

THIS PRINT COVERS CALENDAR ITEM NO. : 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the San Francisco Municipal Transportation Agency (SFMTA), through its Executive Director/CEO (or his designee), to accept and expend a total of \$8,526,709 in Lifeline Transportation Program (LTP) grant funds from the Metropolitan Transportation Commission (MTC) for various projects.

SUMMARY:

- The MTC provides LTP grant funds for capital and operating projects that improve transportation choices for low-income persons.
- The MTC delegates administration of the LTP to the nine Bay Area Congestion Management Agencies. For San Francisco, the San Francisco County Transportation Authority is the Congestion Management Agency.
- The SFMTA is programmed for a total of \$8,526,709 in LTP grant funds for various projects. However, given the State of California's budget crisis, some of the funding amounts for projects are subject to change. The SFMTA will work with the SFCTA and the MTC to modify project scopes, determine fiscal years for programming of funds, and/or identify non-LTP funds for projects recommended to receive funding, as necessary.
- This action authorizes the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend a total of \$8,526,709 in Fiscal Year 2009, 2010 and 2011 LTP grant funds for various projects from the MTC.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION BE RETURNED TO: Leda Young, 1 South Van Ness Ave., 8th Floor

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

Purpose

SFMTA Board approval of this resolution would authorize the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend a total of \$8,526,709 in LTP grant funds from the MTC for various projects.

Goal

The SFMTA will further the following goal of the Strategic Plan through acceptance of these funds:

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

Objective 4.2 - Ensure efficient and effective use of resources.

Description

The MTC's Lifeline Transportation Program (LTP) encourages residents and other stakeholders in low-income communities to participate in identifying priorities for transportation improvements and provides funding to implement these priorities. The MTC initiated the second LTP grant cycle in mid-2008 with a combination of State Transit Assistance, Proposition 1B State Infrastructure Bond proceeds, and federal Job Access and Reverse Commute funds. The MTC delegates administration, including project selection and oversight, to the nine Bay Area Congestion Management Agencies. The San Francisco County Transportation Authority (SFCTA) is the Congestion Management Agency for San Francisco.

Based on its applications, the SFMTA is programmed for LTP grant funds for the following projects:

Project Name	Description	LTP Funds
Enhanced Transit Security Program	Improve security on specific bus lines.	\$1,534,415
29-Sunset Reliability Improvement Project	Continue expanded bus service on 29 Sunset bus line.	\$727,200
108-Treasure Island Enhanced Service	Continue expanded bus service on 108 Treasure Island bus line.	\$262,228
Randolph/Farallones/Orizaba Access Pedestrian Safety Project	Install transit bulb island and curb bulbs in Oceanview Neighborhood.	\$480,000
Persia Triangle Improvements Project	Install bus bulbs, consolidate bus stops, and make various traffic and streetscape improvements in the Persia Triangle area.	\$802,734
Discounted Lifeline Pass Program	Increase use of discounted Lifeline Pass program among eligible low-income residents.	\$1,595,213
Shopping Shuttle Program	Provide group van shopping service to targeted public housing buildings.	\$1,560,000
San Bruno Avenue Transit Preferential Streets Improvement Project	Implement transit priority treatments along a 1.5-mile segment of San Bruno Avenue.	\$1,564,919
Total		\$8,526,709

In response to potential changes in available LTP grant funds given the State of California's budget crisis, some of the funding amounts are subject to change. The SFMTA will work with the SFCTA and the MTC to modify project scopes, determine fiscal years for programming of funds, and/or identify non-LTP funds for projects recommended to receive funding, as necessary.

ALTERNATIVES CONSIDERED

Not applicable.

FUNDING IMPACT

The funds for the projects are from:

- LTP Funds (State Transit Assistance, Proposition 1B State Infrastructure Bond proceeds, and federal Job Access and Reverse Commute funds) from MTC (\$8,526,709), and
- The minimum 20% required match funds are from SFMTA Operating Funds, local Proposition K funds, and in-kind services as shown in the table below:

Project Name	Amount of LTP Funds	Local Match (Minimum 20%)	Local Match Funding Source
Enhanced Transit Security Program	\$1,534,415	\$383,604	SFMTA Operating Funds
29-Sunset Reliability Improvement Project	\$727,200	\$945,360	SFMTA Operating Funds
108-Treasure Island Enhanced Service	\$262,228	\$611,866	SFMTA Operating Funds
Randolph/Farallones/Orizaba Access Project	\$480,000	\$120,000	Prop K Funds
Persia Triangle Improvements Project	\$802,734	\$200,684	Prop. K Funds
Discounted Lifeline Pass Program	\$1,595,213	\$398,803	SFMTA In-kind Services
San Bruno TPS Project	\$1,564,919	\$391,230	Prop K Funds
Shopping Shuttle Program	\$1,560,000	\$390,000	New Freedom Funds, SFMTA Paratransit Operating Budget, and Paratransit Broker in-kind services.
Total	\$8,526,709	\$3,441,547	

OTHER APPROVALS RECEIVED OR STILL REQUIRED

In November 2008, the SFCTA approved the projects to receive LTP funds. The MTC is anticipated to adopt the program of projects for LTP funds in January 2009.

The City Attorney has reviewed this report.

RECOMMENDATION

The SFMTA Board approval of this resolution would authorize the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend a total of \$8,526,709 in Fiscal Year 2009, 2010 and 2011 LTP grant funds from the MTC for various projects.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Metropolitan Transportation Commission's (MTC's) Lifeline Transportation Program (LTP) encourages residents and other stakeholders in low-income communities to participate in identifying priorities for transportation improvements and provides funding to implement these priorities; and

WHEREAS, The MTC initiated the second LTP grant cycle in mid-2008 with a combination of State Transit Assistance, Proposition 1B State Infrastructure Bond proceeds and federal Job Access and Reverse Commute funds; and

WHEREAS, The MTC delegates administration, including project selection and oversight, to the San Francisco County Transportation Authority (SFCTA), as the Congestion Management Agency for San Francisco; and

WHEREAS, Based on its applications, the SFMTA is programmed to receive a total of \$8,526,709 in Fiscal Year 2009, 2010 and 2011 LTP grant funds from the MTC for the Enhanced Transit Security Program (\$1,534,415), the 29-Sunset Reliability Improvement Project (\$727,200), 108-Treasure Island Enhanced Service (\$262,228), the San Bruno TPS Project (\$1,564,919), the Randolph/ Farallones/Orizaba Access Project (\$480,000), the Persia Triangle Improvements Project (\$802,734), the Discounted Lifeline Pass Program (\$1,595,213), and the Shopping Shuttle Program (\$1,560,000); and

WHEREAS, Under Charter Section 8A.102(b)12, the SFMTA has exclusive authority to apply for, accept and expend federal, state, or other grants for Agency purposes; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the San Francisco Municipal Transportation Agency, through its Executive Director/CEO (or his designee), to accept and expend a total of \$8,526,709 in Fiscal Year 2009, 2010 and 2011 Lifeline Transportation Program grant funds from the Metropolitan Transportation Commission for the Enhanced Transit Security Program (\$1,534,415), the 29-Sunset Reliability Improvement Project (\$727,200), 108-Treasure Island Enhanced Service (\$262,228), the Randolph/Farallones/Orizaba Access Project (\$480,000), the San Bruno TPS Project (\$1,564,919), the Persia Triangle Improvements Project (\$802,734), the Discounted Lifeline Pass Program (\$1,595,213), and the Shopping Shuttle Program (\$1,560,000); and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO (or his designee) to furnish whatever additional information may be requested by MTC in connection with this request; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO (or his designee) to execute any and all agreements necessary to complete the transfer of funds.

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

THIS PRINT COVERS CALENDAR ITEM NO. :

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Office of the Board of Directors

BRIEF DESCRIPTION:

Appointing the San Francisco Municipal Transportation Agency's (SFMTA's) Controller, Elena Chiong, to the Board of Trustees for the Transport Workers Union-San Francisco Municipal Railway Trust Fund.

SUMMARY:

- San Francisco Civil Service Commission Rule 406.4 provides that the Transportation Workers Union-San Francisco Municipal Railway Trust Fund (Trust Fund) shall be administered by a six member Board of Trustees.
- Two of the trustees are appointed by the SFMTA Board of Directors and serve at the pleasure of the SFMTA Board of Directors.
- The first Trustee is Cam Beach, a SFMTA Board member.
- It is recommended that the SFMTA Board of Directors appoint Elena Chiong, SFMTA's Controller as a second trustee representative to the Trust Fund's Board of Trustees.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO

Sonali Bose _____

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

To appoint Ms. Elena Chiong, San Francisco Municipal Transportation Agency's (SFMTA's) Controller to serve on the Trust Fund's Board of Trustees.

