

THIS PRINT COVERS CALENDAR ITEM NO.: 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets – Transportation Engineering

BRIEF DESCRIPTION:

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

SUMMARY:

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

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO _____ Maxine Louie _____

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

To approve various routine traffic and parking modifications.

Benefit to the SFMTA 2008 – 2012 Strategic Plan:

GOAL

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

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

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

Objective 2.4 - Reduce congestion through major corridors

Objective 2.5 - Manage parking supply to align with SFMTA and community goals

ITEMS:

- A. ESTABLISH - PARKING METER AREA 3 (2-HOUR TIME LIMIT, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY) - 8th Street, both sides, between Bryant and Townsend Streets; and Brannan Street, both sides, between 8th and 7th Streets. **PH 9/4/09 Requested by SFMTA**
- B. ESTABLISH - NO PARKING ANYTIME – Folsom Street, east side, between Chapman Street and Powhattan Avenue; and Prentiss Street, both sides, between Chapman Street and Powhattan Avenue. **PH 9/4/09 Requested by Resident**
- C. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "S" (2-HOUR TIME LIMIT, 8 AM - 9 PM, MONDAY THROUGH FRIDAY) – Noe Street, west side, between Duboce Avenue and 14th Street. **PH 9/4/09 Requested by CPMC**
- D. ESTABLISH - TRAFFIC SIGNAL - Powell Street and Washington Street; and Clarendon Avenue and Panorama Drive. **PH 9/4/09 Requested by SFMTA**
- E. ESTABLISH - STOP SIGN – Wisconsin Street at 19th Street, stopping the stem of this uncontrolled T intersection. **PH 9/4/09 Requested by SFMTA**
- F. ESTABLISH - TALL VEHICLE (OVER 6 FEET) RESTRICTION – Acadia Street, east and west sides, from Joost Avenue to approximately 20 feet southerly. **PH 9/4/09 Requested by Community**
- G. ESTABLISH - NO LEFT TURNS EXCEPT MUNI - Market Street, eastbound, at the intersection of Market, Sansome and Sutter Streets (adds Muni exemption to existing No Left Turn regulation). **PH 9/4/09 Requested by SFMTA**
- H. RESCIND - BUS STOP – Wisconsin Street, east side, south of 20th Street (nearside). **PH 9/4/09 Requested by SFMTA**

- I. ESTABLISH - BUS ZONES – Cesar Chavez Street, south side, from Valencia Street to 80 feet easterly (80-foot bus zone); Cesar Chavez Street, south side, from Mission Street to 80 feet easterly (80-foot bus zone); and Folsom Street, east side, from Cesar Chavez Street to 80 feet northerly (80-foot bus zone). **PH 9/4/09 Requested by SFMTA**
- J. RESCIND - TOW-AWAY, NO STOPPING, 4 PM to 6 PM, MONDAY THROUGH FRIDAY AND ESTABLISH - TOW-AWAY, NO STOPPING ANYTIME - Stanyan Street, west side, between Fulton and Fell Streets. **PH 9/18/09 Requested by SFMTA**
- K. ESTABLISH - BUS ZONE – Plymouth Avenue, west side, from Monterey Boulevard to 45 feet northerly. **PH 9/18/09 Requested by SFMTA**
- L. ESTABLISH - TOW-AWAY, NO PARKING ANYTIME – Jack London Alley, west side, between Brannan Street and South Park Avenue. **PH 9/18/09 Requested by Resident**
- M. RESCIND - MUNI BUS ZONE – California Street, north side, from Cherry Street to 55-feet westerly. **PH 9/18/09 Requested by SFMTA**
- N. RESCIND - BLUE ZONE – California Street, north side, from 113-feet west of Cherry Street to 22-feet westerly. **PH 9/18/09 Requested by SFMTA**
- O. RESCIND - COMMERCIAL LOADING ZONE, 8 AM TO 6 PM, MONDAY THROUGH SATURDAY - California Street, north side, from 135-feet west of Cherry Street to 51-feet westerly. **PH 9/18/09 Requested by SFMTA**
- P. ESTABLISH - MUNI BUS ZONE – California Street, north side, from 70-feet west of Cherry Street to 116-feet westerly. **PH 9/18/09 Requested by SFMTA**
- Q. ESTABLISH - COMMERCIAL LOADING ZONE, 8 AM TO 6 PM, MONDAY THROUGH FRIDAY - California Street, north side, from 11-feet west of Cherry Street to 34-feet westerly. **PH 9/18/09 Requested by SFMTA**
- R. RESCIND - NO PARKING ANYTIME AND ESTABLISH - TOW-AWAY, NO PARKING ANYTIME – Stevenson Street, north side, from 120 feet to 142 feet east of 3rd Street (22-foot zone). **PH 9/18/09 Requested by Business**
- S. ESTABLISH - ONE-WAY STREET - Willow Street, westbound, between Buchanan and Laguna Streets (retain existing configuration on Willow Street). **PH 9/18/09 Requested by SFMTA**
- T. RESCIND - TOW-AWAY, NO PARKING ANYTIME – Willow Street, 600 Block, south side, between Buchanan and Laguna Streets. **PH 9/18/09 Requested by SFMTA**

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency has received a request, or identified a need for traffic modifications as follows:

- A. ESTABLISH - PARKING METER AREA 3 (2-HOUR TIME LIMIT, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY) - 8th Street, both sides, between Bryant and Townsend Streets; and Brannan Street, both sides, between 8th and 7th Streets.
- B. ESTABLISH - NO PARKING ANYTIME – Folsom Street, east side, between Chapman Street and Powhattan Avenue; and Prentiss Street, both sides, between Chapman Street and Powhattan Avenue.
- C. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "S" (2-HOUR TIME LIMIT, 8 AM - 9 PM, MONDAY THROUGH FRIDAY) – Noe Street, west side, between Duboce Avenue and 14th Street.
- D. ESTABLISH - TRAFFIC SIGNAL - Powell Street and Washington Street; and Clarendon Avenue and Panorama Drive.
- E. ESTABLISH - STOP SIGN – Wisconsin Street at 19th Street, stopping the stem of this uncontrolled T intersection.
- F. ESTABLISH - TALL VEHICLE (OVER 6 FEET) RESTRICTION – Acadia Street, east and west sides, from Joost Avenue to approximately 20 feet southerly.
- G. ESTABLISH - NO LEFT TURNS EXCEPT MUNI - Market Street, eastbound, at the intersection of Market, Sansome and Sutter Streets (adds Muni exemption to existing No Left Turn regulation).
- H. RESCIND - BUS STOP – Wisconsin Street, east side, south of 20th Street (nearside).
- I. ESTABLISH - BUS ZONES – Cesar Chavez Street, south side, from Valencia Street to 80 feet easterly (80-foot bus zone); Cesar Chavez Street, south side, from Mission Street to 80 feet easterly (80-foot bus zone); and Folsom Street, east side, from Cesar Chavez Street to 80 feet northerly (80-foot bus zone).
- J. RESCIND - TOW-AWAY, NO STOPPING, 4 PM to 6 PM, MONDAY THROUGH FRIDAY AND ESTABLISH - TOW-AWAY, NO STOPPING ANYTIME - Stanyan Street, west side, between Fulton and Fell Streets.
- K. ESTABLISH - BUS ZONE – Plymouth Avenue, west side, from Monterey Boulevard to 45 feet northerly.
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- R. RESCIND - NO PARKING ANYTIME AND ESTABLISH - TOW-AWAY, NO PARKING ANYTIME – Stevenson Street, north side, from 120 feet to 142 feet east of 3rd Street (22-foot zone).
- S. ESTABLISH - ONE-WAY STREET - Willow Street, westbound, between Buchanan and Laguna Streets (retain existing configuration on Willow Street).
- T. RESCIND - TOW-AWAY, NO PARKING ANYTIME – Willow Street, 600 Block, south side, between Buchanan and Laguna Streets.

WHEREAS, The public has been notified about the proposed modifications and has been given the opportunity to comment on those modifications through the public hearing process; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors, upon recommendation of the Executive Director/CEO and the Director of Transportation Engineering, does hereby approve the changes.

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

 Secretary to the Board of Directors
 San Francisco Municipal Transportation Agency

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Requesting authorization to award San Francisco Municipal Transportation Agency Contract CS-155-1, Professional Architectural and Engineering Services for the Final Design and Construction of the Central Subway Project – Design Package #1 Utilities Relocation and Tunnel Design to PB/Telamon, a joint venture of Parsons Brinckerhoff and Telamon Engineering Consultants, Inc. for an amount not to exceed \$6,500,000 for a term not to exceed five years with an option to extend the term an additional four years.

SUMMARY:

- The selected consultant will provide necessary professional Architectural and Engineering Services required for Design Package #1 to complete Central Subway Utilities Relocation and Central Subway Tunnel Designs.
- SFMTA Board of Directors adopted Resolution No. 09-055 on April 7, 2009 authorizing the Executive Director/CEO to issue a Request for Proposal (RFP), evaluate proposals, select the highest ranking proposal, and to negotiate a contract for Contract No. CS-155, Professional Architectural and Engineering Services for the Final Design and Construction Phases of Central Subway.
- SFMTA advertised the RFP on April 10, 2009 and completed the contract negotiations with the highest ranked firm in September 2009.
- The base contract for Final Design Package #1 for the final design of the tunnels and utilities relocation, construction support and other related services within the initial five year term is \$5,795,000.
- Options to provide additional services have been negotiated to an amount not to exceed \$705,000.

ENCLOSURES:

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

APPROVALS:

DATE:

DEPUTY OF DIVISION

PREPARING ITEM: _____

FINANCE (IF APPLICABLE): _____

EXECUTIVE DIRECTOR/CEO: _____

SECRETARY: _____

ADOPTED RESOLUTION TO BE
RETURNED TO: Gigi Pabros

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

Requesting authorization to award San Francisco Municipal Transportation Agency Contract CS-155-1, Professional Architectural and Engineering Services for the Final Design and Construction of the Central Subway Project – Design Package #1 Utilities Relocation and Tunnel Design to PB/ Telamon, a joint venture of Parsons Brinckerhoff and Telamon Engineering Consultants, Inc. for an amount not to exceed \$6,500,000 for a term not to exceed five years with an option to extend the term an additional four years.

GOAL

Contract No. CS-155-1 will help further the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

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

Objective 1.3 Reduce emissions as required by SFMTA Clean Air Plan

Objective 1.4 Improve accessibility across transit service

Objective 1.5 Increase percentage of trip using more sustainable modes

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

Objective 2.2 Ensure efficient transit connectivity and span of service

Objective 2.4 Reduce congestion through major corridors

Goal 3 – External Affairs/Community Relations: To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry

Objective 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups

Objective 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits

Objective 3.3 Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life

Objective 3.4 Enhance proactive participation and cooperatively strive for improved regional transportation

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

Objective 4.2 Ensure efficient and effective use of resources

DESCRIPTION

Background:

San Francisco Municipal Transportation Agency's (SFMTA) Third Street Light Rail Transit (LRT) Project is the most significant capital investment in generations for the seventh largest transit system in the nation. Phase 1 of the 6.9-mile two-phase project, began revenue service in

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

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

The primary purpose of the Third Street LRT Project is to accommodate existing and future transit ridership in the corridor with greater reliability, comfort and speed. By 2030, the San Francisco Planning Department projects a 26% percent increase in overall corridor population and a 61% percent increase in corridor employment. These increases are greater than the increases anticipated for the City as a whole. The Central Subway will serve both the mobility needs of existing land uses (with 56,000 riders projected for 2016) and future development (with 78,000 riders projected for 2030).

The Third Street LRT Project will significantly improve travel times, reducing a current 46-minute bus trip between the southern terminus in Visitacion Valley and the northern terminus in Chinatown by 15 minutes to a more reasonable 31-minute LRT ride. For riders using only the Central Subway portion of the project, travel times will be reduced to less than half of current travel times, from a 20-minute bus ride to a 7-minute subway ride between the Caltrain terminal and Chinatown. The Central Subway will allow transit to bypass the congestion faced by traffic and buses on city streets.

Critical populations will be well served by the project, bringing improved service to low-income, minority and no-car households, decreasing travel time and improving reliability. Over half of the benefits for those who use the Central Subway are expected to accrue to low-income people, who comprise 19% of the total households along the Third Street alignment. The 2000 census shows that 54% of the households along the entire corridor do not have access to a vehicle, and within the Central Subway portion of the alignment, 68% of the households are transit-dependent.

The Central Subway Project is the second phase of the Third Street Light Rail Project. Both phases of the project were initially evaluated under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), in an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) that was certified in 1998. On January 19, 1999, the Public Transportation Commission approved Resolution No. 99-009, which adopted the environmental findings pursuant to the California Environmental Quality Act (CEQA) for the Project, including mitigation measures as set forth in the 1998 FEIS/FEIR and Mitigation Monitoring Report. The Federal Transit Administration (FTA) issued a Record of Decision (ROD) for the Initial Operating Segment (IOS) of the Project (the Third Street LRT Phase 1) on March 16, 1999, under the National Environmental Protection Act (NEPA), and authorized the SFMTA to enter into final design for the initial operating segment (IOS) in the early half of 2000. Revenue operation of Phase 1 of the Third Street Light Rail, extending from Bayshore Boulevard to Fourth and King Streets, began in April 2007.

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SFMTA Board of Directors adopted Resolution No. 02-144 on November 19, 2002, which authorized the Director of Transportation to execute Contract No. CS-138 with the joint venture of Parsons Brinckerhoff Quade & Douglas and PGH Wong for professional engineering and other support services for the Central Subway segment of the Project (“PB/Wong Agreement”), in an amount not to exceed \$29,800,000. The Board of Supervisors adopted Resolution No. 03-58 on January 27, 2003, which authorized the Director of Transportation to execute the PB/Wong Agreement. The PB/Wong Agreement included services to prepare a SEIS/SEIR for the Project.

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

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

The Draft Supplemental EIS/EIR was issued on October 17, 2007, for a 55-day public review period. During the public comment period, a series of three publicized community meetings were held in the Chinatown, Union Square and South of Market areas to provide information to the public about the Draft SEIS/SEIR released for public review. These informational meetings were well attended and the public was provided with opportunities to view renderings and talk with project staff about the Project and the environmental process. The San Francisco Planning Department conducted a public hearing on the Supplemental EIS/EIR on November 15, 2007.

The public comment period was closed on December 10, 2007. SFMTA received 39 comment letters, and 23 people, representing 20 organizations, provided comments at the Planning Commission public hearing held on November 15, 2007. At the public hearing, 19 speakers expressed support for the project and one expressed opposition to the project. Of those responding during the public comment period, five (including the Recreation and Parks Department) expressed support specifically for Alternative 3B.

On February 19, 2008, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 08-029, selecting the Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street, as the Locally Preferred Alternative, authorizing the Executive Director/CEO to carry forward this selection in the Final SEIS/SEIR.

The San Francisco Planning Commission adopted Motion No. M-17668 on August 7, 2008 certifying completion of the Central Subway Final SEIR. The Planning Commission certified the SEIR as accurate, adequate and objective, reflecting the independent judgment of the Planning Commission.

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On August 19, 2008, the SFMTA Board of Directors, adopted Resolution No. 08-150 adopting Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street and a construction variant to extend the tunnel another 2,000 feet north of Jackson Street, the CEQA Findings and Statement of Overriding Considerations for the SEIS/SEIR and the Mitigation Monitoring and Reporting Plan.

Environmental appeals were filed and heard by the Board of Supervisors on September 16, 2008. The Board of Supervisors voted unanimously to uphold the Environmental findings.

The Notice of Determination was filed on September 18, 2008 and the 30-day legal challenge period has expired without any legal challenges being filed. The notice for the Final SEIR appeared in the Federal Register on October 3, 2008 and the 30-day waiting period has elapsed. The FTA issued the Record of Decision announcing the completion of the Central Subway environmental process on November 16, 2008.

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

Current Status:

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

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

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

Purpose and Scope of Contract:

The anticipated complexity of the Central Subway, including tunneling and/or cut-and-cover construction, in proximity to sensitive urban structures and facilities, poses significant coordination, management, design and construction challenges to the city. The city does not have the specialized expertise or staff resources to perform all design services necessary for a project of this size and intricacy. Given the substantial capital investment in the Central Subway and the target project completion schedule of 2018, it is in the best interest of the agency to engage a qualified design consultant with specific experience and expertise in transit, tunneling, architectural, engineering, and other professional services for the execution of the Central Subway phase of the Third Street LRT Project.

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

- overall design management
- prepare and implement an overall Final Design strategic execution plan;
- verify/validate existing preliminary engineering design
- verify cost and schedule for each construction contract;
- complete the final design for the tunnels and utility relocation;
- prepare construction contract documents for
 - utility relocation contracts
 - tunneling contract
- furnish professional engineering services as necessary to complete final design
- provide engineering support during construction;
- provide as-needed geotechnical engineering support during construction;
- review and respond to technical submittal from contractors;
- review and respond to proposed changes;
- perform field visits and observations to verify design compliance and/or assist in resolving issues;
- witness and approve factory testing of manufactured equipment and materials;
- update design drawings as a result of responses to request for information, submittals and changes;
- assemble operations and maintenance manuals;
- prepare conformed plans and specifications upon contract completion
- establish and implement a quality control program with procedures and oversight in performing the services to complete the final design;

The contract provides for an initial term of five years for engineering services as described above. The SFMTA may elect to extend the contract for a second term of up to four years for continued engineering and construction support services.

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For this contract, the prime consultant, the consultant's key personnel and all architectural/engineering sub-consultants will be precluded from participating in any subsequent RFPs for project controls, construction and procurement services for the Central Subway Project.

Selection Process:

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

The RFP was advertised on April 10, 2009. SFMTA received substantial input from the community on the RFP after it was issued. Upon a thorough analysis of the required services and in order to maximize SBE participation, the RFP was later revised through RFP addenda to allow for three separate contracts. The required services were divided into three separate design packages and proposers were invited to propose on each package independently. The three design packages were Design Package #1 – Utilities Relocation and Tunnel Design, Design Package #2 – Stations Design, and Design Package #3 – Systems. Two pre-proposal conferences were held on April 28, 2009 and June 11, 2009. On July 21, 2009, four proposers submitted a total of five proposals for the three design packages. One proposal was received PB/Telamon, a joint venture of Parsons Brinckerhoff and Telamon for Design Package #1 – Utilities Relocation and Tunnel Design contract. The proposal was evaluated by a technical selection committee comprised of members from various SFMTA divisions, other City Departments and BART. PB/Telamon was selected as the qualified proposer for Design Package #1.

Negotiations with PB/Telamon have been underway since August 21, 2009. The negotiations have focused on ensuring that the SFMTA and City are obtaining high quality and cost-effective engineering services that will help ensure that the public receives a quality transit system, on time and within budget. The consultant team had provided a proposed budget that responded to their understanding of the level of effort necessary to satisfy the scope provided by SFMTA. The negotiations have focused on clarifying scope of work and determining reasonable compensation.

As a result of these negotiations, SFMTA management concludes that the award of the contract to PB/Telamon for Design Package #1 will support SFMTA goals and objectives in the delivery of the Central Subway Project by: maintaining customer focus, fostering a high standard of performance and quality, and ensuring efficient and effective use of public resources.

SFMTA successfully negotiated a contract with the Consultant in September 2009 for a total amount of \$6,500,000. The base contract for Final Design Package #1 (final design of the tunnels and utilities relocation) and construction support services within the initial five year term is \$5,795,000. Options to provide additional related services have been negotiated to an amount not to exceed \$705,000.

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

Task #	Title	Base Hours	Base YOE Cost \$	Option Hours	Options YOE Cost \$
1.0	Program Management and Control	3,880	427,032	1,080	118,865
2.0	Design and Project Integration	1,090	171,725	40	6,302
3.0	Geotechnical Investigations	2,640	451,996	0	0
4.0	Surveying and Right-Of-Way	1,310	194,668	0	0
5.0	Traffic Engineering	0	0	480	61,938
6.0	Utility Design Coordination	1,306	143,635	0	0
7.0	Drainage	80	9,535	0	0
8.0	Permits	0	0	200	55,911
9.0	Contract Specifications	2,422	384,657	0	0
10.0	Cost Estimate and Scheduling	680	135,125	0	0
11.0	Quality Control	780	161,732	180	37,323
12.0	Drawings and Documents	12,501	1,514,762	2,060	249,613
13.0	Construction Packaging and Schedules	400	58,937	0	0
14.0	Outreach Support	200	23,000	0	0
15.0	Bid Support Services	528	93,878	230	40,894
16.0	Design Services During Construction	8,378	1,257,146	300	45,016
Direct Labor Costs:		36,195	\$5,027,829	4,570	\$615,860
Fixed Fees			\$502,783		\$61,586
Other Direct Costs (Reimbursable Expenses)			\$264,388		\$27,553
Total:		36,195	\$5,795,000	4,570	\$705,000

Optional professional services identified under this agreement include planning, community outreach, construction support and management, systems project integration start-up, testing and commissioning.

All work to be performed and authorized by the SFMTA will be certified by the Controllers' Office prior to the issuance of the notice to proceed.

Optional work has been established to provide professional engineering and construction management support services for the duration of the Central Subway Program delivery. Optional services beyond the scope identified during the Phase 1 base list of services shall be authorized upon the approval of the Executive Director/CEO.

A list of Sub-consultants performing work under this contract is represented in Enclosure 3.

A copy of the Consultant Agreement including Exhibit A, Scope of Services, is attached as Enclosure 4. Other exhibits are not attached hereto but are available at the SFMTA Board Secretary's office for review.

The Contract Compliance Office has determined that PB/Telamon will meet the 30% SBE participation goal established for this contract.

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

ALTERNATIVES CONSIDERED

The City does not have the specialized expertise or staff resources to perform all design services necessary for a project of the size and complexity of the Central Subway. Given the substantial capital investment in the Central Subway and the target project completion schedule of 2018, it is in the best interest of the SFMTA to engage a qualified consultant with specific experience and expertise in transit tunnel engineering, construction management, and other professional services for the execution of the Central Subway phase of the Third Street Project.

FUNDING IMPACT

Consultant services, under this contract, are funded from federal, state and local sources. The Project Budget & Financial Plan is set forth in Enclosure 2.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

This contract is subject to approval by the Civil Service Commission.

RECOMMENDATION

Staff recommends that the San Francisco Municipal Transportation Agency Board of Directors authorize the Executive Director to execute Contract CS-155-1, Professional Architectural and Engineering Services for the Final Design and Construction of the Central Subway Project – Utilities Relocation and Tunnel Design, with PB/Telamon for an amount not to exceed \$6,500,000 for a term not to exceed five years with an option to extend the term for an additional four years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Final Environmental Impact Statement/Environment Impact Report (Final EIS/EIR) for the two-phase Third Street Light Rail Project (the "Project") was completed in November 1998; and,

WHEREAS, The Public Transportation Commission adopted Resolution No. 99-009 on January 19, 1999, which adopted the environmental findings pursuant to the California Environmental Quality Act (CEQA) for the Project, including mitigation measures as set forth in the Project's Final Environmental Impact Report and Mitigation Monitoring Report; and,

WHEREAS, Design and construction of the 1.75-mile Central Subway ("Central Subway Project") is Phase 2 of the Third Street Light Rail Transit Project; and,

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted Resolution No 05-087 on November 19, 2002, which authorized the Director of Transportation to execute Contract No. CS-138 with Parsons Brinkerhoff Quade and Douglas and PGH Wong (PB/Wong) for Professional Engineering and other support services for the Central Subway; and,

WHEREAS, The SFMTA Board of Directors adopted Resolution No 02-144 on June 7, 2005, which selected the Fourth Street alignment as the Locally Preferred Alternative for the Central Subway Project, which alternative will be carried through the Supplemental Environmental Impact Statement/Environmental Impact Report ("SEIS/SEIR") and the federal New Starts Process; and,

WHEREAS, The SFMTA Board of Directors adopted Resolution No. 08-029 on February 19, 2008 selecting the Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street, as the Locally Preferred Alternative; and,

WHEREAS, The San Francisco Planning Commission adopted Motion No. M-17668 on August 7, 2008 certifying completion of the Central Subway Final Supplemental Environmental Impact Report; and,

WHEREAS, The SFMTA Board of Directors, adopted Resolution No. 08-150 on August 19, 2008 adopting Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street and a construction variant to extend the tunnel another 2,000 feet north of Jackson Street, the CEQA Findings and Statement of Overriding Considerations for the SEIS/SEIR and the Mitigation Monitoring and Reporting Plan; and,

WHEREAS, The SFMTA Board of Directors adopted Resolution No. 09-055 on April 7, 2009 authorizing the Executive Director/CEO to issue a Request for Proposal (RFP) for Contract

No.CS-155 for Professional Architectural and Engineering Services for the Final Design and Construction of the Central Subway Project, evaluate proposals, select the highest ranking proposal, and to negotiate a contract for Contract No. CS-155, Professional Architectural and Engineering Services for the Final Design and Construction Phases of Central Subway.

