

Guards shall escort and protect SFMTA's Revenue Division employees who handle cash and negotiable fare media as requested by SFMTA. SFMTA may elect to use armed or unarmed Guards to escort and protect Revenue staff. Revenue staff collects cash from the operating divisions, subway fare gates and some surface platforms on a daily basis. Special events also require Revenue staff to collect fares directly from transit passengers or from various collection points. Contractor must provide sufficient numbers of Guards to ensure uninterrupted protection of Revenue staff during the performance of Revenue operations as requested by SFMTA.

- i. The daily Revenue operations require constant alarm and video monitoring as well as armed Guards to ensure both the safety of Revenue personnel and the integrity of the revenue collection and counting process. Guards assigned to Revenue operations must be observant, aware and alert at all times.
- ii. Contractor must rotate Guard assignments a minimum of once every two months for Revenue related activities, and take such

other measures as required to minimize the opportunity for collusion between Guards and SFMTA employees.

- iii. Contractor must ensure uninterrupted Guard service for Revenue operations.
- iv. Guards assigned to the Tower of the New Revenue Center must be thoroughly familiar with:
  - (a) all of the Site's life safety systems, CCTV video system, alarm and access control systems, operation of revenue parking garage doors and loading areas, SFMTA building security policies;
  - (b) equipment removal policy and procedures; and
  - (c) procedures for deliveries of freight, supplies, equipment, mail, packages.

#### **E. Failure to Perform Guard Duties**

Any theft of SFMTA property or acts of vandalism, including but not limited to graffiti, that occurs during the hours of contract security coverage where security personnel are confirmed to be assigned, but who fails to comply with post order or other instructions from authorized SFMTA personnel, will result in Contractor's liability to SFMTA for an amount equal to 100% of the costs to clean, repair, and replace damaged or stolen assets. Notwithstanding the foregoing, Contractor's liability shall not exceed one million dollars during the original term of this Contract.

### **5. UNIFORMS**

#### **A. Uniforms to be Supplied and Maintained.**

Contractor must furnish and maintain all uniform items for all Guards provided to perform the Services required by this Contract, including outdoor clothing appropriate for the weather and season, with necessary safety clothing and equipment. All Guards must wear a complete uniform of the type required by this Section at all times while on duty. When reporting for duty, Guards' shoes must be shined, all uniform items must fit well and be clean and pressed and must generally present a professional image to the public. The Contractor shall be responsible for the cleaning, pressing, and repair costs for all uniforms.

#### **B. Uniform Design.**

All Guards shall wear the same color and style of uniform. Uniform design shall be a police/military style uniform subject to the approval of the SFMTA. Any changes to uniform design or color required by the SFMTA shall be made at no additional cost to the SFMTA. Uniforms must be in the in the following colors or a combination of such colors:

- i. Dark Blue

- ii. Dark Grey
- iii. Forest Green
- iv. Tan

Shoulder patches with Contractor identification and not larger than 4-1/2 inches by 4-1/2 inches shall be worn on the uniform's left shoulder. No other Contractor identification is to be worn or displayed on the uniform. A lettered breast badge and cap ornament displaying the Contractor's name shall also be worn.

### C. Uniform Items.

Contractor shall issue to or require all Guards to have a uniform, which must include, at a minimum, the following items:

- i. Shirts (long and short sleeve);
- ii. Trousers;
- iii. Black Garrison style belt;
- iv. Cap;
- v. Jacket (cold weather use);
- vi. Sweater (optional);
- vii. Rain gear in bright yellow or orange with "Security" printed on back;
- viii. Black gloves, leather and lined;
- ix. Belt keepers;
- x. Name plate, gold or silver (over left breast pocket with badge number, first initial and last name) and SFMTA-issued photo I.D. badge;
- xi. Keys with key holder
- xii. Contractor's insignia shoulder patch (each shirt and jacket);  
and
- xiii. Black shoes or boots, leather.

## 6. EQUIPMENT

- A. Flashlight and batteries;
- B. Flashlight holder, black, ring or snap style;
- C. Radio holder, black;
- D. Handcuffs and case or pouch (if required);
- E. Expandable baton (if required by SFMTA);
- F. Expandable baton holder, black (if required);
- G. Whistle (thunder type) with chain attachment;

- H. .40 Caliber Semi-automatic firearms for armed Guards only or other firearm if requested by the SFMTA
- I. Approved chemical agent (subject to prior approval of use of chemical agents by the Management of Enforcement and Security, SFMTA);
- J. Body armor to the extent determined necessary by Contractor;
- K. Vehicles for Field Supervisor and Graffiti Unit;
- L. Cellular telephones for all Supervisors
- M. All other equipment determined by Contractor to be reasonably necessary to the successful performance of the Services.

## 7. SITES

### A. Requested Locations.

Contractor shall provide armed and unarmed Guards at any location within the City and County of San Francisco within twenty-four (24) hours of SFMTA request.

### B. Regular Locations.

Contractor shall provide regular Guard Services at the following Sites in accordance with the schedule set forth in Exhibit A. The SFMTA reserves the right during the term of the Agreement to add Sites or to eliminate any Site.

i. **Curtis E. Green Metro Center** – This Metro Center, located at 425 Geneva Avenue is a rail operations and maintenance complex that houses major maintenance and storage facilities for light rail vehicles and historic streetcars, dispatch offices, storage of maintenance equipment and supplies, and administrative offices for the maintenance division.

ii. **Geneva Metro Center** – The smaller portion of Green Center is located at 2301 San Jose Avenue and is primarily the maintenance center and storage area for the system's historic fleet.

iii. **John M. Woods Motor Coach Center** – The John M. Woods Center, located at 22nd and Indiana Streets, is the largest maintenance and storage facility for the system's standard motor coaches and includes administrative offices for operations dispatch and maintenance, parts storage, heavy repair, light repair, machine shops, body and paint functions, and a carpentry shop.

iv. **Potrero Trolley Coach Division** – Potrero Division, located at Hampshire and Mariposa Streets, is the system's largest trolley coach division. This facility includes storage and maintenance facilities for standard and articulated trolleys and offices for SFMTA's street supervisors.

v. **Kirkland Motor Coach Division** – Kirkland Division is located at North Point and Stockton Streets and is the operations, maintenance and storage facility for about 200 standard motor coaches

vi. **Welton M. Flynn Motor Coach Division** – Flynn Division, located at 1940 Harrison Street, is the operations, maintenance and storage facility for the motor coach fleet.

vii. **Presidio Trolley Coach Division** – The Presidio Division, located at Geary Blvd. and Presidio Avenue, houses system safety and training divisions classrooms and offices in addition to the maintenance and storage of trolley coaches.

viii. **Cable Car Division** – The Cable Car Division, located at Washington and Mason Streets, houses the cable power and machinery for operating the City's historic cable cars, the maintenance and storage facility for cable cars, and the Cable Car Museum.

ix. **SFMTA Headquarters** – located at 1 South Van Ness Avenue is owned by the City and leased by SFMTA (SFMTA currently occupies the 7<sup>th</sup>, 3<sup>rd</sup> & Basement levels, and anticipates occupying the 6<sup>th</sup> floor in 2008). SFMTA Headquarters is occupied by senior administrative staff, finance staff, the Revenue Division, Human Resources, Construction, Planning, Parking and Traffic, Information Technology, and External Affairs.

x. **SFMTA Customer Service Center** – located at 11 South Van Ness and included in the lease for 1 South Van Ness. The hours of operation are 8am-5pm Monday–Friday. The Customer Service Center houses parking citation payments, parking citation hearings and fare media sales. Contractor shall provide the following for the Customer Service Center:

- (a) One unarmed Guard shall be posted at the front desk for metal detector monitoring.
- (b) A second armed Guard shall patrol the interior perimeter on a regular basis and escort daily deposits to the Revenue Center.
- (c) The Guards shall be responsible for opening the Customer Service Center at 8am and closing the facility to the public at 5 pm.

xi. **Burke Avenue Warehouse** – A SFMTA Materials Management warehouse at 1570 Burke Ave. is used for storage of bus parts before distribution to individual storerooms at the divisions.

xii. **700 Pennsylvania Facilities** – located at the corner of Pennsylvania & 22<sup>nd</sup> St., currently houses facilities and track maintenance staff, including the crafts, special machine shop and custodial crew along with the signal crew and fleet engineering.

xiii. **Sixth & King** – is used as a temporary storage yard for trains until Muni Metro East is completed in late 2008.

xiv. **1399 Marin Facility** – Houses track maintenance swing shift and their equipment and the video shop trailers. The yard is used to store the reserve motor coach fleet and has a fuel pumping station used in emergencies.

xv. **The Howard St Facility** – located at 821 Howard St., houses the Central Subway construction staff.

xvi. **Subways** – SFMTA has responsibility for the upkeep of four subway stations that are owned by the Bay Area Rapid Transit (BART) District: Embarcadero Station, Montgomery Station, Powell Station, and Civic Center Station. SFMTA also owns and operates five additional stations in its Metro System: Van Ness Station, Church Station, Castro Station, Forest Hill Station and West Portal Station.

**Trackways** – SFMTA’s Metro System encompasses over 70 miles of trackways throughout the city, primarily along the J, K, L, M, N and T light rail lines. The remaining trackways access tracks linking the Metro Center other tracks. 6.2 miles of this system is in the Metro Subway running from Embarcadero Station to the West Portal Station at the end of the Twin Peaks Tunnel.

### C. **Future Sites**

(a) **Muni Metro East** – is in the final construction phase and is scheduled to be completed in September of 2008

(b) **Islais Creek** –(Kirkland Replacement) is still in development, with a 2010 tentative completion date for project

(c) **Additional sites as requested by the SFMTA.**

## **8. PERSONNEL**

### A. **Contractor Responsible For Personnel.**

Contractor shall provide adequate numbers of trained and qualified personnel to fully staff all posts for all locations for which Guard Services are required to be provided by this Contract. All Guards must be employees of the Contractor. Hiring, training, payment of wages and benefits, uniforms, equipment, supervision, transportation costs, direction and discharge of Guards shall be the responsibility of the Contractor. The payment of federal, state, and local taxes and all wages shall be the responsibility of the Contractor. Contractor is responsible for complying with all required federal, state and local employment laws and regulations. SFMTA may request Contractor to remove any Guard from its premises at any time it desires and for any reason. The Contractor shall provide Relief for Guards who are on authorized breaks or leaves. All new employee names must be provided to the Employees Services Section of SFMTA’s Human Resources prior to the employee’s start date.

### B. **Removal without Cause.**

SFMTA may request Contractor to remove any Guard from performing Services under this Contract at any time it desires and for any reason. Contractor shall remove and replace personnel within 24 hours when requested by the SFMTA.

### C. **Removal with Cause.**

Contractor shall remove and replace a Guard within 30 minutes of SFMTA request for any cause or condition that renders the Guard incapable of performing their duties, which shall include but is not limited to: Sleeping on duty, theft, alcohol or illegal drug

use. Contractor shall remove and replace personnel within 24 hours for other violations or performance failures set forth in the Agreement when requested by the SFMTA.

**D. Reassignment, Augmentation, Reduction of Workforce.**

Within five (5) Days of SFMTA request, Contractor shall reassign Guards, and such reassignment shall be at no cost to the SFMTA. If SFMTA's need for Services increases or decreases the number of Guards required to fulfill this Contract, the City's cost shall be based on actual hours of Services provided at the billing rates set forth in this Contract.

**E. Drug and Alcohol Screening**

i. Legal Requirements. Federal Transit Administration (FTA) regulations require that all armed personnel undergo random substance (drug and alcohol) abuse screening as a condition of employment or contracting with SFMTA, as follows:

In implementation of the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. App. 1618a), the Federal Transit Administration (FTA), in February 1994, issued regulations requiring its grant recipients to institute drug and alcohol testing programs. These regulations, as amended, are found in Title 49 of the Code of Federal Regulations, Part 655. Additionally, Part 40 contains procedures for collecting and analyzing drug and alcohol specimens.

Generally speaking, FTA requires testing of all transit system employees, including part-time employees, certain volunteers and contractors who perform "safety-sensitive functions." A safety-sensitive function includes maintaining a revenue service vehicle or equipment used in revenue service. Maintenance includes both preventive maintenance and overhaul of such vehicles or equipment.

ii. Required Tests. The drug and alcohol testing requirements include, but are not limited to:

- (a) Testing for alcohol, by means of a breathalyzer test
- (b) Testing for five drugs (cocaine, marijuana, amphetamines, PCP, and opiates), by means of a urine specimen
- (c) Six types of testing: pre-employment, random, post-accident, reasonable suspicion, return-to-duty, and follow-up
- (d) Adoption of a policy statement explaining the various testing requirements, including procedures and the consequences for those employees who test positive. The policy must be distributed to all of the contractor's safety-sensitive employees.
- (e) Training of all safety-sensitive employees. Each safety-sensitive employee will need a minimum of one hour of training on the effects and consequences of prohibited drug use and on the signs and symptoms indicating prohibited drug use. Supervisors who may make reasonable suspicion determinations need an additional two hours of training on the indicators of probable drug use and alcohol misuse.
- (f) Referral of employees who test positive to a Substance Abuse Professional

- (g) Record-keeping and reporting. The regulations include requirements for retention of records and annual reporting of drug and alcohol testing information by SFMTA to FTA.
- (h) Obtaining information from previous employers on all applicants who apply for safety-sensitive positions.

iii. Testing Program. The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655 and 49 CFR Part 40, produce any documentation necessary to establish its compliance with Parts 40 and 655, and permit any authorized representative of the U.S. Department of Transportation or its operating administrations, the California Public Utilities Commission (in its capacity as state oversight agency), or the City and County of San Francisco to inspect the facilities and records associated with the implementation of the drug and alcohol testing program and review the testing process. The Contractor agrees further to certify annually its compliance with Part 655 by December 1st of the calendar year and to submit the Management Information System (MIS) reports before March 1st (for the prior calendar year) to the Manager of Muni's Employee Services Section. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

The Contractor further agrees to submit within thirty (30) days of the Effective Date: (1) verification that its safety-sensitive employees are included as part of a safety-sensitive random testing pool; (2) a copy of Contractor's policy statement developed to implement its drug and alcohol testing program; and (3) the name of its third party administrator, if applicable. Failure to submit such documents within the prescribed time period, or failure to submit any other documentation relevant to the testing requirements as required by SFMTA, shall be cause for withholding payments to Contractor until the requirements of this section are met.

iv. Personnel to be Tested. One hundred percent (100%) of all armed Guards assigned to SFMTA shall be screened on an annual basis. Contractor must provide written proof of testing of each armed Guard prior to that Guard providing any Services under this Contract.

v. Records of Testing. SFMTA shall have the right to inspect or copy any records associated with drug or alcohol testing conducted pursuant to this Section to the extent allowed by law, including pass/fail results of all individual tests, within one business day of written request.

#### **F. Qualified Employees.**

Employees hired by the Contractor as Guards shall possess the following skills and abilities:

- i. Guards shall have the ability to speak, read, write, understand and properly use documents written in English.
- ii. Contractor shall communicate all written materials provided by SFMTA to Guards, including rules, procedures, regulations, guidelines and instructions, and shall ensure that Guards adhere to the standards set forth in such materials.



iii. Each and every Guard provided under this Contract shall have the minimum qualifications required for the position for which he/she is provided as set forth herein, to include a license from the Department of Consumer Affairs, Bureau of Collections and Investigative Services, Private Investigation Act, Article 3.2, Section 7544.6 (commonly known as a "Guard Card"). The SFMTA or may require proof of such qualifications at any time from either the Guard or the Contractor.

iv. Guards must be at least twenty-one (21) years of age. This requirement may be waived for veterans of military service with the written approval of the SFMTA.

v. Any Guard assigned to armed duty shall meet all qualifications and have all required licenses and certifications to carry firearms.

vi. The following persons are not qualified to work as Guards:

(a) Persons with felony or serious misdemeanor convictions(s) during the last five years.

(b) Persons presently on probation or parole.