GOAL

The SFMTA will further the following goals and objectives of the Strategic Plan:

- Goal 4: Financial Capacity – To ensure financial stability and effective resource utilization
 - Objective 4.1 – Increase revenue by 20% or more by 2012 by improving collections and identifying new sources
 - Objective 4.2 - Ensure efficient and effective use of resources

DESCRIPTION

Pursuant to the City and County of San Francisco's (City) Charter, each year a study is conducted to determine the wages that may be paid to SFMTA operators. The Charter provides that the maximum amount that may be paid is the average of the two highest wage schedules in effect on July 1st of that year for comparable platform employees and coach or bus operators of other public transit systems operated primarily within municipalities with a population of not less than 500,000 and employing at least 400 operators.

As part of this annual survey, an actuarial study is also conducted which is used to determine the monetary value of the difference between retirement, health and vacation benefits provided by the City and the benefits paid to operators for the two public transit systems used to determine SFMTA operator wages. As provided by Charter Section A8.404(f), an amount not to exceed the difference between these benefits shall be converted to a dollar amount and deposited into the Trust Fund.

San Francisco Civil Service Commission Rule 406.4 provides that the Trust Fund shall be administered by a six member Board of Trustees.

Two of the trustees are appointed by the SFMTA Board of Directors and serve at the pleasure of the SFMTA Board of Directors. Cam Beach, a SFMTA Board of Director currently serves on the Trust Fund's Board of Trustees. Three trustees are appointed by the Transport Workers Union, Local 250A. The remaining appointment is made by the Civil Service Commission. Civil Service Commission Rule 406.4 also grants these appointing authorities one alternate trustee appointment to serve when a trustee is not available to attend Board meetings.

The key powers and duties of the Board of Trustees include establishing:

- a detailed procedure for the receipt of monies to the Trust Fund and for the

administration
PAGE 3.

- of the Trust Fund;
- the types of benefits that shall be made available to transit operators and the procedures for the disbursement of such benefits; and
 - procedures for the investment of funds.

Elena Chiong has indicated her willingness to serve on the Trust Fund's Board of Trustees. She would replace former Finance Budget Manager, Henry Li. Due to the fiduciary responsibility entrusted to the Trust Fund's Board of Trustees, SFMTA staff recommends that Ms. Elena Chiong, the SFMTA's Controller, also be appointed to serve on the Board of Trustees.

ALTERNATIVE CONSIDERED

None

FUNDING IMPACT

None

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are required. The San Francisco Municipal Transportation Agency (SFMTA) Board has the authority to appoint two trustees.

RECOMMENDATION

The City Attorney's Office review is not required because it is a policy matter.

Staff recommends that the SFMTA Board approve the attached resolution authorizing the SFMTA, through its Executive Director/CEO or his designee, to appoint Ms. Elena Chiong, the SFMTA's Controller to serve on the Board of Trustees.

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

RESOLUTION No. _____

WHEREAS, San Francisco Civil Service Commission Rule 406.4 provides that the Transport Workers Union-San Francisco Municipal Railway Trust Fund shall be administered by a six member Board of Trustees; and

WHEREAS, Two of the trustees are appointed by the San Francisco Municipal Transportation Agency Board of Directors and serve at the pleasure of the SFMTA Board of Directors; now, therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors does hereby appoint Elena Chiong to the Board of Trustees for the Transportation Workers Union-San Francisco Municipal Railway Trust Fund.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 11

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute an agreement with Titan Outdoor LLC for advertising on San Francisco Municipal Transportation Agency vehicles and other property.

SUMMARY:

- In 2004, the City entered into a Transit Advertising Agreement for transit vehicles with a term of five years. That agreement expires on June 30, 2009.
- On August 19, 2008, the SFMTA Board adopted Resolution No. 08-149, authorizing a Request for Proposals (“RFP”) for Advertising on SFMTA Property, including vehicles and parking garages. The SFMTA issued the RFP on August 22, 2008. The SFMTA received two proposals, only one of which conformed to the minimum qualifications set forth in the RFP. The SFMTA conducted a thorough evaluation process relating to the qualifications of Titan Outdoor, the proposer that submitted the responsive proposal.
- The SFMTA negotiated with Titan Outdoor a 10-year contract with two five-year extension options, and a minimum guarantee of \$289,950,000 if both extension options are exercised.
- Titan Outdoor may wrap up to 20 percent of the SFMTA’s transit vehicles at any one time, excluding cable cars and historic streetcars, but may not cover any of the windows, vehicle numbers or SFMTA insignia.
- If approved by the SFMTA Board and the Parking Authority Commission, the Agreement will be submitted to the Board of Supervisors for final approval.

ENCLOSURES:

1. Resolution
2. Agreement for Advertising on SFMTA Vehicles and Other Property
3. Letter from Titan Outdoor

APPROVALS:

DIRECTOR OF DIVISION
PREPARING ITEM

DATE

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION Gail Stein, SFMTA Real Estate
BE RETURNED TO

ASSIGNED MTAB CALENDAR DATE: _____

PAGE 2

PURPOSE

This calendar item authorizes the Executive Director/CEO to execute an agreement with Titan Outdoor LLC for advertising on San Francisco Municipal Transportation Agency vehicles, in parking garages and on other property, and enables the SFMTA to obtain significant additional revenues from advertising to meet its operating needs.

GOAL

This item will meet the following goal and objectives of the SFMTA Strategic Plan:

- Goal 4, Financial Capacity: To ensure financial stability and effective resource utilization.
 - 4.1 Increase revenue by 20% or more by 2012 by improving collections and identifying new sources.
 - 4.2 Ensure efficient and effective use of resources.

DESCRIPTION

The City and Viacom Outdoor Group Inc. (now known as CBS Outdoor) entered into the current agreement for advertising on transit vehicles effective as of July 1, 2004. That agreement expires on June 30, 2009.

On August 19, 2008, the SFMTA Board adopted Resolution No. 08-149, authorizing a Request for Proposals (“RFP”) for Advertising on SFMTA Property. The SFMTA issued the RFP on August 22, 2008. The SFMTA received two proposals, one from Titan Outdoor and one from CBS Outdoor. Only the Titan Outdoor proposal conformed to the minimum qualifications set forth in the RFP. The SFMTA conducted a thorough evaluation process relating to the qualifications of Titan Outdoor. Negotiations have been completed, and the major provisions of the Agreement for Advertising on SFMTA Vehicles and Other Property (the “Agreement”), which is attached, are as follows:

Term

- The Agreement is for a 10-year term, plus two five-year options to extend the Agreement at the SFMTA’s sole discretion.

Revenue; Payments

- Titan Outdoor will make annual payments of \$500,000 in administrative fees and \$250,000 in marketing support. Additionally, Titan Outdoor will provide \$400,000 annually in media and/or services; these amounts will escalate annually according to the Bay Area Consumer Price Index.

PAGE 3

- Titan Outdoor will pay the SFMTA the greater of (i) 65% of its gross revenues from advertising under the contract, or (ii) a Minimum Annual Guarantee (“MAG”) of revenue, as set forth in the chart below:

Fiscal Year	MAG
2009-10	\$7,100,000
2010-11	\$7,600,000
2011-12	\$8,200,000
2012-13	\$8,750,000
2013-14	\$9,200,000
2014-15	\$9,850,000
2015-16	\$10,750,000
2016-17	\$11,500,000
2017-18	\$12,250,000
2018-19	\$13,000,000
2019-20*	\$14,000,000
2020-21*	\$14,750,000
2021-22*	\$16,000,000
2022-23*	\$17,000,000
2023-24*	\$18,250,000
2024-25*	\$19,500,000
2025-26*	\$20,750,000
2026-27*	\$22,250,000
2027-28*	\$23,750,000
2028-29*	\$25,500,000
Total	\$289,950,000

*Assumes that the SFMTA exercises the option(s) to extend the Agreement

- If, during the term of the Agreement, the number of transit vehicles (other than cable cars, historic streetcars or the 51 diesel buses in the reserve fleet) decreases for a period of 90 days or more by at least 15% (140) relative to the number of available transit vehicles on January 1, 2009 (934), then monthly MAG payments (attributable to advertising on transit vehicles) will decrease by the percentage decrease in the available transit vehicles. This calculation will be made every month until the number of available transit vehicles returns to 934.