WHEREAS, The anticipated complexity of the Central Subway Project, in proximity to sensitive urban structures and facilities, poses significant design, coordination, and construction challenges to the City; and,

WHEREAS, The City does not have the specialized expertise or staff resources to design and manage a project of this size and intricacy; and,

WHEREAS, The SFMTA conducted a competitive selection process, and PB/Telamon was selected as the qualified proposer; and,

WHEREAS, Staff and Central Subway Partners have engaged in a detailed contract negotiation to determine the costs and resources necessary to provide the Central Subway Project comprehensive engineering, construction support and related services for tunneling and utilities relocation; and,

WHEREAS, Execution of the contract is contingent upon approval of the Civil Service Commission; and,

WHEREAS, The Contract will assist SFMTA in meeting the objectives of Goal No. 1 of the Strategic Plan -- to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy; Goal No. 2 -- to improve transit reliability; Goal No. 3 --to improve economic vitality through improved regional transportation; and Goal No. 4 -- to ensure the efficient and effective use of resources; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute Contract CS-155-1, Architectural and Engineering services for the Final Design and Construction of the Central Subway Project – Utilities Relocation and Tunnel Design with PB Telamon, a joint venture between Parsons Brinkerhoff, Inc. and Telamon Engineering Consultants, Inc., for an amount not to exceed \$6,500,000 for all base contract work to complete the final design of the tunnels and utility relocation for the Central Subway Project with options, for a term not to exceed five years with an option to extend the term for an additional four years; options to be exercised by the Agency by the approval of the Executive Director/CEO.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2
 THIRD STREET LIGHT RAIL PROJECT
 CENTRAL SUBWAY

San Francisco Municipal Railway Contract No. CS-155-1

Cost	(\$Millions)
Conceptual and Preliminary Engineering	43.35
Program Management & Construction Management	158.60
Final Design	42.00
Construction Contracts	1014.69
Vehicles	29.09
Contingency	<u>172.47</u>
Total Central Subway Cost	\$ 1,578.30

Funding	(\$Millions)
Federal 5309 New Starts ¹	942.20
State RTIP Grant	88.00
CMAQ	6.23
State TCRP Grant	14.00
Proposition 1B-2006 MTC Share	100.00
Proposition 1B-MTA Share	100.00
Proposition Additional 1B-MTA Share	40.00
Proposition K Sales Tax Funds	123.98
Option Local and Regional Sources	<u>163.89</u>
Total Central Subway Funding	\$ 1,578.30

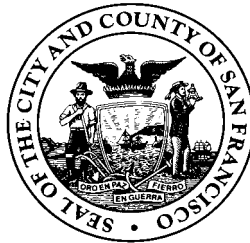
^{1.} New Starts funding to be determined

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

**PB/Telamon JV
 CS-155**

	Base Services	Optional Services
PB Americas, Inc.	X	X
Telamon Engineering Consultants Inc.	X	X
AGS. Inc.	X	X
A.R. Sanchez – Corea & Associates, Inc.		X
Carey & Co., Inc.		X
CHS Consulting Group		X
Cornerstone Transportation Consulting, Inc.	X	X
Fong Brothers Printing, Inc.	X	X
FW Associates, Inc		X
Hortscience	X	
Kendall Young Associates	X	X
Martin M. Ron Associates		X
MHC Engineers, Inc.		X
SC Solutions	X	
Simon & Associates	X	
Stevens & Associates	X	X
SOHA Engineers	X	
Sonoma State University	X	
Structus Consulting Engineers	X	
Trans Pacific Geotechnical Consultants, Inc.	X	X
Treadwell & Rollo	X	

CONTRACT FOR CENTRAL SUBWAY
FINAL DESIGN PACKAGE # 1
TUNNELS AND UTILITIES RELOCATION
DRAFT 10-02-09 10:00 AM



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

Contract No. CS-155-1

**Design Package #1
Tunnels and Utilities Relocation Final Design**

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Agreement between the City and County of San Francisco
and
PB Telamon, a Joint Venture between Parsons Brinckerhoff, Inc. and Telamon
Engineering Consultants, Inc.
for Architectural and Engineering the Final Design and Construction of
the San Francisco Municipal Transportation Agency
Central Subway Project (Third Street Light Rail Project, Phase 2)
Tunnels and Utilities Relocation

This Agreement, dated for convenience as October 20, 2009, in the City and County of San Francisco, State of California, by and between: PB Telamon ("Consultant"), a joint venture between Parsons Brinckerhoff, Inc., contracting through its subsidiary PB Americas, a corporation with its principal place of business in New York (hereinafter PB), and Telamon Engineering Consultants, Inc., (hereinafter "Telamon") and the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency (hereinafter "SFMTA" or "City").

RECITALS

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

B. A Request for Proposals was issued on March 27, 2009 ("the RFP"), and the SFMTA selected Consultant as the highest qualified proposer pursuant to the RFP.

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

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

E. On October 20, 2009 the SFMTA Board of Directors adopted Resolution No. _____ authorizing the SFMTA's Executive Director/CEO to execute this Agreement.

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

NOW, THEREFORE, the City and the Consultant agree as follows:

1. THE PROJECT.

1.1. General Description. The City does hereby engage the Consultant to perform, under the terms and conditions in this Agreement, professional services to complete Tunnels and Utilities Relocation design and related engineering, architectural, and construction support work for the Final Design of and related Construction Support Services for the Central Subway Project (the "Project"), which is Phase Two of the Third Street Light Rail Transit Project. The Project and the work that Consultant may perform under this Agreement are fully described in the Request for Proposals ("RFP") dated March 27, 2009, the documents referenced therein and referenced in Appendix 10 of the RFP, and Addendums 1 through 6 to the RFP, the Consultant's Proposal, and this Agreement. It is the responsibility of the Consultant to request, review and incorporate requirements for the Tunnels and Utilities Relocation design for the Project that may be established in such referenced documents. As directed by the SFMTA, Consultant shall perform as Basic Services, Optional Services, and Additional Services all work reasonably related and necessary to the final design and support the construction of tunnels and utilities relocation for the Project and to support the construction of the Project, as determined by the SFMTA and as that work is described in this Agreement and in the RFP. **Primary Responsibilities and Design Integration.** Consultant's primary responsibilities shall be to perform and provide final design services for utility relocation and the tunnels for the Project. Consultant shall assist and follow the lead of the design firm assigned to Contract Package # 2 in coordinating design activities and integrating the final design of the stations to the tunnels. Consultant shall also assist and follow the lead of the design firm assigned to Design Package #3 (design integration for control systems and trackway design) in coordinating design activities and integrating the final design of the trackway, traction and control systems to the tunnels and the stations.

1.2. Term. This Agreement shall be in effect upon final approval by the Parties and shall continue for a period of Ten (10) Years from the date that the SFMTA first issues Notice to Proceed ("NTP") to the Consultant.

2. DEFINITIONS.

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

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

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

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

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

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

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

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

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

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

2.10. Central Subway Project (CSP) or Project means the planning, design and construction of the Central Subway Project, Phase 2 of the SFMTA Third Street Light Rail Project.

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

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

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

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

2.15. Construction Management means the daily management of the construction and quality control of the Project, including but not limited to oversight and

coordination of contractors to ensure that the Project is constructed in conformance with design specifications and requirements.

2.16. Consultant means PB Telamon, a joint venture between Parsons Brinckerhoff, Inc., contracting through its subsidiary PB Americas, a New York Corporation with offices located at 303 Second Street, Suite 700 North, San Francisco, CA 94107 and Telamon Engineering Consultants, Inc., located at 855 Folsom Street, Unit 142, San Francisco, CA 94107

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

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

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

2.20. Days means working days of the City and County of San Francisco (unless otherwise indicated). The use of the term "days," "working days" or "business days" shall be synonymous.

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

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

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

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

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

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

2.27. Fixed Fee means the fee paid to Consultant that is Consultant's profits and shall also cover any costs or expenses borne by Consultant that are not otherwise compensable under this Agreement.

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

2.29. Key Team Members or Key Personnel means those participants on the Project who are instrumental to the success of Project or otherwise contribute in a substantive, measurable way to the Project's development. Key Team Members may be Consultant personnel or City personnel. Consultant's Key Team Members are listed in Section 12.2.

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

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

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

2.33. Notice to Proceed (NTP) means a letter from the SFMTA advising the Consultant of the day when Work is to commence on the Project or a phase of the Project.

2.34. OCC means an Operations Control Center.

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

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

2.37. Party means an entity bound by this Agreement.

2.38. Parties mean all entities bound by this Agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

2.52. San Francisco Municipal Transportation Agency (“SFMTA” or “Agency”) means the agency of the City that is created by Section 8A of the Charter of the City and County of San Francisco that operates the City’s public transit service, the Municipal Railway (“Muni”).

2.53. Scope of Services or Work means the services, tasks, and deliverables that the Consultant will provide to the SFMTA under this Agreement, including Base Contract Services and Optional Services, pursuant to Design Plan(s) and/or Task Order(s).

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

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

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

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

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

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

2.60. Work Product means all designs, drawings, schematics, specifications, reports, studies, presentations, data, specifications, design criteria, graphs, schedules, photographs, videos, recordings, pictures, memoranda, letters, computer-generated data, calculations, estimates, summaries and such other information and materials as may have been created, prepared, developed, accumulated, generated or kept by the Consultant, the Subprime Consultants or Subconsultants, in connection with the Work performed under this Agreement, whether approved, completed or in process. Work Product does not include any or records or documents pertaining solely to the operation of Consultant’s business that are not otherwise subject to audit under this Agreement.

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

3. CONSULTANT'S BASIC SERVICES.

3.1. Inclusive Services. Consultant shall perform as Basic Services all customary and necessary architectural, engineering and other consulting services necessary to complete the design of the Tunnels and Utilities Relocation for the Project, produce the Construction Documents for Tunnels and Utilities Relocation, and support the construction of those portions of the Project. Consultant shall commence the Basic Services by reviewing the environmental, conceptual and preliminary design documents referenced in Appendix 10 of the RFP. Consultant shall confirm the validity of said design work and shall incorporate and build upon that work in its own Work Product. Consultant's Basic Services are further described in the Scope of Services set out in Attachment A to this Agreement. Basic Services includes the following:

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

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

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

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

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

3.1.6. Contract for or employ the Consultant's employees and the Consultant's consultants as may be necessary or required including, but not limited to, mechanical, civil, electrical, plumbing, structural, signal and control systems engineers; cost estimator; landscape Consultant; and other special designers and services as may be necessary for fire protection, life safety, acoustical, audio/visual, lighting, specifications, signaling and control, tunneling, dewatering, traction power, security, computer infrastructure, parking and traffic control studies for designated impacted areas, and disabled access; and others as may be necessary for complete design of the Project; all parties shall be licensed by the State of California if so required. The Consultant shall submit for approval by the City any changes in the subconsultants listed in Attachment B. The addition of subconsultants for unforeseen specialty services shall require a modification under this Agreement.

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

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

3.4. Code Compliance.

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

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

3.4.3. The Consultant shall, immediately upon becoming aware of any such imposition or change of requirement, provide SFMTA with full and detailed particulars of the changes required in the equipment and of costs involved therein, or shall be deemed to have waived any rights under this Section. In the event any governmental requirements are removed, relaxed or changed in any way after the Effective Date so as to make the Consultant's performance of unperformed work less expensive, or less difficult, then SFMTA shall have the option either to require the Consultant to perform pursuant to the more rigorous requirements or to receive a reduction in the price of the equipment affected for all savings in direct costs which may be realized by the Consultant by reason of such change and appropriate adjustments in deductions for overhead and profit made so as to reflect actual savings made by the Consultant. SFMTA shall give the Consultant notice of SFMTA's determination, and anticipated savings.

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

3.6. 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.

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

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

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

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

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

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

3.7.6. Art Commission: The Consultant shall coordinate, meet and work with City departments and personnel necessary to determine relevant City requirements, develop designs, incorporate artwork under the San Francisco Public Art Program, and review and assist the SFMTA to obtain required City approvals of the designs. Artwork commissioned by the City that is to be incorporated in the Project as an integral building or site element may require coordination with the design and structure of the building or site. Involvement by the Consultant to assist in the selection of artwork by the San Francisco Art Commission and services by the Consultant to coordinate the design and structure of the building or site to accommodate the installation of such artwork shall be a part of Basic Services. As directed by the City, the Consultant shall coordinate and work with any representatives the City may designate in the selection of artists for the Project to incorporate requirements for the chosen artwork into the design for the Project. The

Consultant shall make presentations to and/or attend meetings as necessary for the Civic Design Committee and the Visual Arts Committee of the San Francisco Art Commission. Substantial changes required of the Consultant to incorporate requirements for the chosen artwork into the Project after the completion and acceptance of the Design Development documents shall be Additional Services under this Agreement.

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

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

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

3.7.10. Information and Data. The Consultant shall request in writing any information and data it will require from the Agency for its work. The Consultant shall identify the timing and priority for which this information and data will be required in its request for that information. Consultant shall plan its work to allow adequate time for the City to provide the requested information. .

3.7.11. Use Of Computer Technology For Design and Coordination of Drawings. The Consultant may use CADD or similar technology in developing the design for the Project. The cost of any clerical work, or services related to CADD support shall be included in Basic Services. Additionally, the SFMTA and the Consultant will employ

multidimensional design tools compatible with Building Information Modeling ("BIM") system, the scope and extent of which shall be determined jointly by the SFMTA and the Consultant. Consultant shall be responsible for entering applicable preliminary design documents and Consultant's Work Product into the BIM. Services associated with the development and population of a BIM system for modeling and clash detection during design shall be included in Basic Services. If the SFMTA elects to further refine the BIM system as a facilities management tool beyond design and construction of the Project, such work would be considered an Additional Service.

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

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

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

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

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

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

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

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

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

3.10.1. Provide an updated color schedule, samples of textures and finishes of all materials to be used in the project for review and approval of the City.

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

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

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

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

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

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

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

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

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

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

3.10.12. Additionally, the Consultant, as part of Basic Services, will assign at least one senior responsible member of its design team to be available as needed at the site for the duration of construction until substantial completion, unless otherwise authorized or directed by the City. This staff member shall be authorized to represent and render decisions on behalf of the Consultant in all design and construction coordination matters, and shall be charged with representing the design team in responding to questions and clarifications needed on site to minimize disruption to construction. When assigned member(s) are temporarily unavailable for any reason (such as vacations or extended illness), the Consultant shall advise the City and assign an alternate, similarly capable and authorized individual. If the stage of construction requires additional full- or part-time employees on site, then the Consultant shall provide the same with no increase to the Fixed Fee unless the work is considered Additional Work. If other consultants representing specialty services are required to perform similar on-site services for periods agreed-to between the Consultant and the City, it is the Consultant's responsibility to coordinate the availability of other consultants and schedule such on-site services as necessary for the timely progress of the work.

3.10.13. The Consultant shall provide Construction Support, which includes but is not limited to interpretation of the Contract Documents and advising the City and the PM/CM Consultant of all decisions rendered. Interpretations by the Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form. Consultant's personnel who performed the design work about which a Contractor issues a Request For Information ("RFI") shall respond to the RFI.

3.10.14. The Consultant acknowledges that a construction contract will be awarded based on the lowest responsive bid by a responsible bidder for the construction

of the Tunnels and the construction of the Utilities Relocation; that there is no certainty that the successful bidder will cooperate willingly with the Contract Documents; and that the level of administrative difficulties faced by the Consultant during the construction phase may vary substantially. Accordingly, the Consultant agrees that it shall not seek additional compensation for administrative difficulties the Consultant may encounter with the Contractor on the Project, unless the City determines that Contractor refused to communicate with Consultant or otherwise acted unreasonably, and that the Contractor's action forced the Consultant to expend undue and otherwise unavoidable additional professional labor hour.

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

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

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

3.10.18. Upon request by the SFMTA or where it appears necessary from Consultant's own observations, the Consultant shall consult with the PM/CM Consultant and the Program Manager as to the Contractor's level or percentage of completion of work, quality of work, and Contractor's adherence to the design and specifications.

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

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

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

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

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

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

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

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

3.10.27. The Consultant shall have authority to make interpretations and decisions in matters relating to appearance and aesthetic or artistic effects where they do not conflict with any design element previously approved by the City and where such decisions are consistent with the intent of the Contract Documents; provided the City shall retain the authority to make the final interpretations and decisions. Whenever interpreting

or making decisions concerning an integrated artwork commissioned by the City, the Consultant must obtain City approval prior to making any such interpretation or decision. The Consultant shall be responsible for any additional construction costs arising out of any aesthetic change initiated by the Consultant after the commencement of construction, unless payment to the construction contractor for and notice to the Consultant to implement such changes have been specifically approved in writing by the City in advance of the Consultant making the changes to the construction documents.

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

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

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

3.10.31. All design-build systems recommended by the Consultant and submitted by the construction contractor shall be reviewed and approved by the Consultant in a timely manner for conformance with the intent of the design drawings and specifications.

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

3.10.33. Warranty Services. The Consultant shall assist the City's maintenance and operation personnel in conducting warranty inspections during the warranty period following Final Completion as set forth below:

3.10.34. At the SFMTA's request, the Consultant shall observe and review the condition of completed work, and provide assistance to the City to develop a list of Corrective Warranty work and for completion for systems, components, equipment, and finishes that have failed to meet the specified performance criteria or the terms of specific product warranties during the warranty period following Final Completion.

3.10.35. The Final Warranty Inspection shall take place no earlier than the eleventh (11th) month following Final Completion and no later than the twelfth (12th) month following Final Completion.

3.10.36. In the event that systems, components, equipment, and finishes fail to meet the specified performance criteria or the terms of specific product warranties at any time prior to the Final Warranty Inspection, the Consultant shall observe and review the condition of completed work, and provide assistance to the City to develop a list of Corrective Warranty work and a schedule for completion.

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

3.12. Project Office. The SFMTA will pay for and provide Consultant a Project Office furnished with furniture, , computers, facsimile and telecommunication equipment , The Consultant shall use this Project Office for administrative and professional activities related to the performance of the Project and for the SFMTA and other City personnel assigned to perform work on the Project.

4. DESIGN RESPONSIBILITY AND STANDARDS.

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

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

4.3. No Waiver. SFMTA's approval of any of the Work Product or services shall not in any way relieve the Consultant of responsibility for the technical adequacy or accuracy thereof. Neither SFMTA's review, approval, acceptance of, or payment for any of the services or Work Product shall be construed to operate as a waiver of any rights under this Agreement.

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

4.5. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Consultant, Subprime Consultants or Subconsultants. Consultant's personnel and subconsultants shall comply with the licensing requirements of the State of California in their respective Disciplines. Consultant shall comply with City's reasonable requests regarding assignment or reassignment of personnel, but Consultant must supervise all personnel, including those assigned or reassigned at City's request.

5. PROGRAM DIRECTION.

5.1. SFMTA Direction. Consultant shall perform all work under this Agreement under the direction of and to the satisfaction of the SFMTA's Program Officer and Program Manager. The work to be performed by Consultant under this Agreement shall be subject to the Program Direction of the SFMTA. As used in this Agreement, the term "Program Direction" shall include but not be limited to the following:

5.1.1. Directions to Consultant, which shift work emphasis between tasks, require pursuit, redirection, modification or termination of certain activities, or otherwise provide information and program guidance to Consultant.

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

5.1.3. Assign or reassign staff to perform particular tasks.

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

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

John Funghi
Central Subway Program Manager
San Francisco Municipal Transportation Agency

821 Howard Street
San Francisco, CA 94103
tel: 415-701-4299
fax: 415-701-5222

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

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

Should the SFMTA be dissatisfied with more than two of the above categories of Consultant performance in the same evaluation, SFMTA will render a negative evaluation on the Consultant's performance for that quarter. In such cases, the Consultant shall be required to formulate and deliver to the SFMTA within five (5) working days a corrective action and schedule plan to be followed by the Consultant with results reported to SFMTA monthly until the problem areas have been resolved or otherwise improved to the SFMTA's satisfaction.

6. PROGRAM BUDGET AND COST CONTROLS.

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

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

CP2 (Utility Contract 2)	\$3,200,000
CP3 (Tunneling)	\$203,200,000

The Construction Budget includes all construction costs. The Base Year Cost excludes construction contingencies, year of expenditure escalation and alternates, either additive or deductive, the cost of furniture, operating and office equipment, telephones and business networks, and the cost of artwork that is to be incorporated in the Project as an integral building or site element. The Construction Budget shall be reviewed and amended as set forth herein upon completion of 90 percent for CP3 and 100 percent for CP2 and CP3 of final design, respectively, for each of the above Construction Contracts.

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

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

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

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

[Construction Budget] =	[Σ2009 Base Year Cost]	+ [ΣAgreed Adjustments]
Construction Budget 1 for each Construction Contract Package will be recalculated after each of the submittals leading up to bid.	Base Year Cost will be the sum of the direct capital construction costs in 2009 base year dollars for each of the project elements that make up the Construction Contract Packages. Base year costs as	All allowed adjustments to the above base year Construction Budgets require approval of the Central Subway Configuration Management Board (CMB). Adjustments will be requested to reflect:

	<p>defined by FTA do not include allocated contingency and do not include escalation to year of expenditure. Project elements included in each Construction Contract will be identified using the FTA Standard Cost Classification (SCC) categories to be listed in Appendix N of Terms and Conditions (new appendix). The reference cost estimate is: “<i>Central Subway Project, 2009 Capital Cost Estimate</i>” Rev 0, August 31, 2009.</p>	<ul style="list-style-type: none"> ○ Changes in Project Configuration and design development. ○ Adjustments to year of expenditure (YOE) ○ Materials cost escalation as determined using published ENR construction cost indexes ○ Adjustments due to unforeseen conditions at time of bid (e.g., excessive escalation of indirect costs such as fuel and availability of labor) ○ Allocated contingencies ○ Adjustments to cost components shall be documented by originator and reviewed by other contributors (SFMTA and it’s Consultants and Stakeholders)
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6.1.3. The Consultant is responsible for designing a comprehensive and complete Project that does not vary more than five percent (5.0%) of the Construction Budget of each of the Construction Bid Packages.

(a) In the event that cost estimates at One Hundred Percent (100%) design completion indicate that the Construction Cost will exceed One Hundred Five Percent (105%) of any Construction Budget, Consultant shall, at the request of the City and at no additional cost to the City (i.e., for no further reimbursement, Fixed Fee or other compensation), revise the design and Construction Documents, plans and specifications until the construction cost is within plus or minus five percent (+/-5%) of the Construction Budget, subject to the conditions listed in Section 6.1.2.

(b) In the event that the City receives a responsive lowest bid from a responsible bidder that exceeds One Hundred Five Percent (105%) of any Construction Budget, the Consultant shall, at the request of the City and at additional cost but no additional Fixed Fee to the City: (a) revise the design and Construction Documents, plans and specifications and (b) assist the City with re-bidding of the Project, until the construction cost is within plus or minus five

percent (+/-5%) of the Construction Budget, subject to the conditions listed in this Section 6.

6.1.4. The City, in its sole discretion, may modify the Construction Budget, or may apply additive or deductive alternates to the lowest responsive bid to meet the Construction Budget Limit. The Consultant and the City will confer at all phases of design and before the design of any alternates. The Consultant shall design additive and deductive alternates with final determination by the City as to the scope of such alternates, which alternates shall be a part of the bid package, and the order in which the City would accept such alternates. The alternates shall be set out in the Construction Documents and clearly identified as optional work to be separately set out in contractors' bids.

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

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

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

6.2. Cost Estimating.

6.2.1. Within 60 days of the SFMTA's issuing NTP to Consultant, the Consultant shall review the existing conceptual and preliminary design documents for the Project and shall also review the Construction Budgets for each Contract Bid Package, as listed in Section 6.1.1. Within 90 days of NTP, Consultant shall then prepare quantity takeoffs to be used by the PM/CM Consultant to prepare an update to the Project Construction Cost ("Cost Estimate") for SFMTA approval. The quantity take-offs and estimating units shall be consistent with the level of design completion and be accompanied with a statement of assumptions regarding design contingencies and exclusions. .

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

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

6.2.4. The Consultant shall accept the Engineer's Estimate of Construction Cost based on the complete (100 percent) Construction Documents issued for bidding, and considering the Construction Budget for the Project.

6.3. City Cost Change Control Procedure.

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

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

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

cooperate with the City to identify other changes to the Project that could reduce cost and offset the recommended increased cost, for approval by the City.

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

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

6.4. Task Budgets. During performance under this Agreement, the Consultant shall manage its work and that of its Subprime Consultants and Subconsultants so that all services are provided and performed in a cost-effective and efficient manner. Within each Design Plan, a task budget shall be established for each task. The Consultant shall complete its work and services within said task budgets. The SFMTA will control the budget at the Project level, not at the work task level. The Consultant will have the authority to reallocate budget between work tasks as long as the overall project budget is not increased due to reallocation of budget between work tasks. Task budgets may be modified only upon authorization of Program Manager. Task budgets shall not be increased because of any unwarranted delays, conduct or costs attributable to the Consultant, but will be increased by SFMTA in the event of Additional Work within or affecting a task, because of unavoidable delay by any governmental action, or other conditions beyond the control of the Consultant that could not be reasonably anticipated.

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

6.5.1. Upon SFMTA's acceptance of Utilities Relocation design work, SFMTA will release one-half of amounts retained from payments for said work. The SFMTA will release the remaining amounts held in retention for Utilities Relocation design work upon the SFMTA's acceptance of work as substantial construction completion.

6.5.2. Upon SFMTA's acceptance of Tunnels design work, SFMTA will release one-half of amounts retained from payments for said design work. The SFMTA will release the remaining amounts held in retention for Tunnels design work upon the SFMTA's acceptance of work as substantial construction completion.

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

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

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

7. PROGRAM SCHEDULE.

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

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

7.3. Force Majeure. Notwithstanding anything in this Agreement, Consultant, including Consultant's subconsultants, shall not be responsible hereunder for any delay, default or non-performance of this Agreement, if and to the extent that such delay, default or nonperformance is due to an act of God, natural disaster, strike, national emergency, government action or other action or reason rendering Consultant's timely performance beyond its reasonable control. To the extent that Consultant becomes aware of such uncontrollable forces that could or will impact the SFMTA, Consultant shall use all reasonable effort to mitigate the harm or damages that the CSP might incur by such uncontrollable forces.