(c) Guards removed for cause at any time during this Agreement

(d) Guards who do not possess the required certifications or training specified in this Agreement.

vii. Should any employee be found unqualified for the position to which he/she is assigned, Contractor shall remove such employee immediately and provide a replacement within four (4) hours at no additional cost to the SFMTA.

viii. The SFMTA shall not pay for any Service provided by Contractor's employees who do not meet the qualifications set forth herein. In the event that the SFMTA discovers, at anytime, that it has already paid the Contractor for Services provided by an unqualified employee of the Contractor, the Contractor shall refund any such payment to the SFMTA within ten (10) business days of notification by the SFMTA. The SFMTA may, at its option, deduct an equal amount from any payment due or to become due to the Contractor under this Agreement or any other agreement.

## **G. Training Requirement**

i. State Requirements: Contractor shall require all Guards to have current Guard Cards in their possession. Contractor shall provide to the SFMTA a photocopy of current Guard Cards for all Guards assigned to SFMTA facilities ten days prior to

the Effective Date. Photocopies of valid Guard Cards for new employees shall be provided 24 hours prior to their start date at SFMTA Sites. Photocopies of Guard Card renewals or proof of payment for the renewals shall be provided to the SFMTA quarterly. In addition to the Guard Card, all Armed Guards must have in their possession an Armed Guard Card as issued by the State Department of Consumer Affairs.

ii. SFMTA Requirements:

Within five (5) Days of the Effective Date of the Agreement, Contractor and SFMTA will meet to develop written training plans and implement a training program. Contractor and SFMTA will have five (5) days to complete the training plan and three (3) weeks to complete all training.

Prior to assignment at any SFMTA Site, all Guards shall complete the SFMTA Contractor Safety Course (4 hours). Training will include but is not limited to SFMTA specific curriculum to address safety issues related to work at a transit facility and CALOSHA safety training.

Additional training requirements for more specialized positions (the type of training depends on assigned duties) are as follows:

**b. Field Supervisor –Unarmed 3 days**

Training will include learning the location and routes to all SFMTA facilities, all identified security vulnerabilities and alarm response procedures. Training will also include doors to be secured or unlocked at 949 Presidio at prearranged times as well as the safe vehicle and proper radio usage procedures to assist in monitoring deployment of unarmed staff. They will also be instructed on proper radio usage. As this is a supervisory position the field supervisor will also learn how to train new unarmed Guards assigned to do a foot patrol of the Site, to document their activities and to issue radio and other needed equipment to them.

**c. Console Supervisor-Unarmed (Security, 875 Stevenson St) 3 days**

Training will include proper radio usage procedures and documentation of calls to assist in monitoring deployment of unarmed personnel and abide by FCC rules, inventory & key control. Training will also include CCTV & alarm monitoring procedures, alarm response duties and emergency contact procedures, and incident report writing. As this is a supervisory position those assigned to this position will also be trained on how to fill open posts and weekly scheduling of unarmed Guards.

**d. Video Guard-Unarmed (Trailer & 875 Stevenson St.) 3 days**

Training will include instruction on how to monitor multiple cameras at multiple platforms, facilities and sites for unusual activities, video downloading procedures, incident report writing and emergency contact procedures.

**e. Tower Guard-Unarmed (Revenue Center-1 SVN basement) 3 days**

Training will include proper radio usage procedures, inventory control, CCTV and alarm monitoring procedures, downloading of requested video to CDs, alarm

response duties and emergency contact procedures, approved procedures to control access to revenue loading dock and secured areas to authorized personnel. They will also be instructed on proper radio usage.

**f. Armed Revenue Supervisor (Revenue Center-1 SVN basement) 3 days**

Training for this position will include all training in procedures provided to armed revenue Guards. The armed supervisor will also be trained in revenue loading dock procedures and how to monitor the daily Loomis pickup. As this is a supervisory position those assigned to this position will also be trained on how to schedule/rotate armed Guards through different collections as required by the contract and how to fill open posts.

**g. Armed Revenue Guards (Revenue Center-1 SVN basement) 3 day**

Training will include orientation to all platforms, sites and facilities to which armed Guards escort revenue staff during revenue operations. During this training Guards will be instructed on each area's vulnerabilities as well as proper placement and responsibilities while on escort duty and when returning to base. They will also be instructed on proper radio usage.

**h. Graffiti Supervisor-Unarmed 3 days**

Training for this position will include all training in procedures provided to Graffiti Patrol Guards. As this is a supervisory position those assigned to this position will also be trained on how to schedule Guards assigned to this unit and how to fill open posts.

**i. Graffiti Patrol-Unarmed 3 days**

Training will include learning the routes to all SFMTA bus yards, facilities, portals, stations and platforms where Graffiti is likely to occur, pictorial and written documentation of procedures for Graffiti attacks, as well as safe vehicle usage. They will also be instructed on proper radio usage.

**j. Facility Guard-Unarmed 1 hour orientation of assigned facility**

Training shall include identification of the facility vulnerabilities and the assigned patrol area, instruction on other duties including proper radio usage; verifying employee IDs, and keeping unauthorized people out of restricted areas.

**k. Observer–Unarmed 4 hours**

Training will include an orientation on all ADA compliance issues that operators are required to follow while driving a transit vehicle, documentation of non-compliance, filling out ride reports and time sheets.

**l. Cable Car Observers (2 days MTA training)**

Cable Car Observer Training will include an orientation to SFMTA and its cable car fare handling operations. The training will consist of a review of the rules, policies and procedures that all cable car operators (grip men and conductors) are required to follow

regarding proper cash handling. Training will include types of violations and previously discovered methods of inappropriate handling of funds.

Personnel assigned to the Cable Car Observer position should be fully trained in undercover investigations and loss prevention as well as proper report writing techniques. Previous training should also include observation techniques and documentation, communications and signaling when working with a partner, legal and liability issues, court room procedures and demeanor, and conflict resolution. Documentation of training shall be provided to SFMTA for any Guard assigned to the SFMTA Cable Car Observer program prior to the assignment.

iii. Ongoing Training Requirements

The Contractor must ensure that training as described in Section ii. above is conducted annually or when a Contractor hires any new Supervisor, armed Guard or a group of ten (10) unarmed Guards within a given quarter. The SFMTA reserves the right to test Guards' knowledge of the training curriculum required by this Contract. All training man hours conducted to meet the site specific requirements of SMTA as described in subsection ii and iii shall be billable to SFMTA at the rates described in Attachment B, Schedule of Charges.

The Contractor shall ensure that all Guards have completed an Anti-Discrimination and Harassment Course (4 hours) within one (1) year of the Effective Date of this Contract.

iv. Training Waivers

Contractor may request the training requirement to be waived for a particular Guard if Contractor submits adequate documentation to demonstrate that the Guard's skills already exceed the training requirements and the SFMTA approves the waiver request. No waivers for safety and CALOSHA training are allowed under this Agreement.

## **9. TYPES OF SERVICES.**

### **A. Armed Personnel.**

Contractor shall provide the following Guards and Services in accordance with Exhibit A:

i. **Armed Revenue Escort Security Officer Guards**

Contractor shall provide Armed Revenue Escort Security Officer Guards who are assigned to Revenue escort duties. These Guards must be armed and fully equipped (.40 Caliber Semi-automatic, handcuffs, baton, approved chemical agent, holsters) to escort Revenue staff.

ii. **Armed Revenue Guard Supervisor.**

Contractor shall provide an Armed Revenue Guard Supervisor, who shall supervise all armed Guards assigned the Revenue Section to ensure that making sure that such Guards follow all established procedures. This includes but is not limited to checking in armed Guards, issuing equipment, collecting reports, scheduling of armed Revenue Guards and Relief, and additional duties as requested.

## **B. Unarmed Personnel.**

Contractor shall provide the following unarmed personnel:

### **i. Revenue Tower Officers**

Guards posted at the Tower will be stationed in an elevated tower at SFMTA headquarters at 1 South Van Ness in the basement area connected to the Revenue Vault section to secure the Vault and adjacent areas. Guards at this post must be proficient in PC based software, CCTV and employee\_access control and alarm systems, monitor and control all entry into the garage area and Vault sections. Guards at this post shall screen individuals through metal detectors installed at the Vault entrances and shall also use handheld scanners to isolate detected items and conduct searches as authorized by SFMTA Security

### **ii. Senior Console Supervisor**

One Senior Supervisor (Monday through Friday) shall be responsible for monitoring the deployment of Guards and supervising all consoles, Mobile Patrols, and unarmed Guard operations, managing communications, and reporting directly to the Contractor's Account Manager. The Senior Console Supervisor shall be responsible for scheduling all Guards and Relief, as well as monitoring all access and CCTV systems, making CD copies of CCTV recordings and backing up of access control system databases as instructed SFMTA. SFMTA requires a minimum of one (1) unarmed Console Supervisor to be assigned to Security Control Consoles per 8-hour shift.

### **iii. Security Control Console Monitors**

Contractor shall provide Guards to monitor Security Control Consoles, at 2-3 Sites, 24 hours per day, 7 days per week. Security Control Consoles contain: the radio base station, CCTV monitors, digital video recorder (DVR) and the employee access control system.

### **iv. Field Supervisor**

Contractor shall provide one (1) unarmed Field Supervisor, whose primary responsibility shall be to patrol SFMTA's various facilities and Sites and respond to all dispatch requests by the Security Control Console Supervisor for any alarms. When requested, or when there is an incident that requires such response, the Field Supervisor shall meet San Francisco Police Department (SFPD) and/or SFMTA staff at the location with keys or access cards as required in order to allow them access into the building. The Field Supervisor must remain in contact with the Security Control Console Supervisor while on patrol using a hand held radio to be provided by SFMTA.

### **v. Graffiti Unit Supervisor**

Contractor shall provide a Graffiti Unit Supervisor who shall supervise Graffiti Unit personnel and perform all of the duties of the Graffiti Unit Personnel described below. The Graffiti Unit Supervisor shall be responsible for scheduling Guards in the Graffiti Unit and their Relief. The Graffiti Unit Supervisor shall also be responsible for ensure that police reports are filed for all major Graffiti hits, tracking tags and Graffiti hits of SFMTA equipment and property, labeling photographs, for insuring that all photos and reports are sent to

the SFPD Graffiti unit, and to ensure that Contractor's anti- Graffiti efforts are coordinated with SFPD.

vi. **Graffiti Unit Guards.**

Contractor shall provide uniformed and undercover Mobile Patrol Guards to prevent Graffiti from occurring and to gather evidence to prosecute vandals. The locations that must be patrolled by the Graffiti Unit include but are not limited to T-line platforms, the perimeters of all Sites, and any Site that is a bus, trolley or light rail vehicle storage yard. Graffiti Unit Guards may not be used as Relief.

(a) **The Graffiti Unit** must patrol the affected SFMTA Property following the report of a Graffiti attack on any bus, trolleys or light rail vehicle while parked on SFMTA Property. After arriving on site, Graffiti Unit Guards shall inventory vehicles with Graffiti, interview SFMTA employee(s) who reported or saw the incident, get a track sheet indicating where the coaches marred by Graffiti are located in the yard, and take digital photographs of the individual Graffiti "tags". The Guard will advise the Senior Console Supervisor to contact SFMTA Central Control with a request for SFPD to respond to the Site to issue a police report. The Guard shall remain on-site to assist SFPD. The Incident Report will include an SFPD case number along with photographs and a track sheet.

**C. Supervisor Duties**

i. Each Supervisor of an upcoming shift shall, prior to shift change, determine the readiness of Guards preparing to be posted and ensure adequate number of properly uniformed and equipped Guards are available for the shift.

ii. Each Supervisor shall communicate any changes in post assignments or procedures, any special instructions, announcements, or any other pertinent information that may affect security operations.

iii. On-duty Supervisors shall be available at all times during their shift to receive and implement orders or special instructions from the SFMTA concerning matters which affect the operation and security of assigned areas.

iv. Supervisors shall instruct Guards as to their daily duties at the beginning of each shift. Guard duties shall not interfere with the operations of the SFMTA.

v. Other than Graffiti Unit Supervisor, no on-duty Supervisor may perform the duties of a Guard on patrol or Relief except in emergencies or to provide break coverage. During emergencies, the Supervisor may staff a post for a period not to exceed two (2) hours in any consecutive eight (8)-hour period, unless this requirement is waived by the SFMTA. An Emergency Report shall be submitted to SFMTA by the Supervisor no later than the next business day after the emergency.

**D. Contract Security Administrative Support**

Contractor shall provide all necessary administrative support to manage Contractor's employees; to prepare reports, compile statistics and provide information as requested by the SFMTA. Contractor shall provide one (1) administrative employee, to be stationed between the hours of 8 a.m. and 5 p.m., at a location to be determined by the SFMTA.

#### **E. As-Needed and Emergency Guard Service**

In addition to requested scheduled Services, Contractor shall provide As-Needed Guard Service whenever requested by SFMTA, so long as SFMTA gives at least four (4) hours notice of a request for additional Services. Guards requested under As-Needed Guard Service shall be paid at the regular rate for armed and unarmed Guards. SFMTA anticipates the As-Needed Guard Service requirements to be approximately 1,500 hours annually.

Contractor may be asked to provide armed or unarmed Guards for Emergency Guard Service. Contractor shall provide an Emergency Guard within 30 minutes of SFMTA request. Contractor may charge an emergency rate for the first four (4) hours of services only. After the first four hours, the rate of pay will revert to regular rates.

#### **F. Account Manager**

Contractor shall provide an Account Manager to coordinate Contract Services. The Account Manager shall be responsible for managing the SFMTA account and responding to all SFMTA requests for additional Services or any other SFMTA concerns regarding staffing or security issues. The Account Manager shall report directly to SFMTA's Deputy Director of Enforcement and Security.

The Account Manager must be available to participate in security audits and evaluations of SFMTA facilities, practices and procedures. This requirement is a material term of this Contract.

#### **G. Observer Program**

Contractor shall provide unarmed plain-clothes Guards as needed and as approved by the SFMTA to act as field observers. The Observer Program was established by court decree to ensure SFMTA's adherence to ADA requirements. The Observer will be assigned to specific SFMTA operators where complaints about non-compliance with ADA requirements have been reported. Observers shall complete a daily written report in a form to be provided by the SFMTA, documenting their observations while riding each vehicle. Although the primary purpose of Observers is to document ADA compliance by SFMTA operators, such Observer report may also include observation of other transit service-related issues, such as fare evasion, customer service problems, or vandalism. The estimated amount of Observer hours that will be required during the term of the Contract is 5,000 hours annually. No single individual employed as part of the Observer Program may work as an Observer more than 20 hours per week. The Observer shall, at a minimum, document the following observations:

- i. Whether the operator calls out stops and transfer points.
- ii. Whether the operator is courteous and accommodating to patrons with disabilities.
- iii. Whether the wheelchair ramp or the coach is lowered when needed.
- iv. Whether wheelchair patrons are properly secured in the designated wheelchair area when the coach is in motion.

- v. That the designated seats are kept open for patron(s) who are elderly or who have disabilities.
- vi. Whether the bus is operated safely with a minimum amount of jerking motions.
- vii. Whether all service animals are allowed on the vehicle.
- viii. Whether the operator checks to make sure that riders are carrying appropriate fare media or paying the required cash fare.
- ix. Whether the fare boxes on the vehicle are functioning properly.

#### **H. Cable Car Observer's Program**

The selected Contractor must provide personnel as needed and as approved by the designated MTA Security Manager to act as field observers on the Cable Cars. The primary function of the observers is to be alert for any fare handling violations. The unarmed plainclothes observers will be assigned to ride designated Cable Car lines. Observers will be required to complete a report, provided by SFMTA, documenting their observations while riding each vehicle.

Observers shall work individually or in teams of two. They will work on an as needed basis, days and times may vary. A total of 6 to 8 part time personnel shall be hired so shifts can be rotated to avoid identification by Operators.