Rights Granted

- Titan Outdoor will have the right to advertise on a wide range of properties under the jurisdiction of the SFMTA and will provide related infrastructure, such as ad panels for the vehicles.

PAGE 4

- The Agreement ensures that Titan Outdoor's rights are incidental to the SFMTA's transportation services, which may undergo changes affecting the advertising rights granted in the Agreement.

SFMTA Property; Other Property; Limitations on Advertising Displays

- The following SFMTA property is available for advertising under the Agreement: transit vehicles, parking garages, transit stations, including the future Central Subway stations, and other SFMTA facilities, and fare and parking media.
- The property covered under the Agreement will include parking garages under the jurisdiction of the Department of Recreation and Park. The SFMTA will enter into a Memorandum of Understanding with the Department of Recreation and Park related to those garages.
- Only interior ads are allowed on historic streetcars; all ads on cable cars must be in conformity with the character, style, and design of such vehicles.
- Titan Outdoor may wrap up to 20 percent of the SFMTA's transit vehicles at any one time, excluding cable cars and historic streetcars, but may not cover any of the windows, vehicle numbers or SFMTA insignia.
- Titan Outdoor may place digital advertising on up to 20 percent of the SFMTA's transit vehicles at any one time, excluding cable cars and historic streetcars. The SFMTA will be able to override digital advertising with emergency signage.
- The SFMTA will approve the following items prior to their use by Titan Outdoor: plan for advertising and advertising locations in parking garages; advertisements on fare media; plan for naming rights; future advertisements in the new Central Subway stations; and experimental advertisements.

Quality of Advertising

- Titan Outdoor will be required to comply with the provisions of the SFMTA Advertising Policy.

Maintenance Responsibilities

- Titan Outdoor will maintain the advertisements that it installs and any infrastructure that supports such advertisements in a clean, safe and first-class condition. Titan Outdoor will use "green" maintenance products that present the least potential threat to human health and the City's natural systems.
- Titan Outdoor will inspect and, if necessary, clean each advertisement at least once per week. Titan Outdoor will inspect more often if conditions warrant.
- Within 24 hours of notification, Titan Outdoor must repair any damage to any advertisements or infrastructure, including damage of a hazardous nature.

Performance Requirements and Security Deposits

- Titan Outdoor will provide a letter of credit for \$3,550,000 (50% of the MAG for fiscal year 2009-2010) for the first 10 years of the Agreement, increased to an amount equal to 50% of the MAG for fiscal year 2019-2020 for the duration of the Agreement if the options to extend the Agreement term are exercised. The SFMTA may draw on the letter of credit in the event of a failure to make the annual required payments due under the Agreement, a failure to replenish the Security Fund (see below) or termination of the Agreement due to a default by Titan Outdoor.
- Liquidated damages ranging from \$500/day to \$5,000/day may be imposed for maintenance breaches, failure to submit an annual financial statement, failure to cure audit deficiencies or failure to comply with the SFMTA's Advertising Policy. Titan Outdoor will provide a Security Fund of \$250,000 that SFMTA may draw on to pay for liquidated damages and other obligations not covered by the letter of credit.

LBE Goal

- Titan Outdoor has voluntarily committed to utilize certified LBE firms in support of the SFMTA's LBE Program goals and to encourage advertisers and advertising agencies to utilize LBEs. Titan Outdoor has agreed to use its best efforts to mentor an LBE or LBE-eligible San Francisco firm or firms to become a supplier and fabricator of non-illuminated static advertising frames and to perform printing services.

Termination

- The SFMTA may terminate the contract for default or convenience. The SFMTA may also partially terminate advertising rights with respect to any category of advertising space, other than transit vehicles, that Titan Outdoor does not sell over a period of 60 days unless Titan Outdoor demonstrates that it intends to sell advertising on that space but has been unable to do so.

Reference Checks

The SFMTA conducted reference checks with four comparable transit agencies with similar transit advertising contracts with Titan Outdoor: the New York MTA, Southeastern Pennsylvania Transportation Authority (SEPTA), Massachusetts Bay Transportation Authority and BART. All of these advertising contracts included MAG payments. All four of the agencies reported that Titan Outdoor had fulfilled and, in most cases, exceeded its annual MAG payment obligations, which ranged from \$7 million to \$58 million. All four transit agencies highly recommended Titan Outdoor as a contractor for the SFMTA. No operational issues were discovered through the reference verification process.

ALTERNATIVES CONSIDERED

The only alternative to entering into the Agreement with Titan Outdoor would be for the SFMTA to cease this type of advertising and to forgo this revenue source. Given the budget challenges facing the SFMTA, staff eliminated this option.

PAGE 6

FUNDING IMPACT

The Agreement is a revenue contract which will bring significant additional funds to the SFMTA and will not require the expenditure of funds.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Agreement will require the approval of the Board of Supervisors.

The City Attorney's Office and the Contract Compliance Office have reviewed this Calendar Item and the Agreement.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors and Parking Authority Commission authorize the Executive Director/CEO to execute an agreement with Titan Outdoor for advertising on SFMTA vehicles and other property.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, In 2004, the City entered into a Transit Advertising Agreement for advertising on transit vehicles with a term of five years, which is due to expire on June 30, 2009; and

WHEREAS, On August 19, 2008, the Board of Directors adopted Resolution No. 08-149, which authorized the San Francisco Municipal Transportation Agency ("SFMTA") to advertise a Request for Proposals ("RFP") for an agreement for advertising on SFMTA property, including vehicles and parking garages; and

WHEREAS, The SFMTA issued the RFP on August 22, 2008 and received two proposals, only one of which was responsive to the minimum qualifications set forth in the RFP; and

WHEREAS, The SFMTA conducted a thorough evaluation of the proposal submitted by Titan Outdoor LLC ("Titan Outdoor"), the proposer that submitted the responsive proposal; and

WHEREAS, SFMTA staff and Titan Outdoor have completed negotiations of a new Agreement for Advertising on SFMTA Vehicles and Other Property ("Agreement"); and

WHEREAS, The new Agreement is for a 10-year term, plus two five-year extension options, and will bring the SFMTA a minimum of \$289,950,000 in revenue should both extension options be exercised; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute Contract SFMTA 2008/09-08 (Agreement for Advertising on SFMTA Vehicles and Other Property) with Titan Outdoor, in a form substantially as presented to this Board, including a 10-year term, plus two five-year options to extend the Agreement, and required minimum annual guarantee, administrative and other payments to the SFMTA; and, be it

FURTHER RESOLVED, That the SFMTA Board of Directors recommends this matter to the Board of Supervisors for its approval.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

PARKING AUTHORITY COMMISSION
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. _____

WHEREAS, On August 19, 2008, the Parking Authority Commission adopted Resolution No. 08-154, which authorized the San Francisco Municipal Transportation Agency ("SFMTA") to advertise a Request for Proposals ("RFP") for an agreement for advertising on SFMTA and Parking Authority Commission property, which includes parking garages under the jurisdiction of this Commission; and

WHEREAS, The SFMTA issued the RFP on August 22, 2008 and received two proposals, only one of which was responsive to the minimum qualifications set forth in the RFP; and

WHEREAS, The SFMTA conducted a thorough evaluation of the proposal submitted by Titan Outdoor LLC ("Titan Outdoor"), the proposer that submitted the responsive proposal; and

WHEREAS, SFMTA staff and Titan Outdoor have completed negotiations of an Agreement for Advertising on SFMTA Vehicles and Other Property ("Agreement"); and

WHEREAS, The Agreement is for a 10-year term, plus two five-year extension options, and will bring the SFMTA a minimum of \$289,950,000 in revenue should both extension options be exercised; now, therefore, be it

RESOLVED, That the Parking Authority Commission authorizes the SFMTA Executive Director/CEO, as the authorized representative of the Parking Authority, or his designee, to execute Contract SFMTA 2008/09-08 (Agreement for Advertising on SFMTA Vehicles and Other Property) with Titan Outdoor, in a form substantially as presented to this Commission, including a 10-year term, plus two five-year options to extend the Agreement, and required minimum annual guarantee, administrative and other payments to the SFMTA; and, be it

FURTHER RESOLVED, That the Parking Authority Commission recommends this matter to the Board of Supervisors for its approval.