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

7.5. Construction Support Services. The Parties estimate that the SFMTA will require and that Consultant shall provide Construction Support Services for 72 months following completion of the Construction Documents. Should the Consultant be required to perform Construction Support Services for a period beyond a total duration of 72 months, due to no fault of the Consultant, the Consultant shall be entitled to additional compensation, conditional upon Consultant's providing to the SFMTA complete and accurate documentation of all actual increased cost of performance of its services for that additional period. In the event that the construction is delayed beyond the scheduled completion date due to the fault of the Consultant, as determined by the City in its sole discretion, then the Consultant shall continue to provide Construction Support Services in accordance with this Agreement for the additional time delay attributed to the Consultant at no additional charge to the City. In such event, the City reserves all rights as against the Consultant. The Consultant may submit any disputed amounts as a claim.

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

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

8. CHANGES IN SCOPE.

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

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

of-scope and necessary to the Project, the Consultant shall submit to the SFMTA a proposal for the Additional Work, as described below

A proposal for Additional Work shall include:

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

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

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

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

(a) Breakdown of estimated hours and direct salaries by individual for each activity required to complete all tasks and subtasks;

(b) Overhead, including Salary Burden costs;

(c) Estimated out-of-pocket expenses;

(d) Proposed additional Fixed Fee.

8.3. Proposal Review.

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

8.3.2. Upon completion of negotiation, the City will direct the Consultant in writing to proceed with the Additional Work after obtaining appropriate City approvals, memorialized in a Task Order.

8.3.3. In the event that City and Consultant cannot reach agreement on the terms of any Task Order for Additional Work, City may either cancel the Task Order and have the work accomplished through other available sources, or City may direct the Consultant to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances may the Consultant refuse to undertake a City-ordered task that the Consultant is qualified to perform. The City and the Consultant shall continue to negotiate any outstanding terms under provisions of Section 26.12 (Resolution of Disputes) of this Agreement while the additional Task Order is being performed. The City shall not deny the Consultant reasonable compensation for Additional Work performed under an approved Task Order.

8.4. Request for Additional Work. If the Consultant considers any work or services to be outside the Scope of Services as established by this Agreement, the RFP and the Proposal, the Consultant shall notify the SFMTA's Program Manager, with copies to parties identified in Section 26.1(Notices to the Parties), in writing within five (5) working days of discovering such extra work or services to request authorization to perform the Additional Work. Neither Consultant nor any Subprime Consultant or Subconsultant shall be reimbursed for out-of-scope work performed without first obtaining approval of Program Manager in accordance with the procedures set forth below.

8.5. Approvals Required.

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

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

8.6. Consultant at Risk. If the Consultant proceeds to do work that it perceives to be Additional Work without first obtaining City's written approval in accordance with the above procedures, regardless of the amount or value of the work, the City shall have no obligation to reimburse Consultant for the work thus performed. Eagerness to respond to the City's comments or concerns, expediency, schedule constraints will not be acceptable reasons to proceed with Additional Work without City's prior written approval.

8.7. Changes to Design Plan. The SFMTA may direct Consultant to make changes in the Design Plan at any time in its sole discretion. The SFMTA, acting through the Program Manager, shall have the authority to direct Consultant to discontinue, perform further, or provide additional resources to the performance of any task or subtask included in an Design Plan or Task Order and to direct Consultant to amend an Design Plan to those ends.

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

8.9. Change Through Fault Of Consultant.

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

8.9.2. In the event the SFMTA is required to pay to a construction contractor additional compensation or any compensation for additional work as a result of an error or omission by the Consultant that violates the applicable professional standard of care, the SFMTA may charge to the Consultant against any amount owing to Consultant any cost or expense that the SFMTA would not have sustained but for such error or omission.

9. SUBCONTRACTING.

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

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

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

9.4. Prompt Payment of Subconsultants. Progress Payments. In accordance with SFMTA's SBE Program, no later than three (3) working days from the date of Consultant's receipt of progress payments by the City, the Consultant shall pay any subconsultants for work that has been satisfactorily performed by said subconsultants, unless the Consultant notifies the CCO in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between the Consultant and the subconsultant. Within ten (10) working days following receipt of payment from the City, Consultant shall provide City with a declaration under penalty of perjury that it has promptly paid such subconsultants for the work they have performed and stating the amounts paid. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

9.5. Interest on Unpaid Amounts. If the Consultant does not pay its subconsultant as required under the above paragraphs, it shall pay interest to the subconsultant at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure. This Section shall not impair or limit any remedies otherwise available to the Consultant or a subconsultant in the event of a dispute involving late payment or nonpayment by the Consultant or deficient subconsultant performance or nonperformance by the Consultant.

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

9.7. Substitutions of SBE Firms. If Consultant wishes to substitute a Subprime Consultant or Subconsultant that is a SBE, the Consultant must make good faith efforts to use another SBE as a substitute. The Consultant shall notify SFMTA in writing of any request to substitute a SBE subconsultant (or supplier) and provide the SFMTA's CCO with any documentation requested to support the substitution. The CCO must approve the request in writing for the substitution to be valid.

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

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

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

10. SMALL BUSINESS ENTERPRISE PROGRAM.

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

10.2. Compliance with SBE Program. Consultant shall comply with the SBE provisions contained in the attached Attachment G, which are incorporated by reference as though fully set forth herein, including, but not limited to, achieving and maintaining the SBE goal set for the total dollar amount awarded for the services to be performed under this Agreement. Failure of Consultant to comply with any of these requirements shall be deemed a material breach of this Agreement.

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

10.4. Non-Discrimination in Hiring. Pursuant to City and SFMTA policy, Consultant is encouraged to recruit actively minorities and women for its workforce and take other steps within the law, such as on-the-job training and education, to ensure non-discrimination in Consultant's employment practices.

11. WORK PRODUCT, DELIVERABLES AND SUBMITTALS.

11.1. Construction Documents Requirements.

Work Product shall be created and maintained as follows:

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

11.1.2. Written documents, spread sheets and cost estimates on Microsoft Office Suite 2003 (Word and Excel)

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

11.1.4. Audiovisual presentations in Microsoft PowerPoint 2003.

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

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

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

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

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

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

11.4. Agency's Responsibilities Regarding Submittals. The SFMTA will review and comment on Consultant's submittals generally within 15 Days of receipt or such other time as agreed by the SFMTA in the Design Schedule (described in Section 7.1, supra). The Agency and Consultant will establish a timetable of submittals and reviews during initial Project coordination meetings, which the Consultant shall include in the Design Plan. The Agency's review and comments of Consultant submittals shall in no way relieve the Consultant of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the Agency relieve the Consultant of its independent responsibility to provide submittals and deliverables in full compliance with local, State and federal codes, regulations and standards.

12. CONSULTANT PERSONNEL.

12.1. Consultant's Project Manager. The Consultant agrees to commit and assign a senior Consultant or engineer as the Project Manager to direct Consultant's Work and to serve as the official contact and spokesperson on behalf of the Consultant in matters related to the Project for the Term of this Agreement. The Consultant's Project Manager shall have signature authority to bind Consultant. The Consultant's Project Manager must work in the Project office in San Francisco for Term of the Agreement. The Consultant has identified Matthew E. Fowler, PE, as the Consultant's Project Manager.

12.2. Key Personnel. The Consultant agrees that Key Team Members shall be committed and assigned to work on the Project to the level required by SFMTA for the Term of the Agreement, and shall work at the Project office in San Francisco. The

following persons are Key Team Members who have been committed and assigned by the Consultant to work on the Project to the level required by SFMTA for the Term of the Agreement:

<p><u>PB:</u></p> <ul style="list-style-type: none"> • Matthew E. Fowler • Shing Owyang • Jimmy Thompson (for cross passages) 	<p><u>Telamon:</u></p> <ul style="list-style-type: none"> • Mennor Chan • Fred Reynolds • Martin DeForge
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12.2.1. If one of the Key Personnel listed above is not assigned to serve as lead for Construction Support Services, then the SFMTA and PB shall identify the Consultant personnel to serve in that role, and that person shall also be considered Key Personnel.

12.2.2. All Key Team Members' assignment for the term of this Agreement shall be to complete the Final Design and provide bid support and construction support services for the construction the Project, unless otherwise authorized by the SFMTA, which shall not arbitrarily withhold such authorization as long as the Project is not thereby delayed or otherwise harmed, the determination of which shall be in the SFMTA's sole discretion. All Key Team Members shall be available through completion of construction to respond to RFI's and otherwise provide Construction Support for the Project, as required.

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

12.4. Substitutions of Key Team Members.

12.4.1. Substitutions of Key Team Members will not be allowed except for extenuating circumstances, such as death, illness or departure from the firm, or with the City's prior approval, which approval will not be arbitrarily withheld as long as such substitution will not delay or otherwise harm the Project, which shall be determined by the SFMTA in its sole discretion. If it is necessary to substitute a Key Team Member, the Consultant shall propose a replacement in writing to the Program Officer for approval.

12.4.2. The Consultant shall replace any Key Team Member departing from the Project or departing from his/her assigned role in the Project with an individual of comparable experience on a non-temporary basis within thirty (30) calendar days of the departure of the Key Team Member, unless the SFMTA's Program Manager grants an extension to that time limit in writing. Consultant's failure to replace a Key Team Member shall be cause for the City to suspend invoice payments.

12.4.3. Consultant shall not be relieved of its obligation for full performance of the Scope of Services as a result of any unfilled position. The Consultant shall be held fully responsible for any inefficiencies, schedule delays or cost overruns resulting in whole or in part from any Key Team Member departing from the Project or departing from his/her assigned role in the Project before the end of the committed duration.

12.4.4. Consultant shall bear any additional costs incurred in substituting personnel. Such costs include relocation expenses, expenses related to recruiting and hiring, training and learning on the job.

12.5. Liquidated Damages. Consultant acknowledges that the SFMTA's selection of Consultant and the negotiated amount of Consultant's Fixed Fee were based, in part, on the expertise and experience Consultant's proposed Key Team Members as submitted in the Proposal. The Consultant acknowledges and agrees that the replacement of Key Team Members during the course of the Project would be extremely disruptive and damaging to the City, the cost of which is difficult, if not impossible, to calculate. The Consultant, therefore, shall pay to the City a charge of Two Hundred Thousand Dollars (\$200,000) for the first Key Team Member whom the Consultant replaces without written approval by the City. For each additional Key Team Member whom the Consultant replaces without written approval by the City, the Consultant shall pay to the City a charge of Three Hundred Thousand Dollars (\$300,000). Said charges shall not be considered or act as a penalty, but shall be liquidated damages to the City to compensate the City for the additional costs and inefficiencies to the Central Subway Project that the Parties agree will necessarily arise from the unauthorized departure of a Key Team Member of the Consultant. The SFMTA reserves the right to require Consultant to replace or reassign any personnel assigned by Consultant to the Project, including but not limited to Key Team Members. Should the City require Consultant to replace or reassign any of its personnel so that said persons are no longer working on the Project, the liquidated damages provisions of this Section 12.5 shall not apply.

13. COMPENSATION.

13.1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the City Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. Notwithstanding any other provision of this Agreement, this Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION 13.1 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

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

13.3. Guaranteed Maximum Costs

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

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

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

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

13.4. Total Amount.

13.4.1. The total amount of compensation under this Agreement for all Work performed by Consultant, shall not exceed Five Million Seven Hundred Ninety Five Thousand Dollars (\$5,795,000) for Basic Services, and an additional Seven Hundred Five Thousand Dollars (\$705,000) for Optional Services.

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

13.5. Fixed Fee.

13.5.1. For all of the Consultant's Basic Services, which are all services provided by Consultant except for those tasks and work specifically identified as Additional Work, the Agency shall pay the Consultant a Fixed Fee, which is Consultant's profit for performing the Basic Services under this Agreement. The Fixed Fee shall not

exceed a sum total of Five Hundred Forty Seven Thousand Five Hundred Seventy One Dollars (\$547,571) for Basic Services and an additional Sixty Three Thousand Eight Hundred Sixty-Six (\$63,866) for Optional Services. The Fixed Fee, which is profit, will be allocated to the Prime and Subconsultants and is included in the Total Price set forth above. The SFMTA will pay Consultant the Fixed Fee proportionate to the completion of the design.

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

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

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

13.6. Change in Scope of Services. If the Scope of Services of any Phase or other portion of the Project is reduced, that reduction shall be memorialized in an amendment to the relevant Task Order(s) or Design Plan, and the Fixed Fee for that Work shall be reduced, as negotiated by the Parties, but such reduction shall not be less than the proportional value of the reduced Work, as measured by the value of that Work set out in Attachment C (Summary of Fees) to this Agreement or other agreed document setting out the relative value of tasks. If the Scope of Services is increased, then the Parties will negotiate an appropriate Fixed Fee for the Additional Services. Any negotiations for changes in the scope of services shall be subject to the agreement of the SFMTA's Program Officer and the Consultant. The Consultant shall do no work in addition to or beyond the scope of the services set forth and contemplated by this Agreement unless and until it is authorized to do so by the issuance to it of a "Modification of Contract," duly executed and approved.

13.7. Calculation of Compensation. Consultant acknowledges and agrees that the Agency shall compensate Consultant for its Work under the Agreement either

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

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

13.9. Cost Plus Fixed Fee Payment. For all Work that the City does not designate as Lump Sum Additional Work, the City will reimburse Consultant for Reimbursable Expenses (allowable costs) and will pay the Consultant a Fixed Fee proportionate to the value of the Work. The City will reimburse Consultant for only those expenses that are allowed under the principles set out in the Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments" and as specifically authorized therein and as allowed under the compensability standards set out in 48 C.F.R. parts 31.105, 31.2, 31.6 and the Cost Accounting Standards set out in 48 C.F.R. part 9904 et seq. Compensation for Cost-plus-Fixed-Fee Work will be computed as follows:

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

13.9.2. Actual costs or prices of approved Reimbursable Expenses for the Consultant and subconsultants at any tier, net of any discounts, rebates, refunds, or other items of value received by Consultant or any of its subconsultants that have the effect of reducing the cost or price actually incurred. Compensation for materials and expenses shall be at direct cost, without any mark-ups.

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

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

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

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

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

13.11. Salary Rates. Compensation under this Agreement will be based on the overhead and direct salary rates as shown on the Schedule of Rates attached as Attachment C. The direct salary rates in Attachment C may be adjusted at twelve (12) month intervals, but each increase shall be no more than the Consumer Price Index (CPI). The CPI shall be defined as the Consumer Price Index for San Francisco-Oakland-San Jose, All Items, [1982-84=100] for All Urban Consumers. Consultant shall not make any individual salary adjustments above Consumer Price Index for which the SFMTA would incur additional costs unless approved by the SFMTA's Program Manager in writing and in advance. The Consultant shall not submit requests to the SFMTA asking for salary adjustments for the same individual more than once within any 12-month period. Rate increases requiring SFMTA approval shall apply only to Work performed after the SFMTA's approval of the increased rates.

13.12. Overhead Rates - Provisional Rates and Annual Audit. The overhead rates applicable to Consultant and its subconsultants are listed in Appendix H, which is incorporated by reference as if fully set out here. Field Office Overhead rates are applicable to all Consultant and subconsultant personnel who have worked full time at the Project Field Office for more than six months annually. Said employees are not working out of their home offices, and are therefore not receiving home office support in their day-to-day activities, so the hours they bill do not qualify for the Home Office Overhead rate. The Field Overhead rate is a reduced rate as consideration for the support those personnel receive from SFMTA. The purpose of the Field Office Overhead Rate is to reimburse the Consultant for the Salary Burden and home office support provided to the field employees. Composite Home Office Overhead rates are applicable to all other personnel who provide non-continuous or part time services to the project.

The rates set out in Appendix H are provisional and shall apply only for one year following NTP. Commencing within 90 days after the first anniversary of NTP, the City may audit Consultant's and subconsultants' books and records to determine the actual rates of compensation due. The Federal Acquisition Regulations (FAR) shall be used for the purposes of this audit to provide guidance as to the calculations of the Overhead rates and Reimbursable Expenses to the extent the FAR does not conflict with standards set out in this Agreement. Based on the audited rates, the City shall then pay to Consultant or Consultant shall refund to the SFMTA any difference between amounts paid and amounts actually owed. The audited rates shall then be used as provisional rates for one the following year, until again reset by the City's audit of Consultant's books and records, which will commence each year within 90 days of the anniversary of NTP.

13.13. Transfer of Unused Funds. Consultant may request City's approval to transfer unused funds from one subtask to another subtask within the same main task to cover the unexpected shortfall of another subtask provided that the need for additional funds to complete the subtask is not due to Consultant's poor management or planning. Consultant may request City's approval to transfer unused funds from one task(s) to other tasks to cover the unexpected shortfall of the other Tasks, provided that if in the opinion of the Program Manager the funds are no longer necessary for the original task(s) for which the funds were allotted and the main reason for the task(s) requiring additional funds is not due to Consultant's poor management or planning. Such request must be made in writing to the Program Manager at least 15 calendar days in advance of the need to transfer funds across subtasks. City's approval of subtask or task amount changes will not be unreasonably withheld. City's approval shall be by the SFMTA Program Manager.

13.14. Non-Reimbursable Expenses. Consultant shall be compensated only for those Reimbursable Expenses authorized in Attachment C and that are allowed under Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," and under the compensability standards set out in 48 C.F.R. parts 31.105, 31.2, 31.6 and the Cost Accounting Standards set out in 48 C.F.R. part 9904 et seq. If an expense is not a Reimbursable Expense or Overhead, the City shall have no obligation to compensate Consultant for it. Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses shall be considered Overhead and will not be accounted as Reimbursable Expenses. Consultant and subconsultant personnel entertainment or personal expenses of any kind shall not be considered Overhead or a Reimbursable Expense under this Contract. Office and field supplies/equipment expenses are not reimbursable expenses unless said supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for this Project. Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis as listed in Attachment C are not reimbursable.

13.15. Prepayment. Unless the Program Manager gives specific written authorization, Consultant shall not submit invoices and the City shall not pay or otherwise reimburse Consultant for costs of any kind that the Consultant has not actually incurred and paid prior to date of invoice.

13.16. Refunds, Rebates and Credits. Consultant shall assign to the City any refunds, rebates or credits accruing the Consultant that are allocable to costs for which the Consultant has paid or has otherwise reimbursed the Consultant or for which the Consultant will submit an invoice.

13.17. Payment of Invoices. Compensation shall be made in monthly payments on or before the last day of each month for Work, as set forth in an Design Plan or Task Order, that the Executive Director/CEO of the SFMTA or his designee, in his sole discretion, concludes has been performed as of the last day of the immediately preceding month in accordance with the Scope of Services attached to this Agreement as Attachment A and applicable Design Plans and Task Orders. The City shall endeavor to issue payments of undisputed amounts to the Consultant within thirty (30) days following the receipt of complete and accurate invoices. City shall make payment

to Consultant at the address specified in Section 26.1 (Notices to the Parties). All amounts paid by City to Consultant shall be subject to audit by City.

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

13.19. Payment Limitations.

13.19.1. No charges shall be incurred under this Agreement nor shall any payments become due to Consultant until all Work Product and other services required under this Agreement are received from Consultant and approved by the SFMTA as being in accordance with this Agreement.

13.19.2. The City may reasonably withhold payment to the Consultant pending resolution, in an amount equal to questioned, disputed, or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the City in connection with the Consultant's negligent errors or omissions. Payments for undisputed amounts due on the same or other invoice shall not be unreasonably withheld or delayed.

13.19.3. If the evidence of production, the quality of the work, or the costs expended are not consistent with the budget and the schedule for an assigned task, the Consultant shall justify to the SFMTA's Program Manager the costs and Fixed Fee invoiced. The Program Manager will review the justification offered and adjust the monthly payment as deemed necessary. These requirements shall also apply to Work by subconsultants. No invoice shall be rendered if the total Work done under this Agreement since the last invoice amounts to less than Fifteen Hundred Dollars (\$1,500), except that an invoice may be submitted if three (3) months have elapsed since the last invoice was submitted. No more than one invoice shall be submitted in a month.

13.20. Invoices.

Form of Invoice. Invoices furnished by Consultant under this Agreement must be in a form acceptable to the City Controller. The Consultant shall submit invoices in quadruplicate for all allowable charges incurred in the performance of the Agreement. Each invoice must contain the following information:

1. Contract Number
2. Design Plan or Task Order Number
3. Name, position, hourly rate and hours worked of employee(s) whose labor is invoiced
4. Description of the work performed or services rendered
5. Cost by employee (per hour or other agreed increment of measure) and other direct costs

6. Subconsultant costs supported by invoice itemization in the same format as described here
7. Fixed-Fee for current invoice period and amount of Fixed Fee paid as of date of invoice
8. Total costs
9. SBE utilization report (MTA Form 6)
10. Certified payroll records substantiating all labor charges for Consultant and all subconsultants shown on the invoice

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

13.22. Documentation for Payment. Invoices shall be submitted together with the Monthly Progress Reports, Monthly Cost Control Report and Monthly Update Schedule, the contents of which are defined herein, and shall be submitted by the 21st day of each month for work performed in the preceding month. The Monthly Cost Control Report shall include the current completed percentages for each task and subtask, the current estimated labor hours and cost for each Discipline to complete each of the tasks, an itemized breakdown of dollars and hours by employee and by subtask for all Consultant and subconsultant charges for the month being invoiced (accounting for a minimum of 28 calendar days of the month), and an itemized breakdown of out-of-pocket expenses by task incurred since the previous billing, along with copies of bills of materials and expenses incurred, and certified payroll records. Failure to submit a complete Monthly Cost Control Report, Monthly Updated Schedule and Monthly Progress Report by the due date shall constitute cause for suspension of invoice payments. In addition to the above, the SFMTA's Program Manager may, prior to authorization for payment of invoices, require delivery of either a complete or partial set of current work products as evidence of the status of the Consultant's work.

13.23. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code Sections 6.80 to 6.83 and Section 21.35, and pursuant to applicable federal law, any Consultant or subconsultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A Consultant or subconsultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A Consultant or subconsultant will be deemed to have submitted a false claim to the City if the Consultant or subconsultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly

makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim. Consultant agrees that said remedies are cumulative and in addition to the remedies and penalties provided for false claims under federal law.

13.24. Disallowance and Disputed Amounts. If Consultant claims or receives payment from City for a service, reimbursement for which is later disallowed by the City, the State of California or United States Government, Consultant shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Consultant under this Agreement or any other Agreement. Any Compensation or reimbursement received by Consultant under this Agreement does not constitute a final decision or waiver of decision by the City as to whether said payment meets the terms and requirements of this Agreement. If following audit or other review, the City determines that the Consultant and/or subconsultants are not entitled to certain compensation requested or received, the City shall notify the Consultant stating the reasons therefore. Completion of the CSP or any portion of Consultant's Work will not alter Consultant's or a subconsultant's obligations to return any funds due the SFMTA as a result of later refunds, corrections, or other transactions, nor alter the SFMTA or its funding agencies' rights to disallow or otherwise not recognize costs on the basis a later audit or other review. The City may reasonably withhold payment to the Consultant pending resolution, in an amount equal to questioned, disputed or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the City in connection with the Consultant's negligent errors or omissions. Payments for other amounts due on the same or other invoice shall not be unreasonably withheld or delayed.

13.25. Payment Does Not Imply Acceptance of Work. The issuance of any progress payment or final payment by the City or the receipt thereof by the Consultant shall in no way lessen the liability of the Consultant to correct unsatisfactory work although the unsatisfactory nature of such work may or may not have been apparent or detected at the time such payment was made. Work that does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced or performed again by Consultant without delay.

13.26. Project Suspension or Termination

13.26.1. If the Project is suspended for more than one hundred eighty (180) days or abandoned in whole or in part, the Consultant shall be compensated for services satisfactorily performed prior to receipt of written notice from the City of such suspension or abandonment. If the Project is resumed after being suspended for more than one hundred eighty (180) days, the Consultant's documented and reasonable remobilization costs and compensation for the remainder of the services to be provided for the Project shall be equitably adjusted based on the Consultant's demonstrated increased costs.

13.26.2. In the event that the City terminates the Agreement for fault, the City may reduce any amount earned or otherwise due the Consultant by the sum of any additional costs the City has or will incur as a result of the Consultant's default.

13.27. Final Payment. Final payment of any balance earned by the Consultant for Project work will be made within sixty (60) days after all of the following:

1. Satisfactory completion of all work required by this Agreement;
2. Receipt by SFMTA of the Work Product not previously delivered;
3. Delivery of all equipment/materials purchased specifically for the Project ;
4. Receipt by SFMTA of a fully executed final statement of amounts paid to and owed to each SBE under this Agreement;
5. Such audit and verification as SFMTA may deem necessary, provided such audit is not unreasonably delayed beyond the completion of the Project; and,
6. Execution and delivery by the Consultant of a release of all claims against SFMTA arising under or by virtue of this Agreement, other than such claims, if any, as may be specifically exempted by the Consultant from the operation of the release in stated amounts to be set forth therein.

14. TAXES; INDEPENDENT CONTRACTOR.

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

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

14.2.1. Consultant, on behalf of itself and any permitted successors and assigns, recognizes and understands that Consultant, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

14.2.2. Consultant, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property

taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Consultant accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code Section 480.5, as amended from time to time, and any successor provision.

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

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

14.2.5. Consultant shall provide a San Francisco Business Tax Registration to the SFMTA for the City to certify this Agreement.

14.3. Independent Contractor.

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

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

14.3.3. Any claim by any agent, Subconsultant or employee of Consultant, Subprime Consultant or Subconsultant that alleges or seeks to establish employment status with the City shall come under the defense and indemnification provisions of this Agreement.

14.4. Payment of Employment Taxes and Other Expenses.

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

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

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

15. INSURANCE REQUIREMENTS.

PB and Telamon shall maintain in force for as long as the City faces exposure to liability from Consultant's activities performed pursuant to this Agreement, insurance in the following amounts and coverages set out below.