### **10. TIMES OF SERVICE**

#### **A. Time Records**

- i. Time records shall be signed by Guards at the beginning and end of each shift and include a standard description of assignments for each day broken down in actual increments [i.e. - Metro TVM collection - 4 hours, Fare Media delivery – 2 hours, break – 1 hour, etc.]. No other Guard, Supervisor or individual is authorized to sign time records.
- ii. All original time records and payroll records for an employee's time for which the SFMTA is charged shall be maintained within 100 miles of San Francisco and shall be retrievable within 24 hours of SFMTA request.
- iii. Contractor shall maintain electronic records of actual daily Guard assignments and functions in a standard and reportable manner
- iv. Contractor shall make all time records and payroll records available for inspection, copying or audit for the entire term of the Agreement and for two years after the term of the Agreement. This section shall survive termination or expiration of the Agreement.



- v. Time records shall be signed at the end of each shift by the shift Supervisor certifying the accuracy of the time record for that Guard.
- vi. Time records for all Guards shall be maintained at the Security Office at 875 Stevenson until the end of each calendar year.
- vii. No Guard or Supervisor shall be required to report for duty earlier than described in such person's shift. If a Guard or Supervisor is obligated to report for duty or punch in prior to shift change in order to determine readiness or any other function, such person's time shall be billable to SFMTA as the rates described in Attachment B.
- viii. Break coverage shall be billable at the rates for the Guard being relieved.

The Contractor must provide the assignment of duties and location one week prior to commencement for approval by the Deputy Director of Enforcement and Security. Contractor must also describe how arrangements will be made for rotating coverage during breaks for Guards stations at revenue locations, and must show assignment rotation a minimum of once a month for Revenue related activities.

## **B. Hours of Service**

### **i. Shift Schedule.**

The Contractor shall provide Guards to fill all shifts listed in **Exhibit A**. SFMTA reserves the right to change the times or locations of the shifts listed in Exhibit A. Contractor agrees that the Services to be performed by it herein, including the locations and areas where Services are to be performed, the hours for which such Services are to be maintained, and the number of trained, equipped and qualified Guards to be furnished by the Contractor hereunder shall be subject to the approval of the SFMTA. Contractor agrees that the scheduled work hours and days of Services may be changed at any time, without any penalty to the SFMTA, provided the SFMTA gives ten (10) business days notice of any changes to Exhibit A, except in emergencies.

### **ii. Limitation on Overtime.**

No Guard shall work more than twelve (12) hours on one or more Sites, for other clients of Contractor or for or any other job in any twenty-four (24) hour period unless the work periods are separated by an eight (8) hour non-duty period. This limitation shall not apply where Contractor demonstrates in writing within one (1) business day after the event, any condition that prevented Contractor's compliance with this requirement. All requests for an exception to this requirement must receive prior written approval from the SFMTA. The Contractor shall obtain a written confirmation of the waiver of this requirement from the SFMTA for each occurrence.

## **C. Holidays**

Contractor shall provide Services on the following official City holidays:

- i. New Years Day

- ii. Martin Luther King's Birthday
- iii. President's Day
- iv. Memorial Day
- v. Independence Day
- vi. Labor Day
- vii. Columbus Day
- viii. Veterans Day
- ix. Thanksgiving Day
- x. Day after Thanksgiving
- xi. Christmas
- xii. Any additional official City holidays during the term of the Agreement

#### **D. Special Events**

The Contractor shall provide additional Services for miscellaneous special events that require armed or unarmed Guard coverage. SFMTA will provide at least five (5) business days notice of the number of Guards needed for a Special Event. These events include but are not limited to:

- i. Bay to Breakers (armed)
- ii. Halloween (armed and unarmed)
- iii. New Years Eve (armed and unarmed)
- iv. Gay Freedom Day Weekend (armed)
- v. Rodeo (unarmed)
- vi. Cable Car Bell Ringing (unarmed)
- vii. Fleet week (unarmed)
- viii. San Francisco 49ers Football games (armed)
- ix. San Francisco Giants Baseball games (armed)

## **11. REPORTS AND MEETINGS**

### **A. Quarterly Meetings**

Contractor's Account Manager shall attend quarterly status meetings with SFMTA staff to discuss issues related to the Agreement including, but not limited to, performance, invoice payments, Agreement status, personnel issues, etc. At least one (1) week prior to the quarterly status meeting, the Account Manager shall provide a quarterly status report that summarizes the status of performance of the Agreement with respect to the subject matters listed above and any others that either party requests be included on the agenda for the quarterly status meeting.

### **B. Reports**

i. **General Report Requirements.**

Whenever a written report is required under the Agreement, any such report must be written in legible English. . All reports must be submitted in a Microsoft Word or compatible format in the approved template as set forth in Section 3. Any changes to report content or formats requested by SFMTA shall be made at no cost to the SFMTA. All written reports are to be submitted by the beginning of the next business day to:

**SFMTA Deputy Director of Enforcement and Security (or designee)**  
**505 – 7<sup>th</sup> Street**  
**San Francisco, CA 94103**  
**(e-mail address and fax number to be provided at time of contract award)**

ii. **Incident Reports.**

Incident Reports shall be prepared no later than the end of the shift during which an incident occurs by each and every Guard who witnessed or responded to the incident. Included in the incident report is a description of the reported incident and status such as “no incident”, “all clear” or “further investigation and follow-up required.” The Incident Report shall be submitted to the SFMTA Deputy Director of Enforcement and Security, or a designated representative in the approved template as set forth in Section 3. Incident Reports must be submitted by Guards whenever there is an event or condition on or adjacent to SFMTA Property involving injury to persons or property, criminal activity, security breaches, departures from required procedures, suspicious activity, unauthorized persons on SFMTA property or any significant confrontations or altercations among or between SFMTA employees, contractors (including Contractor's employees) or members of the public. Original Incident Reports must be submitted to SFMTA each business day for the prior business day's incidents in electronic format as well as by fax. An Incident Report must be filed in any of the following circumstances:

- (a) A Guard is required to intervene between any two or more persons, including other Guards, members of the public or SFMTA staff;
- (b) A Guard witnesses any crime or suspected crime, including assault;
- (c) A Guard witnesses any incident in which there is a potential personal injury, whether or not medical attention is requested or required, or in which loss or damage to public or private property occurs;
- (d) A Guard is required to give direction or an order to any person on a Site and they protest or express their unwillingness to comply;
- (e) A Guard discovers any unlocked doors or any activated alarms, false or otherwise;
- (f) A Guard discovers any evidence of an area being used and/or occupied by vagrants or loiterers.

(g) A Guard observes suspicious or unusual activities, intrusion alarm information, or Graffiti attacks.

iii. **Annual Summary Reports**

Each year, 90 days before each anniversary date of this Contract, Contractor must furnish a report of the total services ordered under this Contract during the preceding twelve months. The report must be in a format acceptable to SFMTA and must list by department or location the following: (1) all services awarded under this contract; and (2) total quantity and dollar value of each service ordered, including services for which there were no orders. Contractor must also furnish a separate similar report for the total of all services ordered by SFMTA which are not part of this Contract.

iv. **Other Required Reports.**

(a) All malfunctions, vandalism and loss of said equipment stored in the Security Control Console Office must be reported within four (4) hours of the occurrence. The Security Control Console Office contains SFMTA equipment for which Contractor shall be responsible.

(b) When a Guard observes suspicious or unusual activities, intrusion alarms, or a Graffiti attack, a report must be telephoned in to SFMTA Central Control within 5 minutes of the occurrence.

(c) Upon the Effective Date Contractor shall submit a monthly staffing plan that includes the number of Guards that are delegated to each assignment listed in Exhibit A for the upcoming month. The first staffing plan shall include the first two months of the Contract, and each staffing plan shall be submitted 30 days in advance of the month covered by the staffing plan. Supervisors must report any variances from established staffing plans and schedules that occur within a given shift by location and hour, within one (1) business day of the variance. The staffing plan must include arrangements for rotating coverage during breaks for Guards stationed at Revenue Sales locations, and must show assignment rotation a minimum of once a month for Revenue related Activities.

(d) Lost/Stolen Item report: Guard completes report when a lost or stolen item is reported to provide description of lost/stolen item, location, name of facility and date.

(e) Daily Security Report (DSR): a log of a Guard's activity during an assigned shift. Items to be filled out include but are not limited to time of patrols and breaks/lunch which is kept on file at the SFMTA Security Office..

(f) Radio Logs: Record of all Guard and Supervisor radio transmissions that travel over the SFMTA designated radio frequency. Logs include time of transmission, station call letters and an hourly time check. Log is kept on file at the SFMTA Security Office.

(g) Armed Guard Daily Report: A log of activity of Armed Guards during a given shift. Log includes arrival and departure time, the name of the SFMTA revenue worker to whom they have been assigned. Log is turned Revenue at the end of each shift.

(h) Excel Matrix of Planned/Unplanned Scheduled Events to track the date and time of an event, its location, the number of Guards assigned, hours of service, etc.

## **12. MATERIALS TO BE PROVIDED BY SFMTA**

- A. Approved form of Affidavit of Training Form;
- B. Approved form of Monthly Access Card Inventory;
- C. SFMTA required Standard Operating Procedures;
- D. Site's life safety systems, CCTV, computer system, alarm systems, operation of revenue parking garage doors and loading areas, SFMTA building security policies, and key and access card control;
- E. Emergency fire or fire alarm procedures including floor plans with locations of fire alarm pull boxes, fire extinguishers, fire alarm monitoring panel and other life/safety systems;
- F. Emergency intrusion alarm procedures including computer programs, closed circuit television monitors, voice intercom systems, alarms and alarm enunciator panels and other equipment required for monitoring and control of building access;
- G. Procedures and protocols for responding to medical emergencies, bomb threats, riots, fires, earthquakes, hazardous spills, floods and other emergencies;
- H. Procedures for deliveries of freight, supplies, equipment, mail, packages, to the New Revenue Center;
- I. Equipment removal policy and procedures of the New Revenue Center;
- J. Procedures for receiving and forwarding requests for maintenance;
- K. Procedures and protocols for issuing, canceling, using, replacing, and confiscating access control devices including keys and access cards;
- L. SFMTA Security shall provide the Contractor with a list of contact names and departments, with land line, cell phone and pager numbers. These names are to be used when Contractor needs to notify various individuals or departments about incidents, or to request information and assistance.
- M. SFMTA organization chart and list of names and phone numbers of all relevant contacts for the Contractor including Security and Enforcement, Revenue, Operations, Contracts and Procurement, Equal Opportunity and Diversity and Accounting units.
- N. SFMTA e-mail address for use in submitting electronic reports as described in Section 11B and fax number for use in performance of this Contract.

### **13. LIQUIDATED DAMAGES**

A. Failure to submit Post Orders within fifteen (15) days of the Effective Date as set forth in Section 3.A shall result in a credit to the City of \$100 per 24-hour period of delay, provided Contractor has timely received all documentation from SFMTA pursuant to Section 12.

B. Failure to provide a draft Training Plan no less than ten (10) Days prior to commencement of training as set forth in Section 3.C shall result in a credit to the City of \$100 per 24-hour period of delay.

C. Failure to provide Proof of Training as set forth in Section 3D shall result in a credit to the City of \$100 per employee.

D. Submitting false affidavits for training verification as set forth in Section 3.D.iv. shall result in a credit to the City of \$1,000 per incident.

E. Failure to submit a Facilities Patrol Plan on the Effective Date as set forth in Section 3.E shall result in a credit to the City of \$100 per 24-hour period of delay, provided Contractor has timely received all documentation from SFMTA under paragraph 12, .

F. Failure to submit proposed Guard uniform designs to SFMTA for approval within ten (10) Days of the Effective Date as set forth in Section 3.F shall result in a credit to the City of \$ 50 per 24-hours period of delay.

G. Failure to submit Supervisor Contact List on the Effective Date as set forth in Section 3.G shall result in a credit to the City of \$50 per 24-hour period of delay.

H. Failure to submit Proposed Form of Emergency Report on the Effective Date as set forth in Section 3.H shall result in a credit to the City of \$50 per 24-hour period of delay.

I. Failure to provide the all Report Templates to be used by the Contractor on the Effective Date as set forth in Section 3.I shall result in a credit to the City of \$50 per 24-hour period of delay.

J. Failure to provide Services at all times during Revenue operations as set forth in Section 4.D shall result in a credit to the City of \$100 per incident.

K. Any theft of SFMTA property or acts of vandalism, including but not limited to graffiti, that occurs during the hours of contract security coverage where security personnel are confirmed to be assigned, but who fails to comply with post order or other instructions from authorized SFMTA personnel, will result in Contractor's liability to SFMTA for an amount equal to 100% of the costs to clean, repair, and replace damaged or stolen assets. Notwithstanding the foregoing, Contractor's liability pursuant to this Section and Appendix A, Section 4.E shall not exceed one million dollars during the original term of this Contract.

L. Failure to ensure that Guards report to duty with all uniform elements required by Section 5 shall result in a credit to the City of \$25 per incident

M. Failure to ensure that each Guard reports for duty with all required equipment required by Section 6 shall result in a credit to the City of \$25 per incident.

N. Failure to provide Guards to SFMTA Sites listed in Section 7, in accordance with Exhibit A shall result in a credit to the City of \$100 per day per shift not covered by a Guard.

O. Failure to remove and replace Guards as set forth in Section 8.C and within deadlines in the Agreement shall result in a credit to the City of \$50 per 30 minute delay.

P. Failure to reassign Guards within five (5) Days of SFMTA request at no cost to the SFMTA, as set forth in Section 8.D shall result in a credit to the city of \$150 per incident.

Q. Failure to provide all new employee names and documentation of drug testing to the SFMTA for each armed Guard as set forth in Section 8.E shall result in a credit to the City of \$250 per incident.

R. Failure to submit an Emergency Report within the deadline set forth in Section 9.C.v shall result in a credit to the City of \$50 per day of delay.

S. Failure to provide Contract Security Administrative Support to the SFMTA as set forth in Section 9.D shall result in a credit to the City of \$25 per incident.

T. Failure to provide any required personnel and hours of coverage for the Account Manager as set forth in Section 9.F shall result in a credit to the City of \$50 per day per staff person not provided.

U. Failure to provide any required personnel and hours of coverage for the Observer Program as set forth in Section 9.G shall result in a credit to the City of \$50 per day per staff person not provided.

V. Failure to provide any required personnel and hours of coverage for the Cable Car Observer program as set forth in section 9.H shall result in a Credit to the City of \$50 per day per staff person not provided.

W. Failure to provide the adequate level of personnel and hours of coverage for Special Events as described in Section 10.D shall result in a credit to the City of \$100 per day per staff.

X. Failure to attend quarterly meetings with the SFMTA as set forth in Section 11A shall result in a credit to the City of \$100 per incident.

Y. Failure to provide any report as set forth in Section 11.B shall result in a credit to the City of \$250 per incident, provided Contractor has been given ten (10) days' notice and opportunity to cure.