I certify that the foregoing resolution was adopted by the Parking Authority Commission at its meeting of _____.

Secretary, Parking Authority Commission

TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	1
1.1. Advertisement.....	1
1.2. Advertising Campaign.....	1
1.3. Advertising Contract.....	1
1.4. Advertising Space.....	1
1.5. Agreement.....	1
1.6. Annual Financial Report.....	1
1.7. Annual Revenue Share.....	1
1.8. Barter; Trade.....	1
1.9. Calendar Year.....	1
1.10. City.....	2
1.11. Consumer Price Index, Bay Area CPI.....	2
1.12. Contractor.....	2
1.13. Contract Year.....	2
1.14. Days.....	2
1.15. Digital Infrastructure Costs.....	2
1.16. Director.....	2
1.17. Effective Date.....	2
1.18. Fare and Parking Media.....	2
1.19. Fiscal Year.....	2
1.20. Graffiti.....	2
1.21. Gross Revenue.....	2
1.22. Infrastructure.....	2
1.23. MAG; Minimum Annual Guarantee.....	2
1.24. Monthly Payment.....	2
1.25. Municipal Railway; Muni.....	2

1.26.	Net Revenue.....	2
1.27.	Outage.....	2
1.28.	Party; Parties.....	3
1.29.	Proposal.....	3
1.30.	Records.....	3
1.31.	Request for Proposals, RFP.....	3
1.32.	San Francisco Municipal Transportation Agency; SFMTA.....	3
1.33.	SFMTA Property.....	3
1.34.	Total Required Payments.....	3
1.35.	Transit Stations.....	3
1.36.	Vehicles.....	3
1.37.	Wrap.....	3
2.	TERM OF THE AGREEMENT.....	3
3.	GRANT OF ADVERTISING RIGHTS AND PRIVILEGES; LIMITATIONS.....	3
3.1.	Rights Granted.....	3
3.2.	License Granted.....	3
3.3.	Rights Retained.....	3
3.4.	Option Regarding Retained Rights.....	4
3.5.	Authorized Advertising.....	4
3.5.1	Vehicle Advertising.....	4
	(a) Vehicle Count and Description.....	4
	(b) Wraps.....	4
	(c) Guaranteed Space on Vehicles.....	5
3.5.2	Transit Information Displays.....	5
	(a) PDSS Description.....	5
	(b) PDSS Advertising Space and Time.....	5
	(c) PDSS Ownership.....	5
3.5.3	Transit Stations.....	5
3.5.4	Fare Media.....	5
3.5.5	Corporate Sponsorships; Naming Rights.....	5
3.5.6	Trades and BarTERS.....	5

3.6.	Unsold Space	6
3.6.1	City's Use of Unsold Space.....	6
3.6.2	Contractor's Use of Unsold Space.....	6
3.6.3	Public Service Announcements	6
3.7.	Bonuses; Discounts; Allowances	6
3.8.	Advertising Space Subject to Change.....	7
3.9.	Transportation Priority.....	7
3.10.	Partial Termination	7
3.11.	Use of Structures.....	7
3.12.	No Damage to City Property.....	7
3.13.	Nuisances	7
4.	PARKING GARAGES.....	7
4.1.	Approvals Required	7
4.2.	Advertising Plan.....	7
5.	INVENTORY MANAGEMENT SYSTEM (IMS).....	7
5.1.	General.....	7
5.2.	IMS Review and Approval	8
5.3.	Inventory Records.....	8
5.4.	Technical Requirements.....	8
5.4.1	Application Requirements	8
5.4.2	IMS Maintenance and Upgrades.....	8
5.4.3	Security	8
5.4.4	Outages	8
5.5.	Disaster Planning	8
6.	OWNERSHIP, INSTALLATION AND MAINTENANCE	8
6.1.	Installation and Ownership Rights.....	8
6.2.	Maintenance.....	9
6.3.	Inspection and Clean-up	9
6.4.	Repair.....	9
6.5.	Removal of Advertisements.....	9
6.6.	Maintenance Plan.....	9

6.7.	Maintenance Products	9
6.8.	Remedies for Failure to Maintain or Repair	9
6.9.	Meetings.....	9
6.10.	Permits	9
7.	CONTENT OF ADVERTISEMENTS.....	9
7.1.	Advertising Policy	9
7.2.	Disclaimers	9
7.3.	Complaints	10
7.4.	Design Considerations and Use of Materials.....	10
7.4.1	General Considerations.....	10
7.4.2	Experimental Displays; New Media	10
7.4.3	Digital Displays	10
	(a) Limitations	10
	(b) Rollout Plan	10
	(c) Revenue.....	10
7.4.4	Cable Car Displays	10
8.	PAYMENTS.....	10
8.1.	Payments by Contractor to SFMTA	10
8.1.1	Administrative Payments.....	11
8.1.2	Marketing Support	11
8.1.3	Minimum Annual Guarantee (MAG)	11
8.1.4	Payment of MAG.....	12
8.1.5	Annual Revenue Share.....	12
8.1.6	Proration.....	12
8.2.	Late Payments.....	13
8.3.	Verification of Revenue	13
9.	REPORTS, INSPECTION AND REVIEWS	13
9.1.	Annual Financial Statement.....	13
9.2.	Summary Report	13
9.3.	Annual Inspection of Records.....	13
9.4.	Sales Activity Report	13

9.5.	Account Activity Summary by Display Location and Type.....	13
9.5.1	Advertising by Category	13
9.5.2	Bay Area-Wide Transit Contracts.....	14
9.6.	Copies of Contracts.....	14
9.7.	Maintenance and Service Logs	14
9.8.	Media Trade Reports.....	14
9.9.	Schedule of Rates and Charges.....	14
9.10.	Garage Revenue	14
10.	SECURITY DEPOSITS	14
10.1.	Requirement to Provide Financial Guarantees	14
10.2.	Letter of Credit.....	15
10.2.1	Requirements	15
10.2.2	Financial Institution	15
10.2.3	Extensions of Agreement.....	15
10.2.4	Demand on Letter of Credit	15
10.2.5	Expiration or Termination of Letter of Credit	15
10.2.6	Return of Letter of Credit	16
10.2.7	Excessive Demand.....	16
10.3.	Security Fund.....	16
11.	INSURANCE.....	16
12.	INDEMNIFICATION.....	17
13.	INCIDENTAL AND CONSEQUENTIAL DAMAGES.....	18
14.	LIABILITY OF CITY	18
15.	LIQUIDATED DAMAGES	18
15.1.	Performance Standards	18
15.1.1	Maintenance Breaches	18
15.1.2	Annual Financial Statement.....	19
15.1.3	Failure to Cure Audit Deficiencies	19
15.2.	Failure to Comply with Advertising Policy	19
15.3.	Failure to Pay Liquidated Damages.....	19
16.	DEFAULT; REMEDIES	19

16.1.	Events of Default	19
16.2.	City's Rights on Default.....	19
16.3.	No Waiver of Remedies.....	20
17.	TERMINATION FOR CONVENIENCE.....	20
18.	RIGHTS AND DUTIES UPON TERMINATION OR EXPIRATION.....	20
19.	LOCAL BUSINESS PARTICIPATION; EMPLOYMENT REQUIREMENTS	20
19.1.	LBE PARTICIPATION.....	20
19.1.1	Commitment	20
19.1.2	Nature of LBE Participation	21
19.1.3	Function	21
19.1.4	Mentoring Program.....	21
19.1.5	Quarterly Meetings	21
(a)	LBE Prime Contractor	21
(b)	LBE Subcontractor.....	21
(c)	LBE Joint Venture Partner	21
(d)	Other LBEs	21
(e)	Materials or Supplies	21
19.1.6	Substitution of Subcontractor and Suppliers.....	22
19.1.7	Addition of Subcontractors and Suppliers	22
19.1.8	Reporting Requirements	22
19.1.9	Enforcement.....	22
20.	First Source Hiring Program.....	22
20.1.	Incorporation of Administrative Code Provisions by Reference.....	22
20.2.	First Source Hiring Agreement.....	22
20.3.	Hiring Decisions	24
20.4.	Exceptions.....	24
20.5.	Liquidated Damages	24
20.6.	Subcontracts.....	25
21.	REQUIRING MINIMUM COMPENSATION FOR COVERED EMPLOYEES.....	25
22.	REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES.....	26
23.	MISCELLANEOUS PROVISIONS.....	27