15.1. Workers Compensation. PB and Telamon shall each maintain Workers' Compensation Insurance, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident injury or illness; and

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

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

15.4. Valuable Papers. PB shall maintain "All Risk" general insurance on Valuable Papers and Records for cost to repair or replace with like kind and quality

including the costs of gathering and/or assembling information, subject to a minimum limit of Five Million Dollars (\$5,000,000). Telamon shall maintain "All Risk" general insurance on Valuable Papers and Records for cost to repair or replace with like kind and quality including the costs of gathering and/or assembling information, subject to a minimum limit of One Million Dollars (\$1,000,000).

15.5. Professional Liability.

15.5.1. PB. From the effective date of this Agreement, PB shall maintain professional liability insurance practice coverage with limits of Twenty Million Dollars (\$20,000,000) each claim/annual aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement. Any deductible for said policy shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000). PB shall be responsible for the payment of all claim expenses and loss payments within the deductible. Said professional liability practice policy may be applied to the contract for Design Package No. 2 (Stations) if PB is awarded that contract. But at no time shall PB allow the aggregate value of professional liability insurance available to the City for this Project to drop below Twenty Million Dollars (\$20,000,000). If said policy limits are eroded by claims not arising from the Project, then PB shall immediately obtain additional insurance coverage to meet the requirements of this Agreement.

15.5.2. Telamon. From the effective date of this Agreement, Telamon shall maintain professional liability insurance practice coverage with limits of Five Million Dollars (\$5,000,000) each claim/annual aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement. But at no time shall Telamon allow the aggregate value of professional liability insurance available to the City for this Project to drop below Five Million Dollars (\$5,000,000). If said policy limits are eroded by claims not arising from the Project, then Telamon shall immediately obtain additional insurance coverage to meet the requirements of this Agreement. Any deductible for said policy shall not exceed Twenty Thousand Dollars (\$20,000). Telamon shall be responsible for the payment of all claim expenses and loss payments within the deductible. If required by the SFMTA, Consultant shall provide said professional liability insurance under an insurance policy specific to the Project.

15.5.3. Excess Professional Liability Insurance. The City will in good faith endeavor to obtain excess professional liability insurance coverage on behalf of Consultant (to protect against Consultant's errors and omissions in excess of Professional Liability Insurance) for commercially reasonable terms and cost that conform to the terms and conditions of this Agreement. If the City is successful in obtaining that coverage, the City will: (a) limit PB's joint and several liability for professional liability errors and omissions committed by Telamon to the value of Telamon's professional liability insurance; (b) limit Telamon's joint and several liability for professional liability errors and omissions committed by PB to the value of Telamon's professional liability insurance; and, (c) waive subrogation of claims by the City's excess insurance against Consultant. If the City is unable to obtain said excess professional liability insurance, the SFMTA and Consultant shall meet to revisit and renegotiate the professional liability provisions of this Agreement to provide adequate insurance coverage to the City at reasonable cost to the City in light of the risks of the Project.

15.5.4. Consultant shall maintain all professional liability policies for a claim reporting period not less than four (4) years following completion of services under this agreement.

15.5.5. All professional liability policies shall protect against any negligent act, error or omission arising out of the Consultant's design or engineering activities or with respect to the Project, including coverage for acts by Subprime Consultants and Subconsultants for whose work the Consultant is responsible under this Agreement. Professional liability policies shall be endorsed to require the insurer to provide the City with no less than 30 days notice of policy expiration or cancellation.

15.5.6. Consultant shall notify the SFMTA of any claims against its professional liability policy or policies that are not specific to the Project under this Agreement. If the SFMTA determines, in its sole discretion, that said claims jeopardize the protection against errors and omissions required by this Section 15, Contractor shall at its expense procure additional professional liability insurance in an amount sufficient to replenish coverage lost by said claim(s) to meet the requirements set out in Sections 15.5.1 and 15.5.2, above.

15.5.7. Each partner of the PB Telamon joint venture partnership shall ensure and does warrant for itself that its Professional Liability (Errors and Omissions) Insurance policy does not contain any provision that excludes coverage for its services performed as part of the joint venture partnership. All insurance policies and certificates shall carry such endorsements, which shall be provided to the City. Consultant may be relieved of the obligations of this Section 15.5.8 only if the City is able to obtain excess professional liability insurance (see Section 15.5.3, above), and PB provides review and oversight to Telamon, as provided in Section 16.4.2, above.

Requirements of Insurance Policies.

15.5.8. Valuable Papers, Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

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

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

(c) All rights of subrogation against the City shall be waived.

15.5.9. Workers Compensation insurance policies must provide the following:

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

(b) All rights of subrogation against the City shall be waived.

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

Carter R. Rohan, R.A.
Central Subway Program Officer
Director, Capital Programs and Construction
San Francisco Municipal Transportation Agency
1 South Van Ness, 7th floor
San Francisco, CA 94103

Shahnam Farhangi
Division Deputy, Construction Administration and Quality
Management
San Francisco Municipal Transportation Agency
1 South Van Ness, 3rd floor
San Francisco, CA 94103

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

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

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

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

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

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

16. INDEMNITY, LIABILITY, AND REMEDIES,

16.1. Indemnification. To the fullest extent permitted by law, the Consultant shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claim, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Consultant or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

16.2. Limitations.

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

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

16.3. Intellectual Property Infringement. Notwithstanding any other provision of this Agreement, Consultant shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary rights of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Consultant's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, shall be considered a material breach of contract, if not the basis for indemnification under the law.

16.4. Joint Venture Partners.

16.4.1. Notwithstanding the joint venture status of Consultant or other separate legal status of the Consultant from its owner partners, each of the joint venture partners, PB Americas and Telamon, as the owners of the Consultant, shall remain jointly and severally liable for the performance, errors and omissions of Consultant, as limited by Section 15.5.3 of this Agreement.

16.4.2. PB shall review and provide oversight to Telamon in the performance of Telamon's work under this Agreement.

16.4.3. Any notice, order, direction, request or any communication required to be or that may be given by the SFMTA to the Consultant as set forth in Section 26.1 (Notices to the Parties) of this Agreement, shall be deemed to have been well and sufficiently given to and shall bind the Consultant, its individual joint venture members, and all persons acting on behalf of the Consultant. Any notice, request or other communications given by the Consultant to the SFMTA as indicated in Section 26.1 (Notices to the Parties) of this Agreement, shall be deemed to have been given by and shall bind the Consultant, its individual joint venture members, and all persons acting on behalf of the Consultant.

16.4.4. In the event of a dissolution of the joint venture, the SFMTA shall have the unqualified right to select which joint venture member, if any, shall continue the work under this Agreement and such selected member shall assume all liabilities, obligations, rights, and benefits of the Consultant under this Agreement. Such dissolution of the joint venture shall not be effected without prior consultation with the SFMTA. In the event of failure or inability of any one of the joint venture members to continue performance under this Agreement, the other joint venture member(s) shall perform all services and work and assume all liabilities, obligations, rights and benefits of the Consultant under this Agreement. Such determination of failure or inability to continue performance shall not be effected without prior consultation with SFMTA. Nothing in this Section shall be construed or interpreted to limit SFMTA's rights under this Agreement or bylaw to determine whether the Consultant or any one of the joint venture members has performed within the terms of this Agreement.

16.5. Liability of City. City's payment obligations under this Agreement shall be limited to the payment of the compensation for Work actually performed for the City in accordance with the payment provisions set out in Section 13 of this Agreement and the Appendices to this Agreement referenced therein. Notwithstanding any other provision of this Agreement, in no event shall City be liable to any individual or business entity, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

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

16.6.1. Consultant fails or refuses to perform or observe any term, covenant or condition contained in any of the following Subsections of this Agreement:

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

powers of Consultant or of any substantial part of Consultant's property, or (e) takes action for the purpose of any of the foregoing.

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

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

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

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

17. EQUIPMENT

17.1. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to Consultant by City. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless the City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to Consultant, its employees, the City's employees, or third parties, or to property belonging to any of the above.

17.2. Ownership of Equipment. Any equipment, vehicles, computer programs (software licenses and media), and the like, purchased by the Consultant or its subconsultants in connection with services to be performed under this Agreement shall become property of and will be transmitted to the SFMTA at the conclusion of the Consultant's services under the Agreement.

18. CITY'S RESPONSIBILITIES

The City's responsibilities for design of the Project are expressly set out in this Agreement and the RFP. The Consultant shall be responsible for all aspects of the Project's design except for those tasks, duties, or areas of design that are expressly assigned or reserved to the City in this Agreement. In addition to those tasks, duties, or areas of design that are expressly assigned to the City elsewhere in the Agreement or RFP, the City shall perform the following:

18.1. Approvals. Obtain approvals from Appropriate Authorities, as defined herein, with the assistance of the Consultant, and promptly render decisions, when within its power to do so, pertaining thereto to avoid unreasonable delays in the progress of the Project.

18.2. Deficiencies. Promptly notify the Consultant in writing of apparent deficiencies in Consultant's designs.

18.3. Fees. Pay all fees required to secure building permits.

18.4. Hazardous Substances. Acknowledge that the discovery, presence, handling or removal of asbestos, asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances, which may presently exist at the job site, is outside of the Consultant's expertise and is not included in the scope of work the Consultant is to perform nor included in the Consultant's insurance. The City therefore agrees to hire one or more expert consultants in this field to deal with these problems if the Project involves such materials. Even though the Contract Documents may incorporate the work of such other consultants, the Consultant shall not be responsible for the discovery, presence, handling or removal of such materials.

18.5. Nonaffixed Furniture and Equipment. Be responsible for purchase and coordination with successful vendors for delivery, assembly, storage and placement of loose furniture, furnishings and equipment not included within the Construction Documents prepared by the Consultant.

18.6. Project Data. Furnish the documents and data developed for the Project under conceptual and preliminary design, which are listed in the RFP in Appendix 10.

18.7. Program Manager. Designate a Program Manager who shall coordinate his or her duties with the Consultant as provided herein.

18.8. Respond to Submittals. Review and respond in writing within 15 Days of a submittal by the Consultant to all aspects of the documents.

18.9. Tests and Inspections. Furnish tests and inspections as required during the construction phase for structural, mechanical, chemical and other laboratory tests, inspections, special inspections and reports specified by the Consultant in the Construction Documents.

18.10. Construction Cost Estimates. SFMTA shall cooperate with Consultant to bring construction cost estimates within agreed acceptable limits of Construction Budget.

19. TERMINATION OF CONTRACT.

19.1. Termination for Cause. Either party may terminate this Agreement, in whole or in part, in writing, if the other party substantially fails to fulfill its obligations under this Agreement through no fault of the terminating party. However, such termination may not be effected unless the other party is given (a) not fewer than ten (10) calendar days written notice (delivery by certified mail) of its intent to terminate; and (b) an opportunity for consultation and to rectify failures of obligations (to cure the alleged breach or default of Agreement) within thirty (30) days of consultation with the terminating party before termination becomes effective.

19.2. Termination for Convenience.

19.2.1. Exercise of Option to Terminate for Convenience.

Notwithstanding any other provision of this Agreement, the City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Consultant no less than fourteen (14) calendar days written notice of termination. The notice shall specify the date on which termination shall become effective. Consultant shall not have the right to terminate this Agreement for convenience. Consultant does not have the right to terminate for convenience,

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

- (a) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- (b) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (c) Terminating all existing orders and subcontracts.
- (d) 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.

(e) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts, as allowed under the principals set out in 48 CFR Subparts 49.2 and 49.3 to the extent that those principles are in accord with the cost principles for local governments set out in the Office of Management and Budget Circular A-97.

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

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

19.2.3. Final 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:

(a) A reasonable allowance for profit on the cost of the services and other work described necessary to effect termination.

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

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

(d) Expenses directly attributable to termination which the Consultant is not otherwise compensated, such as the cost to dispose of, or buy out commitments for, trailers, office space, computers, motor vehicles, cell phones and blackberry-like devices.

19.2.4. Non-Recoverable Costs. In no event shall City be liable for costs incurred by Consultant or any of its subconsultants after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding Subsection 19.2.3. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees, or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such Subsection 19.2.3.

19.2.5. Deductions. In arriving at the amount due to Consultant under this Section 19, City may deduct: (a) all payments previously made by City for work or other services covered by Consultant's final invoice; (b) any claim which City may have against Consultant in connection with this Agreement; (c) any invoiced costs or expenses excluded pursuant to the immediately preceding Subsection 19.2.4; and (d)

the reasonable costs to the City to remedy or replace defective or rejected services or other work that does not comply with the requirements of this Agreement.

19.2.6. Survival of Payment Obligation. City's payment obligation for Work performed in accordance with this Agreement shall survive termination of this Agreement.

19.3. Rights and Duties Upon Termination or Expiration.

19.3.1. Survival of Provisions. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 13.22 (Submitting False Claims; Monetary Penalties), 13.23 (Disallowance and Disputed Amounts), 13.24 (Payment Does Not Imply Acceptance of Work), 14 (Taxes, Independent Contractor), 15 (Insurance Requirements), 16.1 (Indemnification), , 16.5 (Liability of City), 17 (Equipment), 19.1 (Termination for Cause), 19.2 (Termination for Convenience), 21.3 (Protection of Private Information), 22 (Work Product and Works for Hire), 23 (Audit and Inspection of Records), 26 (Contract Administration and Construction),

19.3.2. Duties Upon Termination. Subject to the immediately preceding Subsection 19.3.1, upon termination of this Agreement prior to expiration of the term of this Agreement specified in Section 1.3, this Agreement shall terminate and be of no further force or effect. Consultant shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This Subsection shall survive termination of this Agreement.

20. CONFLICT OF INTEREST.

20.1. Applicable Authority. Through its execution of this Agreement, Consultant acknowledges that it is familiar with Article I, Chapter I and Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement. Consultant further acknowledges that it is aware of the requirements concerning the filing of Statements of Economic Interest, California Fair Political Practices Commission Form 700, under the requirements of California Government Code Section 87300 et seq. and the San Francisco Campaign and Governmental Code Section 3.1-102, and that Consultant shall ensure that its employees and subconsultants are aware of those requirements and comply with them.

20.2. Other Bids Prohibited. Consultant agrees that neither it nor any corporation, joint venture or partnership in which it has a financial interest shall submit a proposal for Program Controls System RFP or bid for construction work on the Central Subway Project. Consultant further agrees that except as may be specifically authorized by the SFMTA Consultant shall not consult with or otherwise provide advice

or information concerning the Central Subway Project to any potential proposers for the Program Controls System RFP or to potential bidders for construction contracts for the Central Subway Project.

20.3. No Financial Interest in the Project. By submission of its Proposal, the Consultant covenants that it has no direct or indirect financial interest and that it shall not acquire any financial interest that creates or would create a conflict of interest with respect to any of the work, services or materials required to be performed or provided under this Agreement. Furthermore, the Consultant shall not employ any person or agent having any such conflict of interest. In the event that the Consultant or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to SFMTA and take action immediately to eliminate the conflict or to withdraw from this Agreement, as SFMTA requests. The Consultant shall not employ any consultant who is concurrently employed by SFMTA or by another consultant to the SFMTA (including, but not limited to, surveyors, engineers, Consultants, and testing laboratories), without first obtaining SFMTA's approval in writing.

20.4. Conflicts of Interest. By submission of its Proposal, the Consultant covenants that it has no direct or indirect pecuniary or proprietary interest and that it shall not acquire any interest that conflicts in any manner or degree with the work, services or materials required to be performed or provided under this Agreement. Furthermore, the Consultant shall not employ any person or agent having any such conflict of interest. In the event that the Consultant or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to SFMTA and take action immediately to eliminate the conflict or to withdraw from this Agreement, as SFMTA requests. The Consultant shall not employ any consultant who is concurrently employed by SFMTA or by another consultant to the SFMTA (including, but not limited to, surveyors, engineers, Consultants, and testing laboratories), without first obtaining SFMTA's approval in writing.

20.5. Other Agreements between the City and the Consultant. Through its execution of this Agreement, the Consultant certifies that neither it nor any of its employees has any undisclosed financial interest, however remote, in any other Agreement with the City, whether or not such Agreement is with Consultant's respective firms, affiliate firms or through separate employment, except as expressly itemized below. The Consultant understands and agrees that failure to disclose such information may result in termination of this Agreement for cause.

20.6. Lobbyists and Gratuities.

20.6.1. Contingency Fees Prohibited. The Consultant warrants and covenants that it has not employed or retained any person or persons to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach of violation of this warranty SFMTA shall have the right to annul this Agreement without liability or in its discretion to deduct from the Total Price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee

20.6.2. No Gratuities to City Employees. The Consultant warrants and covenants that no gratuities, in the form of entertainment, gifts, or otherwise, have been or will be offered or given by the Consultant or any of its agents, employees, or representatives to any official or employee of the City and County of San Francisco in an attempt to secure a contract or favorable treatment in awarding, amending, or making any determination related to the performance of this Agreement. Consultant acknowledges that it is familiar with San Francisco Campaign and Governmental Conduct Code Section 3.216 and the regulations adopted thereunder, and understands that Consultant is a "restricted source" for all SFMTA employees and officers, as the term is defined in that Section. Contractor agrees that it will make no gifts to any SFMTA employee or officer the acceptance of which would violate Section 3.216. (See also federal lobbying restrictions discussed at Section 28.6, below.)

20.7. Collusion in Contracting. Consultant warrants and covenants that it has not imposed on any Subprime Consultant or Subconsultant as a condition for receiving a subcontract under this Agreement a requirement that said subconsultant not participate in or be listed on in any other Proposal for this Contract. This restriction provision shall not apply between a Proposer and a Subprime Consultant listed in the Proposal to whom the Consultant provided proprietary or confidential financial information such that the participation of the Subprime Consultant in another Proposer's Proposal would provide an unfair advantage to a Proposer. Consultant further warrants that it informed its Subprime Consultants that Subconsultants cannot be restricted from being listed or otherwise participating in a Proposal from another consultant for this Contract, and that to Consultant's knowledge its Subprime Consultants have complied with these requirements.

20.8. Remedies. If the Executive Director/CEO has reason to believe that the Consultant has breached the covenants set forth in this Section 20, he shall so notify the Consultant in writing. The Consultant shall respond to said notice within ten (10) days of receipt with a detailed written explanation or answer to any facts, allegations, or questions contained or referenced in said notice. The Consultant may request a hearing on the matter by Executive Director/CEO or his designee that shall be conducted within fifteen (15) days of the receipt by the Executive Director/CEO of the request unless a later date is concurred in by SFMTA and the Consultant. The decision of the Executive Director/CEO shall be a prerequisite to appeal thereof to SFMTA Board of Directors or to Superior Court in the County of San Francisco, State of California. If, after consideration of the Consultant's response and any hearing, the Executive Director/CEO determines that the covenants have been breached, the Executive Director/CEO shall have the discretion to exercise those remedies provided by any applicable federal or state laws or regulations or by this Agreement in the event of said breach and/or prohibited conflicts of interest.

21. CONFIDENTIALITY, PRIVACY AND SECURITY OF INFORMATION.

21.1. Proprietary, Confidential and Security Sensitive Information. Consultant understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Consultant may have access to private or confidential information which may be owned, controlled by, or licensed to the

City and that such information may contain proprietary or confidential details, or it may constitute Sensitive Security Information, the disclosure of which to third parties may be contrary to law, harmful to public safety, and/or damaging to City. Consultant agrees that all information disclosed by City to Consultant shall be held in the strictest confidence and used only in performance of the Agreement. Consultant agrees that all Work Product, reports, studies, analyses, specifications, work schedules and recommendations prepared by the Consultant for use in connection with the work under this Agreement or furnished to the Consultant by the City are confidential, and that Consultant will not publish, circulate or use any of the foregoing except in the performance of this Agreement without first obtaining the SFMTA's written approval to do so.

21.2. Project Security. Consultant shall consider and treat all Work Product as Sensitive Security Information as defined by FTA Circular 42.20.1(f) and other applicable regulation and authority. Consultant shall at all times guard and keep secure and confidential all such information and documents. Consultant's failure to guard and keep safe and confidential said documents shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Consultant pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Consultant.

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

22. WORK PRODUCT AND WORKS FOR HIRE.

22.1. Ownership. All Work Product, including but not limited to documents, electronic, written, graphic, or three dimensional models, including drawing sets, CADD files, BIM files, schematics, system designs, blue prints, specifications, presentation drawings, models, films and videos, simulations or other presentation materials and other documents, models or computer files prepared by the Consultant are works for hire as defined under Title 17 of the United States Code commissioned by the SFMTA, and all such works shall be made and remain the property of the City, including all intellectual property rights to all documents; provided, however, that the Consultant shall be entitled to retain one reproducible copy thereof and CADD files, made at the Consultant's expense. As part of its Basic Services, the Consultant shall provide the City with one licensed copy of software that will allow the City to view the electronic CADD files prepared by the Consultant and its Subprime Consultants and Subconsultants. Additionally, the Consultant shall provide technical specifications for any computer hardware required to use the provided software and files.

22.2. Assignment. To the extent that the Work Product does not qualify as a work made for hire under applicable law, and to the extent that the Work Product includes material subject to copyright, patent, trade secret, mask work, or other proprietary right protection, the Consultant hereby assigns to SFMTA, its successors and assigns, all right, title and interest in and to the Work Product, including but not limited to (1) all copyrights in the same, and in all renewals and extensions of the copyrights that may be secured under applicable laws; and (2) all rights in and to any inventions and designs embodied in the Work Product or developed in the course of the Consultant's creation of the Work Product. The foregoing assignment includes a license under any current and future patents owned, patents applied for or licensable by the Consultant to the extent necessary to exercise any rights of ownership in the Work Product. Any reuse of the Work Product except for the specific purpose intended will be at the users' sole risk without liability or legal exposure to the Consultant.

22.3. Moral Rights. To the extent that the Consultant may have any moral rights to the Work Product, the Consultant hereby forever waives any and all such rights. Neither the Work Product nor anything constructed from the plans, designs, drawings and specifications in the Work Product shall be considered art or a work of art. To the extent that the Work Product, any part of the Work Product, or anything constructed from the plans, designs, drawings and specifications in the Work Product are considered art or works of art, any rights of the Consultant or obligations of the City under applicable law, including but not limited to Visual Artists Rights Act of 1990, 17 U.S.C. §§ 101 et seq., and the California Art Preservation Act, Civil Code sec. 987, are hereby forever waived.

22.4. Assistance. At SFMTA's expense, the Consultant shall execute and deliver such instruments and take such other action as may be requested by SFMTA to perfect or protect SFMTA's rights in the Work Product and to perfect the assignments contemplated by this Section.

22.5. Delivery of Work Product. The Consultant agrees to deliver all aspects of the Work Product, including without limitation all plans, drawings, designs, specifications, technical reports, operating manuals, notes, data, documentation, and computer software (in source code and object code form), in accordance with the delivery schedule set forth in this Agreement. In the event of early termination of this Agreement, the Consultant shall deliver all aspects of the Work Product immediately upon such early termination at the then-existing stage of completion, and all aspects of the Work Product shall become the property of SFMTA.

22.6. Representations and Warranties. The Consultant hereby represents and warrants that:

22.6.1. It has full power to enter into this Agreement and make the assignments set forth herein;

22.6.2. It has not previously and will not grant any rights in the Work Product to any third party that are inconsistent with the rights granted to SFMTA herein;

22.6.3. The Work Product does not infringe or violate any copyright, trade secret, trademark, patent or other proprietary or personal right held by any third party; and

22.6.4. The Work Product has been or will be created solely by the Consultant or employees of the Consultant within the scope of their employment and under obligation to assign all rights in the Work Product to SFMTA, or by independent subconsultants, approved by SFMTA in advance, under written obligations to (a) assign all rights in the Work Product to SFMTA and (b) maintain the confidentiality of any SFMTA confidential information disclosed to the subconsultant.

22.7. Indemnity for Copyright or Patent Infringement. The indemnity and defense requirements set out in Section 16.3 of this Agreement shall apply to Consultant's Work Product and the tools used by Consultant to product it, without limitation.

22.8. Notations. All Work Product furnished by the Consultant, other than documents exclusively for the internal use by SFMTA, shall carry such notations on the front cover or a title page (or in the case of maps, in the name block) as may be determined by SFMTA. The Consultant shall also place its endorsement on all Work Products. All such notations and endorsements shall be subject to prior approval by SFMTA prior to delivery. All such notations and/or endorsements placed on the Work Product(s) by the Consultant shall be for intellectual property purposes only and shall not be for professional engineering services.

22.9. Reuse. Should the City or any other person, firm or legal entity under the authority and control of the City, without the Consultant's participation, use, re-use, or modify the Consultant's drawings, specifications or other documents prepared under this Agreement, the City agrees to notify the Consultant of said intended use. The Consultant shall not be responsible for any loss, costs or expenses incurred by any party arising out of such use, re-use or modification of the Consultant's drawings, specifications, and other documents.

22.10. Artists Rights. If Consultant contracts for any art or work of art to be included in the Project, prior to executing such contract, Consultant shall obtain from the artist(s) who produced or will produce the art a written and signed agreement stipulating that such works are works for hire for commercial use and forever waiving any and all rights of the artist(s) and any and all obligations of the City under applicable law requiring preservation of said art or works of art, including but not limited to Visual Artists Rights Act of 1990, 17 U.S.C. §§ 101 et seq., and the California Art Preservation Act, Civil Code § 987 et sec.

22.11. Subcontracts. Consultant shall include the provisions of this Section in all contracts with Subprime Consultants and shall further require that Subprime Consultants include said provision in their respective contracts with Subconsultants.

23. AUDIT AND INSPECTION OF RECORDS.

23.1. Access to Records. Consultant agrees to maintain and make available to the City accurate books and accounting records relative to its activities under this Agreement, irrespective of whether such services were funded in whole or in part by this Agreement. Consultant will permit the City to audit, examine, reproduce, and make excerpts and transcripts from such books and records and to make audits of all

invoices, materials, payrolls, records or personnel and other data necessary to determine or audit allowable expenses, overhead, including costs and overhead incurred as work performed as Additional Services,.