**EXHIBIT A – Security Hours Chart**

**TABLE 1**

<b>Armed Services Assignments</b>	<b># of staff needed</b>	<b>Hours/Day</b>	<b>Days/Week</b>	<b>Days/ Month</b>	<b>Hours/ Month</b>	<b>Weeks/Year</b>	<b>Notes</b>	<b>Total Hours/year</b>
Accompany SFMTA staff to collect and distribute passes to vendors	3	7	n/a	4	84	n/a		1,008
Accompany SFMTA staff to collect and distribute RTC passes to vendors	3	7	n/a	4	84	n/a		1,008
Accompany SFMTA staff to deliver passes to Safeway for distribution to participating outlets	1	4	n/a	1	4	n/a		48
AM, Powell/Market Booth: Stand near booth to deter robberies	1	8	7	n/a	n/a	52		2,912
PM, Powell/Market Booth: Stand near booth to deter robberies	1	8	7	n/a	n/a	52		2,912
AM, Hyde/Beach Booth: Stand near booth to deter robberies	1	8	7	n/a	n/a	52		2,912
PM, Hyde/Beach Booth: Stand near booth to deter robberies	1	8	7	n/a	n/a	52		2,912
AM, Bay/Taylor Booth: Stand near booth to deter robberies	1	8	7	n/a	n/a	52		2,912
PM, Bay/Taylor Booth: Stand near booth to deter robberies	1	8	7	n/a	n/a	52		2,912
Line Sales, F-Line: Stand near revenue staff selling tickets in line.	2	9	7	n/a	n/a	14	In operation from Memorial Day to Labor Day 14 weeks)	1,764
Montgomery Street Station Pass sales; regular shifts (year round)	1	7.25	5	n/a	n/a	52		1,885
Montgomery Street Station Pass sales; monthly peak-time shifts (1st and 4th wks of each month)	1	7.25	5	n/a	n/a	26		943
MMX, Wkday shift, 1-coll.-rev in subway station; 1 stays w/ rev. vehicle	2	7	5	n/a	n/a	52		3,640
MMX, Weekend shift, 1-coll.-rev in subway station; 1 stays w/ rev. vehicle	2	5	2	n/a	n/a	52		1,040



<b>Armed Services Assignments</b>	<b># of staff needed</b>	<b>Hours/Day</b>	<b>Days/Week</b>	<b>Days/ Month</b>	<b>Hours/ Month</b>	<b>Weeks/Year</b>	<b>Notes</b>	<b>Total Hours/year</b>
Change Machines 1-coll.-rev from machine; 1 stays w/ rev. vehicle	2	6	7	n/a	n/a	52		4,368
Autelca machines, 1-coll.-rev from machine; 1 stays w/ rev. vehicle (19th Avenue)	2	2.5	5	n/a	n/a	52		1,300
Subway Collection, weekday, PM 1-collect revenue; 1-stay with vehicle	2	3.5	5	n/a	n/a	52		1,820
Subway Collection, Saturday PM 1-collect revenue; 1-stay with vehicle	2	7	1	n/a	n/a	52		728
Subway Collection, Sunday PM 1-1 collect revenue, 1-stay with vehicle	2	2.5	1	n/a	n/a	52		260
PM CUBIC collection truck from divisions	1	7	6	n/a	n/a	52		2,496
F-Line Streetcar collection	1	8	6	n/a	n/a	52		936
F-line Streetcar collection Saturday	1	8	1	n/a	n/a	52		416
Baseball	2	4.5	n/a	n/a	n/a	n/a	77games/year	693
Special Events	2	10					65 days per year	1,300
							TOTAL	<b>43,125</b>

**TABLE 2**

Unarmed Guard Services Assignments	Site	# of staff needed	Hours/Day weekdays ( x 5 days)	Hours/weekends (x 2 days)	Total hours weekly	Days/Week	Weeks/year	Notes	Total Hours/Year
Back Gate	Geneva	1	8	24	88	n/a	52	wkday shifts are 9p to 5a; weekends run 5a Sat to 5a Monday, unless otherwise indicated.	4,576
Front and Back Gate	Green	1	8	24	88	n/a	52		4,576
23rd Street	Woods	1	8	24	88	n/a	52		4,576
Tubbs	Woods	1	8	24	88	n/a	52		4,576
Front Door	Flynn	1	8	24	88	n/a	52		4,576
Back Gate	Presidio	1	8	24	88	n/a	52		4,576
Front Gate/Building	Presidio	1	8	8	56	n/a	52		2,912
Upper Yard	Potrero	1	8	8	56	n/a	52		2,912
Lower Yard-house	Potrero	1	8	24	88	n/a	52		4,576
Secondary Gate	Kirkland	1	8	8	56	n/a	52		2,912
Primary Gate	Kirkland	1	8	24	88	n/a	52	Hours: 6p to 6a	4,576
Museum/Barn	Cable Car	1	8	8	56	n/a	52		2,912
Tower Guard-Revenue Center-One South Van Ness		1	24	7	n/a	n/a	52		8,736
Graffiti Patrol	All Sites	4	8	8	224	n/a	52		11,648
General Patrol – Metro East (9/1/08)	6 <sup>th</sup> and King	1	24	n/a	168	7	52		8,736
General Patrol	6th and King/ swing - grave	1	8	n/a	56	7	52		2,912
General Patrol	Marin	1	24	n/a	168	7	52		8,736
General Patrol	Marin (night)	1	12	n/a	84	7	52		4,368

<b>Unarmed Guard Services Assignments</b>	<b>Site</b>	<b># of staff needed</b>	<b>Hours/Day weekdays ( x 5 days)</b>	<b>Hours/ weekends (x 2 days)</b>	<b>Total hours weekly</b>	<b>Days/ Week</b>	<b>Weeks/ year</b>	<b>Notes</b>	<b>Total Hours/ Year</b>
Customer Services Center – 11 South Van Ness		2	8	5	n/a	n/a	52- 178 holiday hours	2 Guards total, 1 armed and 1 unarmed	3,984
Special Events		2	8				60 days/year		960
								<b>TOTAL</b>	<b>98,336</b>

**TABLE 3**

<b>Supervisor Assignments</b>	<b># of staff needed</b>	<b>hours/day</b>	<b>Days/Week</b>	<b>Weeks/year</b>	<b>Total hours/year</b>
Senior Console Supervisor (M-F Days)	1	8	5	52	2,080
Security Console Supervisor (M-F Swing and Grave)	1	16	5	52	4,160
Security Console (weekend)	1	24	2	52	2,496
Armed Supervisor (Shift TBD)	1	24	7	52	8,736
Field Supervisor	1	24	7	52	8,736
Graffiti Supervisor	1	8	5	52	2,080
					<b>28,288</b>

**TABLE 4**

<b>Miscellaneous Assignments</b>	<b>No. Staff</b>	<b>Hours/Day</b>	<b>Days/Week</b>	<b>Weeks/Year</b>	<b>Hours/Year</b>
Video Surveillance Stevenson (Swing and Grave)	1	16	7	52	5,824
Video Surveillance T-line Trailer (hours TBD)	2	26	7	52	18,928
Administrative Support	1	8	5	52 wks (- 88 hours)	1,992
Account Manager	1	8	5	52 wks (-88 hours)	1,992
<b>TOTAL</b>				<b>TOTAL</b>	<b>28,736</b>

**Appendix B  
Calculation of Charges**

	Description of Assignment	Estimated Unit (Hourly) Per Year	Straight Time Rate per Hour	Total Estimated Price
1.	Unarmed Security Guard	98,336	\$ 20.64	\$ 2,029,655.00
2.	Armed Security Guard	43,125	\$ 25.06	\$ 1,080,712.50
3.	Observer Program Personnel	5,000	\$ 21.19	\$ 105,950.00
4.	Cable Car Observer Program Personnel	2,500	\$ 21.19	\$ 52,975.00
5.	Unarmed Supervisor Rate	19,552	\$ 24.60	\$ 480,979.20
6.	Armed Supervisor Rate	8,736	\$ 29.15	\$ 254,654.40
7.	Unarmed Security Guard – Emergency Rate	As Needed	\$ 32.10	
8.	Armed Security Guard – Emergency Rate	As Needed	\$ 43.01	
9.	Video Surveillance	24,752	\$ 20.91	\$ 517,564.32
10.	Administrative Support	1,992	\$ 24.99	\$ 49,780.08
11.	Account	1,992	\$ 29.09	\$ 57,947.28

	Manager		
		<b>Total Cost Per Year</b>	<b>\$4,630,217.70</b>

MTA approved overtime shall be billed at 150% of the applicable rate.

**THIS PRINT COVERS CALENDAR ITEM NO: 11**

**MUNICIPAL TRANSPORTATION AGENCY  
City and County of San Francisco**

**DIVISION:** Muni Service Delivery and Operations

**BRIEF DESCRIPTION:**

Authorizing the Executive Director/CEO or his Designee to advertise and issue a Request for Proposals (RFP) for San Francisco Municipal Transportation Agency (SFMTA) Contracts CS-900, As-Needed Specialized Engineering Services for SFMTA Rail Vehicles Rehabilitation and Replacement program and CS-901, As-Needed Specialized Engineering Services for SFMTA Rubber Tire Vehicles Rehabilitation and Replacement Program, receive proposals, select consultants to provide technical and professional services on an as-needed basis, and negotiate contracts with the selected consultants for a term of up to five years and an amount not to exceed \$5,000,000 for Rail Vehicles Rehabilitation and Replacement Program and \$4,000,000 for Rubber Tire Vehicles Rehabilitation and Replacement Program.

**SUMMARY:**

- Proposals will be solicited for qualified firms to provide technical and professional services to support the Rail Vehicles Rehabilitation and Replacement Program and the Rubber Tire Vehicles Rehabilitation and Replacement Program.
- Consultant is to provide technical and professional services on an “as-needed” basis to assist and supplement SFMTA staff.
- Consultant will provide specialized engineering and quality control services for the implementation and completion of the various vehicle procurement and rehabilitation projects.
- Services provided under this contract will be used for locally and federally funded projects.
- The term for each contract shall not exceed five years. The Rail Vehicles Rehabilitation and Replacement Program shall not exceed \$5,000,000 and the Rubber Tire Vehicles Rehabilitation and Replacement Program shall not exceed \$4,000,000.
- The Contract Compliance Office has established a 25 percent Small Business Enterprise participation goal for each contract.
- The City Attorney's Office has reviewed this item.

**ENCLOSURES: (List numerically and by title)**

1. Resolution
2. Request for Proposals



## **EXPLANATION:**

The San Francisco Municipal Transportation Agency (SFMTA) is requesting authority to advertise and issue a Request for Proposals (RFP) As-Needed Specialized Engineering Services for SFMTA Rubber Tire Vehicles Rehabilitation and Replacement Program to solicit proposals from qualified consultants with specialized professional experience in the areas of rolling stock manufacturing, production, rehabilitation, and remanufacturing to provide technical engineering and quality assurance services for the following vehicle replacement and rehabilitation programs:

1. Rubber Tire Vehicles Rehabilitation and Replacement Program
  - A. Replacement of 45 NABI Buses
  - B. 329 Neoplan Buses Midlife Overhaul
  - C. Replacement of 60 New Flyer Trolley Coaches
  - D. 273 ETI Midlife Overhaul
  
2. Rail Vehicles Rehabilitation and Replacement Programs
  - A. Midlife Overhaul of 151 Breda Light Rail Vehicles
  - B. Complete Rehabilitation of 4 Damaged Light Rail Vehicles
  - C. Streetcar Rehabilitation Program:
    - Safety Enhancement of 9 Milan Streetcars
    - Complete Rehabilitation of “Car No. 1” (streetcar)
    - Major Rehabilitation of 16 Non-Active Presidents Conference Committee (PCC) Streetcars
    - Major Overhaul of 16 active PCC Streetcars

The SFMTA may enter into one contract for each replacement and rehabilitation program. The selected consultants will assist the SFMTA in ensuring that the vehicle replacement and rehabilitation contractors for each program deliver a quality product that is on schedule, within budget, with minimal claims, with minimal impacts to the public, and in conformance with the contractors' obligations.

After advertising the RFP and receiving proposals, a Selection Committee will review the proposals, conduct oral interviews, and recommend a highest-rated proposer for each contract to the Executive Director/CEO who may authorize staff to enter into negotiations with the selected consultants. Although a consultant may submit bids for both contracts, the same consultant may not be selected for both contracts. Upon successful conclusion of negotiations with the selected consultants, the Executive Director/CEO will present the negotiated contracts to the SFMTA Board of Directors for approval and request authorization to award and execute the contracts.

No new funds are required for these contracts since all tasks will be funded through existing local and federal sources.

The Contract Compliance Office has established a 25 percent Small Business Enterprise

participation goal for each contract.

CONSISTENCY with SFMTA 2008-2012 Strategic Plan

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

Objectives:

- 1.1 Improve safety and security across all modes of transportation
- 1.3 Reduce emissions as required by SFMTA Clean Air Plan
- 1.4 Improve accessibility across transit services

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

Objective:

- 4.2 Ensure efficient and effective use of resources.

Recommendation:

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to advertise and issue the RFP for Contracts CS-900, As-Needed Specialized Engineering Services for SFMTA Rail Vehicles Rehabilitation and Replacement program and CS-901, As-Needed Specialized Engineering Services for SFMTA Rubber Tire Vehicles Rehabilitation and Replacement Program, receive proposals, select consultants to provide technical and professional services on an as-needed basis, and negotiate contracts with the selected consultants for a term of up to five years and an amount not to exceed \$5,000,000 for Rail Vehicles Rehabilitation and Replacement Program and \$4,000,000 for Rubber Tire Vehicles Rehabilitation and Replacement Program.

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

RESOLUTION NO. \_\_\_\_\_

WHEREAS, The Muni Service Delivery and Operations Division – Operation Engineering of the San Francisco Municipal Transportation Agency (SFMTA) provides professional services for SFMTA fleet procurement and rehabilitation projects; and

WHEREAS, Due to the variety and specialization of this work, staff with the required skills and experience to perform the work are not always readily available; and

WHEREAS, Staff proposes that the SFMTA issue and advertise a Request for Proposals to solicit proposals from qualified consultants with specialized professional experience in the

areas of rolling stock manufacturing, production, rehabilitation, and remanufacturing to provide technical engineering and quality assurance services for the Rail Vehicles Rehabilitation and Replacement Program and for Rubber Tire Vehicles Rehabilitation and Replacement Program; and

WHEREAS, After advertising the Request for Proposals and receiving proposals, a Selection Committee will review the proposals, conduct oral interviews, and recommend a highest-rated proposer for each contract to the Executive Director/CEO who may authorize staff to enter into negotiations with the selected consultants; and

WHEREAS, The professional services will be used in conjunction with locally and federally funded projects, and will be funded through the project budgets; and

WHEREAS, The Contract Compliance Office has established a 25 percent SBE goal for each contract; and

WHEREAS, Authorizing the Executive Director/CEO to issue and advertise this Request for Proposal will result in professional services that will ultimately assist the SFMTA in ensuring improved safety, accessibility and security across all modes of transportation and efficient and effective use of resources in accordance with the goals and objectives of the 2008-2012 Strategic Plan; and

WHEREAS, SFMTA staff will seek approval by the SFMTA Board of Directors prior to awarding Contracts CS-900 and CS-901; now, therefore be it

RESOLVED, That the Executive Director/CEO is authorized to issue and advertise a Request for Proposals for Contract CS-900, As-Needed Specialized Engineering Services for SFMTA Rail Vehicles Rehabilitation and Replacement Program, receive proposals, select a Consultant, and negotiate a contract with the selected Consultant for an amount not to exceed \$5,000,000.00, and for a term not to exceed five years; and be it further

RESOLVED, That the Executive Director/CEO is authorized to issue and advertise a Request for Proposals for Contract CS-901, As-Needed Specialized Engineering Services for SFMTA Rubber Tire Vehicles Rehabilitation and Replacement Program, receive proposals, select a Consultant, and negotiate a contract with the selected Consultant for an amount not to exceed \$4,000,000.00, and for a term not to exceed five years.

I hereby certify that the San Francisco Municipal Transportation Agency Board adopted the foregoing resolution at its meeting of \_\_\_\_\_

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

City and County of San Francisco

The Municipal Transportation Agency

Request for Proposals for

CONTRACT NO. CS-900  
CCO 08-1001

AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR SFMTA RAIL VEHICLE  
PROJECTS

AND

CONTRACT NO. CS-901  
CCO-08-1014

AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR SFMTA RUBBER TIRE  
VEHICLE PROJECTS

JUNE 2008

Pre-proposal Conference: July 29, 2008 at 10:00 am

Deadline For Submission: August 28, 2008 at 3:00 pm

## OFFICIAL ADVERTISEMENT

The San Francisco Municipal Transportation Agency (SFMTA) desires to retain specialized professional and technical engineering consultants to provide as-needed specialized professional engineering services in a broad area of technical disciplines to supplement staff in the implementation of various SFMTA vehicle rehabilitation and procurement projects. The contracts for these services will be established for a period not to exceed five years, at a cost not to exceed \$4,000,000 for the Rubber Tire Vehicles Rehabilitation and Replacement Program and \$5,000,000 for the Rail Vehicles Rehabilitation and Replacement Program.

Consultants will provide professional consulting services as specified in the Request For Proposals (RFP), either by direct assignment of Consultant's personnel or through sub-consultants.