23.1.	Submitting False Claims; Monetary Penalties	27
23.2.	Taxes	27
23.3.	Qualified Personnel.....	28
23.4.	Responsibility for Equipment	28
23.5.	Independent Contractor.....	28
23.6.	Payment of Taxes and Other Expenses.....	28
23.7.	Conflict of Interest	29
23.8.	Proprietary or Confidential Information of City.....	29
23.9.	Notices to the Parties	29
23.10.	Works for Hire	30
23.11.	Audit and Inspection of Records.....	30
	23.11.1 Records	30
	23.11.2 City's Right to Inspect and Copy	30
	23.11.3 Audit	30
	23.11.4 Findings of Nonperformance	30
23.12.	Subcontracting	30
23.13.	Assignment	30
23.14.	Non-Waiver of Rights.....	31
23.15.	Nondiscrimination; Penalties	31
	23.15.1 Contractor Shall Not Discriminate.....	31
	23.15.2 Incorporation of Administrative Code Provisions by Reference	31
23.16.	Drug-Free Workplace Policy	31
23.17.	Compliance with Americans With Disabilities Act.....	31
23.18.	Sunshine Ordinance	31
23.19.	Limitations on Contributions	31
23.20.	Prohibition on Political Activity with City Funds	32
23.21.	Preservative-Treated Wood Containing Arsenic	32
23.22.	Modification of Agreement.....	32
23.23.	Administrative Remedy for Agreement Interpretation	32
23.24.	Agreement Made in California; Venue.....	32
23.25.	Construction	32

23.26. Entire Agreement	32
23.27. Compliance with Laws	32
23.28. Services Provided by Attorneys.....	32
23.29. Severability	33
23.30. Protection of Private Information	33
23.31. Graffiti Removal	33
23.32. Food Service Waste Reduction Requirements.....	33
23.33. No Third Party Beneficiaries	33
23.34. Disputes.....	33
23.35. MacBride Principles--Northern Ireland	34

**City and County of San Francisco
Municipal Transportation Agency
1 South Van Ness Avenue
San Francisco, California 94103-1267**

Agreement between the City and County of San Francisco and

**Titan Outdoor LLC
SFMTA 2008/09-08**

This Agreement is made this _____ day of _____, 2009, in the City and County of San Francisco, State of California, by and between: Titan Outdoor LLC (“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 grant certain advertising rights on SFMTA properties.
- B.** A Request for Proposals (“RFP”) was issued on August 22, 2008, and City selected Contractor as the highest-qualified proposer pursuant to the RFP.
- C.** Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract.

Now, THEREFORE, the parties agree as follows:

1. DEFINITIONS.

1.1. Advertisement. Any combination of numerals, letters, words, models, banners, emblems, insignia, symbols, devices, lights, trademarks, service marks, sounds, textures, odors or other perceptible representation intended to call attention to any person, firm, group, organization, place, commodity, product, service, business, profession, enterprise or industry.

1.2. Advertising Campaign. A series of Advertisements that share a single idea and theme and are placed on numerous Vehicles or other Advertising Space for a limited period of time.

1.3. Advertising Contract. A contract between Contractor and its advertisers, clients, customers or agents to display or distribute Advertisements on Advertising Space.

1.4. Advertising Space. Any surface or portion thereof of SFMTA Property that is subject to this Agreement and is approved by SFMTA for the placement of Advertisements.

1.5. Agreement. This contract, all referenced Exhibits to this contract, the RFP and the Proposal, in that order of precedence, all of which are incorporated by reference in this Agreement as though fully set forth.

1.6. Annual Financial Report. The report required to be submitted under Section 9.2.

1.7. Annual Revenue Share. The amount payable to SFMTA as determined by applying the revenue share percentage listed in Table 8.1.3 to the Net Revenues for the previous Fiscal Year.

1.8. Barter; Trade. A sale of Advertising Space by Contractor in which the consideration received is all or partially in products or services.

1.9. Calendar Year. The period of time beginning January 1 and ending December 31 of a particular year.

- 1.10. City.** The City and County of San Francisco, a municipal corporation.
- 1.11. Consumer Price Index, Bay Area CPI.** Consumer Price Index distributed by the Bureau of Labor Statistics for the Consolidated Metropolitan Statistical Area covering San Francisco - Oakland - San Jose, effective April 1 of each year.
- 1.12. Contractor.** Titan Outdoor LLC, and its successors in interest.
- 1.13. Contract Year.** The period of time beginning July 1 and ending June 30 of a particular year.
- 1.14. Days.** Unless otherwise specified, all references to the term "Days" refer to calendar days.
- 1.15. Digital Infrastructure Costs.** All costs associated with the installation and fabrication of the digital displays and associated equipment, including but not limited to, all hardware and software costs, telecommunications costs (including wiring), digital system development costs, installation costs, initial electricity costs, flagging costs, if any, and the cost of financing.
- 1.16. Director.** The Director of Transportation of the San Francisco Municipal Transportation Agency or his or her designee.
- 1.17. Effective Date.** July 1, 2009.
- 1.18. Fare and Parking Media.** Fare and parking media issued by the SFMTA, including Fast Passes®, transfers, passports, cable car tickets, parking tickets (excluding garage parking tickets) and residential parking permits, but not including TransLink® cards.
- 1.19. Fiscal Year.** July 1 through June 30.
- 1.20. Graffiti.** Any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).
- 1.21. Gross Revenue.** All amounts billed for the sale of Advertising Space to advertisers, including the cash value of any Barter or Trades, as reflected in Contractor's Advertising Contracts, without any deductions and without regard to actual amounts received from advertisers.
- 1.22. Infrastructure.** All infrastructure required to be constructed, installed or maintained pursuant to this Agreement, including but not limited to advertising display frames, displays, racks, space frames, advertising boards, projection equipment or any device that is for the purpose of displaying Advertisements.
- 1.23. MAG; Minimum Annual Guarantee.** The minimum annual guarantee payment required by Section 8.1.3 of the Agreement.
- 1.24. Monthly Payment.** A payment made by Contractor to the SFMTA each month consisting of 1/12th of the MAG, 1/12th of the annual administrative payment required under Section 8.1.1, and 1/12th of the annual marketing support payment required under Section 8.1.2 of the Agreement.
- 1.25. Municipal Railway; Muni.** The public transit system in San Francisco under the jurisdiction of the SFMTA.
- 1.26. Net Revenue.** Gross Revenue less actual costs for advertising agency commission, provided that no such commission shall exceed 16 2/3% of Gross Revenue.
- 1.27. Outage.** Any period of time during which the IMS, required by Section 5, is not fully operational in accordance with the requirements of this Agreement or is not accessible to the SFMTA.

1.28. Party; Parties. The Parties to this Agreement are SFMTA and Contractor.

1.29. Proposal. The proposal submitted by Contractor in response to the City's Request for Proposals, dated November 3, 2008.

1.30. Records. All documents created, received or maintained by Contractor in connection with performance under this Agreement, including, but not limited to, books, accounts, invoices, maintenance and service logs, database information, contracts, construction documents, payroll information, maintenance and service logs and other documents, whether or not kept in electronic format.

1.31. Request for Proposals, RFP. The Request for Proposals issued by the City on August 22, 2008, attached hereto and incorporated by reference as though fully set forth.

1.32. San Francisco Municipal Transportation Agency; SFMTA. The Municipal Transportation Agency, an agency of the City and County of San Francisco established by San Francisco Charter Article VIII A, or any successor agency.

1.33. SFMTA Property. Real or personal property under the jurisdiction or control of the SFMTA that the SFMTA may approve for advertising under this Agreement, including, but not limited to, Vehicles, parking garages, facilities, Transit Stations, and Fare and Parking Media.

1.34. Total Required Payments. The amounts that Contractor is required to pay to SFMTA pursuant to Section 8.1.1 through 8.1.3 of this Agreement.

1.35. Transit Stations. Muni subway stations and tunnels owned and operated by the SFMTA during the term of this Agreement, including, but not limited to, the future Central Subway stations, and the Twin Peaks Tunnel.

1.36. Vehicles. Municipal Railway diesel buses, electric trolley buses, alternative fuel buses, historic streetcars, light rail vehicles, and cable cars used for public transit.

1.37. Wrap. An Advertisement covering an entire Vehicle except windows.

2. TERM OF THE AGREEMENT

The term of this Agreement shall be from July 1, 2009 to June 30, 2019. The SFMTA may, in its sole discretion, exercise two five-year options to extend this Agreement to June 30, 2024 and June 30, 2029, respectively.