23.2. Maintenance of Records. Consultant shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The period of access and examination for records that relate to (1) litigation or the settlement of claims arising out of the performance of this Agreement, or (2) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General of the United States or the U.S. Department of Transportation, or any of their duly authorized representatives, shall continue until such litigation, claims, or exceptions have been finally resolved. Consultant shall require its subconsultants to also comply with the provisions of this Section, and shall include the provisions of the Section in each of its subcontracts.

23.3. Audit of Subconsultants. Consultant shall include the provisions of this Section in all agreements between Consultant and its Subprime Consultants and subconsultants of every tier giving the City the same rights against the Subprime Consultants. Consultant shall require that the Subprime Consultants include the provisions of this Section in their respective contracts with Subconsultants. Cancelled checks of payments to Subprime Consultants and Subconsultants must be maintained by Consultant and Subprime Consultants, respectively, and made available to the City upon request.

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

23.5. Rights of State or Federal Agencies. Consultant shall comply with reporting requirements of the U.S. Department of Transportation grant management rules, and any other reports required by the Federal Government. The State of California or any federal agency having an interest in the subject matter of this Agreement shall at a minimum have the same rights conferred upon City by this Section 23.

24. NONDISCRIMINATION; PENALTIES.

24.1. Consultant Shall Not Discriminate. In the performance of this Agreement, Consultant agrees not to discriminate against any employee, City and County employee working with such Consultant or subconsultant, applicant for employment with such Consultant or subconsultant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes. The Consultant shall carry out

applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the City deems appropriate.

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

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

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

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

24.6. Compliance with Americans with Disabilities Act. Consultant acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a Consultant, must be accessible to the disabled public. Consultant's design of the Project under this Agreement shall comply with the ADA and any and all other applicable federal, state and local disability rights and/or access legislation. Said requirements shall apply both to the manner and process by which the Consultant provides the services, and the content of all deliverables under this Agreement. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that

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

25. GENERAL CONTRACT REQUIREMENTS.

25.1. Compliance with All Laws and Regulations.

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

25.1.2. The Consultant shall comply with all federal, state, and local licensing, registration, filing and/or certifications standards, all applicable accrediting standards, and any other standards or criteria established by any agency of the State of California or of the federal government applicable to the Consultant's operation.

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

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

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

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

25.4.2. Failure to Comply. Failure to comply with any requirement contained in this Section shall constitute a material breach by Consultant of the terms of this Agreement. If, within 30 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.

25.4.3. Application to Subconsultants. Any subcontract entered into by Consultant shall require the subconsultant to comply, as to the subconsultant's Eligible Employees, with each of the terms of this Section.

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

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

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

25.7. Limitations on Contributions. Through execution of this Agreement, Consultant acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (A) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (B) a candidate for the office held by such individual, or (C) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the

later of either the termination of negotiations for such contract or six months after the date the contract is approved. Consultant acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Consultant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Consultant's board of directors; Consultant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Consultant; any Subprime Consultant or Subconsultant listed in the bid or contract; and any committee that is sponsored or controlled by Consultant. Additionally, Consultant acknowledges that Consultant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

25.8. Requiring Minimum Compensation for Covered Employees.

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

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

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

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

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

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

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

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

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

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

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

25.9.2. Notwithstanding the above, if the Consultant is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with Subsection 25.9.1 above.

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

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

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

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

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

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

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

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

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

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

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

25.10. First Source Hiring Program.

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

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

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

(b) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of

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

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

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

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

(f) Set the term of the requirements.

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

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

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

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

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

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

(a) To be liable to the City for liquidated damages as provided in this Section;

(b) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this Section;

(c) That the Consultant's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the Consultant to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the Consultant from the first source hiring process, as determined by the FSHA during its first investigation of a Consultant, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the Consultant's failure to comply with its first source referral contractual obligations.

(d) That the continued failure by a Consultant to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the

conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the Consultant's continued failure to comply with its first source referral contractual obligations;

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

- The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and
- In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

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

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

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

25.11. Prohibition of Political Activity with City Funds. No funds appropriated by the City for any contract, grant agreement or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign for any candidate or measure. Recipients of City funds will cooperate in audits conducted by the Chief Financial Officer to verify that no City funds were used for political purposes.

In accordance with San Francisco Administrative Code Chapter 12.G, Consultant may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity")

in the performance of the services provided under this Agreement. Consultant agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Consultant violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (A) terminate this Agreement, and (B) prohibit Consultant from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Consultant's use of profit as a violation of this Section.

25.12. Services Provided by Attorneys. Any services to be provided as part of Consultant's services under this Agreement that are provided by a law firm or attorney retained by the Consultant must be reviewed and approved in writing in advance by the San Francisco City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subconsultants of Consultant, will be paid unless the provider received advance written approval from the City Attorney.

26. CONTRACT ADMINISTRATION AND CONSTRUCTION.

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

To SFMTA: Carter R. Rohan, R.A.
 Central Subway Program Officer
 Director, Capital Programs and Construction
 San Francisco Municipal Transportation Agency
 1 South Van Ness, 7th floor
 San Francisco, CA 94103
 Tel: 415-701-4282
 Fax: 415-701-4300
 carter.rohan@SFMTA.com

Management
 Shahnam Farhangi
 Division Deputy, Contract Administration and Quality
 San Francisco Municipal Transportation Agency
 1 South Van Ness, 3rd floor
 San Francisco, CA 94103
 Tel: 415-701-4284
 Fax: 415-701-4300
 shahnam.farhangi@SFMTA.com

To Consultant: Matthew E. Fowler, PE
 Project Manager
 PB Americas, Inc.
 303 Second Street, Suite 700 North
 San Francisco, CA 94107

Any notice of default must be sent by registered mail.

26.2. Assignment. The services to be performed by Consultant are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Consultant unless first approved by City by written instrument executed and approved as required by SFMTA policy and City law. Consultant and the partners of any joint venture or association that constitute the Consultant or any of the Consultant's subconsultants may incorporate or change their business names, and such actions shall not be considered an assignment for purposes of this Agreement provided such incorporation or name change does not decrease that entity's obligation or liability under this Agreement.

26.3. Successors and Assigns. This Agreement shall be binding upon the City and the Consultant and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any funds due or to become due there under may be assigned by the Consultant without the prior written consent and approval of the City.

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

26.5. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required by the terms of this Agreement or as otherwise required by law.

26.6. Successors and Assigns. This Agreement shall be binding upon the City and the Consultant and their respective successors and assigns.

26.7. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco or as provided by Code of Civil Procedure Section 394; the venue for litigation in a county other than San Francisco pursuant to Section 394 will be Alameda County.

26.8. Negotiated Scope of Work. The Final Design services Consultant shall provide to the City for the Project are described in this Agreement. Tasks and subtasks that are reasonably related to the tasks included within the work described in Appendix A are Basic Services. .

26.9. Construction of Agreement. All article or section titles and paragraph captions are for reference only and shall not be considered in construing this Agreement. This Agreement is the result of and memorializes a negotiated contract between the Parties, each of which is experienced and knowledgeable in professional services contracting for public works architectural and engineering design, construction support and related services, and each of which was represented by and had the

assistance of legal counsel of its choosing. No rule of construction in which an ambiguity in a contract is construed against the drafter shall be applied to interpret this Agreement or the Parties' intentions thereto.

26.10. Entire Agreement. This Agreement and its listed Attachments and other documents incorporated by reference constitute an integrated document that sets forth the entire agreement between the parties as to the matters addressed therein, and the provisions of this Agreement and its listed Attachments supersede all other oral or written provisions, drafts of the Agreement. This contract may be modified only as provided in Section 8.

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

26.12. Disputes and Resolution.

26.12.1. Notice of Dispute. For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved Party shall furnish the other Party with a notice of dispute within fifteen (15) days of the determination of the dispute. The Party receiving a notice of dispute shall submit a written reply with fourteen (14) days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the Party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the Party's position.

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

26.12.3. No Cessation of Work. Pending final resolution of a dispute hereunder, the Consultant shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the SFMTA Program Manager.

26.12.4. Alternative Dispute Resolution. If agreed to by both Parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

26.12.5. Claims for Additional Compensation. For disputes involving a claim for additional compensation, parties involved shall attempt to resolve such disputes expediently and in good faith so as not to impact the performance or schedule of the

Project. Under no circumstances shall the Consultant or its sub-consultants stop work due to an unresolved dispute.

26.12.6. Disputes among Consultant Partners. If Consultant is a joint venture partnership, the resolution of any contractual disputes related to Consultant's joint venture or association partners (if any) shall be the sole responsibility of the Consultant and . not to impact Consultant's performance of the Contract or otherwise delay the Project. Any such disputes that impact the Project shall be cause for the City to withhold and/or reduce invoice payments to the Consultant's Joint Venture or Association firms until the dispute is resolved.

26.13. Mutual Agreement. This Agreement is the product of negotiations between the Parties. Each Party represents that it is a sophisticated and experienced participant in contracting for public works. Each Party has been represented by legal counsel of their choosing. Each Party represents that it has read and understands this Agreement, and enters into this Agreement of its own free-will and without coercion of any kind. The Parties agree that this Agreement shall not be subject to any rule of contract construction that may hold or would result in any ambiguity of any provision of this Agreement being held against the drafter of said provision.

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

26.15. No Third Party Beneficiary. This Agreement is intended for the sole benefit of the City and the Consultant, and is not intended to create any third-party rights or benefits.

26.16. Signatories Authorized. By signing below, each signatory warrants that he or she is authorized to execute this Agreement and thereby bind the Party he or she represents.

27. ENVIRONMENTAL REQUIREMENTS.

27.1. Resource Efficiency and Conservation. Consultant shall adhere to the extent practicable to all requirements of Chapter 82 Resource Efficiency Requirements for City-owned Facilities (Green Building Ordinance), attached hereto as Attachment J. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Consultant to comply with any of the applicable requirements of Chapter 5 specifically required by the SFMTA may be deemed a material breach of contract.

27.2. Preservative-Treated Wood Containing Arsenic. Consultant shall not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San

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

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

Consultant shall remove all graffiti from any real property owned or leased by Consultant in the City and County of San Francisco within forty eight (48) hours of the earlier of Consultant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This Section is not intended to require a Consultant to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Consultant to comply with this Section of this Agreement shall constitute an Event of Default of this Agreement.

27.4. Food Service Waste Reduction Requirements. Consultant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The

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

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

27.6. Recycled Products. Consultant shall use recycled products, as set out in Sections 28.10 and 28.19, below.

28. FEDERAL REQUIREMENTS.

28.1. Federal Contract Requirements and Applicable Law. The provisions set out this Section 28 are required by federal law. If there is any conflict between said provisions or any federal law, regulation or requirement, including such limitations and requirements as the FTA may impose, such federal requirements, terms and conditions shall take precedence over any terms and conditions set out in this Agreement. The City and County of San Francisco is a chartered City and County with home rule powers under the Constitution of the State of California. The terms of this Agreement are governed by California Law and the ordinances and Charter of the City and County of San Francisco. Except as expressly provided for in this Agreement, the Federal Acquisition Regulations (FAR) shall not apply to this Agreement, except as to provide guidance as to accounting and auditing standards, including but not limited to calculation of compensable costs and overhead.

28.2. Incorporation of Federal Transit Administration (FTA) Terms.

28.2.1. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, (http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html), as amended and the Master Grant Agreement (<http://www.fta.dot.gov/documents/15-Master.pdf>), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any SFMTA request that would cause SFMTA to be in violation of the FTA terms and conditions.

28.2.2. The FTA Master Agreement obligates SFMTA to incorporate certain provisions into this Agreement and any lower tier subcontracts at any level and to take appropriate measures to ensure that Consultant and its lower tier subconsultants at any level comply with certain applicable requirements set forth in the Master Agreement. The FTA Master Agreement is hereby incorporated by reference into this Agreement, and Consultant shall comply with all such requirements.

28.2.3. Copies of the FTA Master Agreement are available from SFMTA.

28.3. Applicability of Federal Grant Contract.

28.3.1. This procurement may be subject to one or more financial assistance contracts between SFMTA and the U.S. Department of Transportation, which incorporate the current FTA Master Agreement and Circular 4220.1F as amended. U.S. Department of Transportation's level of financial assistance may be between zero and eighty percent (0-80%). The Consultant is required to comply with all terms and conditions prescribed for third party contracts in these documents.

28.3.2. Federal laws, regulations, policies and administrative practices may be modified or codified after the date this Agreement is established and may apply to this Agreement. To assure compliance with changing federal requirements, Contract Award indicates that the Consultant agrees to accept all changed requirements that apply to this Agreement.

28.4. Federal Funding Limitation. Consultant understands that funds to pay for Consultant's performance under this Agreement are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All funds must be approved and administered by FTA. SFMTA's obligation hereunder is payable from funds that are appropriated and allocated by FTA for the performance of this Agreement. If funds are not allocated, or ultimately are disapproved by FTA, SFMTA may terminate or suspend Consultant's services without penalty or obligation other than those specifically provided for in Section 19.2 of this Agreement as a termination for convenience. SFMTA shall notify Consultant promptly in writing of the non-allocation, delay, or disapproval of funding.

28.5. No Federal Government Obligation to Third Parties. Consultant agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party contractor, or any other person not a party to the Grant Agreement in connection with this Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including a subrecipient or third party contractor.

28.6. Federal Lobbying Restrictions.

28.6.1. This Agreement is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 C.F.R. Part 20, which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an office or

employee of Congress or an employee of any Member of Congress in connection with the awarding of any federally funded contract, the making of any Federal grant or loan, or entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Consultants and Subconsultants at any time who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Consultant shall submit the "Certification Regarding Lobbying" included in this document. The Consultant's signature on this certification shall certify that: a) it has not engaged in the prohibited activity and b) the language of the certification shall be included in all lower tier subcontracts, which exceed \$100,000, and that all such subconsultants shall certify and disclose accordingly. SFMTA is responsible for keeping the certification form of the Consultant, who is in turn responsible for keeping the certification forms of subconsultants. Further, by executing the Agreement, the Consultant agrees to comply with these laws and regulations.

28.6.2. If the Consultant has engaged in any lobbying activities to influence or attempt to influence the awarding of this Agreement, the Consultant must disclose these activities. In such a case, the Consultant shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities". SFMTA must also receive all disclosure forms.

28.6.3. The Consultant and any subconsultants shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:

- (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Agreement; or
- (b) A change in the person(s) influencing or attempting to influence this federally funded Agreement; or
- (c) A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Agreement.

28.7. Lobbying Certification and Disclosure. Pursuant to 49 C.F.R. Part 20 (which is by this reference incorporated herein), the Consultant shall execute and return the Certification Regarding Lobbying by Consultant form set forth in Attachment H with the execution of this agreement.

28.8. Certification Regarding Debarment, Suspension And Other Responsibility Matters.

28.8.1. Pursuant to Executive Order 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 and federal regulations in 49 C.F.R. 29, entities and individuals who are debarred or suspended by the federal government are excluded from obtaining federal assistance funds under this Contract. To assure that such entities and individuals are not involved as participants on this FTA-financed contract, if the contract exceeds \$25,000 each Consultant shall complete and submit, as part of its Proposal, the certification form, contained in these documents. The inability of a Consultant to provide a certification will not necessarily result in denial of consideration for contract award. A Consultant that is unable to provide a certification must submit a complete explanation attached to the certification form. Failure to submit a certification or explanation may disqualify the Consultant from participation under this Contract. SFMTA, in conjunction with FTA, will consider the certification or explanation in determining contract award. No contract will be awarded to a potential third-party contractor submitting a conditioned debarment or suspension certification, unless approved by the FTA.

28.8.2. The certification is a material representation of fact upon which reliance is placed in determination of award of contract. If at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately provide written notice to SFMTA. If it is later determined that the Consultant knowingly rendered an erroneous certification, or failed to notify SFMTA immediately of circumstances which made the original certification no longer valid, SFMTA may disqualify the Consultant. If it is later determined that the Consultant knowingly rendered an erroneous certification, or failed to notify SFMTA immediately of circumstances which made the original certification no longer valid, SFMTA may terminate the contract, in addition to other remedies available including FTA suspension and/or debarment.

28.8.3. Further, the Consultant shall not knowingly enter into any subcontract with an entity or person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds. As such, the Consultant shall require all subconsultants seeking subcontracts to complete and submit the same certification form contained in these documents before entering into any agreement with said subconsultant.

28.9. Exclusionary Or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, the Consultant agrees that it will comply with the requirement of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

28.10. Conservation. The Consultant shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State Energy Action plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.).

28.11. Clean Water. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control

Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

28.12. Clean Air. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

28.13. Fly America. International air transportation of any persons involved in or property acquired for the Project must be provided by U.S. flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, in accordance with U.S. GAO regulations, "Uniform Standards and Procedures for Transportation Transactions," 4 C.F.R. Part 52, and U.S. GAO Guidelines for Implementation of the "Fly America Act" B-138942, 1981 U.S. Comp. Gen. LEXIS 2166. March 31, 1981.

28.14. Seismic Safety. The Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Consultant also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

28.15. National Intelligent Transportation Systems Consultanture and Standards. The Consultant agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Consultanture and Standards as required by Section 5206(e) of TEA-21, 23 U.S.C. § 502-, and with FTA Notice, "Federal Transit Administration National ITS Consultanture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other subsequent Federal directives that may be issued.

28.16. Electronic and Information Technology. When providing reports or other information to the SFMTA, or to the Federal Transit Administration (FTA), among others, on behalf of the SFMTA, the Consultant agrees to prepare such reports or information using electronic or information technology capable of assuring that the reports or information delivered will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

28.17. Nondiscrimination. In addition to the provisions prohibiting discrimination set out in Sections 10.4 and 24.1, above, the Consultant shall ensure compliance by it and its subconsultants with all requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d), federal Executive Order No. 11246, regulations of the U. S. Department of Labor issued thereunder, the regulations of the federal Department of Transportation issued thereunder, and the Americans with Disabilities Act, as they may be amended from time to time. Accordingly, during the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

28.17.1. The Consultant shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter "DOT"), Title 49, Code of Federal Regulations, Part 21 ("Nondiscrimination in Federally-Assisted Programs of the Dept. of Transportation"), as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

28.17.2. In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, creed, sex, sexual orientation, disability, age, or nationality.

28.17.3. The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SFMTA or FTA to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information is required of a contractor or subconsultant that is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to SFMTA, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

28.17.4. In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, SFMTA shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:

- (a) Requiring the Consultant to take remedial action to bring the Consultant into compliance;
- (b) Withholding of payments to the Consultant under the Agreement until the Consultant complies; and/or
- (c) Cancellation, termination, or suspension of the Agreement, in whole or in part.

28.17.5. The Consultant shall include the provisions of these Subsections 28.17.1 to 28.17.4 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as

SFMTA or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the Consultant may request SFMTA to enter into such litigation to protect the interests of SFMTA and, in addition, the Consultant may request the United States to enter into such litigation to protect the interest of the United States.

28.18. Title VI Compliance. During the performance of this Agreement, Consultant, for itself, its assignees, and its successors in interest agrees as follows:

28.18.1. Compliance with Regulations: Consultant shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

28.18.2. Nondiscrimination: Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

28.18.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.

28.18.4. Information and Reports: Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SFMTA or the FTA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to SFMTA, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

28.18.5. Sanctions for Noncompliance: In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, SFMTA shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

(a) Withholding of payments to Consultant under the Agreement until Consultant complies, and/or,

(b) Cancellation, termination or suspension of the Agreement, in whole or in part.

28.18.6. Incorporation of Provisions: Consultant shall include the provisions of Subsection 28.18.1 through 28.18.5 of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as SFMTA or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, Consultant may request SFMTA to enter into such litigation to protect the interests of SFMTA, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

28.19. Requirements of Americans with Disabilities Act. The Consultant is required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

28.19.1. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

28.19.2. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 27;

28.19.3. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

28.19.4. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

28.19.5. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

28.19.6. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

28.19.7. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. Part 64, Subpart F; and

28.19.8. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

28.19.9. Any implementing requirements that the FTA may issue.

28.20. Recycled Products. To the extent practicable and economically feasible, the Consultant agrees to provide a competitive preference for recycled products to be used in the Project pursuant to the U.S. Environmental Protection Agency Guidelines at 40 C.F.R. Parts 247, implementing Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962. If possible, the Consultant shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical at the fulfillment of this Agreement.

28.21. Privacy.

28.21.1. Should the Consultant, or any of its subconsultants, or their employees administer any system of records on behalf of the federal government, the Privacy Act of 1974, 5 USC § 552a, imposes restrictions on the party administering the system of records.

28.21.2. For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, SFMTA and any Consultants, third-party contractors, subcontractors, and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Agreement will make this Agreement subject to termination.

28.21.3. The Consultant agrees to include this clause in all subcontracts awarded under this Agreement that require the design, development, or operation of a system of records on individuals subject to the Act.

28.22. False or Fraudulent Statements and Claims.

28.22.1. The Consultant recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Accordingly, by signing this Agreement, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered Grant Agreement, Cooperative agreement, Contract or Project. In addition to other penalties that may be applicable, the Consultant acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Consultant, to the extent the Federal Government deems appropriate.

28.22.2. The Consultant also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Consultant the penalties of 18 U.S.C. § 1001, 31 USC §§ 3801, et seq., and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

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

28.23. Drug-Free Workplace Policy. Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, 41 U.S.C. 702, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns will be deemed a material breach of this Agreement.

28.24. Approval by Counterparts. This Agreement may be approved by counterparts signed by parties' respective authorized representatives which shall be considered a single document. Counter parts may be delivered by facsimile, PDF email, or courier.

29. INCLUDED APPENDICES.

The following documents included as appendices to this Agreement are incorporated by reference as if fully set out herein.

- A. Signed Scope of Services/Scope of Work
- B. Directory of Subconsultants
- C. Summary of Fees - Cost Breakdown/Schedule of Charges
- D. Other Direct Costs
- E. Organization Chart
- F. SBE Forms
- G. Small Business Enterprise (SBE) Program
- H. Overhead Rates for Field and Home Office Personnel
- I. San Francisco Art Commission Civic Design Review Committee Guidelines
- J. Chapter 82 Resource Efficiency Requirements for City-owned Facilities (Green Building Ordinance).
- K. CityBuild Implementation Policy
- L. Quality Management Manual
- M. Design Schedule
- N. Construction Contract Package Definitions

The remainder of this page is intentionally left blank.

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

CITY	CONSULTANT
<p>City and County of San Francisco Municipal Transportation Agency</p> <p>By _____ NATHANIEL P. FORD SR. Executive Director/CEO</p> <p>SFMTA Board of Directors Resolution No. _____ Adopted: _____ Attest: _____</p> <p>_____ Roberta Boomer, Secretary SFMTA Board of Directors</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By _____ Robert K. Stone Deputy City Attorney</p>	<p>By signing this Agreement, Consultants each certifies that it complies with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>Each Consultant has read and understands paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <p>_____ Ron Hartje Senior Vice President PB Americas, Inc., a division of Parsons Brinckerhoff, Inc. 303 Second Street, Suite 700 North San Francisco, CA 94107 Federal Employer ID No. 41-2045366</p> <p>_____ Mennor Chan, PE President Telamon Consulting Engineers, Inc. 855 Folsom Street, Unit 142, San Francisco, CA 94107 Federal Employer ID No. _____</p>

THIS PRINT COVERS CALENDAR ITEM NO. 10.4

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

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Requesting authorization for the Executive Director/CEO to execute Contract No. SFMTA 2008-09/43, Cable Car Kiosks Fabrication, with RJS & Associates, 1675 Saber Street, Hayward, California, in an amount not to exceed \$829,013.86, and for a term not to exceed one year.

SUMMARY:

- San Francisco Municipal Transportation Agency (SFMTA) Contract No. SFMTA 2008-09/43, Cable Car Kiosks Fabrication, is to construct two new cable car kiosks, to be located at cable car turnarounds at (1) Powell and Market and (2) Hyde and Beach Streets.
- The scope of work under Contract No. SFMTA 2008-09/43 consists of fabrication of two kiosks and delivery of them to the installation sites; City staff will prepare the site and install the completed kiosks.
- The SFMTA issued an Invitation For Bids on September 4, 2009. On September 30, 2009, the SFMTA received three bids.
- The lowest responsive and responsible bid was from RJS & Associates, in the amount of \$829,013.86. The work is to be substantially completed within one year from the Notice to Proceed.

ENCLOSURES:

1. SFMTAB Resolution
2. Cable Car Kiosk Fabrication Contract

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO

Contracting Section Attn: Corey Marshall

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

The purpose of this calendar item is for the SFMTA to acquire a custom-fabricated cable car kiosk to be located at (1) Powell and Market streets and (2) Hyde and Beach streets, which will serve as the primary points of sale for Muni's many cable car customers. The kiosk will provide enhanced security for SFMTA employees as well as convenience for Muni customers.

GOAL

Contract No. SFMTA 2008-09/43 would assist in the implementation of the following goals in the SFMTA Strategic Plan:

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

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

Objective 1.4 Improve accessibility across transit services.

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

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

Objective 5.2 Improve facilities in which people are working.

DESCRIPTION

The current cable car kiosks located at (1) Powell and Market and (2) Hyde and Beach Streets currently serve as the primary points of sale for more than one million SFMTA/Muni cable car customers annually. Unfortunately, the current kiosks are extremely antiquated and do not provide adequate security or acceptable working conditions given the volume of customer transactions and the prominent locations where they are sited.