Consultants are encourage to submit proposals for both contracts, but only one contract will be awarded to a single Consultant or Joint Venture. Both contracts will not be awarded to the same Consultant or Joint Venture. Each proposal will be clearly marked as a response to either the Rubber Tire Vehicles Rehabilitation and Replacement Program or the Rail Vehicles Rehabilitation and Replacement Program. It is not acceptable to submit one proposal for both contracts.

Proposals and completed forms must be submitted and received by the SFMTA by 3:00 p.m. on August 28, 2008 at the following address:

The San Francisco Municipal Transportation Agency  
Operation Engineering Section  
700 Pennsylvania Ave, San Francisco CA 94107  
Attention: R. Rankin

Prospective proposers may obtain a copy of the RFP and additional information for Contracts Nos. CS-900 and CS-901, including the forms to be submitted with the proposal, at the address given above or by calling (415) 401-3107.

Consulting firms are encouraged to contact Ms. Naomi Steinway of the SFMTA Contract Compliance Office at (415) 701-4363 prior to submitting a proposal to discuss the Small Business Enterprise (SBE) Program.

The SFMTA will hold a pre-proposal conference on July 29, 2008 at 10:00 a.m. at 700 Pennsylvania Avenue, Building D Conference Room, San Francisco, California, to discuss the proposed contracts and the SBE Program.

A Selection Committee and the Contract Compliance Office will evaluate each submittal. The final selection of the Consultants for these Contracts will be made based on the evaluation of the proposals, the proposals' responsiveness to the RFP, oral interviews, and compliance with the SBE/Nondiscrimination Requirements. The Selection Committee will be composed mainly of SFMTA staff.

The successful proposer shall cooperate with the 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 SBEs do not exist.

A twenty-five percent (25%) SBE participation goal has been established for each Contract.

Questions concerning SBE Program requirements should be addressed to:

Ms. Naomi Steinway  
SFMTA Contract Compliance Office  
One South Van Ness Avenue,  
San Francisco, CA 94103  
Telephone: (415) 701-4363

Questions regarding the Scope of Work should be addressed in writing to:

Ms. Trinh Nguyen Project Manager  
Operations Engineering  
700 Pennsylvania Street  
San Francisco, CA 94107-3443  
Telephone: (415) 401-3113  
Fax: (415) 401-3218

The work described in these specifications is to be financed with the assistance of a grant from the Federal Transit Administration (FTA) and all work described in these specifications shall be performed in accordance with FTA requirements.

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Request for Proposals for  
As-Needed Specialized Engineering Services for the SFMTA Rail Vehicles Rehabilitation and Replacement Program  
And  
As-Needed Specialized Engineering Services for the SFMTA Rubber Tire Vehicles Rehabilitation and Replacement Program.

In order to ensure a fair and competitive selection process, SFMTA directs Proposers not to contact SFMTA 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

The San Francisco Municipal Transportation Agency (SFMTA) requests proposals from qualified consultants to provide as-needed specialized engineering services to supplement staff in the implementation of its various projects. The contract for these services will be established for a period not to exceed five years, at an amount of \$4,000,000 for the Rubber Tire Vehicles Rehabilitation and Replacement Program and \$5,000,000 for the Rail Vehicles Rehabilitation and Replacement Program.

The Small Business Enterprise (SBE) goal is twenty-five percent (25%.) for each contract.

The intent of the professional services contract is to enable SFMTA to obtain qualified technical assistance on short notice (within 5 calendar days) on an as-needed basis from the selected consultants or sub-consultants.

## II. Scope of Work

### A. Rail Vehicles Rehabilitation and Replacement Program

The Consultant must be able to provide a broad range of specialized services and staff to complete work required by the SFMTA. The scope of work for the Consultant is described in this section, but is subject to change as a result of negotiations with the selected proposer. The quantity and type of services and personnel to be provided under the tasks listed herein will be executed at the sole discretion of the SFMTA. The SFMTA reserves the right to use qualified City Staff to whatever extent possible in providing the technical engineering and quality control services. The Consultant will not perform any services that qualify as a public work or improvement as defined in Chapter 6 of the San Francisco Administrative Code.

The Consultant shall provide specialized engineering and quality control services for the implementation and completion of various Rubber Tire vehicle procurement and rehabilitation projects, including, but not limited to drafting Request for Proposals, design analysis, engineering calculations, reliability, safety, maintainability, and Mean Distance Between Failure (MDBF), quality control inspection, administrative support, vehicle acceptance and testing, warranty administration and competency gap analysis. The Consultant shall provide competent



professional staff and services in the specialties described below, either by direct assignment of its own personnel or through sub-consultants, subject to review and approval by SFMTA's Project Manager. The services to be provided by the Consultant at the direction of, and to the satisfaction of, the SFMTA include, but are not limited to:

1. Performing detailed design review, data analysis, calculation and investigation of the various sub-systems of vehicles to enable the SFMTA project team to make sound decisions regarding the reliability and feasibility of the products being offered by the vehicle manufacturer.
2. Drafting specifications, and reviewing and making recommendations on all designs, including, but not limited to, conceptual preliminary designs and final design reviews.
3. Advising the SFMTA on key issues regarding vehicle rehabilitation and procurement, including deviation from project requirements.
4. Reviewing, coordinating and recommending approval of project submittals for vehicle rehabilitation and procurement including:
  - a. Overall vehicle design documents (including hardware and software functionality and performance)
  - b. Test plans, procedures, and reports
  - c. Training plans and materials
  - d. Design and Application drawings and manuals
5. Performing quality control and resident inspection during production, including witnessing First Article testing at the vendor's facilities and on SFMTA property.
6. Ensuring that all required tests, operations, measurements and inspections are satisfactorily performed and documented by the vehicle manufacturers and sub-suppliers.
7. Providing periodic inspection, progress reports, and meeting minutes.
8. Witnessing, reviewing and conducting acceptance tests of vehicles delivered to the SFMTA.
9. Ensuring that all O&M manuals, as-built drawings, warranties and other closeout documents are obtained and accepted by the appropriate parties.
10. Ensuring that all training, spare parts, special tools, special test equipment, maintenance and operation manuals, and other deliverables are properly provided to the appropriate parties.
11. Assisting SFMTA engineers in reviewing and redlining deliverables:
  - a. Design documents
  - b. Test plans, procedures and reports
  - c. Training plans and materials
12. Preparing a Final Project Report summarizing the entire project process, including a discussion of successes and areas for improvement.

13. Providing cost and price analyses of contracts, change orders, task orders, and contract modifications in accordance with FTA guidelines, change order estimating, schedule and delay analysis, constructability review, forensic cost and accounting analyses, and dispute analysis and review.
14. Providing additional staffing on an as-needed basis in the areas of inspection, engineering, and quality assurance expertise.
15. Providing risk and sensitivity analyses for capital/operating expenses and revenues.
16. Preparing Fleet Management Plans.
17. Conducting safety analysis, compatibility analysis of the configuration and integration of project deliverables into Muni's shop facilities and infrastructure, and certification activities of documents that include, but are not limited to: reports, databases, spreadsheets, and vehicle interface documentation.
18. Conducting rail profiling.
19. Conducting wheel profiling.

The final scope of work for the contract shall be determined by the SFMTA and will be derived from the RFP and the submitted proposal, but may not include all elements of the RFP or proposal. The performance of services under this contract shall be on a cost plus fixed fee or by task order, or some combination thereof. A maximum not-to-exceed amount for services will be negotiated with the Contractor.

#### B. Rubber Tire Vehicles Rehabilitation and Replacement Program

The Consultant must be able to provide a broad range of specialized services and staff to complete work required by the SFMTA. The scope of work for the Consultant is described in this section, but is subject to change as a result of negotiations with the selected proposer. The quantity and type of services and personnel to be provided under the tasks listed herein will be executed at the sole discretion of the SFMTA. The SFMTA reserves the right to use qualified City Staff to whatever extent possible in providing the technical engineering and quality control services. The Consultant will not perform any services that qualify as a public work or improvement as defined in Chapter 6 of the San Francisco Administrative Code.

The Consultant shall provide specialized engineering and quality control services for the implementation and completion of various rubber tire vehicle procurement and rehabilitation projects, including, but not limited to drafting Request for Proposals, design analysis, engineering calculations, reliability, safety, maintainability, and mean distance between failure (MDBF), quality control inspection, administrative support, vehicle acceptance and testing, warranty administration and competency gap analysis. The Consultant shall provide competent professional staff and services in the specialties described below, either by direct assignment of its own personnel or through sub-consultants, subject to review and approval by SFMTA's

Project Manager. The services to be provided by the Consultant at the direction of, and to the satisfaction of, the SFMTA include, but are not limited to:

1. Performing detailed design review, data analysis, calculation and investigation of the various sub-systems of vehicles to enable the SFMTA project team to make sound decisions regarding the reliability and feasibility of the products being offered by the vehicle manufacturer.
2. Drafting specifications, and reviewing and making recommendations on all designs, including, but not limited to, conceptual preliminary designs and final design reviews.
4. Advising the SFMTA on key issues regarding rail vehicle rehabilitation and procurement, including deviation from project requirements.
5. Reviewing, coordinating and recommending approval of project submittals for rail vehicle rehabilitation and procurement including:
  - a. Overall vehicle design documents (including hardware and software functionality and performance)
  - b. Test plans, procedures, and reports
  - c. Training plans and materials
  - d. Design and Application drawings and manuals
6. Performing quality control and resident inspection during production, including witnessing First Article testing at the vendor's facilities and on SFMTA property.
7. Ensuring that all required tests, operations, measurements and inspections are satisfactorily performed and documented by the vehicle manufacturers and sub-suppliers.
8. Providing periodic inspection, progress reports, and meeting minutes.
9. Witnessing, reviewing and conducting acceptance tests of vehicles delivered to the SFMTA.
10. Ensuring that all O&M manuals, as-built drawings, warranties and other closeout documents are obtained and accepted by the appropriate parties.
11. Ensuring that all training, spare parts, special tools, special test equipment, maintenance and operation manuals, and other deliverables are properly provided to the appropriate parties.
12. Assisting the SFMTA engineers in reviewing and redlining deliverables:
  - a. Design documents
  - b. Test plans, procedures and reports
  - c. Training plans and materials

13. Preparing a Final Project Report summarizing the entire project process, including a discussion of successes and areas for improvement.
14. Providing cost and price analyses of contracts, change orders, task orders, and contract modifications in accordance with FTA guidelines, change order estimating, negotiation, schedule and delay analysis, constructability review, forensic cost and accounting analyses, and dispute analysis and review.
15. Providing additional staffing on an as-needed basis in the areas of inspection, vehicle procurement management, engineering, quality assurance expertise, and project management for SFMTA's capital projects.
16. Providing risk and sensitivity analyses for capital/operating expenses and revenues.
17. Preparing Fleet Management Plans.
18. Conducting safety analysis, compatibility analysis of the configuration and integration of project deliverables into Muni's shop facilities and infrastructure, and certification activities of documents that include, but are not limited to: reports, databases, spreadsheets, and vehicle interface documentation.

The final scope of work for the contract shall be determined by the SFMTA and will be derived from the RFP and the submitted proposal, but may not include all elements of the RFP or proposal. The performance of services under this contract shall be on a cost plus fixed fee or by task order, or some combination thereof. A maximum not-to-exceed amount for services will be negotiated with the Contractor.

#### Additional Information

The services to be provided under both contracts will require Contractors' personnel to climb scaffolds and ladders, work under Muni's prevailing shops operation conditions, work in inclement weather, enter confined spaces, and work nights, holidays and weekends. All of the Contractors' employees are expected to be courteous and professional in their behavior. Intimidating, discriminatory, harassing, or any behavior deemed unacceptable by the SFMTA may be grounds for removal of the individual(s) from SFMTA property.

The City Attorney's Office will provide legal counsel for contract issues, disputes and claims.

Request for substitution of sub-consultants shall be subject to the approval of the SFMTA Board of Directors.

All matters affecting scope, budget, and schedule will require written approval by the SFMTA's Project Manager.

### III. Submission Requirements

#### A. Submission of Proposals

All proposers must submit 10 copies of their Proposals, including required SBE Forms and attachments, by the deadline to the address stated below. Postmarks will not be considered in judging the timeliness of submissions. Each proposal received will be screened to ensure that the information required in Section VI and other requirements are included. Partial or total omission of any of these items from a proposal may disqualify a proposal from further consideration. Proposals that are submitted by fax or submitted late will not be accepted.

All proposals must be received at the SFMTA: August 28, at 3:00 PM

Proposals must be delivered to:

Rosa Rankin  
SFMTA Operation Engineering Section  
700 Pennsylvania Ave  
Building B – 2<sup>nd</sup> Floor  
San Francisco, California 94107-3443  
(415) 401-3107

Each proposal shall be clearly marked as a proposal for either the Rubber Tire Vehicles Rehabilitation and Replacement Program or the Rail Vehicles Rehabilitation and Replacement Program. It is not acceptable to submit one proposal for both contracts. The cover page for each proposal should clearly indicate the contract name and number (i.e. : PROPOSAL FOR CONTRACT CS-900 CCO 08-1001- AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR RAIL VEHICLES).

#### B. Format and Content of Proposals

The proposal shall be clear, concise and complete. The proposal shall total no more than 35 pages on double sided paper (18 sheets). All pages shall be 8-1/2" x 11", minimum size 10 font, unless otherwise noted in this RFP. Documents requested in Item 7 of this Section, along with team members' references and resumes and other reference materials, shall be placed in the appendices and will not be counted as part of the 35-page limit. All documents submitted shall be bound in a binder with each section separated by tabbed dividers. Distinct documents enclosed in the appendix shall be separated by tabbed dividers as well. Attachments, photos, and other reference material may be included in the proposal; however, reference materials not requested in this RFP may or may not be used by the Selection Committee in evaluating the Consultant's proposal.

Firms interested in responding to this RFP must also submit the following information, in the order specified below:

1. Introduction and Executive Summary (up to 2 pages)

Submit a letter of introduction and executive summary of the proposal. The letter must be signed by a person authorized by your firm to obligate your firm to perform the commitments contained in the proposal. Submission of the letter will constitute a representation by your firm that your firm is willing and able to perform the commitments contained in the proposal.

Furnish an executive summary briefly describing the qualifications and organization of the consulting team (prime consultant, sub-consultants, 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, including the twenty-five percent (25%) SBE participation goal.

Indicate that the proposer has read and finds the City's standard contract agreement acceptable (see Attachment 3). 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.

2. Project Organization and Management Approach (up to 8 pages)

a. For a joint venture or association, provide the full name and address of the prime firms or member firms. For an association, provide the type of arrangement and describe the contractual relationship. Provide the same information for each sub-consultant (if any).

b. Provide the name, title, address, and telephone number of individual(s) with authority to bind the firm, joint venture, or association.

c. Identify one individual, empowered by the proposer and representing the entire consulting team, as the principal in charge who has responsibility to manage the entire consulting team, regardless of the other key personnel provided.

d. Briefly describe the prime consultant firm, joint venture, or association and the services it will provide. If the prime consultant is a joint venture or association, explain in detail the responsibility of each member firm. Briefly describe any sub-consultants, their responsibilities, and the services they will provide.

e. Describe how the proposer's team will be organized, specify how each task will be managed and staffed, and identify the relationships among the sub-consultants (if any), and their respective roles on the project. In addition to a written description, an organizational chart on 8-1/2x11 or 11x17 paper may be used to show these relationships.

f. Describe how the Consultant will integrate and interface with City staff and City's other consultants.

g. Describe the consulting team's internal 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.

h. Describe your firms' quality control / quality assurance program. Provide a copy of the current corporate organization chart depicting the reporting relationship of those responsible for quality assurance and quality control in your firm.

3. Service and Staffing (up to 5 pages)

Describe the consulting team's ability and plan to provide the services and staffing to undertake tasks of the proposed scope of work.