3. GRANT OF ADVERTISING RIGHTS AND PRIVILEGES; LIMITATIONS

3.1. Rights Granted. City grants to Contractor the exclusive right to place such advertising as may be authorized from time to time by City on and in Advertising Space subject to this Agreement. The rights granted by this Section 3 are subject to the condition that Contractor, in the exercise of the rights herein granted, will make best efforts to sell Advertising Space and time to advertising clients. City warrants and represents only that Contractor shall have the exclusive right to place such advertising as may be authorized under this Agreement; City does not warrant or represent that any particular level of advertising, or advertising on all available Advertising Spaces, will be permitted under this Agreement.

3.2. License Granted. In conjunction with the rights granted by this Section 3, and subject to all provisions of this Agreement and applicable law, the SFMTA grants to Contractor a license to install, maintain, repair or replace Infrastructure as necessary for the placement of advertising on Advertising Space subject to this Agreement, including Advertising Space in or on Vehicles, Transit Stations, buildings and facilities, and to access such properties for the purpose of installation, maintenance, repair or replacement of Advertisements or Infrastructure, subject to any access restrictions communicated to Contractor in writing by SFMTA.

3.3. Rights Retained. Contractor acknowledges that City intends to, and hereby does, retain and reserve all advertising rights that are not specifically granted by this Agreement, and that City may exercise such retained and reserved rights through a source other than Contractor. The rights retained and reserved by City include, but are not limited, to:

3.3.1. The right to place Advertisements on any SFMTA property that is not expressly made part of this Agreement;

3.3.2. The right to license or otherwise provide for the use of any trade name, trademark, or other identifying device or symbol used, owned, licensed or registered by City;

3.3.3. The right to display poster advertisements in Muni Metro stations, except for the rights granted herein to Contractor for the sale of transit information display advertising; provided, that nothing herein shall affect any rights Contractor has as a result of any prior contractual relationship with the Bay Area Rapid Transit District;

3.3.4. The right to install electronic information displays with advertising in the Muni Metro stations other than as authorized in Section 3.5.2 and at Muni cable car stops;

3.3.5. The right to grant concessionaires the authority to advertise in Muni Metro stations, and on or in items sold by them on such premises;

3.3.6. Exclusive of all Advertising Space approved under this Agreement, the right, at SFMTA's expense, to place on Vehicles and within transit stations and other structures related to its transit system, informative material, including, but not limited to, timetables, "take-one" brochures, service notices, additional signs and other displays designed to encourage the use of its transit system. SFMTA reserves exclusive use of all 11" x 17" frames mounted on the rear-facing side of the bulkhead panel behind the operator's position, and, in articulated Vehicles, two additional 11" x 17" frames located near the trailer portion of the Vehicle. SFMTA shall not sell such space to advertisers either directly or through any intermediary;

3.3.7. Advertising rights granted under the Transit Shelter Advertising Agreement, dated December 10, 2007, between the City and Clear Channel Outdoor, Inc.

3.3.8. Advertising rights granted under a contract between the City and Ghiradelli Chocolate, with a term from August 1, 2008 through December 31, 2009.

3.4. Option Regarding Retained Rights. In the event SFMTA determines to solicit a contractor in connection with any of the advertising rights contained in Section 3.3, SFMTA shall afford Contractor an opportunity to submit a proposal to furnish, install and maintain such advertising. Within 30 days of receipt of written notice from the SFMTA, Contractor shall respond in writing to SFMTA setting forth the terms and conditions pursuant to which the Contractor will perform the work. In the event the Contractor and the SFMTA cannot reach an agreement as to the terms and conditions relating to the advertising rights, the SFMTA may issue a competitive solicitation for those advertising rights.

3.5. Authorized Advertising. In accordance with the exclusive advertising rights granted in this Section 3, City authorizes advertising as set forth below and in Section 4.

3.5.1. Vehicle Advertising. SFMTA initially authorizes Contractor to use the spaces on the Vehicles listed in Exhibit A for Vehicle advertising, subject to change in the sole and exclusive discretion of Director. The City reserves the right to negotiate with the Contractor the use of other vehicles for advertising at a future date.

(a) Vehicle Count and Description. For Vehicle advertising, subject to change in the sole and exclusive discretion of Director, City initially authorizes Contractor to use the spaces on the Vehicles listed in Exhibit A. The City reserves the right to negotiate with the Contractor for the use of other vehicles for advertising at a future date. SFMTA will provide to Contractor a "Fleet Inventory Report" at the inception of this Agreement and on or about the first day of the month following the increase or decrease of Vehicle fleet by 150 Vehicles or more. If new Vehicles are added, the revenue generated from Advertising Spaces on such Vehicles shall be credited towards fulfilling the MAG and included in the Annual Revenue Share calculation under Section 8.1.5.

(b) Wraps. Contractor may apply Wraps to all Vehicles except historic streetcars and cable cars; provided, however, that Contractor may apply Wraps to a maximum of 20 percent of all authorized Vehicles at any one time. Wraps may not cover Vehicle numbers or SFMTA insignia. All Wraps are

subject to policies adopted by the SFMTA Board of Directors regarding Wrap advertising. Wrap Advertisements shall not damage the Vehicles, their paint schemes or decal applications. Contractor shall reimburse City for any damage to Vehicles by reason of the application of any Wraps.

(c) **Guaranteed Space on Vehicles.** In each contract month, SFMTA shall have the right to the exclusive use of no more than 15 percent of Advertising Spaces on the exterior of Vehicles. SFMTA retains the right to use all interior Advertising Space on each Vehicle unless Contractor notifies the SFMTA, at least 30 Days in advance, that it has sold the Advertising Space. Contractor shall install, maintain and remove interior Advertisements for the SFMTA free of charge.

3.5.2. Transit Information Displays. Contractor may utilize available Advertising Space and time on SFMTA transit information displays, including the Platform Display Sign System (PDSS). For PDSS advertising, City authorizes Contractor to use display advertisements on all PDSS equipment situated in Muni Metro stations as described below.

(a) **PDSS Description.** The Advertising Space available on the PDSS consists of two types of displays. The first type is an electronic display that utilizes light emitting diodes to transmit moving or flashing illuminated messages across an area that measures 2 inches by 36 inches. The second type of display is fixed and non-electrical, measuring 2 inches by 36 inches in size and occupying an opening located directly beneath the electronic display. Each PDSS unit has two such openings available for the display of fixed, non-electrical advertising.

(b) **PDSS Advertising Space and Time.** The electronic Advertising Space and time available on the Muni Metro PDSS will vary, since priority will be given to emergency messages, destination messages, operational messages (including, but not limited to, notices to passengers about changes in routes, schedules and fares, as well as procedures for loading and off-loading passengers safely), and time clock information. Although City cannot guarantee that advertising messages will be displayed as scheduled, City will in good faith attempt to run all scheduled advertising messages. City shall have no liability for failure to run any such scheduled Advertisements.

(c) **PDSS Ownership.** Contractor acknowledges City's ownership of the PDSS and all its components, and waives any right, title or interest therein. Upon termination of PDSS rights granted hereunder and within 24 hours after request by City, Contractor agrees to return the PDSS terminal equipment and all its components to City in the same condition as when received, ordinary wear and tear excepted. If Contractor is unable to return the PDSS terminal equipment and all components to City in the same condition as received, ordinary wear and tear excepted, Contractor shall pay to City an amount equal to the cost of obtaining new replacement equipment, and Contractor may keep the original equipment.

3.5.3. Transit Stations. Contractor may advertise in Transit Stations subject to the prior approval of the Director. At least 90 Days prior to any advertising in Transit Stations, Contractor shall present an advertising plan to the SFMTA, setting forth the Contractor's proposal for advertising within Transit Stations (e.g., locations and size/shape/style of advertisements, schedules for advertising campaigns, installations).

3.5.4. Fare and Parking Media. Contractor may advertise on the backs of Fare and Parking Media, subject to the prior approval of the Director.

3.5.5. Corporate Sponsorships; Naming Rights. SFMTA authorizes Contractor to design a corporate sponsorship/naming rights program that will maximize revenue for the SFMTA. This program will be subject to approval of the Director. All revenue generated in connection with the program shall be included in Gross Revenues and in the calculation of the Annual Revenue Share.