Based on early project estimates, the Cable Car Kiosk Fabrication project was identified for \$350,000 in stimulus funding under the American Recovery and Reinvestment Act (ARRA). The new cable car kiosks were designed by Lundberg Associates, the firm who designed the new transit shelters, and approved by the San Francisco Arts Commission, with a number of design enhancements suggested by the Arts Commission. The design enhancements resulted in a significant cost increase for the fabrication of the kiosks. The new structures as designed will

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be more secure and ergonomically accessible, offer greater security for sales transactions and provide the City with a positive aesthetic addition to the historically relevant cable car turnarounds.

The SFMTA issued an Invitation For Bids (IFB) on September 4, 2009. On September 30, 2009, the SFMTA received three responsive and responsible bids from the following firms: RJS & Associates, Orantes Architectural Metals and Plant Construction Company. All bids substantially exceeded the original project estimate and allocated ARRA funding of \$350,000 for the fabrication and delivery of the two kiosk structures due to significant design changes that occurred following the consideration for ARRA funds, as noted above.

Bidder	Bid for Two Kiosks
RJS & Associates	\$ 829,013.86
Plant Construction	\$ 1,003,426.00
Orantes Architectural Metals	\$ 1,364,833.86

It is anticipated that the construction work for the Cable Car Kiosk Fabrication project will be substantially completed within one year from the date of the written Notice to Proceed.

Due to the limited opportunity for subcontracting based on the scope of work and the warranty provisions, the Contract Compliance Office has established no SBE goal for this contract.

The plans and design specifications are not included as enclosures to this Calendar Item. They are available for review at 1 South Van Ness Avenue, 3rd floor, SFMTA Equal Opportunity Office.

ALTERNATIVES CONSIDERED

Although SFMTA reserved the right in the IFB to purchase only one kiosk should funding for the additional kiosk be unavailable, the SFMTA has been able to locate funding to purchase both kiosks.

FUNDING IMPACT

Funding for the Cable Car Kiosks Fabrication has been secured from a combination of ARRA funds and State Transit Assistance (STA) funds.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

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

No other approvals are required for this item.

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RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to execute Contract No. SFMTA 2008-09/43, Cable Car Kiosk Fabrication, with RJS & Associates, to construct two cable car kiosks for an amount not to exceed \$829,013.86, and for a term not to exceed one year.

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

RESOLUTION NO. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) Contract No. SFMTA 2008-09/43, Cable Car Kiosk Fabrication, has been identified as an agency priority to improve ergonomic accessibility, provide state-of-the-art security, and to create a positive aesthetic addition to the City; and

WHEREAS, Project costs in the amount of \$350,000 have been identified and secured through the American Recovery and Reinvestment Act (ARRA), with additional funding from State Transit Assistance (STA) funds; and

WHEREAS, The proposed kiosks have been designed by Lundberg Designs and approved by the San Francisco Arts Commission for their visual appeal and value as an aesthetic contribution to the City's urban space; and

WHEREAS, The SFMTA issued an Invitation For Bids (IFB) on September 4, 2009, and received three responsive and responsible bids on September 30, 2009; and

WHEREAS, The SFMTA determined that the lowest responsive and responsible bidder is RJS & Associates, 1675 Saber Street, Hayward, California, with a bid of \$829,013.86; and

WHEREAS, The Contract Compliance Office has established no SBE participation goal for this contract; now, therefore, be it,

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute Contract No. SFMTA 2008-09/43, Cable Car Kiosk Fabrication, with RJS & Associates, to construct two cable car kiosks for an amount not to exceed \$829,013.86, and for a term not to exceed one year.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency



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

**Agreement between the City and County of San Francisco and
RJS & Associates
for Cable Car Kiosk Construction**

Contract No. SFMTA 2008/09-43

This Agreement is made this ____ day of October, 2009, in the City and County of San Francisco, State of California, by and between: RJS & Associates, a California corporation, 1675 Saber Street, Hayward, California ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

- A. The SFMTA wishes to engage the services of a firm to fabricate two new Cable Car Kiosks ("Kiosks") as identified in the Scope of Work.
- B. An Invitation For Bids ("IFB") was issued on September 4, **2009**, and Contractor submitted the lowest responsive and responsible bid in response to the IFB.
- C. Contractor represents and warrants that it is qualified to perform the services required by City as described in 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 one year from the Effective Date of the Agreement.
3. **Effective Date of Agreement.** This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.
4. **Services Contractor Agrees to Perform.** The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.
5. **Compensation.** In no event shall the amount of this Agreement exceed Eight Hundred Twenty-Nine Thousand, Thirteen Dollars and Eighty-Six Cents (\$829,013.86). 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. Payment for each Kiosk (including delivery and inspection charges) shall be made upon completion and acceptance of the Kiosk by the SFMTA. 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 SFTMA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

6. **Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.
7. **Payment; Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."
8. **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a)



knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Disallowance. If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

10. Taxes. 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. 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.

15.1 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.

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

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

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

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

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



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

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

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

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

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

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

B. Bonds

1. Within 20 days following the receipt of a notice of recommended award of contract and until completion of all Contract obligations and acceptance by City of the final coach, the Contractor shall furnish to City a performance bond in the amount not less than one hundred percent (100%) of the total Contract amount as modified by all Contract Modifications, to guarantee Contractor 's faithful performance of all obligations of the Contract, including warranty obligations in existence until the last cable car Kiosk is accepted, and to guarantee Contractor 's payment to all suppliers of labor and materials under this Contract, excluding the period covered by the warranty bond described in Subsection (b) below.

2. Bonding entities on the performance bond must be legally authorized to engage in the business of furnishing performance bonds in the State of California. All bonding entities or letter of credit must be satisfactory to SFMTA and to the Controller and Risk Manager of the City and County of San Francisco.

3. During the period covered by the Agreement, if any of the sureties upon the bond shall become insolvent or, in the opinion of SFMTA, 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 SFMTA to Contractor, shall by supplemental bond or otherwise, substitute



another and sufficient surety approved by SFMTA in place of the surety becoming insolvent or unable to pay. If Contractor fails within such thirty (30) day period to substitute another and sufficient surety, Contractor, if SFMTA so elects, shall be deemed to be in default in the performance of its obligations hereunder and upon the said bond. The City, in addition to any and all other remedies, may terminate the Agreement or bring any proper suit or proceeding against moneys then due or which thereafter may become due Contractor under the Agreement. The amount for which the surety shall have justified on the bond and the moneys so deducted shall be held by City as collateral for the performance of the conditions of the bond.

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 the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of **\$500** per day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by Purchasing.

20. Default; Remedies. 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:

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|---|---------------------------------------|
| 8. Submitting false claims | 37. Drug-free workplace policy, |
| 10. Taxes | 53. Compliance with laws |
| 15. Insurance | 55. Supervision of minors |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment | 58. Graffiti removal |

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

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

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

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

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

Subject to the immediately preceding sentence, 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, or by e-mail, and shall be addressed as follows:

To City: Diana Hammons
Revenue Manager
Division of Finance and Information Technology
San Francisco Municipal Transportation Agency
One South Van Ness Avenue
San Francisco, CA 94103
Ph: (415) 701-4610
fax: (415) 701-4502
email: diana.hammons@sfmta.com

To Contractor: RJS & Associates
Attn: Kim Zabel
1675 Sabre Street
Hayward, CA 94545
Ph: (510) 670-9111
fax: (510) 670-1181
kim@rjsstructures.com

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. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.



33. Left Blank by Agreement of the Parties

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

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

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

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

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



provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

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

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

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

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

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

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



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

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

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

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. 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 the SFMTA when it enters into such a Subcontract and shall certify to the SFMTA that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.



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

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

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

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

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

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

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

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

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

45. First Source Hiring Program

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



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

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

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

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

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these



requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

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

(6) Set the term of the requirements.

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

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

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

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

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

e. Liquidated Damages. Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice



of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

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

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

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

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

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

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

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

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

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



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

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

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. Left blank by agreement of the parties. (Slavery era disclosure)

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



62. Acceptance and Testing of Constructed Cable Car Kiosks

A. DEFINITIONS

"Acceptance," as used in Sections 62 and 63 means the act of an authorized representative of the SFMTA to approve specific services rendered, as partial or complete performance of the Contract.

"Correction," as used in Sections 62 and 63, means the elimination of a Defect.

"Defect," as used in Sections 62 and 63, means any condition or characteristic in the Kiosks furnished by Contractor under the Contract that is not in compliance with the requirements of the Contract.

B. TEST AND INSPECTION PLAN AND REPORTS

1. The Contractor shall provide a Test and Inspection Plan to test and verify compliance with the Design and Product Specifications contained in Appendices D and E. The Plan shall be provided to SFMTA no later than 30 days prior to the scheduled inspection for review and approval, and include procedures to verify that each of the Kiosks meet the Specifications. The Plan shall include sections for testing at the Contractor's facility and at the designated SFMTA delivery location.
2. The Contractor shall provide reports documenting the results of each testing procedure, including providing a summary of results, analysis, and corrective actions. Reports shall include photos, charts, and additional test data as needed. The Contractor shall sign and date each test report upon completion.

C. Items to be Tested.

At a minimum, the following general items shall be tested before each Kiosk is shipped from the Contractor's facility:

- *Wiring continuity tests
- *Structural water-tightness test
- *Functional operation of electrical systems
- *Inspection of welds

The tests shall be used to establish the integrity of each fabricated Kiosk and its components.

D. PRE-DELIVERY TESTING

The Contractor shall be responsible for managing and conducting pre-delivery tests at its facility, and shall provide round-trip travel expenses for two SFMTA staff to participate in testing and verification (if travel over 100 miles is necessary). The SFMTA reserves the right to be present for all testing activities. The Contractor shall notify the SFMTA Project Manager 10 business days in advance of testing activities. The testing shall be conducted per the Test and Inspection Plan described above. Tests shall be performed by personnel with appropriate technical experience.

Kiosks that do not pass the tests are subject to non-Acceptance. The Contractor is obligated to correct any discrepancies and re-run the tests until they are successfully completed before delivery to SFMTA.



E. **POST-DELIVERY TESTING**

Each Kiosk shall undergo testing and inspection per the Test and Inspection Plan upon arrival at the respective SFMTA installation site.

F. **Repairs Prior To Acceptance**

If a constructed Kiosk fails an Acceptance test or if a Defect related to the Contractor's work is discovered prior to the SFMTA's acceptance of the Kiosk, the Contractor shall perform the repairs necessary to correct the Defect. In that event, the Contractor's representative must begin the repair within five working days after receiving notification from the Project Manager.

The Contractor shall provide, at its own expense, all spare parts, tools, and labor required to complete the repairs. At the Project Manager's option, the Contractor may be required to remove, at its own expense, the Kiosk from SFMTA property while repairs are being affected. The Contractor shall then provide a space to complete the repairs, and shall diligently pursue the repairs.

For any needed repairs or modifications discovered by the Contractor, the Project Manager shall be informed in advance of the repairs or modifications being made to the Kiosk during the Acceptance period.

63. Warranties

A. **TITLE**

The Contractor covenants and warrants that the SFMTA will exclusive title to the Kiosks furnished under the Contract shall vest in the SFMTA immediately upon Acceptance by the SFMTA of such Kiosks.

B. **Warranty Provisions**

1. Contractor Warranty. Warranties in this document are in addition to any statutory remedies or warranties imposed on the Contractor. Warranties include 100 percent of parts and labor costs. "Related Defects" are damage inflicted on any component or subsystem as a direct result of a Defect. Consistent with these requirements and definitions, the Contractor warrants and guarantees to the SFMTA each complete Kiosk, including subsystems and components, are warranted to be free from Defects and Related Defects for five (5) years, beginning on the date of acceptance.

2. Extension of Warranty. If, during the warranty period, repairs or modifications on any on any Kiosk, made necessary by defective design, materials or workmanship, are not completed due to lack of material or inability to provide the proper repair for 30 calendar days, the applicable warranty period shall be extended by the number of days equal to the delay period.

3. Voiding Of WarrantyError! Bookmark not defined.. The warranties shall not apply to the failure of any part or component of the Kiosk that directly results from misuse, negligence, accident, or repairs not conducted in accordance with the Contractor-provided maintenance manuals and with workmanship performed by adequately trained personnel in accordance with recognized standards of the industry. The warranty shall also be void if the SFMTA fails to conduct normal inspections and scheduled preventive maintenance procedures as recommended in the Contractor's maintenance manuals and that omission solely caused the part or component failure.

4. Exceptions And Additions To Warranty. The warranties shall not apply to scheduled maintenance items, normal wear-out items, and items furnished by the SFMTA,



except insofar as such equipment may be damaged by the failure of a part or component for which the Contractor is responsible.

5. Detection Of Defects. If the SFMTA detects a Defect within the warranty period, it shall within 20 working days, notify the Contractor's representative. Within five working days after receipt of notification, the Contractor's representative shall either agree that the Defect is in fact covered by warranty, or reserve judgment until the subsystem or component is inspected by the Contractor's representative or is removed and examined at the SFMTA's property. At that time, the status of warranty coverage on the subsystem or component shall be mutually resolved between the SFMTA and the Contractor. Work shall commence to correct the Defect within 10 working days after receipt of notification and shall be conducted in accordance with "Repairs by Contractor" (Section 63.C.2).

6. Scope Of Warranty Repairs. When warranty repairs are required, the SFMTA and the Contractor's representative shall agree within five working days after notification on the most appropriate course for the repairs and the exact scope of the repairs to be performed under the warranty. If no agreement is obtained within the five-day period, the SFMTA reserves the right to commence the repairs in accordance with "Repairs by SFMTA" (Section 63.C.3).

C. Repair Procedures

1. Repair Performance. The Contractor is responsible for all warranty-covered repair work. To the extent practicable, the SFMTA will allow the Contractor or its designated representative to perform such work. At its discretion, the SFMTA may perform such work if it determines it needs to do so based on operational or other requirements. Such work shall be reimbursed by the Contractor.

2. Repairs By Contractor

a. Unless the time is extended by the SFMTA, the Contractor or its designated representative shall begin work on warranty-covered repairs within five calendar days after receiving notification of a Defect from the SFMTA. The SFMTA shall make the Kiosk available to complete repairs timely with the Contractor's repair schedule.

b. The Contractor shall provide at its own expense all spare parts, tools, and other materials required to complete repairs.

3. Repairs By SFMTA

a. **Parts Used.** If the SFMTA performs the warranty-covered repairs, it shall correct or repair the Defect and any Related Defects utilizing parts supplied by the Contractor specifically for this repair. At its discretion, the SFMTA may use Contractor-specified parts available from its own stock if deemed in its best interest. Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this warranty shall be submitted by the SFMTA to the Contractor for reimbursement or replacement of parts. The Contractor shall provide forms for these reports.

b. **Contractor Supplied Parts.** The SFMTA may require that the Contractor supply new parts for warranty-covered repairs being performed by the SFMTA. These parts shall be shipped prepaid to the SFMTA from any source selected by the Contractor within 10 working days of receipt of the request for said parts. Parts supplied by the Contractor shall be Original Equipment Supplier (OEM) equivalent or superior to that used in the original fabrication of the Kiosk.

c. **Return of Defective Components.** The Contractor may request that parts covered by the warranty be returned to the manufacturing plant. The total cost for this action shall be paid by the Contractor. Materials should be returned in accordance with Contractor's instructions.



d. Failure Analysis. The Contractor shall, upon specific request of the SFMTA, provide a failure analysis of fleet defect-or safety-related parts, or major components, removed from the Kiosks under the terms of the warranty. Such reports shall be delivered within 60 days of the receipt of failed parts.

e. Reimbursement For Labor. Contractor shall reimburse the SFMTA for labor performed by SFMTA employees. The amount shall be determined by multiplying the number of person-hours actually required to correct the Defect by the current top mechanic's hourly overtime wage rate. The wage rate, and therefore, the warranty labor rate, is subject to adjustment each year. Through June 30, 2009, the warranty labor rate shall be based on the stationary engineer's wage rate of \$50.63/hour, which includes labor, fringe benefits, and overhead. These wage and fringe benefit rates shall not exceed the rates in effect in the SFMTA's operations division at the time the Defect correction is made. Alternatively, Contractor shall reimburse the SFMTA its actual internal and contractual costs for procuring a third-party contractor to perform repair work.

f. Reimbursement For Parts. Contractor shall reimburse the SFMTA for defective parts and for parts that must be replaced to correct the Defect. The reimbursement shall be at the current price at the time of repair and shall include taxes where applicable and 15 percent handling costs.

g. Reimbursement Requirements. The Contractor shall reimburse the SFMTA for warranty labor and/or parts within 60 days of receipt of the warranty claim.

4. Warranty After Replacement/Repairs. If any component, unit, or subsystem is repaired, rebuilt or replaced by the Contractor, or by the SFMTA with the concurrence of the Contractor, the component, unit, or subsystem shall be assigned a new warranty period equal to the original manufacturer's warranty, effective the replacement date.

64. FTA Requirements

The provisions contained in "FTA Requirements for Procurement Contracts," attached as Appendix C, are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

65. PREVAILING WAGES

Under Section A7.204 of the Charter of the City and County of San Francisco, contractors fabricating, manufacturing or assembling materials in any shop, plant, manufacturing establishment or other place of employment, when the said materials are of unique or special design, or are made according to plans and specifications for the particular work or improvement, shall be required to comply with the Labor Code of the State of California and all applicable federal laws with respect to hours of work and payment for work in excess of eight hours per day; and such work shall be paid for at not less than the highest general prevailing wages in private employment for similar work.

It is understood and agreed that all provisions of section 1770 et seq. of the California Labor Code are required to be incorporated into this Contract.

It is understood and agreed that the Contractor's working conditions shall be governed by the requirements of Appendix A, Section A7.204 of the Charter as provisions of this Contract.

The following provisions are also requirements of this Contract:



- A. The Contractor shall pay to all persons performing labor in and about the work provided for in this Contract not less than the highest general prevailing rate of wages determined as set forth hereinafter for the respective crafts and employment, including such wages for holiday and overtime work.
- B. The Contractor shall insert in every subcontract or other arrangement which it may make for the performance of any work or labor on the work provided for in this Contract, a provision that said subcontractor shall pay to all persons performing labor or rendering service under said subcontract or other arrangement, the highest general prevailing rate of wages as set forth hereinafter for the respective crafts and employment, including such wages for holiday and overtime work.
- C. The Contractor shall keep or cause to be kept an accurate record showing the name, place of residence, citizenship, occupation, and per diem pay, of each person engaged in the execution of this Contract, and every subcontractor who shall undertake the performance of any part of Work herein required shall keep a like record of each person engaged in the execution of the subcontract. All of said records shall at all times be open to the inspection or examination by duly authorized officers and agents of the City and County of San Francisco.
- D. Should Contractor, or any subcontractor who shall undertake the performance of any part of the work herein required, fail or neglect to pay to the persons who shall perform labor under this Contract, subcontract or other arrangement for the work, the highest general prevailing rate of wages as herein specified, shall forfeit; and, in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, to the City and County of San Francisco the sum of \$50 per day for each laborer, workman or mechanic employed for each calendar day or portion thereof, while they shall be so employed and not paid said highest general prevailing rate of wages, and in addition shall be subject to the penalties set forth in Article V of this Chapter, including debarment. The Agency, when certifying any payment which may become due under the terms of the Contract, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture or forfeitures as so certified.
- E. No person performing labor or rendering service in the performance of the Contract or a subcontract for the work herein required shall perform labor for a longer period than 8 hours each day and 40 hours each calendar week, except that labor in excess of eight hours per day may be permitted when conditions so warrant upon approval by the Agency Engineer, provided that compensation for all hours worked in excess of forty hours per week or eight hours worked per day conforms to the requirements of the California Labor Code (e.g., section 1815) and all applicable federal laws. Any Contractor or subcontractor who violates this provision shall be liable for the same penalties and forfeits as those specified in



subdivision 4 of this Section for each laborer, mechanic, or artisan employed for each calendar day or portion thereof while said person is compelled or permitted to work more than the specified number of hours per day or per week.

- F. The Contractor will cooperate fully with the Labor Standards Enforcement Officer and other city employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements and other labor standards imposed on public works contractors by the Charter;
- G. The Contractor agrees that the Labor Standards Enforcement Officer and his or her designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks;
- H. The Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site;
- I. The Contractor shall prominently post at each job site a sign informing employees that the project is subject to the City's prevailing wage requirements and that these requirements are enforced by the Labor Standards Enforcement Officer;
- J. That the Labor Standards Enforcement Officer may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the prevailing wage and other labor standards imposed by the Charter and this Chapter on public works contractors.



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

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <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:</p> <hr/> <p>Robin M. Reitzes Deputy City Attorney</p> <p>AUTHORIZED BY:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____</p> <p>Roberta Boomer, Secretary to the SFMTA Board of Directors</p>	<p>CONTRACTOR</p> <p>RJS & Associates</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> <hr/> <p>Kim Zabel Corporate Secretary 1675 Sabre Street Hayward, CA 94545</p> <p>City vendor number: [vendor number]</p>
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Appendices

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



- C: FTA Requirements for Federally Funded Personal Services and Procurement Contract
- D: Design Documents
- E: Product Specifications



Appendix A Services to be provided by Contractor

1. Description of Services

Contractor agrees to perform the following services:

Work To Be Performed

The contractor shall fabricate two (2) Cable Car Kiosks,. The detailed design, materials, specifications, and technical requirements for the construction of these Kiosks are described in the Design Documents and Product Specifications, found in Appendices D and E, incorporated by reference into this Agreement as though fully set forth.

Contractor will be required to begin work with the City and the design team upon Notice to Proceed to resolve any questions or clarifications in the Design Documents and Product Specifications. Contractor will be required to acquire all materials, fabricate two (2) new Cable Car Kiosks as directed, , fully test and inspect each Kiosk in coordination with designated City staff prior to and following delivery to the site to verify conformance with all specifications and technical requirements, and deliver the fully fabricated Kiosks to the designated sites at the cable car turnarounds at (1) Powell and Market and (2) Hyde and Beach Streets .

Contractor's Responsibility

- a. Labor and Materials. The Contractor shall supply all labor, inspections, engineering, tools, materials, parts, facilities, and equipment required to fabricate these Kiosks.
- b. Location of Work. The work shall be performed at the Contractor's facility, except for the post-delivery acceptance testing. Subcontractors may perform specialty work, but Contractor shall strictly monitor the quality of work.
- c. Transport of completed Kiosks. Contractor shall be responsible for transporting the Kiosks from the Contractor's facility to the respective installation site, including any transportation to subcontractors. No Contractor work shall be performed on SFMTA-owned or SFMTA-leased property, other than receipt, delivery, testing, and warranty repairs (as permitted by SFMTA). In conjunction with SFMTA, the Contractor shall perform a pre-shipment inspection and inventory to determine the condition of the Kiosks prior to shipment. Following this inspection and prior to the post-delivery inspection, the Contractor shall be responsible for any damage or parts shortage that is not listed on his pre-shipment inspection and inventory report. SFMTA will review and approve the pre-shipment inspection and inventory report before shipment of the Kiosks to the respective installation site.

Contractor's proposal, dated September 30, 2009 is incorporated by reference as though fully set forth. In the event of any conflict, the documents making up the Agreement between the parties shall govern in the following order of precedence: 1) this Agreement and its appendices, 2) the



Invitation For Bids dated September 4, 2009, 3) Contractor's Proposal, dated September 30, 2009.

2. Reports

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

3. SFMTA Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the SFMTA will be Diana Hammons.

**Appendix B
Calculation of Charges**

Item	Description	Quantity	Price Each	Price Total
1.	Complete fabrication of Kiosks including Site Support and Warranty (all sales taxes included)	N/A	N/A	N/A
1A.	Cable Car Kiosk (Powell and Market)	1	\$ 405,981.93	\$ 405,981.93
1B.	Cable Car Kiosk (Hyde and Beach)	1	\$ 405,981.93	\$ 405,981.93
2.	Shipment/delivery of Kiosks	2	\$ 6,000.00	\$ 12,000.00
3.	SFMTA site inspection (if applicable)	2	N/A	\$ 50.00
4.	Contractor post-shipment inspection	2	N/A	\$ 5,000.00
TOTAL CONTRACT PRICE (All Applicable Tax should be included)				\$ 829,013.86

APPENDIX C

FTA REQUIREMENTS FOR FEDERALLY FUNDED PERSONAL SERVICES AND PROCUREMENT CONTRACTS

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

II. FEDERAL CHANGES

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

III. ACCESS TO RECORDS

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

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

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

IV. DEBARMENT AND SUSPENSION

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

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

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

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

VI. CIVIL RIGHTS

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

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

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

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

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

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

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

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

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

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

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

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

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

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

3. FTA Intention. When FTA awards Federal assistance for 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.

4. Hold Harmless. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for

any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

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

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

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

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

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

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

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

B. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible 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

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

X. ENERGY CONSERVATION REQUIREMENTS

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

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

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

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

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

B. 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.

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

XIII. PRIVACY

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

XIV. DRUG AND ALCOHOL TESTING

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

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

XVII. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$100,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

XVIII. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

XIX. RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

XX. BUS TESTING (*applies to contracts for rolling stock*)

To the extent applicable, the Contractor (or Manufacturer) agrees to comply with the requirements of 49 U.S.C. § 5323(c) and FTA implementing regulations at 49 CFR Part 665, and shall perform the following:

A. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the Recipient at a point in the procurement process specified by the Recipient which will be prior to the Recipient's final acceptance of the first vehicle.

B. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

C. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the Recipient prior to Recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

D. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

XXI. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS (*applies to contracts for rolling stock*)

To the extent applicable, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(l) and FTA implementing regulations at 49 CFR Part 663, and to submit the following certifications:

A. Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.

B. Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.

C. Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XXII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made,

pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

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

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

XXIII. 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.

XXIV. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

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

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

1. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined

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

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

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

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

XXVI. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) REQUIREMENTS

A. Registration Requirements. The Contractor shall maintain a current registration in the federal Central Contractor Registration database, located at www.ccr.gov and provide the City with its CCR registration number and legal name as entered into CCR. A valid DUNS number and Tax Identification Number (TIN) are required in order to register.