Provide matrix (11"x17" maximum size paper) detailing the names of the individuals proposed for all tasks; list their current employers; provide a summary of their qualifications, experience and relevant projects worked on over the past four years; and their present job assignment(s). Include brief descriptions of each individual's title, projects, total contract amount including all modifications for each project, locations, duties, and assignment start and end dates.

4. Relevant Experience and References (up to 10 pages)

a. Describe qualifications, experience and major or unusual accomplishments for the following:

- The companies involved: prime consulting firm and its sub-consultants;
- The management personnel directly involved and playing key roles under the Contract;
- The personnel proposed for the tasks specified in the RFP.

This section of the proposal shall summarize, highlight and supplement the information contained in SFMTA Form PM3 (Appendix 1) and resumes. Describe any experience and qualifications that the consulting teams or personnel have in working with a mixed team of City/client-consultant engineering personnel. Describe the proposer's familiarity with San Francisco's construction climate and labor practices. Describe the proposer's familiarity with SFMTA's operating rules and regulations and standard operating procedures.

Detailed information regarding the above shall be contained in SFMTA Form PM3 (Appendix 1) for the prime consultant and its sub-consultants, and in the resumes for individual personnel. SFMTA Form PM3 and personnel resumes should be enclosed in Appendix 1 and will not be counted toward the page limit. Personnel resumes should describe the roles, responsibilities, and major accomplishments achieved for each contract, along with dates of involvement.

b. Provide three different client references for each firm and each individual proposed for each task, including a contact person, his/her title, address, phone number and fax number, from the most recent contracts undertaken by each firm and individual.

5. Technical Approach (up to 5 pages)

The tasks outlined in the Scope of Work are a general description of work. The prospective consultants shall address and expand, as necessary, upon the outlined tasks described in this RFP. At a minimum, the technical approach shall contain the following:

- a. Describe the proposer’s understanding of the nature and extend of the services required for each task.
- b. Describe the proposer’s plan, program, and methods for executing the scope of work. Describe special issues, problems and constraints, and the approach towards mitigating and resolving them.

The proposer may suggest additional tasks and revise task descriptions from those specified in this RFP.

#### 6. Sample Detail Cost Analysis (up to 5 pages)

Provide a sample “cost analysis” (as defined by FTA Circular 4220.1E) that demonstrates the proposer’s understanding and ability to meet FTA third party contract solicitation, award, and administration requirements. If the proposer has not yet developed such a “cost analysis,” SFMTA will accept an actual cost analysis of a task/procurement performed by the proposer for a non-FTA-funded project.

#### 7. Other Required Documents

In addition to the requirements discussed above, proposers must submit the following documents with their proposals:

1. Completed SFMTA Form PM3
2. Small Business Enterprise (SBE) Participation Form (SFMTA SBE Form 1)
3. SFMTA SBE Form 2 - SBE Consultant Participation – Good Faith Efforts
- 3a. SFMTA SBE Form 2A - SBE Bidders List
- 3b. SFMTA SBE Form 2B- SBE Consultant/Joint Venture Partner/Sub-consultant-Gross Revenue Declaration
4. SFMTA SBE Form 3 - Questionnaire on Recruitment, Hiring and Training Practices
5. SFMTA SBE Form 4 - Sub-consultant Participation Declaration \*
6. SFMTA SBE Form 5 - Small Business Enterprise Acknowledgement Declaration
7. Copy of the proposer’s Nondiscrimination Program or EEO Policy Statement (if any)
8. Completed Business Tax Declaration
9. S.F. Administrative Code Chapters 12B and 12C Declaration:  
Nondiscrimination in Contracts and Benefits (See [www.sfgov.org/sfhumanrights](http://www.sfgov.org/sfhumanrights))
10. Completed Certification Regarding Lobbying
11. Attestation of Compliance

Both the prime consultant and all sub-consultants need to submit Items 1, 3a, 3b, 4, 6, 7, 8, 9, 10 and 11. Items 2 and 3 apply to the prime consultant only. Item 6 applies to SBE sub-consultants only. Information about all firms submitting quotes or proposals must be included for Item 3a. Directions for completing Items 2, 3, 3a, 3b, 4, 5, and 6 can be found in SBE Program for Professional and Technical Services for Federally Funded Projects (Appendix 2). Part VI of the



SBE Program describes the documents that must be submitted as part of the proposal. Additionally, Joint Ventures formed at either the prime consultant level or sub-consultant level must submit a Joint Venture Participation Form (Schedule B) plus a joint venture agreement. Please contact SFMTA's CCO to obtain a copy of the Joint Venture – Schedule B Form to be submitted with the proposal if applicable.

\* (Note: If applicable, sub-consultants utilizing lower tier SBE sub-subconsultants must complete SBE Form 4.)

#### IV. Selection Process and Evaluation Criteria

##### A. Selection Process

The selection process used by SFMTA generally follows City and FTA procurement guidelines. All proposals will be evaluated by a Selection Committee composed mainly of SFMTA staff.

Step One: The Selection Committee will first evaluate and score written proposals based on the Evaluation Criteria listed below in B.1. A through G, using a 100-point rating system. Each member of the Selection Committee will separately score each proposer'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 average written evaluation score for each proposal. The maximum score for each proposal will be 100 points.

Based on the average score for each proposer's written proposal, the SFMTA will determine which proposers are within the competitive range. The proposers within the competitive range will be invited to make a presentation and participate in an oral interview with the Selection Committee.

Step Two: The SFMTA will invite selected proposers to appear before the Selection Committee for an oral interview and presentation of the proposal and detailed discussions of the various elements of their proposals. Presentations at the oral interview shall be made by the key team members who will actually be assigned to the Contract. All team members, including SBE subcontractors, should actively participate in the presentation and oral interview with the Selection Committee. Proposers selected for the interview may be required to furnish additional information to clarify their proposals prior to or at the interview and respond to questions by the Selection Committee.

The Selection Committee will score each presentation/oral interview using the Evaluation Criteria listed below in B.2.H, using a 50-point rating system. Each member of the Selection Committee will separately score each proposer's oral interview and presentation. Individual evaluation scores from all Selection Committee members will be added together and then divided by the number of Selection Committee members, to obtain an average interview evaluation score.

Step Three: Final selection will be made based on the combined scores for both the written proposals and the presentation/oral interview. The highest-ranking proposer will be invited to negotiate a contract with the SFMTA. However, the same proposer will not be selected for both

contracts. If the highest-ranking proposer is the same for both contracts, the second-highest proposer will be invited to negotiate one of the two contracts at the discretion of the SFMTA.

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 proposer, SFMTA may choose to discontinue negotiations with the highest-ranking proposer and enter into negotiations with other qualified proposers 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.

## B. Evaluation Criteria

1. **Written Proposal:** Each proposal will be evaluated on the basis of the following criteria, on a 100-point rating system:

A. **Relevant Experience (30 points maximum):** Capability, specific relevant experience and qualifications of each consultant firm, sub-consultant firm, and especially, the proposed personnel for each task.

B. **Organization, and Management Approach (15 points maximum):** Proposer's understanding of the services for each task; effectiveness of its plan, program and method of execution; understanding of special issues, problems and constraints, and approach towards mitigating and resolving them; effectiveness of the proposer's work plan. Effectiveness of the consulting team's organizational structure in executing and managing the tasks; management approach in providing quality and cost-effective and on-time services.

C. **Services and Staffing Ability (15 points maximum):** Ability of the Consultant to provide timely, qualified and adequate staffing and services to support project demands, especially personnel with the expertise related to the proposed scope of work.

D. **Sample cost analysis (5 points maximum):** Quality and conciseness of the sample cost analysis submitted in response to III.B.5 above.

E. **Technical approach (15 points maximum):** Consultants will be evaluated on their understanding of the services for each tasks, effectiveness of their plan, program and method of execution, understanding of special issues, problems, and constraints, and approach towards mitigating and resolving them, effectiveness of the Consultant's work plan.

F. **Record of performance (15 points maximum):** Record of past performance and demonstrated competence of the proposer and sub-consultants.

G. **Overall Proposal (5 points maximum):** Overall organization and clarity of proposal; responsiveness to all items requested to be in the written proposal.

2. **Oral Interview/Presentation:** The Selection Committee will conduct oral interviews of each selected proposer. Prior to the interviews, SFMTA will notify the selected

proposer in writing as to the time and length of the interview and the general format of the interview. The Selection Committee will evaluate the oral interview and presentation based on the following criteria:

H. Oral Interview/Presentation (50 points maximum): The Selection Committee 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 same criteria on which the written proposals were evaluated.

## V. Schedule

### A. Pre-Proposal Conference

A pre-proposal conference will be held at the time and place stated below to discuss the proposed contract and to answer any questions concerning the RFP, SBE/Nondiscrimination Requirements, and other City requirements. Although attendance at the pre-proposal conference is not mandatory, all prospective consultants and sub-consultants are urged to attend this conference.

The Pre-Proposal Conference will be held on:

July 29, 2008 at 10:00 am  
700 Pennsylvania Avenue  
Building D Conference Room  
San Francisco, California 94107

SFMTA will keep a record of all parties who request and receive copies of the RFP. Any requests for information concerning the RFP, whether submitted before or after the pre-proposal conference, must be in writing, and any substantive replies will be issued as written addenda to all parties who have requested and received a copy of the RFP. Questions raised at the pre-proposal conference may be answered orally. If any substantive new information is provided in response to questions raised at the pre-proposal conference, it will also be memorialized in a written addendum to this RFP and will be distributed to all parties that received a copy of the RFP. No questions or requests for interpretation will be accepted within 15 calendar days prior to proposal due date.

### B. Schedule

The anticipated schedule for selecting a consultant is as follows:

<u>Proposal Phase</u>	<u>Date</u>
RFP is advertised and issued	June 20, 2008

by the City	
Pre-proposal conference	July 29, 2008
Deadline for submission of written questions or requests for clarification	August 13, 2008
Proposals due	August 28, 2008
Contract Review Period	August 28, 2008 – September 12, 2008
Contract Award	October 21, 2008

## VI. Terms and Conditions for Receipt of Proposals

### A. Errors and Omissions in RFP; Requests for Information or Clarification

Proposers are responsible for reviewing all portions of this RFP. Proposers must notify SFMTA promptly, 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 will be made by addenda as provided below.

Questions regarding this RFP should be addressed in writing to:

Ms. Trinh Nguyen, Project Manager  
 MTA Operation Engineering Section  
 700 Pennsylvania Ave  
 San Francisco, California 94107  
 (415) 401-3113 phone  
 (415) 701-3270 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) calendar days prior to the proposal due date. SFMTA may or may not respond to questions received after that time.

### 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 Ms. Rosa Rankin at 415-401-3107.

#### C. 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 that any contract will actually be entered into by the City and/or SFMTA. The City and SFMTA expressly reserve 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.

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

#### E. Objections to RFP Terms

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

#### F. Errors and Omissions in Proposal

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

#### Financial Responsibility

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

by the City in any way deemed appropriate.

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

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

### 1. Policy

The SFMTA is committed to a Small Business Enterprise ("SBE") Program for the participation of SBEs in contracting opportunities. The SFMTA is also committed to comply 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 the SBE Program as though fully set forth herein. It is the intention of the SFMTA to create a level playing field on which SBEs can compete fairly for contracts and subcontracts relating to the procurement and professional services activities of the SFMTA.

### 2. Questions

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

Ms. Naomi Steinway  
Contract Compliance Officer  
Municipal Transportation Agency  
Contract Compliance Office  
1 South Van Ness, 3rd Floor  
San Francisco, CA 94103  
Telephone: (415) 701-4363

### 3. Non-Discrimination in Employment

SFMTA will evaluate the proposer's response to the Questionnaire on Recruitment, Hiring, and Training Practices (MTA 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 twenty-five percent (25%) 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: Computer Programming and Design; Architecture and Engineering Services, 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 (MTA Form 2 – SBE Consultant/Sub-consultant – 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.

#### I. 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 the Non-discrimination Program mandated by Chapter 12B of the San Francisco Administrative Code. Documentation regarding Charter 12B and 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 Consultant 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.



## 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.

### Public Access to Meetings and Records

If a consultant 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 consultant must comply with the reporting requirements of that Chapter. The consultant must include in its Proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to consultant's meetings and records, and (2) a summary of all complaints concerning the consultant'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 consultant shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in consultant'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.

### L. Proposer's Obligations under the Campaign Reform Ordinance

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

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

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

- the officer's re-election campaign
- a candidate for that officer's office

- a committee controlled by the officer or candidate.

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

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

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

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

#### M. 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.

#### N. 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.

#### O. Certification Regarding Lobbying

All prospective consultants are required to complete and submit along with their proposals, the certification form in Appendix 6 regarding lobbying. The same certification shall be obtained and submitted from all lower tier participants (sub-consultants, suppliers, etc.) with work greater

than \$100,000.

P. 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 Consultant 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 Consultant 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 Consultant 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 Consultant further agrees to include a provision requiring such compliance in its lower tier covered transactions.

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.

#### 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.

## VII. CITY CONTRACT REQUIREMENTS

### Agreement For Professional Services

The successful Consultant shall be required to enter into a contract substantially in the form of the Agreement for As-Needed Specialized Engineering 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 should pay special attention to the requirements of the Minimum Compensation Ordinance (§43 in the Agreement), the Health Care Accountability Ordinance (§44 in the Agreement), the First Source Hiring Program (§45 in the Agreement), and FTA requirements for personal services contracts, as set forth in Sections 7.2, 7.3, 7.4, and Exhibit A of the Agreement for As-Needed Specialized Engineering Services.

#### 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 shall 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/purchase/hcao.htm](http://www.sfgov.org/purchase/hcao.htm).

D. First Source Hiring Program

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

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

E. Protest Procedures

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

F. FTA Requirements for Personal Services Contracts

These requirements are set forth in Exhibit E of the Agreement for As-Needed Specialized Engineering Services. The successful Consultant will be required to comply with all FTA contracting requirements.

## VIII. APPENDICES

The following appendices accompany this RFP and are incorporated thereto by reference:

1. SFMTA Form PM3
2. Sample Contract Agreement with Exhibits
3. Business Tax Declaration
4. Protest Procedures
5. Certification Regarding Lobbying
6. Attestation of Compliance
7. Nondiscrimination In Contracts And Benefits

APPENDIX 1

MTA FORM PM3

SFMTA MUNI 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 <input type="checkbox"/> Parent Company <input type="checkbox"/> 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 experience: 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 MTA)

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 MTA)

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 Responsibility Responsible Individual	c. Owner's Name & Address	Completion Date (Actual or Estimated)	e. Estimated Cost (In thousands) Entire Project      work for which 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

SAMPLE CONTRACT AGREEMENT WITH EXHIBITS

APPENDIX 2

SAMPLE

AGREEMENT BETWEEN

CITY AND COUNTY OF SAN FRANCISCO

MUNICIPAL TRANSPORTATION AGENCY

AND

XXXXXXXXXXXXXXXXXXXX

FOR

AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR

SFMTA RAIL VEHICLE PROJECTS

CONTRACT NO. CS-900

CCO NO. 08-1001

OR

AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR

SFMTA RUBBER TIRE VEHICLE PROJECTS

CONTRACT NO. CS-901

CCO NO. 08-1014

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City and County of 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

---

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"), and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency ("MTA").

Recitals

- A. The Transportation Planning and Development Division of the MTA provides the professional and technical services required to implement capital and other projects of the San Francisco Municipal Railway ("Muni").
- B. The Agency wishes the services of a consulting firm to provide as-needed specialized engineering services in support of the MTA's various projects.
- C. On XXXX X, 2008, the SFMTA Board of Directors ("SFMTA Board") adopted Resolution No. XX-XXX, which authorized the Executive Director/CEO to issue and advertise a Request for Proposals for as-needed specialized engineering services.
- D. Consultant submitted a proposal in response to the Request for Proposals and the SFMTA successfully concluded contract negotiations with the Consultant.
- E. On \_\_\_\_\_, the SFMTA Board adopted Resolution No. \_\_\_\_\_, authorizing the Executive Director/CEO to award and execute this Agreement with Consultant for said services.
- F. Consultant represents and warrants that it is qualified to perform the services required by City as set forth under this Contract.
- G. Approval for said Agreement was obtained from Civil Service Commission by PSC No. \_\_\_\_\_, dated \_\_\_\_\_.