3.5.6. Trades and Barter. Contractor may Barter or Trade Advertising Space and/or time on unsold Advertising Space under the following conditions:

(a) Contractor must secure the prior written approval of the Director for each Barter or Trade.

(b) Contractor is prohibited from receiving compensation for such transactions except as otherwise expressly authorized by this Agreement.

(c) Contractor shall report the value attributable to the Advertising Space subject to a Trade or Barter in the same manner as it reports actual Gross and Net Revenues. All such reported amounts shall be included in the calculation of the Annual Revenue Share in Section 8.1.5. Contractor will ensure that the advertising value of all Barter and Trade be on a dollar-for-dollar basis, i.e., that the value of Barter or Trades Contractor receives will equal the cash value of Advertising Space Bartered or Traded.

(d) Contractor is prohibited from receiving any consideration or commission for any such Trade or Barter other than payments which are reported under Section 8 of this Agreement.

(e) SFMTA may actively solicit trades, and Contractor shall cooperate with SFMTA in any such endeavor.

3.6. Unsold Space

3.6.1. City's Use of Unsold Space By the first day of each month, Contractor shall provide a projection of all unsold Advertising Space anticipated over the next 60 Days to SFMTA in an electronic format. Notwithstanding the provisions of Section 3 of this Agreement, the City has the first option to use, for a minimum of 14 Days, any Advertising Space, at no charge to the City and for any public purpose that has not been sold by Contractor. The City will be responsible for providing all printed posters ready for posting by Contractor. The SFMTA shall notify Contractor of the City's intention to use the unsold Advertising Space at least 30 Days prior to the date on which the City's use would begin. If Contractor is unable to deliver unsold Advertising Space for any reason after being notified of the City's intention to use unsold Advertising Space, and if the printed materials are time sensitive and cannot be reused, Contractor shall reimburse the City for all reasonable printing and design costs expended in anticipation of the City's use of that Advertising Space.

3.6.2. Contractor's Use of Unsold Space. To the extent that the City does not exercise its option to use unsold Advertising Space in accordance with Section 3.6.1, Contractor may use, at its sole cost and expense, available unsold Advertising Space: (a) for its own advertisements and promotion designed to increase the sale of Advertising Space; or (b) to display public service announcements provided by non-profit public, educational, and charitable organizations; or (c) for Trade and Barter as permitted under Section 3.5.6 of this Agreement.

3.6.3. Public Service Announcements. Contractor shall have the right, at its own discretion, to display certain public, educational, charitable and editorial displays free of charge or at reduced rates in any Advertising Spaces not contracted for use by paid advertisers and not being used by the SFMTA or Contractor pursuant to this Section 3. In the event that Contractor collects revenues hereunder solely to cover direct costs for labor and materials for carding, installation, maintenance, and removal of such displays, such amounts shall not be included in the Gross Revenues used to compute the Annual Revenue Share. Such freely donated or discounted advertising shall not, however, reduce the MAG payments hereunder.

3.7. Bonuses; Discounts; Allowances. No Advertising Space or time bonus, discount or allowance (from the amounts published in Contractor's then current Schedule of Rates and Charges as referenced in Section 9.9) shall be permitted without the prior written approval of the Director unless all the following conditions are met:

3.7.1. The transaction must result in a direct financial benefit to SFMTA, and may not relate in any way to the sale of advertising on or with other transit systems or properties;

3.7.2. Each such space or time bonus, discount or allowance, together with the term and/or schedule of display, shall be clearly itemized with appropriate footnotes in Contractor's Advertising Contracts or on an equivalent form reasonably approved by the Director.

3.7.3. Contractor is prohibited from receiving any consideration or commission for any bonus, discount or allowance other than payments which are reported under Section 9 of this Agreement.

3.8. Advertising Space Subject to Change. Contractor acknowledges and agrees that the available Advertising Space may vary from time to time for various reasons.

3.9. Transportation Priority. Contractor acknowledges and agrees that advertising, and the grant of advertising rights provided for in this Agreement, are incidental to the SFMTA's transportation business, which may undergo changes affecting the advertising rights granted. SFMTA will have no liability to Contractor for any change in its routes, in the number of Vehicles operated by it, in ridership, or for any other change affecting the level or scope of advertising authorized by SFMTA.

3.10. Partial Termination. The SFMTA may partially terminate the rights to any category of Advertising Space (other than on Vehicles) granted to Contractor pursuant to this Agreement upon which no Advertisement has been displayed for a period of 60 Days once advertising has commenced on such Advertising Space. Such partial termination shall require 60 Days' written notice by SFMTA, during which time Contractor may avoid partial termination by demonstrating to SFMTA with appropriate documents either (a) that it has sold Advertisements on the subject Advertising Space prior to the date of SFMTA's notice of partial termination, or (b) that it intends to continue advertising on such Advertising Space but has been unable to sell advertising on the Advertising Space after reasonable attempts to do so.

3.11. Use of Advertising Space. Contractor may not use Advertising Space for any purpose other than those expressly provided in this Agreement.

3.12. No Damage to City Property. Contractor and its subcontractors may not damage City property. The use of exterior advertising display frames or similar hardware and adhesive decals such as "Control-TAC" or its equivalent shall not damage the paint schemes or decal applications of Vehicles, or any surface of any Advertising Space. If in the course of its activities under the Agreement Contractor or any of its employees or subcontractors damages any property belonging to City, Contractor shall compensate the City for the full extent of its losses resulting from the damage. At City's option, City may require Contractor to repair any such damage.

3.13. Nuisances. Contractor shall conduct its activities under this Agreement in a manner that does not constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, or to the public.

4. PARKING GARAGES.

4.1. Approvals Required. The Director must approve all Advertising Space locations in parking garages. For those parking garages under their jurisdiction, the SFMTA Board of Directors, the Parking Authority Commission (or its designee), or the Recreation and Park Commission (or its designee), respectively, must also approve the location of Advertising Space. Contractor shall assist the SFMTA in obtaining the consent of garage operators that may be required to place advertising in certain garages.

4.2. Advertising Plan. At least 90 Days prior to any planned advertising in parking garages, Contractor shall submit a proposed plan for review and approval by the Director. The plan shall contain the Contractor's proposals for Advertising Space locations within each garage, the results of outreach and meetings with garage operators, proposed schedules for advertising placement in each garage, and contact information. The plan must demonstrate that the Contractor is knowledgeable about and has satisfactorily addressed the operating needs and concerns of garage operators. Space shall be reserved for advertisements or signs by businesses located in the garage or for community information. After the plan is finally approved as required under Section 4.1, Contractor need not obtain any further approvals unless the Contractor or SFMTA wish to make a material change to the plan.

5. INVENTORY MANAGEMENT SYSTEM (IMS).

5.1. General. Contractor shall create and maintain throughout the term of the Agreement an Inventory Management System (IMS), as set forth in further detail below, for documenting the location(s) of Advertisements and Advertising Campaigns on Advertising Space.

5.2. IMS Review and Approval. Within 60 Days after the Effective Date, Contractor shall submit for SFMTA approval complete documentation of its proposed IMS, including the database structure and fields, the reports available from the system, disaster planning information required by Section 5.5, and the end-user interface and access as it will be available to SFMTA staff. Within 60 Days after SFMTA approval, Contractor shall implement the system with full functionality in accordance with the approved IMS design.

5.3. Inventory Records. Contractor shall enter into the database, on a daily basis, the Advertising Space, by Vehicle number or other location, the subject matter of the Advertisement or Advertising Campaign; and a sample of each Advertisement that is part of a particular Advertising Campaign. In addition, the database shall contain detail on which Advertisement is posted on each Advertising Space.

5.4. Technical Requirements.

5.4.1. Application Requirements. The data on the IMS must be available to designated SFMTA staff through the internet 24 hours a day. All reports from the IMS shall be available for downloading by SFMTA staff in an open architecture format, such as .xls, .csv, .txt, or .xml format.

5.4.2. IMS Maintenance and Upgrades. Contractor shall backup the IMS system every weekday but shall not conduct any backup or maintenance activities between the hours of 8 a.m. and 8 p.m. Pacific Time, weekdays. Contractor and SFMTA shall meet on an annual basis to review and discuss enhancements to the IMS. Contractor shall obtain written approval from the Director before making any modifications to the IMS that affect the use of the IMS by the SFMTA.