B. Reporting Requirements. The Contractor shall be required to provide information to the SFMTA on the employment impact of all work being performed with ARRA funds so that SFMTA can report such information as required to agencies of the Federal Government. SFMTA will provide forms to Contractor for this purpose, as well as more detailed information and examples. At a minimum, Contractor shall track and/or report information regarding the following:

1. Number of direct jobs working on the project (including all created, retained, or existing jobs). An example of a direct job is a worker employed to construct a facility or to maintain or repair equipment on-site whose time is charged directly to the project.

2. Number of direct, on-project job hours that were worked. (expressed as "full-time equivalents" or FTEs) - calculated as total hours worked in jobs created, retained or existing divided by the number of hours in a full-time schedule, as defined by the contractor.
3. The amount of payroll for the jobs. (Total dollar amount of wages paid by the contractor or consultant for employees on the specified project. Payroll only includes wages and does not include overhead or indirect costs.)
4. The classification (or broad job category) of each job on the project.
5. A description of what was obtained for payment.

C. Records. Contractor agrees to maintain separate and distinct accounts, records, and documents that adequately identify the source and application of ARRA funds and must track accounting and reporting transactions accordingly.

XXVII. WHISTLEBLOWER PROVISIONS (*ARRA-funded contracts*)

Contractor cannot discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, made to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency or their representative, information that the employee reasonably believes is evidence of :

- gross mismanagement of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Contractor agrees to post notice of the rights and remedies as required by ARRA.

THIS PRINT COVERS CALENDAR ITEM NO. : 10.5

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Safety, Security and Enforcement

BRIEF DESCRIPTION:

Authorizing the SFMTA, through its Executive Director/CEO (or his designee), to execute Contract No. SFMTA 2008/09-18, Closed Circuit TV System Technical Installation Project, with Alta Consulting Services, Inc., to provide technical assistance and develop a master plan for a closed circuit television camera system in the subway, and provide project oversight during the installation of cameras and related security equipment; in an amount not to exceed \$230,030, for a term of three years, with two one-year options to extend the term at the sole discretion of the SFMTA.

SUMMARY:

- The SFMTA requests authority to enter into a contract with Alta Consulting Services, Inc. in the amount of \$230,030 to provide technical assistance and project oversight services to the SFMTA Safety, Security and Enforcement Division for developing a CCTV master plan and for project oversight of the installation of security equipment.
- On February 10, 2009, the SFMTA Safety, Security and Enforcement Division issued a Request for Proposals from qualified consultants to review the security needs of SFMTA.
- Five proposals were received; the top three proposals were reviewed by a panel of SFMTA managers. Alta Consulting Services was selected as the highest-ranked proposer.
- This project is funded with Transit Security Grant Program (TSGP) funds from the Transit Security Administration (TSA).

ENCLOSURES:

1. SFMTAB Resolution
2. Agreement with Alta Consulting Services, Inc.

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION BE RETURNED TO Dana Lang

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

The purpose of this project is to engage a consultant to provide technical assistance, develop a master plan for a CCTV camera system in the subway, and provide project oversight during the installation of cameras and related security equipment.

GOAL

The SFMTA will further the following goals of the Strategic Plan:

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

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

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

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

Objective 5.3 – Improve internal communication and employee satisfaction

Goal 6 – Information Technology: To improve service and efficiency, the SFMTA must leverage technology

Objective 6.1 – Information and Technology Leadership: Identify, develop and deliver the enhanced systems and technologies required to support SFMTA’s 2012 goals

DESCRIPTION

The federal Department of Homeland Security’s Transit Security Administration has created the Transit Security Grant Program (TSGP). The purpose of TSGP funding is to create a sustainable effort in the protection of regional transit systems’ critical infrastructure from terrorism, with emphasis on deterring potential terrorist activities such as explosives and non-conventional threats that would cause major loss of life and severe disruption of transit systems. SFMTA has consistently applied for and received TSGP funding since FY 2003.

On October 21, 2008, SFMTA received a letter awarding FY 2006 TSGP funds. A major portion of these funds will go towards the planning and installation of CCTV cameras and equipment in the subway. TSGP funds cannot be used for in-house staff costs, including in-house planning and project oversight. SFMTA therefore must rely on outside consultants to review the security needs, evaluate technologies, recommend the design specifications and installation requirements, and assist with project oversight for the installation contractor.

In early 2009, the Safety, Security and Enforcement Division worked with the Contracts and Procurement Division to issue a Request for Proposals (RFP), inviting firms with expertise in the design and installation of CCTV systems to submit proposals to provide this technical assistance. The RFP proposed that the contract have an original term of three years, and that the SFMTA have two options to extend the term for a period of one year each, which SFMTA may exercise in its sole and absolute discretion.

The SFMTA received five proposals; after an evaluation of the proposals, the SFMTA shortlisted the top three proposals, which were reviewed by a panel of SFMTA managers. Alta Consulting Services was selected as the highest-ranked proposer. Alta's cost proposal was \$230,030 for the proposed scope of work, which was within the amount budgeted for this scope.

The SFMTA has successfully negotiated the contract terms with the consultant. This resolution seeks authorization for the CEO/Executive Director to execute a contract with Alta Consulting in an amount not to exceed \$230,030 for the provision of the following technical assistance and project oversight services:

- a. Provide a detailed CCTV Master Plan, including complete and detailed specifications for CCTV installation.
- b. Provide a detailed and comprehensive list of equipment needed to install the cameras.
- c. Provide engineering and CAD drawings to be used during the installation.
- d. Assist Safety, Security and Enforcement staff to develop the desired capabilities and experience of prospective contractors who would be able to install the CCTV system.
- e. Identify the materials required for a contractor to install the cameras to specifications.
- f. Write the scope of work, specifications, and other requirements to solicit bids for the installation of the cameras.
- g. Participate in planning meetings to review technical information, timelines and to evaluate issues that might impact the smooth management of the installation project.
- h. Tour the SFMTA facilities that are targeted for the project.
- i. Oversee the installation of the cameras as the Project Manager.
- j. Provide other advice to Safety, Security and Enforcement staff as necessary.

This contract is funded by the federal Department of Homeland Security, therefore no Local, Small, or Disadvantaged Business Enterprise (L/S/DBE) goals were set.

ALTERNATIVES CONSIDERED

Not pursuing this project would limit the agency's ability to create a sustainable effort to improve safety and security across all modes of transportation. The Department of Homeland Security's Transit Security Administration (TSA) has identified SFMTA and BART as the two most critical transit systems in Northern California, and considers protection of underwater and underground (subway) resources to be its highest priority. By participating in this project the SFMTA will enhance its ability to receive additional resources as the Transit Security Grant Program continues to expand.

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FUNDING IMPACT

This contract will be fully paid for with funds from the Transit Security Administration's FY 2006 Transit Security Grant Program. There are no required matching funds.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

Civil Service Commission approved this contract on March 2, 2009.

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

RECOMMENDATION

Staff recommends that the SFMTA Board approve this resolution authorizing the Executive Director/CEO (or his designee), to execute Contract No. SFMTA 2008/09-18, Closed Circuit TV System Technical Installation Project, with Alta Consulting Services, Inc., to provide technical assistance and develop a master plan for a closed circuit television camera system in the subway, and provide project oversight during the installation of cameras and related security equipment, in an amount not to exceed \$230,030, for a term of three years, with two one-year options to extend the term at the sole discretion of the SFMTA.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The federal Department of Homeland Security has created the Transit Security Grant Program (TSGP) to create a sustainable effort in the protection of regional transit systems' critical infrastructure from terrorism; and,

WHEREAS, On October 21, 2008, SFMTA received a letter awarding FY 2006 TSGP grant funds, a large portion of which are intended for the planning and installation of Closed Circuit Television (CCTV) cameras and equipment in the subway; and

WHEREAS, Given that TSGP funds cannot be used for in-house staff costs, SFMTA therefore must rely on outside consultants to review the security needs, evaluate technologies, recommend the design specifications and installation requirements, and assist with project oversight for the installation contractor; and

WHEREAS, The SFMTA issued a Request for Proposals on February 10, 2009, inviting firms with expertise in the design and installation of CCTV systems to submit proposals to provide this technical assistance; and

WHEREAS, Five proposals were received and the top three proposals were reviewed by a panel of SFMTA senior executives; and

WHEREAS, The evaluation panel selected Alta Consulting Services, Inc., 2107 N. 1st Street, Suite 470, San Jose, CA 95131, as the highest-ranked proposer; and

WHEREAS, The SFMTA has successfully negotiated contract terms and conditions with Alta Consulting Services; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA, through its Executive Director/CEO (or his designee), to execute Contract No. SFMTA 2008/09-18, Closed Circuit TV System Technical Installation Project, with Alta Consulting Services, Inc., to provide technical assistance and develop a master plan for a closed circuit television camera system in the subway, and provide project oversight during the installation of cameras and related security equipment; in an amount not to exceed \$230,030, and for a term of three years, with two one-year options to extend the term at the sole discretion of the SFMTA.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

**Agreement between the City and County of San Francisco and
ALTA Consulting Services, Inc. for**

Closed Circuit TV System Technical Installation Project

Contract No. SFMTA 2008/09-18

This Agreement is made this 21st day of September, 2009, in the City and County of San Francisco, State of California, by and between: ALTA Consulting Services, Inc., 2107 N. 1st Street, Suite 470, San Jose, CA 95131 ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

- A. The SFMTA wishes to contract with a project management and consulting firm who will provide technical design assistance, procurement services and project management for the Closed Circuit TV (CCTV) System Installation Project.
- B. A Request for Proposal ("RFP") was issued on February 10, 2009, and City selected Contractor as the highest-ranked proposer.
- C. Contractor represents and warrants that it is qualified to perform the services required by City as described in this contract.
- D. Approval for this Agreement was obtained when the Civil Service Commission approved contract number 4098-08/09 on March 2, 2009.

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 three (3) years from the Effective Date of the Agreement as indicated below. In addition, there shall be two (2) options to extend the term for a period of one (1) year each, which the SFMTA may exercise in its sole and absolute discretion.

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

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

5. Compensation. Compensation shall be made in accordance with the Calculation of Charges in Appendix B, attached hereto and fully incorporated by reference, for work performed as set forth in Appendix A of this Agreement. Progress payments will be made at the completion of Phase I, Phase II and Phase III and only after the tasks and deliverables have been completed to the satisfaction of the Executive Director/CEO of the SFMTA, or his designee. Payment for work performed in Phase IV shall be made monthly within thirty (30) days after receipt of a proper and timely invoice for work performed during the prior month. Phase IV work shall be billed on an hourly basis, at the rates listed in Appendix B. In no event shall the amount of this Agreement exceed Two Hundred Thirty Thousand, Thirty Dollars (\$230,030).

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 SFTMA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

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

7. Payment; Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or ACSI 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 ACSI 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 ACSI will be deemed to have submitted a false claim to the City if the contractor, subcontractor or ACSI: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. **Disallowance.** If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

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

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

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

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the

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

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

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

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

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

14. Independent Contractor; Payment of Taxes and Other Expenses

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

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance.

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

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

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

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

(4) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

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

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

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

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors. *(This requirement has been waived. See Appendix E)*

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

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

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

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

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

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

j. Any of the terms of conditions of this Section 15 may be waived by the City's Risk Manager in writing, signed by the Risk Manager, and attached to this Agreement as Appendix C. Such waiver is fully incorporated herein. The waiver shall waive only the requirements that are expressly identified and waived, and under such terms and conditions as stated in the waiver.

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, ACSIs 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. Left Blank by Agreement of the Parties (Liquidated Damages)

20. Default; Remedies. 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:

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| 8. Submitting false claims | 24. Proprietary or confidential information of City |
| 10. Taxes | 30. Assignment |
| 15. Insurance | |

- | | |
|---------------------------------|---------------------------------------|
| 37. Drug-free workplace policy, | 57. Protection of private information |
| 53. Compliance with laws | 58. Graffiti removal |
| 55. Supervision of minors | |

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

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

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

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

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

Subject to the immediately preceding sentence, 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 SSI 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, confidential or sensitive security information which may be owned or controlled by City and that such information may contain proprietary, confidential or sensitive security 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, confidential, or sensitive security data. Contractor and any of its employees performing services under this Agreement shall sign the Confidentiality Agreement attached as Appendix D.

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, or by e-mail, and shall be addressed as follows:

To City: Ted Unaegbu
Manager, Security Administration
Security, Enforcement & Safety Division
San Francisco Municipal Transportation Agency
875 Stevenson Street, 2nd floor, Room 204
San Francisco, CA 94103-0901
Fax: (415) 554-7117
e-mail: ted.unaegbu@sfmta.com

To Contractor: John V. Deal
President and CEO
ALTA Consulting Services, Inc.
2107 N. 1st Street, Suite 470
San Jose, CA 95131
e-mail: jvdeal@altaconsulting.com

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. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to

cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Left Blank by Agreement of the Parties (Local Business Enterprise Utilization; Liquidated Damages)

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

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

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

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

e. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated

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

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

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

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

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

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

40. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors’ bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract

or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

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

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

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. 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 the SFMTA for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under

this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and the SFMTA to exceed \$25,000 in the fiscal year.

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. 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 the SFMTA when it enters into such a Subcontract and shall certify to the SFMTA 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 may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

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

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

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

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

(6) Set the term of the requirements.

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

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

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

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

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

e. Liquidated Damages. Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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. (Supervision of Minors)

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. Left blank by agreement of the parties. (Slavery Era Disclosure)

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

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

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <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:</p> <hr/> <p>Robin M. Reitzes Deputy City Attorney</p> <p>AUTHORIZED BY:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary to the SFMTA Board of Directors</p>	<p>CONTRACTOR</p> <p>ALTA Consulting Services, Inc.</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> <hr/> <p>John V. Deal President and CEO</p> <p>2107 N. 1st. Street, Suite 470 San Jose, CA 95131</p> <p>Tel: (408) 453-6031</p> <p>City vendor number: <u>68089</u></p>
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Appendices

- A: Services to be Provided by Contractor
- A-1 Detailed Task Description and Sample Invoice
- B: Calculation of Charges

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- C. U.S. Department of Homeland Security Requirements For Procurement Contracts
- D: Confidentiality Agreement Sensitive Security Information and Non-Disclosure Consent Form
- E: Insurance Waiver - Workers Compensation Subrogation

Appendix A
Services to be provided by Contractor

1. Description of Services

Contractor's proposal dated March 9, 2009 is incorporated by reference as though fully set forth. In the event of any conflict, the documents making up the Agreement between the parties shall govern in the following order of precedence: 1) this Agreement and its appendices; 2) the Request for Proposals dated February 10, 2009; and 3) Contractor's proposal dated March 9, 2009.

The project will be conducted in four (4) phases as follows:

- Phase I: Master Planning and Modeling
- Phase II: System Design
- Phase III: Contractor Selection
- Phase IV: Construction and Installation

A detailed description of the activities/tasks to be performed in each phase is contained in Appendix A-1.

2. Schedule

The master planning and system design phases shall each be completed by Contractor within one calendar month from the Notice to Proceed, assuming timely response to information inquiries and review of draft documents on the SFMTA's part.

The project schedule shall be developed to permit no longer than ten (10) months for the selection of the installation contractor and the subsequent completion of the CCTV installation work. Meeting the installation schedule is Contractor's responsibility.

3. Reports

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

4. SFMTA Liaison

In performing the services provided for in this Agreement, SFMTA's liaison with the Contractor will be Ted Unaegbu, Manager, Security Administration. Tel: (415) 554-7166. E-mail: ted.unaegbu@sfmta.com

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5. Contractor Liaison and Project Staff

In consideration of the specific project technical, design and management requirements, the following ALTA Consulting personnel will be assigned to the project for its duration. These named personnel will not be substituted or reassigned to other projects without the SFMTA's prior written approval.

Project Principal
Telephone:
E-mail:

Cyrus M. Humphreys, P.E.
(408) 453-6031
cyh@altaconsulting.com

Project Manger
Sr. Engineer
Telephone:
E-mail:

David P. Squier, P.E.
(408) 453-6031
dpsquier@altaconsulting.com

Appendix A-1

Detailed Task Description

The following is a detailed description of the tasks that Contractor shall perform in each phase of the project. This Appendix A-1 is supplemental to the Description of Services in Appendix A.

PHASE I: MASTER PLANNING AND MODELING

The components of the system Master Plan shall include: (a) system objectives; (b) system functionality; (c) technical requirements; (d) logistic needs; and (e) preparation of an initial cost estimate. In this phase Contractor shall perform the following tasks:

1. Develop a specific Project Plan and Schedule.
2. Establish functional objectives for the project through observation of personal behavior. Determine where monitoring is taking place. Determine who is monitoring and/or responding. Determine whether image recording is required.
3. Determine the Scope of the Project – Determine how many locations require CCTV coverage and the type of location.
4. Determine the availability of any existing CCTV system infrastructure – video communications capability, monitoring, recording, etc.
5. Determine project implementation requirements – funding, grant requirements/restrictions, phasing, coverage priorities, applicable technical standards.
6. Perform an initial survey of the locations to be covered by the system and any existing infrastructure.
7. Assess the potential utility value of any existing infrastructure.
8. Develop a system Master Plan including a model system concept. Include any needed system communications infrastructure. Estimate system installation costs including recommended phasing of implementation. Include discussion of expected operations and maintenance staffing needs.
9. Present the Master Plan and model to the SFMTA.
10. Revise the Master Plan and model to reflect direction received from the SFMTA.

Phase I Deliverables

- Initial Project Plan and Schedule (graphical form)

- Draft and final CCTV system Master Plan and model
- Preliminary construction cost estimate
- Meeting notes

PHASE II: DESIGN PHASE

The services provided in the second phase focus on developing a suitable System Design and a Logistics Plan for its implementation by a qualified systems contractor. In this phase Contractor shall perform the following tasks:

1. Update the Project Plan and Schedule.
2. Gather detailed information regarding the specific locations to be covered by the CCTV system via study of any available facility/site documents and/or maps and on-site surveys of the actual facilities/sites. Include consideration of sightlines, available lighting, electrical power and equipment space, potential vandalism, etc.
3. Prepare a preliminary camera system design. To the degree possible, establish prototype designs for camera locations to maximize efficiency.
4. If needed, prepare a design for the needed system communications infrastructure, switching/monitoring center, and recording capabilities.
5. Prepare the design documents for phased procurement as determined by the expected availability of installation, maintenance and operational funding.
6. Prepare an updated system cost estimate based on the actual system design(s).
7. Prepare a detailed draft Logistical Plan for system implementation based on the system design.
8. Present the preliminary designs, cost estimates, logistical plan and any related information to the SFMTA.
9. Based on direction received from the SFMTA, complete the CCTV system design documents in a form suitable for competitive contractor selection purposes.
10. Make any needed changes to the draft Logistical Plan.
11. Update the system cost estimate to reflect the final design and current industry pricing.

Phase II Deliverables

- Updated Project Plan and Schedule (graphical form)
- Draft (80%) and final CCTV system CAD drawings

- Draft (80%) and final procurement specifications
- Updated construction cost estimates (2)
- Draft and final Logistical Plans for project implementation
- Meeting notes

PHASE III: CONTRACTOR SELECTION PHASE

During the contractor selection process, Contractor shall provide the following services:

1. Participate in the Pre-bid Conference and any site walk-throughs.
2. Assist with preparation of any needed design addenda.
3. Assist with review of bids/proposals received.
4. Determine whether bidders have met minimum qualifications.

Phase III Deliverables

- List of potential system installation contractors
- Written responses to bidder's questions

PHASE IV: CONSTRUCTION PHASE

For each phase of construction, Contractor shall provide the following services:

1. In coordination with the SFMTA, update the Project Plan and Schedule.
2. Conduct project kickoff meetings with contractor(s). Review the scope of work, key contract requirements, project schedule and sequencing of the work.
3. Review and comment on contractor's submittals (drawings, catalog cuts, samples, etc.)
4. Periodically observe the progress of the contractor's work. Document each observation with a field progress report.
5. Review and approve the contractor's pay requests.
6. Upon completion of installation (on a site-by-site basis), witness system acceptance tests and document results including identification of any needed remedial action on the contractor's part.

-
- 7. Observe and report on any needed retests.
- 8. Review and comment on close-out documentation including record documents, O&M manuals, warranties, etc.
- 9. Prepare periodic construction progress reports for the SFMTA.
- 10. Participate in periodic construction progress review meetings with the SFMTA and contractor(s)

Phase IV Deliverables

- Updated Project Plan and Schedule (graphical form)
- Responses to installation contractor RFIs.
- Comments on installation contractor submittals
- Field observation reports; progress reports
- Installation acceptance test reports
- Comments on final submittals from contractor

**Appendix B
Calculation of Charges**

Compensation Schedule

Payments will be made in accordance with the following schedule:

Project Phase	Amounts
Completion and Acceptance by SFMTA of Phase I Tasks and Deliverables	\$ 52,355
Completion and Acceptance by SFMTA of Phase II Task and Deliverables	\$ 66,305
Completion and Acceptance by SFMTA of Phase III Task and Deliverables	\$ 7,660
Phase IV – Construction and Installation Billing to be at the hourly rates set forth below, plus actual approved expenses. This Phase projected to be 10 months. See Project Schedule.	not to exceed \$103,710
Total Compensation	\$230,030

Personnel Types and Hourly Rates

Project Principal	\$ 175.00 per hour
Project Manager and Sr. Engineer	\$ 150.00 per hour
Staff Engineer	\$ 135.00 per hour
CAD Drafter	\$ 95.00 per hour

Rates for Mileage

(Federal GSA established rate)

\$ 0.555 per mile

Other Expenses

Actual costs for contractor meals, accommodations, vehicle parking, long distance and cellular phone charges, postage, vehicle rental, scanning/reproduction, etc., subject to the approval of the SFMTA.

Appendix C

U.S. DEPARTMENT OF HOMELAND SECURITY REQUIREMENTS FOR PROCUREMENT CONTRACTS

I. DEFINITIONS

A. Agreement means the agreement between City and Contractor to which this document (U.S. Department of Homeland Security's Urban Areas Security Initiative Grant Program Requirements for Procurement Contracts) is attached and incorporated or for which Contractor has submitted a bid or proposal.

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

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

D. Homeland Security Directive includes any Homeland Security circular, notice, order or guidance providing information about Homeland Security programs, application processing procedures, and Project management guidelines.

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

F. Homeland Security means the United States Department of Homeland Security or its Office of Domestic Preparedness.

G. Third Party Subcontract means a subcontract at any tier entered into by Contractor or a subcontractor, financed in whole or in part with Federal assistance originally derived from Homeland Security.

H. UASI Program Guidelines means the applicable Homeland Security's Urban Areas Security Initiative Grant Program, Program Guidelines and Application Kit.

II. FEDERAL CHANGES

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

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

III. ACCESS TO RECORDS

A. The Contractor agrees to provide the City, Homeland Security, 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 later of: (a) the date of termination or expiration of this Agreement or (b) the date City makes final payment under 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, Homeland Security, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 28 C.F.R. §§ 66.36(i), 70.53.

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

IV. DEBARMENT AND SUSPENSION

See Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions in RFP.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

A. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Government, the 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 third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VI. CONTRACT WORK HOURS AND SAFETY STANDARDS (applicable to non-construction contracts in excess of \$2,500 that employ laborers or mechanics; 28 C.F.R. § 66.36(i)(6))

A. Compliance: Contractor agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-330) as amended and as supplemented by Department of Labor regulations (29 C.F.R. Part 5), which are incorporated herein.

B. Overtime: No contractor or subcontractor contracting for any part of the work under this Agreement 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.

C. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause in Paragraph B 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 B 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 B of this section.

D. Withholding for unpaid wages and liquidated damages - The City 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 C of this section.

E. 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.

VII. NOTICE OF REPORTING REQUIREMENTS

A. Contractor acknowledges that it has read and understands the reporting requirements of Homeland Security stated in 28 C.F.R. §§ 66.40 et seq., 70.50-70.52 and Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs *Financial Guide*, and agrees to comply with any such applicable requirements.

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

VIII. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

A. Contractor agrees that Homeland Security shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

1. The copyright in any work developed with the assistance of funds provided under this Agreement;

2. Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement. 28 C.F.R §§ 66.34, 66.36(i)(8)-(9).

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

IX. PATENT RIGHTS (*applicable to contracts for experimental, research, or development projects financed by Homeland Security. 28 C.F.R. §§ 66.36(i)(8), 70.48(e), Part 70, Appendix A.*)

A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the

City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the Homeland Security.

B. Unless the 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 Homeland Security, those rights in that invention due the Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

C. The Contractor also agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by Homeland Security.

X. ENERGY CONSERVATION REQUIREMENTS

A. 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. 28 C.F.R. § 66.36(i)(13).

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

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

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

B. The Contractor also agrees to include these requirements in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by Homeland Security. 28 C.F.R. § 66.36(i)(12).

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

A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to Homeland Security and the appropriate EPA Regional Office.

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

XIII. TERMINATION FOR CONVENIENCE OF CITY (*All contracts in excess of \$10,000. 28 C.F.R § 66.37*)

See Section 21 of the Agreement.

XIV. TERMINATION FOR DEFAULT

See Section 20 of the Agreement.

XV. INCORPORATION OF HOMELAND SECURITY TERMS

The preceding provisions include, in part, certain standard terms and conditions required by Homeland Security, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by Homeland Security, as set forth in 28 C.F.R. Parts 66 and 70 are incorporated by reference. Anything to the contrary herein notwithstanding, all Homeland Security 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 City requests which would cause City to be in violation of the Homeland Security terms and conditions.