Now, THEREFORE, the parties agree as follows:

Definitions

A/E Services are the professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered or certified to provide those services.

Agreement or Contract refers to this Agreement for As-Needed Services and all referenced Exhibits to this Agreement.

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. .

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

Controller means the Controller of the City.

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

Consultant is \_\_\_\_\_.

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 numbers for this RFP is CCO No. 08-1001 and 08-1014. (Is this the correct number?)

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 former Department of Parking and Traffic division 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 projects development.

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.

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.

Project Manager / Project Engineer: The designated SFMTA employee who will assume all duties and responsibilities and have the right and authority assigned to the Project Manager in the Contract in connection with completion of Work in accordance with the Contract.  
Proposal refers to the Consultant's written response/submittal to the RFP.

Request for Proposals; RFP refers to the Request for Proposals for As-Needed Specialized Engineering Services, issued by the SFMTA on \_\_\_\_\_.

Revenue Fleet is a SFMTA fleet of vehicles providing transit or transportation services to fare-paying customers.

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 division of the SFMTA.

Scope of Services are the services, tasks, and deliverables that the Consultant will provide to the SFMTA under this 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").

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

Turnkey refers to a system of hardware and software delivered ready to operate.

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.

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.

#### Term of the Agreement

- a. Term Subject to Section 2, the term of this Agreement shall be five (5) years from the Effective Date of the Agreement.
- b. Effective Date. This Agreement shall become effective when the Controller has certified to the availability of funds for the first Task Order issued.

#### Services Consultant Agrees to Perform

- c. Scope of Agreement. The Consultant agrees to perform the services provided for in Exhibit A, "Services to be Provided by Consultant," attached hereto and incorporated by reference as though fully set forth herein.
- d. 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 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 Exhibits to this Agreement are incorporated by reference as though fully set forth herein.
- e. Information and Data The Consultant shall request in writing any information and data it will require to perform task orders. The Consultant shall identify the timing and priority for which this information and data will be required. The Consultant and City shall reach agreement as to the availability and delivery time for this data and information during initial task negotiations.
- f. Presentations. In the performance of assigned tasks, the Consultant, if requested by City, shall prepare graphic and written presentations, and participate in presentations of said material to various City departments, commissions, and interested community groups.



g. 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 changes to the California Building Codes and San Francisco Building Code to adopt provisions of the International Building Code and other amendments.

h. Task Requirements. Task requirements will be defined by the SFMTA. The cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below.

i. Scope of Work. SFMTA will prepare the scope of work and expected time of completion, using the Task Order form (Exhibit B) and transmit the Task Order form to the Consultant with a request for a proposal for the performance of the task.

ii. Consultant Proposal. The Consultant shall prepare and submit a proposal for the task to the Contracting Section showing:

1. A detailed description by subtask of the work to be performed and the means and methods that will be used to perform it;

2. Milestones for completion for each subtask and deliverables at each milestone;

3. Personnel and the sub-consultants assigned to each part of the work along with a justification as to why such personnel are qualified to perform the work; and prior experience in performing work of this nature;

4. A detailed cost estimate for each task or subtask showing:

- Estimated hours and direct salaries by position (hourly rates by position as listed in Exhibit C for both Consultant and subconsultant personnel);

- Overhead, including salary burden costs (% rates as listed in Exhibit D) for both Consultant and subconsultants; to arrive at this cost, the overhead rate is multiplied by the cost in (1) above;

- Estimated reasonable out-of-pocket expenses;

- Proposed profit as follows:

- Proposed profit of Consultant's work effort as fixed fee amount not to exceed ten percent (10%) of Consultant's estimated direct salaries and overhead costs; and

- For work performed by all subconsultants, proposed total profit for Consultant and subconsultant on subconsultant's work effort as fixed fee not to exceed twelve percent (12%) of sub-consultant's estimated direct salaries and overhead costs.

iii. Negotiation of Cost and Profit. The Contracting Section will review the proposal and negotiate either a lump sum price or a fixed profit to perform the work of each subtask and task and either a total price or a total cost not to exceed for the task.

- iv. Record of Negotiations. If agreement is reached, the Contracting Section will document the negotiations and agreement in a Record of Negotiations and obtain the approval of Director of Transportation Planning and Development Division of the agreement as defined in the Record of Negotiations.
- v. Controller Certification. Upon approval of the Director of Transportation Planning and Development, the Contracting Section will request certification from the Controller that adequate funds are available to proceed with the task as agreed.
- vi. Notice to Proceed. After certification, the Contracting Section will send to the Consultant a written NTP and Task Number. The Consultant is required to use the task number when submitting invoices to the Contracting Section for payment. The Consultant shall not commence work on any task until it receives a written NTP for the task.
- vii. Changes. Agreed lump sum prices and fixed profits for subtasks and tasks above cannot be modified unless there is a material change in the scope of work of the task. If there is a material change in the scope of work of a task, then a proposal, negotiations, Record of Negotiations and approval of the Record of Negotiations by the Director of Transportation Planning and Development shall be required before changes to agreed lump sum prices and fixed profits can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.
- viii. Failure to Agree on Terms of Task. In the event that City and Consultant cannot reach agreement on the terms of the 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.
  - i. 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. The Consultant 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 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). SFMTA may in turn require Consultant to provide a remedy and/or corrective actions for such deviations.

j. Current Workload and Available Resources. The Consultant covenants that its current workload and the workload of its subconsultants will not affect the commencement and the progress of the work under this Agreement. The Consultant shall have all the necessary professional, technical and support personnel, including those of the subcontractors, available, ready and mobilized to perform actual work within two (2) weeks of the receipt of NTP on a particular task. In addition, the 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.

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

l. Transmittal of Work Product. When requested by Agency's Project Manager, and after completion of each task and subtask, the Consultant shall transmit to Agency all Work Product (duplicates and originals) produced or accumulated in the course of its and its subconsultant's work on this Agreement. The Consultant's Project Manager and Key Personnel shall have thoroughly reviewed and approved all Work Product and signed off as such prior to transmitting them to Agency.

m. Reproduction of Work Product. The Consultant shall arrange and provide for all printing (or other required reproduction) of Work Product.

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

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

#### Compensation

o. Amount. Compensation under this Agreement shall be based on either a negotiated lump sum price per task or subtask, or actual direct costs plus a negotiated fixed profit per subtask and task. In no event shall the amount of this Agreement exceed XXX Million Dollars (\$X,000,000).

p. Method of Computing Compensation.

i. Direct Labor Rates. The direct labor rates in Exhibit C shall be fixed at that level until 12 months after effective date of this Agreement. Direct Salary Rates in Exhibit C may be adjusted 12 months after the effective date of this Agreement but the average increase shall be no more than the Consumer Price Index (CPI). The CPI shall be defined as the Consumer Price Index for San Francisco-Oakland-San Jose, All Items, 1982-84=100 for All Urban Consumers. Any individual salary adjustments above five percent (5%) will require prior written approval from the Director of Transportation Planning and Development Division.

ii. Overhead. The Consultant's compensation under this Agreement will be based on and shall not exceed the combined overhead and salary burden rates as shown on the Schedule of Overhead Rates attached as Exhibit D. The rates in Exhibit D may be adjusted annually with prior written approval from the Director of Transportation Planning and Development. The Consultant's and subconsultants' combined overhead and salary burden rates are subject to audit in compliance with Federal requirements.

The overhead rates attached as Exhibit D, including any adjustment to such rates as provided for above, are subject to reimbursement as described in this paragraph. Within one hundred eighty (180) days of the end of Consultant's fiscal year that immediately follows the expiration or any earlier termination of this Agreement, Consultant shall submit to the SFMTA Liaison,

Consultant's and all sub-consultants' actual rates during the term of this Agreement. For each rate paid to the Consultant that exceeds the Consultant's or any sub-consultant's actual rate, the Consultant shall reimburse to the City the total difference between the rate paid and Consultant's or sub-consultant's actual rate during the term of this Agreement. Consultant shall reimburse City within thirty (30) days of written notice from City seeking reimbursement. For each actual overhead rate of Consultant or sub-consultant that exceeds the rate paid to Consultant, City shall pay to Consultant the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Consultant within sixty (60) days of City's receipt of all of Consultant's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Consultant's rates as provided above.

- iii. Reimbursable Costs. The Consultant states it is familiar with the provisions of Office of Management and Budget (OMB) Circular A-87, Cost Principles For State, Local, and Indian Tribal Governments; that it understands the City does not intend to pay the Consultant for costs under this Agreement which are not reimbursable to City from its funding agencies in accordance with Circular A-87; and that all payments under this Agreement are subject to audit and adjustment.
- iv. Out-of-Pocket Expenses. The SFMTA will reimburse Consultant for the 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.
- v. Non-Reimbursable Expenses. Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Consultant and subconsultant personnel 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 Exhibit \_\_\_\_ will also not be reimbursable by the SFMTA under this Contract.
- vi. Use of Public Transportation. San Francisco is a transit-first city, and the SFMTA encourages Consultant and subconsultants 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. 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.

#### Payment

- q. **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.
- r. Invoices.
- i. 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.

ii. Progress Payment Form. The Controller is not authorized to pay invoices submitted by Consultant prior to Consultant's submission of the MTA Progress Payment Form. If the Progress Payment Form is not submitted with Consultant's invoice, the Controller will notify the MTA and Consultant of the omission. If Consultant's failure to provide the MTA 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 MTA Progress Payment Form is provided..

s. 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.

t. Payment of Invoices.

i. 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.

ii. 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.

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

u. 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.

#### Guaranteed Maximum Costs

v. 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.

w. 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.

x. 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.

y. 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.

#### Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code sections 6.80 to 6.83 and section 21.35, any Consultant or subconsultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A Consultant or subconsultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A Consultant or subconsultant will be deemed to have submitted a false claim to the City if the Consultant or subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

#### 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.

#### Taxes

z. **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.

aa. **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:

- i. 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;
- ii. 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

reevaluation 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.

- iii. 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 reevaluation 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.
- iv. 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.
- v. Consultant shall provide a San Francisco Business Tax Registration to the SFMTA in order for the City to certify this Agreement.

#### 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.

#### 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.

#### Equipment

bb. 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.

cc. 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 MTA at the conclusion of the Consultant's services under the Agreement.

## Independent Contractor; Payment of Taxes and Other Expenses

dd. 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.

ee. 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.

## Insurance

ff. 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:

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



iii. 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.

iv. Professional liability insurance as follows:

1. 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 \$1,000,000 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.

gg. Requirements of Insurance Policies. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

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

ii. 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.

hh. 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:

Ms. Trinh Nguyen  
Project Manager  
SFMTA Operations Engineering  
700 Pennsylvania Avenue  
San Francisco, CA 94107-3343

ii. Claims-Made Form. Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of 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.

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

kk. 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.

ll. Proof of Insurance. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized 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.

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

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

#### Indemnification

oo. 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.

#### pp. Limitations

- i. 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.
- ii. Consultant assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the Consultants of any Indemnitee.
- iii. 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.

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

#### 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.

#### 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.

#### 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.

#### Default; Remedies

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

- i. 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.
- ii. 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.
- iii. Consultant (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Consultant or of any substantial part of Consultant's property or (e) takes action for the purpose of any of the foregoing.
- iv. A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Consultant or with respect to any substantial part of Consultant's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Consultant.

ss. 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.

tt. 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.

## Termination for Convenience

uu. 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.

vv. 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:

- i. Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- ii. Not placing any further orders or subcontracts for materials, services, equipment or other items.
- iii. Terminating all existing orders and subcontracts.
- iv. 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.
- v. Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- vi. Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- vii. 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.

ww. Invoice for Services 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:

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

iv. 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.

xx. 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 (C). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (C).

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

zz. Survival of Payment Obligation. City's payment obligation under this Section shall survive termination of this Agreement.

#### Rights and Duties Upon Termination or Expiration

aaa. Survival of Provisions. 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, 57, and 58.

bbb. Duties Upon Termination. Subject to the immediately preceding subsection (A), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Consultant shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

#### 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.

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.

#### 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 MTA: Ms. Trinh Nguyen  
Project Manager  
SFMTA Operations Engineering Section  
700 Pennsylvania Avenue  
San Francisco, CA 94107-3343

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

Any notice of default must be sent by registered mail.

#### Ownership of Work Product

Any interest of Consultant or its Subconsultants, in its Work Product shall become the property of and will be transmitted to City. However, Consultant may retain and use copies for reference and as documentation of its experience and capabilities.

#### 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.

#### Audit and Inspection of Records

ccc. 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.

ddd. 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.

eee. 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.

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

ggg. 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.

### Subcontracting

hhh. 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 \_\_\_\_ to this Agreement as subconsultants and/or subconsultants on this Project.

iii. Substitutions of Subconsultants. Substitutions may be made for any subconsultants or subcontractors listed in Exhibit \_\_\_\_, 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.

jjj. Additions of Subconsultants. The City will reserve the right to request specific subconsultants with specific expertise to be added to the team to provide services under this Agreement if the City determines that specific expertise is lacking in the project team.

kkk. SBE Firms. 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.

### Assignment

The services to be performed by Consultant are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Consultant unless first approved by City by written instrument executed and approved as required by SFMTA policy and City ordinance. Consultant and the partners of any joint venture or association that 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.

## 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.

## Earned Income Credit (EIC) Forms

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

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

mmm. Failure to Comply. Failure to comply with any requirement contained in subparagraph (A) of this Section shall constitute a material breach by Consultant of the terms of this Agreement. If, within 30 days after Consultant receives written notice of such a breach, Consultant fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Consultant fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

nnn. Flowdown to Subconsultants. Any subcontract entered into by Consultant shall require the subconsultant to comply, as to the subconsultant's Eligible Employees, with each of the terms of this section.

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

## Small Business Enterprise Program.

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

qqq. Compliance with SBE Program. Consultant shall comply with the SBE provisions contained in Attachment 2 of the Request for Proposals, which are incorporated by reference as though fully set forth herein, including, but not limited to, achieving and maintaining the SBE goal set for the total dollar amount awarded for the services to be performed under this Agreement. Failure of Consultant to comply with any of these requirements shall be deemed a material breach of this Agreement.

rrr. SBE Goal. The goal for SBE participation is 25 percent of the total dollar amount awarded for the services to be performed under this Agreement.



sss. Non-Discrimination in Hiring. Pursuant to City and MTA policy, Consultant is encouraged to recruit actively minorities and women for its workforce and take other steps within the law, such as on-the-job training and education, to ensure non-discrimination in Consultant's employment practices.

#### Nondiscrimination; Penalties

ttt. 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.

uuu. 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 MTA) 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.

vvv. 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.

www. 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.

xxx. 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.

#### 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.

#### 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.

#### 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.

#### 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.

#### 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.

#### 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.

#### 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.

### 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.

### Requiring Minimum Compensation for Covered Employees

**yyy.** 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.

**zzz.** 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.

aaaa. 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.

bbbb. 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.

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

dddd. 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.

eeee. 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.

ffff. 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.

gggg. 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.

#### 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.

hhhh. 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.

iiii. 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.

jjjj. 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.

kkkk. 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.

llll. 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.

mmmm. 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.

nnnn. 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.

oooo. Contractor shall keep itself informed of the current requirements of the HCAO.

pppp. 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.

qqqq. 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.

rrrr. 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.

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

tttt. 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.

#### First Source Hiring Program

uuuu. 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.

vvvv. 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:

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

- iv. 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.
- v. 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.
- vi. Set the term of the requirements.
- vii. Set appropriate enforcement and sanctioning standards consistent with this Chapter.
- viii. 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.
- ix. Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

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

xxxx. **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.

yyyy. **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:

- i. To be liable to the City for liquidated damages as provided in this section;
- ii. 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;
- iii. 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.

- iv. 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;
- v. 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:
  - 1. 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
  - 2. 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;
- vi. 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
- vii. 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.

zzzz. **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.