Appendix D

CONFIDENTIALITY AGREEMENT SENSITIVE SECURITY INFORMATION

RECITALS

- A.** The City and County of San Francisco, through its Municipal Transportation Agency ("SFMTA"), is designing and/or installing a closed circuit television (CCTV) system for its public transit system, the San Francisco Municipal Railway (the "Project").
- B.** Alta Consulting Services Inc. ("ACSI") will be performing work on the Project, including design of the CCTV system, and must have reasonable access to SFMTA records. These records, as well as ACSI's work, will include documents and information that are confidential and protected from disclosure under federal law because they contain or will contain Sensitive Security Information ("SSI") under 49 CFR Section 1520.5, as defined below. See 49 CFR Parts 15 and 1520.
- C.** The disclosure of SSI relating to the Project to unauthorized persons may cause irreparable damage to the SFMTA.
- D.** SFMTA will make available SSI regarding the Project to ACSI, and ACSI shall protect its SSI documents, according to the terms and conditions of this Agreement.

AGREEMENT

I. Sensitive Security Information (SSI)

SSI includes, but is not limited to the following: Design specifications, records and drawings of the infrastructure and facilities related to the Project, to the extent the disclosure of which may threaten the security of SFMTA operations and the public and that are stamped or otherwise denoted by the SFMTA or ACSI as SSI. SSI also includes information derived from access that the SFMTA provides to ACSI to view, observe, and inspect the SFMTA facilities that are not open to and not accessible to the public ("Restricted Areas"), and any and all sketches, notes, and narratives taken or prepared by ACSI of Restricted Areas.

II. Acknowledgments

By signing this Agreement, ACSI acknowledges the following:

A. In the course of its work on the Project, ACSI may have access to SSI and/or may prepare documents that constitute SSI.

B. The disclosure of any SSI would cause security risks that may endanger the public and SFMTA operations.

III. Agreements.

By signing this Agreement, ACSI agrees to the following:

A. Use of SSI. ACSI shall not use any SSI except in the course of its activities on behalf of the SFMTA on or related to the Project.

B. Safeguards Against Unauthorized Disclosure of SSI. With respect to SSI, ACSI shall implement the following safeguards and procedures to prevent the unauthorized disclosure of SSI. ACSI shall designate a responsible managing employee or responsible managing officer as its Sensitive Security Information Handler (“SSIH”), who shall ensure that all safeguards are maintained, including the following:

1. Marking the SSI with the protective marking, "**SENSITIVE SECURITY INFORMATION**," and inserting the limited distribution statement set forth below, all in accordance with Federal regulations and as instructed by the SFMTA:

Warning: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to person without a "need to know," as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action.

2. Providing authorized employees adequate instructions with regard to the use and disclosure of SSI, including obtaining the Employees' signed Non-Disclosure Consent forms attached as Exhibit A to this Agreement.

3. Implementing safeguards to restrict copies and reproductions of SSI in any form, including, but not limited to, paper copies and electronically formatted copies. ACSI's SSIH shall authorize copies of portions of SSI only on a need-to-know basis, as determined by SFMTA, and shall retrieve all such copies upon completion of the task for which they were required. Copies and reproductions of SSI shall not be made for or retained for distribution to any lower-tier third party unless the lower-tier third party has complied with the requirements of Section III.B. ACSI shall identify each copy of SSI released by copy number and maintain a record of all copies of SSI released to employees and third parties on the Log of Copies of SSI provided as Exhibit B.

IV. Disclosure to Third Party

V. Disqualification from Bidding.

ACSI acknowledges that breach of this Agreement is grounds for the SFMTA to disqualify ACSI from participation in SFMTA contracts.

VI. Assignment

Recipient shall not assign any rights or transfer any obligation under this Agreement without the express written consent of the SFMTA.

VII. 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..

VIII. Notices

All written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To SFMTA: Ted Unaegbu,
 Manager, Security Administration
 Security, Enforcement & Safety Division
 San Francisco Municipal Transportation Agency
 875 Stevenson Street, 2nd floor, Room 204
 San Francisco, CA 94103-0901
 ted.unaegbu@sfmta.com
 fax: 415-554-7117

To ACSI: John V. Deal
 President and CEO
 ALTA Consulting Services, Inc.
 2107 N. 1st Street, Suite 470
 San Jose, CA 95131
 e-mail: jydeal@altaconsulting.com

Any notice of default must be sent by registered mail or by personal service.

IX. Applicable Law

This Agreement shall be governed by, and construed and interpreted in accordance with the laws of California. Venue for any action arising from this Agreement or related thereto shall be in courts located in San Francisco, California.

X. Successors

This Agreement shall be binding on and inure to the benefit of ACSI's successors or assigns.

IN WITNESS WHEREOF, the ACSI has caused this Agreement to be duly executed in San Francisco, California.

ACSI:

Signature

Dated: _____

Name (please print)

Title:

EXHIBIT A

NON-DISCLOSURE CONSENT FORM
to be executed by Employee of ACSI or Lower-Tier Third Party

Firm Name: _____

Employee Name: _____

Employee Address: _____

I agree that any disclosure to me of information designated as Sensitive Security Information pertaining to the San Francisco Municipal Transportation Agency (“SFMTA”) CCTV System Project (the “Project”) will be subject to the following obligations:

1. I confirm that I have been provided a copy of the Confidentiality Agreement between the SFMTA and ACSI. I confirm that I will comply at all times with the ACSI’s obligations in relation to the SSI (including SSI) as set out in the Confidentiality Agreement and will not do anything which would or could jeopardize any of the ACSI’s obligations in relation to the SSI, or lead to a breach or compromise of the security of the SSI.
2. I will not disclose or permit disclosure of the SSI, or permit anyone to use the SSI, without the prior written approval of the ACSI’s Sensitive Security Information Handler and the SFMTA.
3. The above obligations of confidentiality and non-use will apply to my work on the Project during the bidding period for the contract with the SFMTA, and will continue to apply without limitation of time after the date of termination of my work.

Executed by:

**Employee Signature
Handler**

Sensitive Security Information

Date

Date

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Parking and Traffic

BRIEF DESCRIPTION: Requesting the Municipal Transportation Agency Board of Directors to authorize the Executive Director/CEO to execute the fifth amendment to the Red Light Photo Enforcement Agreement between the Municipal Transportation Agency and ACS State and Local Solutions to extend the term of the contract until December 30, 2010, at no additional cost.

SUMMARY:

- Authorizing the Executive Director/CEO to execute the fifth amendment to the Red Light Photo Enforcement Agreement (Agreement) between the SFMTA and ACS State and Local Solutions (ACS). This extension allows for the orderly transition to a new contract which is currently undergoing a rigorous selection process.
- This amendment will not result in the contract cost exceeding the original amount of \$9,424,195.
- The City entered into the current agreement with ACS in 2005 which will expire on December 30, 2009. The term of the agreement may be extended for an additional one (1) year at the option of the City.
- At the December 2, 2008, MTA Board meeting, the MTA Board, by motion, extended the agreement for one month until January 31, 2009.
- The third contract amendment extended the term of the Agreement until December 30, 2009. This was the first of two possible one year extensions to the contract.
- The fourth amendment incorporated an equipment lease specifying the terms for the Contractor's lease of new system equipment for expansion of the existing system at no additional cost.

ENCLOSURES:

1. SFMTAB Resolution
2. Contract Amendment

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Richard Cho

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

This contract amendment will authorize the existing Red Light Camera enforcement system to continue uninterrupted through 2010.

GOAL

This program will fulfill the following goal of the SFMTA Strategic Plan:

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

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

DESCRIPTION

Background:

The City and County of San Francisco implemented one of the first Red Light Photo Enforcement programs in the nation. The program automated the issuance of citations to motorists who violate red lights at enforced intersections saving valuable law enforcement resources and dramatically increased traffic and pedestrian safety throughout the City. The program has been very successful with over 120,000 citations issued since the program's inception in 1996.

The original contract with ACS was entered into on December 30, 2005 and expired on December 30, 2008. At that time, the term of this Agreement could be extended up to an additional two years at the option of the City. At the December 2, 2008, SFMTA Board meeting, the SFMTA Board, by motion, extended the contract until January 31, 2009. On January 6, 2009, the SFMTA Board extended the term of the Agreement until December 30, 2009.

Under the original contract, ACS agreed to design, install, maintain, and service red light camera units and system equipment. In addition, ACS was responsible for administering all citation and court-related documents related to San Francisco's red light cameras. The contract has been amended four times. The first amendment was executed on December 1, 2007, and added five wet-film cameras to the City's existing camera pool to enable automated enforcement of 32 intersections at any given time. The second amendment was executed on December 4, 2008, and extended the Agreement through January 31, 2009, under the existing terms. The third amendment was executed on January 6, 2009 and extended the Agreement through December 30, 2009 at no additional cost. The fourth amendment was executed on May 1, 2009 between the San Francisco Municipal Transportation Agency and ACS State and Local Solutions to incorporate an equipment lease specifying the terms for the Contractor's lease of new system equipment for expansion of the existing system at no additional cost.

Program Success:

The program has proven to be a valuable tool in reducing red light related collisions by up to 40% at enforced intersections. The City has been successful in improving the safety at locations having red light cameras. The most benefit in safety correlates directly to the decrease in severity of collisions, and the number of collisions in general. Motorists that are familiar with intersections having red light cameras are likely to drive with less aggression and more caution. In addition, the presence of the photo enforcement program in the City has generated a “spill-over” effect of reducing red light related collisions at neighboring intersections not equipped with cameras, indicating that the photo enforcement program is leading to a more widespread behavioral change towards driving safely.

Since we first installed red light cameras, nearly 200 other jurisdictions are now operating a Red Light Photo Enforcement Program nationwide.

ALTERNATIVES CONSIDERED

Staff recommends that extending the term of the existing Agreement is the only viable alternative to preserving the continuity of the existing enforcement program. Canceling the existing contract and soliciting bids from other qualified vendors at this time would result in a delay of up to one year before a new contract could be awarded. Red light camera enforcement would cease during this period.

There is no compelling evidence to suggest that another vendor could immediately assume administration of the existing enforcement system at a lower cost. The City owns the equipment at all existing enforced intersections. Since this equipment is proprietary, no other vendor could assume immediate operation of the system without reinstalling their own equipment at each of the 27 intersections. Retooling each intersection with another vendor's equipment would likely result in significant downtime and increased costs.

FUNDING IMPACT

Since its inception in 1996, the Red Light Camera Program has been a very successful, self-funded program. Improvements in regular maintenance of existing camera equipment, and in efficient citation processing have attributed to the increase in revenue for this program each year. Funding for this program is appropriated on a continuous basis from year to year with any surplus balance carried over to the next year. The program has never incurred a deficit.

Funds required for the operation, maintenance, and construction of new enforced intersections are self-generated through the citations issued by the program so there is no financial impact.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are required.

The Office of Contract Compliance has determined that the 19% DBE goal established for this contract has been maintained to date. The City Attorney has reviewed this report.

PAGE 4.

RECOMMENDATION

SFMTA staff recommends that the Municipal Transportation Agency Board of Directors authorize the Executive Director/CEO to execute the Fifth Amendment to the Red Light Photo Enforcement Agreement between the San Francisco Municipal Transportation Agency and ACS State and Local Solutions to extend the term of the contract until December 30, 2010 at no additional cost.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Collisions caused by red light running are among the most severe types of automobile accidents; and

WHEREAS, The Department of Parking and Traffic began the Red Light Photo Enforcement Program in collaboration with the San Francisco Police Department in 1996 to reduce collisions, property damage, injuries, and deaths caused by red light running violations and has issued more than 120,000 citations to date; and

WHEREAS, Collision data shows this program has been very effective at reducing the number of fatalities, injuries, and property damage caused by red light violations and increasing overall traffic safety City-wide since the program began; and,

WHEREAS, The existing Red Light Photo Enforcement Agreement between the San Francisco Municipal Transportation Agency and ACS State and Local Solutions allows the City, at its sole option, to extend the term of the contract by one-year; and,

WHEREAS, SFMTA staff recommends that the SFMTA exercise its option to extend the existing contract by one-year – until December 30, 2010; and,

WHEREAS, During this period, staff will investigate the latest improvements in photo enforcement technology to evaluate how to proceed with system expansion; and

WHEREAS, After construction of the expansion intersections is completed, the SFMTA intends to use the expansion locations as pilot locations to test and evaluate digital camera equipment from ACS and other vendors; and

WHEREAS, The fifth amendment does not change the total contract amount; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute the fifth amendment to the Red Light Photo Enforcement Agreement between the San Francisco Municipal Transportation Agency and ACS State and Local Solutions to extend the term of the agreement to December 30, 2010, at no additional cost.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

CITY AND COUNTY OF SAN FRANCISCO
Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, California 94103-5417

Fifth Amendment

THIS AMENDMENT (this "Amendment") is dated for convenience as of the 16th day of October, 2009, in San Francisco, California, by and between ACS State and Local Solutions ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency (the "Agency").

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

a. Agreement. The term "Agreement" shall mean the Agreement dated December 19, 2005, between Contractor and City, as amended by the First Amendment dated December 1, 2007 and Second Amendment dated December 4, 2008, the Third Amendment dated January 1, 2009, and the Fourth Amendment dated May 1, 2009.

b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

a. Section 2. Section 2 "Term of the Agreement" currently reads as follows:

Subject to Section 1 (Certification of Funds), the term of this Agreement shall be from December 30, 2005 to December 30, 2009.

The term of this Agreement may be extended up to an additional one (1) year upon the option of the City and mutual agreement of the parties both as to the period for any such extension, and the terms and conditions upon which such extension shall be based. The City reserves the right to extend this Agreement after completion of the five-year term of the contract.

Such section is hereby amended in its entirety to read as follows:

a. Term of the Agreement

Subject to Section 1 (Certification of Funds), the term of this Agreement shall be from December 30, 2005 to December 30, 2010.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after December 31, 2009.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

CONTRACTOR

Recommended by:

ACS State and Local Solutions

Nathaniel P. Ford, Sr.
Executive Director/CEO
Municipal Transportation Agency

Mark J. Talbot
Vice President
ACS State and Local Solutions
1800 M Street, NW
Washington, DC 20036

Approved as to Form:

City vendor number: 68769

Dennis J. Herrera
City Attorney

By: _____
John I. Kennedy
Deputy City Attorney

Approved:

Municipal Transportation Agency
Board of Directors
Resolution No. _____

Adopted: _____

Attest:

Roberta Boomer
Secretary
MTA Board of Directors

THIS PRINT COVERS CALENDAR ITEM NO. : 10.7

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs and Construction

BRIEF DESCRIPTION:

Authorizing the acceptance of San Francisco Municipal Railway Contract No. MR-1211, Presidio Trolley Coach Facility Overhead Reconstruction Project, with Abbett Electric Corporation in the final amount of \$2,714,975.49; authorizing release of retention and approving closeout of the contract.

SUMMARY:

- The scope of work under this contract included reconstruction and raising of the existing Overhead Contact System at the Presidio Trolley Coach Facility; replacement of trolley poles, foundations and yard lighting; installation of disconnect switches in the yard and repair shops; replacement of the existing public address (PA) system; and underground/replacement of existing feeder cables.
- The written Notice to Proceed with the work was issued on November 14, 2006. The Contract work was substantially completed on September 9, 2007.
- All work covered by this Contract has been fully and satisfactorily completed in accordance with the plans and specifications. All required guarantee bonds and releases have been obtained from the contractor.
- The Contract Compliance Office has determined that Abbett Electric Corporation has met the contract goal of 15 percent for Disadvantaged Business Enterprise participation.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

_____ Gigi Pabros _____

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

Authorizing the acceptance of San Francisco Municipal Railway Contract No. MR-1211, Presidio Trolley Coach Facility Overhead Reconstruction Project, with Abbett Electric Corporation in the final amount of \$2,714,975.49; authorizing release of retention and approving closeout of the contract.

GOAL

This Project has assisted in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

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

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

Objective 1.5 Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare)

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

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

DESCRIPTION

The purpose of this project was to rebuild the Overhead Contact System (OCS) at the Presidio Trolley Coach Facility yard. These overhead lines were installed when the facility was first converted to trolley coaches over 50 years ago; and in the course of time, the trolley poles had become badly corroded and needed replacement. In addition, the ETI trolley coaches are taller than Muni's older trolley coaches; creating the need to raise the existing OCS approximately three feet to allow adequate clearance to safely perform maintenance work on the roofs of coaches. The work performed included the construction of a number of overhead line poles and the entire overhead wiring at the Presidio Facility and the installation of disconnect switches in the yard and repair shops.

On May 16, 2006, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted Resolution No. 06-057, which authorized the award of San Francisco Municipal Railway Contract No. MR-1211: Presidio Trolley Coach Facility Overhead Reconstruction Project, to Abbett Electric Corporation in the amount of \$2,622,825.00 with an overall contract duration of 300 calendar days.

The written Notice to-Proceed with the work was issued on November 14, 2006. The Contract

PAGE 3.

work was substantially completed on September 9, 2007.

Contract Modification No. 1 was approved by the Executive Director/CEO on February 9, 2009. The contract modification included final quantity adjustment, removal and disposal of contaminated spoils, and additional guy-wires to raise the height of the contact wires in the Presidio yard. Contract Modification No. 1 increased the total contract amount by \$92,150.49 to a final contract amount of \$2,714,975.49 with no extension of time.

All work covered by this Contract has been fully and satisfactorily completed in accordance with the plans and specifications. All required guarantee bonds and releases have been obtained from the contractor.

The Contract Compliance Office has determined that Abbett Electric Corporation met the 15 percent Disadvantaged Business Enterprise goal established for this contract.

ALTERNATIVES CONSIDERED

N/A

FUNDING IMPACT

This Contract was funded by Federal grants and local matching funds from the San Francisco County Transportation Authority (SFCTA) and other sources.

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

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are required for this Contract acceptance.

The City Attorney has reviewed this closeout document.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors accept of San Francisco Municipal Railway Contract No. MR-1211, Presidio Trolley Coach Facility Overhead Reconstruction Project, with Abbett Electric Corporation in the final amount of \$2,714,975.49, authorizes release of retention, and approves closeout of the Contract.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On May 16, 2006, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted Resolution No. 06-057, which authorized the award of San Francisco Municipal Railway Contract No. MR-1211: Presidio Trolley Coach Facility Overhead Reconstruction Project, to Abbett Electric Corporation in the amount of \$2,622,825; and,

WHEREAS, Contract Modification No. 1 was approved by the Executive Director/CEO on February 9, 2009,, increasing the total contract amount by \$92,150.49 to a final contract amount of \$2,714,975.49 with no extension of time; and,

WHEREAS, All work covered by this Contract has been fully and satisfactorily completed in accordance with the plans and specifications, and all required guarantee bonds and releases have been obtained from the contractor; and,

WHEREAS The Contract Compliance Office has determined that Abbett Electric Corporation met the 15 percent Disadvantaged Business Enterprise goal; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors accepts San Francisco Municipal Railway Contract No. MR-1211, Presidio Trolley Coach Facility Overhead Reconstruction Project, with Abbett Electric Corporation in the final amount of \$2,714,975.49, authorizes release of retention, and approves closeout of the Contract.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2

Trolley Coach Facility Overhead Reconstruction Project
PRESIDIO TROLLEY COACH FACILITY OVERHEAD RECONSTRUCTION PROJECT
San Francisco Municipal Railway Contract 1211
Project Budget and Financial Plan

Item	Amount
Conceptual Engineering Report:	
Staff Support (SFMTA and Other Dept. Services)	\$550,273
Design Phase:	
Staff Support (SFMTA and Other Dept. Services)	\$672,286
Construction Phase:	
Construction Contract	\$2,714,975
Contingency and Staff Support	\$1,369,217
Total Cost	\$5,306,751

Funding	Amount
Federal Grants	\$4,245,401
Local Grants	
Prop K Sales Tax	\$1,061,350
Total Funding	\$5,306,751

THIS PRINT COVERS CALENDAR ITEM NO. : 10.8

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs and Construction

BRIEF DESCRIPTION:

Accepting San Francisco Municipal Railway Contract No. MR-1204, H. Welton Flynn Motor Coach Facility Modifications for Neoplan Buses, with Angotti and Reilly Inc., in the final amount of \$1,947,000; authorizing release of retention; and approving closeout of the Contract.

SUMMARY:

- The scope of work under this contract included replacement of five bus maintenance hoists, with related foundations, maintenance hose racks and other miscellaneous equipment to maintain the Neoplan buses, and performing ADA upgrades to the facility.
- The written Notice to Proceed with the work was issued on February 5, 2004. The Contract work was substantially completed on December 31, 2004.
- All work covered by this Contract has been fully and satisfactorily completed in accordance with the plans and specifications. All required guarantee bonds and releases have been obtained from the Contractor.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Gigi Pabros

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

This calendar item requests that the SFMTA Board of Directors accepts San Francisco Municipal Railway Contract No. MR-1204, H. Welton Flynn Motor Coach Facility Modifications for Neoplan Buses, with Angotti and Reilly Inc., in the final amount of \$1,947,000; authorizes release of retention; and approves closeout of the contract.

GOAL

This Project has assisted in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

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

Objective 1.1 Improve safety and security across all modes of transportation

Objective 1.5 Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare)

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

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

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

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

Objective 5.2 Improve facilities in which people are working

DESCRIPTION

The purpose of this project was to replace the five existing "in-ground" hoists with new parallelogram lifts to allow more efficient maintenance of the Neoplan buses. The project also included the replacement and relocation of the maintenance hose racks and other miscellaneous equipment to support the new lifts, and performing ADA upgrades to the facility.

On December 2, 2003, the SFMTA Board of Directors adopted Resolution No. 03-196, which authorized the award of San Francisco Municipal Railway Contract No. MR-1204, H. Welton Flynn Motor Coach Facility Modifications for Neoplan Buses, to Angotti and Reilly Inc. in the amount of \$1,770,000, with an overall contract duration of 300 calendar days.

PAGE 3.

The written Notice-to-Proceed with the work was issued on February 5, 2004. The Contract work was substantially completed on December 31, 2004.

The Director of Transportation approved Contract Modification No. 1 on February 7, 2005. The contract modification included increasing the capacity of the lifts, installing isolation valves for the compressed air and water supply laterals, and modifying the supports for the overhead exhaust system. Contract Modification No. 1 increased the total contract amount by \$49,138 to \$1,819,138 with no extension of time.

The Director of Transportation approved Contract Modification No. 2 on February 7, 2005. The contract modification included installing isolation valves for the maintenance hose rack system to minimize disruption to maintenance, relocating existing below-ground electrical conduits, adding additional dispenser reels for the power steering fluid, and installing flexible type fluid injection nozzles. Contract Modification No. 2 increased the total contract amount by \$80,315 to \$1,899,453 with no extension of time.

The Director of Transportation approved Contract Modification No. 3 on September 11, 2005. The contract modification included performing electrical work, adding features to the lift system, and ADA upgrades. Contract Modification No. 3 increased the total contract amount by \$47,547 to \$1,947,000 with a time extension of 30 calendar days.

All work covered by this Contract has been fully and satisfactorily completed in accordance with the plans and specifications. All required guarantee bonds and releases have been obtained from the Contractor.

ALTERNATIVES CONSIDERED

Not applicable.

FUNDING IMPACT

This Contract was funded locally by the San Francisco County Transportation Authority.

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

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are required for this Contract acceptance.

The Contract Compliance Office has determined that Angotti and Reilly Inc. met the 15 percent MBE and 5 percent WBE subcontracting goals.

The City Attorney has reviewed this closeout document.

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RECOMMENDATION

Staff recommends that the SFMTA Board of Directors accepts San Francisco Municipal Railway Contract No. MR-1204, H. Welton Flynn Motor Coach Facility Modifications for Neoplan Buses, with Angotti and Reilly Inc., in the final amount of \$1,947,000; authorizes release of retention; and approves closeout of the Contract

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On December 2, 2003, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 03-196, which authorized the award of San Francisco Municipal Railway Contract No. MR-1204: H. Welton Flynn Motor Coach Facility Modifications for Neoplan Buses, to Angotti and Reilly Inc., in the amount of \$1,770,000; and,

WHEREAS, On February 7, 2005, the Director of Transportation approved Contract Modification No. 1, increasing the total contract amount by \$49,138 to \$1,819,138 with no extension of time; and,

WHEREAS, On February 7, 2005, the Director of Transportation approved Contract Modification No. 2, increasing the total contract amount by \$80,315 to \$1,899,453 with no extension of time; and,

WHEREAS, On September 11, 2005, the Director of Transportation approved Contract Modification No. 3, increasing the total contract amount by \$47,547 to a final contract amount of \$1,947,000 with a time extension of 30 calendar days; and,

WHEREAS, All work covered by this Contract has been fully and satisfactorily completed in accordance with the plans and specifications, and all required guarantee bonds and releases have been obtained from the Contractor; and,

WHEREAS The Contract Compliance Office has determined that Angotti and Reilly Inc. met the 15 percent MBE and 5 percent WBE subcontracting goals; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors accepts San Francisco Municipal Railway Contract No. MR-1204, H. Welton Flynn Motor Coach Facility Modifications for Neoplan Buses, with Angotti and Reilly Inc., in the final amount of \$1,947,000; authorizes release of retention; and approves closeout of the Contract.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2

H. Welton Flynn Motor Coach Facility Modifications for Neoplan Buses Project
San Francisco Municipal Railway Contract MR-1204
Project Budget and Financial Plan

Item	Amount
Conceptual Engineering Phase:	
Staff Support (SFMTA and Other Department Services)	\$285,468
Design Phase:	
Staff Support (SFMTA and Other Department Services)	\$931,504
Construction Phase:	
Construction Contract	\$1,947,000
Contingency and Staff Support	\$893,311
Construction by City Staff	\$42,728
Procurement	
Portable Lifts and Sweeper Machine	\$149,989
Total Cost	\$4,250,000

Funding	Amount
Local Grants	
Transportation Sales Tax	\$4,250,000
Total Funding	\$4,250,000