#### 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, (A) terminate this Agreement, and (B) prohibit Consultant from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Consultant's use of profit as a violation of this section.

#### 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.

#### Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required by law.

#### 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.

#### 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.

#### Construction

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

#### 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.

#### 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.

#### 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.

#### Prompt Payment of Subconsultants

aaaaa. 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.

bbbbbb. 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.

ccccc. 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.

#### Disputes

dddddd. Notice of Dispute. For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within fifteen (15) days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with fourteen (14) days of delivery of the notice. The notice and response shall contain the following: (i) a statement of the party's position and a summary of the arguments supporting that position, and (ii) any evidence supporting the party's position.

eeeeee. Resolution of Disputes. Disputes arising in the performance of this Agreement that are not resolved by negotiation between the SFMTA Liaison and Consultant's shall be decided in writing by the SFMTA Manager of Project Management. The decision shall be administratively final and conclusive unless within ten (10) days from the date of such decision, the Consultant mails or otherwise furnishes a written appeal to the 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 MTA Liaison's decision as to a particular dispute is final.

fffff. No Cessation of Work. Pending final resolution of a dispute hereunder, the Consultant shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the MTA Liaison.

ggggg. Alternative Dispute Resolution. If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

hhhhh. Claims for Additional Compensation. For disputes involving a claim for additional compensation, parties involved shall attempt to resolve such disputes expediently and in good faith so as not to impact the performance or schedule of the Project. Under no circumstances shall the Consultant or its sub-consultants stop work due to an unresolved dispute.

iiii. Disputes among Consultant Partners. The resolution of any contractual disputes related to Consultant's Joint Venture or Association partners (if any) shall be the sole responsibility of the Consultant. Each party of the Joint Venture or Association shall resolve all such disputes within thirty (30) calendar days of when the dispute first surfaced so as not to impact 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.

#### 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.

#### Protection of Private Information

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

#### 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.

#### 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.

#### 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..

#### FTA Requirements

The provisions contained in "FTA Requirements for Personal Services Contracts," attached as Exhibit E 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

Municipal Transportation Agency

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

Approved as to Form:

Dennis J. Herrera  
City Attorney

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

Municipal Transportation Agency  
Board of Directors  
Resolution No. \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary, SFMTA Board

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.

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Authorized Signature

---

Printed Name

---

Title

---

Company Name

---

CITY VENDOR NUMBER

---

Address

---

City, State, ZIP

---

Phone Number

---

Federal Employer ID Number

## **EXHIBITS**

- A. SERVICES TO BE PROVIDED BY CONSULTANT
- B. TASK ORDER FORM
- C. DIRECT SALARY RATES BY POSITION OR CLASS FOR CONSULTANT AND ALL SUBCONSULTANTS
- D. OVERHEAD RATES FOR CONSULTANT AND ALL SUBCONSULTANTS
- E. FTA Requirements for Personal Services Contracts
- F. Small Business Enterprise (SBE) Program for Professional and Technical Services

## **EXHIBIT A**

### **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, As-Needed Specialized Engineering Services," issued June 23, 2008, the Proposal submitted by the Consultant on [insert date], and as required under this Agreement.

The Consultant will provide specialized engineering and quality control services for the implementation and completion of the various vehicle procurement and rehabilitation projects, including, but not limited to drafting Request for Proposals, design analysis, engineering calculations, reliability, safety, maintainability, and Mean Distance Between Failure (MDBF), quality control inspection, administrative support, vehicle acceptance and testing, warranty administration and competency gap analysis. The Consultant will provide competent professional staff (subject to review and approval by SFMTA's Project Manager) and services in specialties described below, either by direct assignment of its own personnel or through sub-consultants. The services for which staff and services are to be provided by the Consultant to support the project include, but are not limited to:

20. Performing detailed design review, data analysis, calculation and investigation of the various sub-systems of the vehicle to enable the SFMTA project team to make sound decisions regarding the reliability and feasibility of the products being offered by the vehicle manufacturer.
21. Drafting specifications, and reviewing and making recommendations on all designs, including, but not limited to, conceptual design preliminary and final design reviews.
22. Providing technical review and assessment of transportation systems.
23. Advising the SFMTA on key issues, including deviation from project requirements.
24. Reviewing, coordinating and recommending approval of project submittals including:
  - a. Overall vehicle design documents (including hardware and software functionality and performance)
  - b. Test plans, procedures and reports
  - c. Training plans and materials
  - d. Design and Application drawings and manuals
25. Performing quality control and resident inspection during production, including witnessing First Article testing at the vendor's facilities and on SFMTA property.
26. Ensuring all required tests, operations, measurements and inspections are satisfactorily performed and documented by the vehicle manufacturers and sub-suppliers.
27. Providing periodic inspection and progress reports, and meeting minutes.



28. Witnessing, reviewing and conducting acceptance tests of vehicles delivered to the SFMTA.
29. As directed by the SFMTA's project manager, make sure that all O&M manuals, as-built drawings, warranties and other closeout documents are obtained and accepted by the appropriate parties.
30. As directed by the SFMTA's project manager, ensure that all training, spare parts, special tools, special test equipment, maintenance and operation manuals, and other deliverables are properly provided to the appropriate parties.
31. Assist the SFMTA engineers in reviewing and redlining deliverables:
  - a. Design documents
  - b. Test plans, procedures and reports
  - c. Training plans and materials
32. Prepare Final Project Report summarizing the entire project process, including a discussion of the successes and aspects requiring improvements.
33. Provide cost and price analyses of contracts, change orders, task orders, and contract modifications in accordance with FTA guidelines, change order estimating, schedule and delay analysis, constructability review, forensic cost and accounting analyses, and dispute analysis and review.
34. Providing additional staffing on an as-needed basis in the areas of inspection, engineering and quality assurance expertise for SFMTA's vehicle rehabilitation and procurement projects.
35. Providing risk and sensitivity analyses for capital/operating expenses and revenues.
36. Preparing Fleet Management Plans.
37. Conducting safety analysis, compatibility analysis of the configuration and integration of project deliverables into Muni's shop facilities and infrastructure, and certification activities of documents that include, but are not limited to: reports, databases, spreadsheets, and vehicle interface documentation.
38. Conducting rail profiling.
39. Conducting wheel profiling

## **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. SFMTA Liaison**

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

Ms. Trinh Nguyen  
 Project Manager  
 SFMTA Operations Engineering Section  
 700 Pennsylvania Avenue  
 San Francisco, CA 94107-3343  
 (415) 401-3113

BIT B

MUNICIPAL TRANSPORTATION AGENCY

Contract Title: As-needed Systems Engineering Services      Contract No.: CS-900 or 901

Project Title: \_\_\_\_\_      Project No.: \_\_\_\_\_

TASK ORDER DESCRIPTION

Task Title <input type="checkbox"/> New Task Order <input type="checkbox"/> Revised Task Order															
Work to be Performed															
Schedule <div style="text-align: right; margin-top: 10px;">           Start Date: _____            Estimated Completion Date: _____         </div>															
<div style="display: flex; justify-content: space-between;"> <span>Budget Amount: \$ _____</span> <span>Index Code: _____</span> </div>															
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 60%;">Deliverables</th> <th style="text-align: left; width: 20%;">Date Req'd.</th> <th style="text-align: left; width: 20%;">Quantity</th> </tr> <tr> <th style="text-align: left;">Descriptions</th> <th></th> <th></th> </tr> </thead> <tbody> <tr> <td colspan="3" style="padding: 10px 0;"> <b>APPROVALS</b> </td> </tr> <tr> <td style="padding: 5px 0;">           Approved _____         </td> <td colspan="2" style="text-align: center; padding: 5px 0;">           MTA Liaison         </td> </tr> <tr> <td style="padding: 5px 0;">           Approved _____         </td> <td colspan="2" style="text-align: center; padding: 5px 0;">           Manager, Operation Engineering         </td> </tr> </tbody> </table>	Deliverables	Date Req'd.	Quantity	Descriptions			<b>APPROVALS</b>			Approved _____	MTA Liaison		Approved _____	Manager, Operation Engineering	
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Approved _____	MTA Liaison														
Approved _____	Manager, Operation Engineering														

EXHIBIT C

Direct Salary Rates by Position or Class for  
Consultant and all Sub-consultants

Position

Direct  
Salary  
(Hourly)

EXHIBIT D

SCHEDULE OF OVERHEAD RATES

Consultant/Overhead Rate

Sub-consultant (%)

## EXHIBIT E

### FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

#### DEFINITIONS

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.

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

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.

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

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.

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.

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

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.

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.

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

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

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

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

## 2. FEDERAL CHANGES

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

## ACCESS TO RECORDS

- A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

## DEBARMENT AND SUSPENSION

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

## NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

- a. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## CIVIL RIGHTS

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

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

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

ii. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

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

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

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

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

i. 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.

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

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

ii. 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:



1. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
  2. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.
- iii. **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 Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.
- iv. **Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.
- v. **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.
- vi. **Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.
- vii. **Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- k. **Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

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

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

- a. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
- c. Withholding for unpaid wages and liquidated damages - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- d. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

#### ENERGY CONSERVATION REQUIREMENTS

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

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

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

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

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

Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

## PRIVACY

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

## DRUG AND ALCOHOL TESTING

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

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

## FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

e. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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

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

## FLY AMERICA

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

## INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control

in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

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

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

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

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

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

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

**EXHIBIT F**

**SMALL BUSINESS ENTERPRISE (SBE) PROGRAM FOR PROFESSIONAL AND  
TECHNICAL SERVICES**

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

REQUEST FOR PROPOSALS (RFP)

FOR

CONTRACT NO. CS-900:  
AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR  
SFMTA RAIL VEHICLES

(CCO No. 08-1001)

AND

CONTRACT NO. CS-901:  
AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR  
SFMTA RUBBER TIRE VEHICLES

(CCO No. 08-1014)

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

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SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY  
SMALL BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

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

FOR FEDERALLY-FUNDED PROJECTS

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SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY  
Small Business Enterprise Program Requirements

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

POLICY

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

A. Applicability

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

B. Objectives

The objectives of this program are to:

Remove barriers to SBE participation in the bidding, award and administration of SFMTA contracts;

1. Assist SBEs to develop and compete successfully outside of the Program;
2. Ensure that the Program is narrowly tailored in accordance with 49 CFR Part 26;
3. Ensure that only SBEs meeting the eligibility requirements are allowed to participate as SBEs;
4. 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;

5. 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
6. 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:

## 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 twenty-five percent (25%) Small Business Enterprise participation goal for each 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 Professional Engineering Services 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 professional engineering 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 Professional Engineering Services industry.

7. The term “socially and economically disadvantaged individual” shall have the meaning, as the term is defined in 49 CFR Section 26.5, and shall also include persons with disabilities.

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

### 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

**Forms Submitted with Proposal**

	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.
	<b>FORMS SUMMITTED AT POST AWARD</b>	
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
2. 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.

Contract Number:	_____	Contract Name:	_____
Proposer's Name:	_____	CCO Staff Assigned:	_____

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:

---

b. Summarize below discussions and/or negotiations:

---

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

---

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

---

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

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

---

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

---

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

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

**DECLARATION**

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

---

Name and Title (Print)

---

Signature

---

Date

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.



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.)

WORKFORCE DATA SPREADSHEET #1

8. Please fill out this workforce breakdown

Name of firm: \_\_\_\_\_

Address: \_\_\_\_\_

EMPLOYEE * CATEGORIES	TOTAL EMPLOYEE		AFRICAN AMERICA N		HISPANI C		ASIAN/ PAC. ISL.		AMER. IND./ ALAK. NTV.		TOTAL MINORITY		PERCENTAG E WHITE		PERCENTAGE MINORITY	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Officials																
Managers																
Professionals																
Technicians																
Admin. Support																
Trainees																
Others																
Full-time																
Part-time																
TOTAL																

3/30/95

COMPLETED BY Name: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

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



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 Municipal Transportation Agency's SBE Program.

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

\_\_\_\_\_  
Name & Title (Please Print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone No.



SFMTA SBE FORM No. 6  
 PROGRESS PAYMENT REPORT

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

TRANSMITTAL To: Project Manager Copy: Contract Compliance Office

From: Consultant \_\_\_\_\_ Date Transmitted: \_\_\_\_\_

PART 1: Fill in all blanks and check the box below.	
Contract Number: _____	Contract Title: _____
Reporting Period (Month and Year): _____	
Corresponding Progress Payment No.: _____	
<u>Note:</u> The information submitted on Parts 1 and 2 of this form is accurate for the progress payment period immediately preceding that of the current payment application attached herewith.	
1. Amount of Prime Contract	\$ _____
2. Amount of Change Orders, Amendments and Modifications to Date	\$ _____
3. Total Contract to Date including Change Orders, Amendments and Modifications (Line 1 + Line 2)	\$ _____
4. Amount Invoiced this Reporting Period	\$ _____
5. Total Amount Paid to Date including Retention (excluding Line 4)	\$ _____
6. Amount of Progress Payment Requested to Date (Line 4 + Line 5)	\$ _____
7. Percent Complete (Line 6 ÷ Line 3)	\$ _____
8. Reporting Period - From (date): _____	To (date) _____

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

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

\_\_\_\_\_  
 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 Portio n 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

Page 2 of 2

END OF SFMTA SBE FORM NO. 7

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:

SFMTA SBE FORM No. 8

DECLARATION – AMENDMENTS TO PROFESSIONAL SERVICE CONTRACTS

Information is needed for each firm listed on Page 1 (prime consultants, joint venture partners, subconsultants

and suppliers). Firms that have previously worked on City contracts may already have a vendor number. You may enter the vendor or federal I.D. number instead of completing the rest of the information. Use additional sheets if necessary.

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

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

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)

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

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

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

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

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

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

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

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

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



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

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

## APPENDIX 3

### 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  
\_\_\_\_\_, \_\_\_\_\_  
(State) (City)

\_\_\_\_\_  
Name of Company (please print) Mailing Address for  
General Corresp., Purchase Orders, etc.  
General Address

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

\_\_\_\_\_  
Name of Signatory (please print) Remittance Address, if  
different  
Remit Address {

\_\_\_\_\_  
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.

For more information

Regarding how to apply, call the Tax Collector at (415) 554-6718 or 554-4400.  
Regarding a bid, call Purchasing.

## APPENDIX 4

### 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 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) working 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:

Elson Hao, P.E.  
Principal Engineer  
Operations Engineering Section, Operations Divisions  
San Francisco Municipal Transportation Agency  
700 Pennsylvania Ave  
San Francisco, CA 94107

Trinh Nguyen, P.E.  
Project Manager  
Operations Engineering Section, Operations Divisions  
San Francisco Municipal Transportation Agency  
700 Pennsylvania Ave  
San Francisco, CA 94107

#### 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) working 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 5

NEW RESTRICTIONS ON LOBBYING CERTIFICATION

1. The Contractor 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 Contractor shall require that the language of this certification be included in all Subcontracts, and that all subcontractors 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 31 U.S.C. Section 1352 (as amended by the Lobbying Disclosure Act of 1995). 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 Contractor certifies and affirms the truthfulness and accuracy of each statement of this certification and disclosure. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section 3801 et seq., apply to this certification and disclosure.

Date \_\_\_\_\_

Contractor Name \_\_\_\_\_

Authorized Representative Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

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

- (1) The prospective participant certifies to the best of its knowledge and belief that it and its principals:
  - a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
  - b. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) b. of this certification; and
  - d. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

The certification in this clause is a material representation of fact relied upon by the TJPA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the TJPA, 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.

Bidder/Offeror Name: \_\_\_\_\_  
Authorized Representative Name: \_\_\_\_\_  
Authorized Representative Title: \_\_\_\_\_  
Authorized Representative Signature: \_\_\_\_\_

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

APPENDIX 6

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:

1. I attest that I and all members of the firm listed above will and have complied to date with Section VI. S 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 Section VI. S of the above RFP, this will disqualify my firm and any Proposal in which my firm is named from further consideration. Yes

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

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

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

APPENDIX 7

NONDISCRIMINATION IN CONTRACTS AND BENEFITS