5.4.3. Security. Contractor shall ensure that all information in the IMS is secure and that no other entity will have access to information required to be provided under this Agreement without written authorization from the Director. Contractor shall provide to SFMTA username(s) and password(s) for secure access to the IMS. Contractor shall replace and/or block any username(s) and password(s) if requested by SFMTA within four hours. Contractor shall provide any new requested username(s) and passwords within two Days. There shall be no limit to the number of username(s) and password(s).

5.4.4. Outages. Contractor shall document any Outages and shall provide a monthly report documenting all Outages no later than the fifth day of each calendar month. In no case shall the IMS be less than fully operational for a total of more than 240 minutes in any calendar month.

5.5. Disaster Planning. Contractor shall use disaster planning best practices to ensure that IMS data can be recovered within a reasonable period of time after a disaster affecting IMS utilization. Contractor shall submit a copy of its disaster planning protocol to the SFMTA in connection with the approval of the database under Section 5.2.

6. OWNERSHIP, INSTALLATION AND MAINTENANCE

6.1. Installation and Ownership Rights. Contractor, at its own expense, shall:

6.1.1. Furnish all new Infrastructure of the size currently in use, or of a size and type as may be agreed upon by SFMTA and Contractor, as is required either to replace presently existing Infrastructure, to add to the existing Infrastructure or to construct new Infrastructure in new locations. Contractor shall reimburse City for any such Infrastructure installed at City's expense by a factory supplier of new or rebuilt vehicles or other supplier. Contractor acknowledges and agrees that City owns and has full title to any and all Infrastructure including, but not limited to, that which is now or hereafter affixed to any Vehicle or any other SFMTA property subject to this Agreement. Notwithstanding anything to the contrary hereto, all digital signs shall remain the property of the Contractor until the expiration of this Agreement, at which time ownership of the signs shall vest in the SFMTA.

6.1.2. Place all Advertisements in a clean, safe, and first-class condition, and shall maintain or replace Advertisements as needed.

6.1.3. Erect all Infrastructure and insert all Advertisements in accordance with any schedule approved by SFMTA, or if no schedule is approved, whenever possible at hours of minimum passenger, visitor and employee activity within SFMTA facilities. Contractor may only install Advertisements in or on Vehicles when they are not in use.

6.2. Maintenance. Contractor shall continuously maintain Infrastructure in a clean, safe, and first-class condition during the entire term of this Agreement, and shall maintain or replace all Infrastructure as needed.

6.3. Inspection and Clean-up. Contractor must inspect each Advertisement at least once per week. Contractor shall make more frequent inspections if conditions warrant. In the course of each inspection of an Advertisement, Contractor shall remove all Graffiti, stickers, posters, dust and dirt from each Advertisement.

6.4. Repair. Within 24 hours of notification by the City, SFMTA staff or discovery by Contractor, Contractor shall repair any damage, including, but not limited to, damage from vandalism or Graffiti, found on any Advertisement or advertising Infrastructure. Contractor shall repair, replace or remove, as appropriate, any damage to an Advertisement or Infrastructure that is of a hazardous nature, including but not limited to broken glass or protruding edges, within 24 hours of notification to or discovery by Contractor.

6.5. Removal of Advertisements. Contractor agrees to remove Advertisements as expeditiously as practical after the expiration of each Advertising Contract, and in no event later than 30 Days after expiration of any such Advertising Contract, so that no continuation or over-posting of such Advertising Contract results in any loss of revenues to be generated under this Agreement. Dated advertisements shall be removed within five days after expiration of the Advertising Contract.

6.6. Maintenance Plan. Contractor shall perform maintenance in accordance with the standards of this Agreement and the terms of the maintenance and installation plan attached as Exhibit B.

6.7. Maintenance Products. To the maximum extent feasible, Contractor shall use maintenance products that present the least potential threat to human health and the City's natural systems. The City's approved "green" product list may be obtained at the following website:
http://www.sfenvironment.org/our_programs/topics.html?ssi=9&ti=22.

6.8. Remedies for Failure to Maintain or Repair. In the event that Contractor fails to repair or maintain Advertisements within the time specified by SFMTA, SFMTA may, in its sole discretion, upon five Days written notice to Contractor, cause the repair or maintenance of said Advertisements or Infrastructure. Contractor shall pay SFMTA for its actual costs, including overhead costs, within 10 Days following receipt by Contractor of an invoice.

6.9. Meetings. Contractor's upper level management personnel shall meet with the SFMTA in San Francisco quarterly for the purpose of reviewing Contractor's performance under this Agreement, including the success of its advertising sales program. Contractor's operations personnel shall meet in person or by telephone with SFMTA staff monthly (or more often, at the request of the SFMTA) to discuss operational issues.

6.10. Permits. Contractor shall be responsible for obtaining any permits that may be required in connection with installation of any Advertising under this Agreement.

7. CONTENT OF ADVERTISEMENTS

7.1. Advertising Policy. The SFMTA Board of Directors has adopted an Advertising Policy that prohibits certain types of advertisements. See Exhibit C. The Contractor agrees to comply with the advertising standards set forth in this policy. The SFMTA Board of Directors may unilaterally amend the Policy, and SFMTA will provide to Contractor notice of any such amendments. Contractor is permitted to display only those Advertisements that are in compliance with SFMTA's Policy. Upon written demand by the Director, Contractor agrees to promptly remove any Advertisements that are in violation of SFMTA's Policy to the extent permitted by state or federal law.

7.2. Disclaimers. Contractor shall install a decal on each Advertisement or associated Infrastructure that reads: "The views expressed in any advertisement do not necessarily reflect the views of the Municipal Transportation Agency." Contractor shall provide the decals and SFMTA will determine the locations on the Advertising Space where Contractor shall place the decals.

7.3. Complaints. Contractor shall install a decal on each Advertisement or associated Infrastructure indicating that a member of the public may dial 3-1-1 to report any complaint about the physical condition of the Advertisement. The design of the decal and the location of the decal on the Advertisement will be subject to the prior approval of the SFMTA. Current decals shall be replaced as needed to ensure accuracy and readability.

7.4. Design Considerations and Use of Materials

7.4.1. General Considerations. It is the intent of both SFMTA and Contractor to provide an advertising program that is effective and aesthetically pleasing and that will be beneficial to both Parties. The parties accordingly agree (A) to maintain throughout the term of this Agreement a continual liaison and exchange of plans and information to assure the successful implementation of the Agreement, and (B) to use materials and technology presently available or subsequently developed for all exterior and interior Advertisements that will enhance the appearance and image of SFMTA Vehicles, transit system and facilities and that will not detract from the transit system's color scheme and logo or damage the surface of Advertising Spaces, including the Vehicles' paint scheme or decal applications. SFMTA shall have the right to determine the number, type, and method of attachment and location of all advertising Infrastructure. Contractor shall also use, to the maximum extent feasible, the most sustainable technology and materials.

7.4.2. Experimental Displays; New Media. Contractor may experiment with new advertising materials, media formats, displays and designs. SFMTA and Contractor shall coordinate on the type and extent of such experimental projects, and their schedule and term; provided, however, Contractor shall not proceed with such experimental projects until authorized by SFMTA. During the term of these projects, the sales and inventory value of such experimental displays shall not be used to recalculate the MAG, unless and until the SFMTA authorizes any such display on a non-experimental basis. Revenue from these displays may, however, be used as a credit towards meeting the MAG and shall be included in the calculation of Annual Revenue Share in Section 8.1.5 below.

7.4.3. Digital Displays. Digital advertising displays are permitted on Vehicles and in Transit Stations subject to the following:

(a) **Limitations.** Contractor shall limit digital advertising to no more than 20 percent of Vehicles at any one time; and Contractor may not include digital advertising on historic streetcars and cable cars. Digital advertising must be capable of being overridden when the SFMTA determines that such Infrastructure must be used for emergency signage.

(b) **Rollout Plan.** Not later than 60 days prior to any planned placement of digital advertising displays on Vehicles or in Transit Stations, Contractor shall submit a rollout plan to the SFMTA for approval. The rollout plan shall set forth the types, locations, and duration of such displays, the Infrastructure costs, and projected advertising revenue. Contractor shall include a pro forma spreadsheet showing how long it will take to recoup its capital costs from advertising revenues based on the revenue share allocation in subsection (c) below. The SFMTA will have 30 days from submission of the rollout plan to review the rollout plan and either approve it, disapprove it, or submit any comments to Contractor.

(c) **Revenue.** Notwithstanding any provision of Section 7.4.2, or Sections 8.1.3 through 8.1.5 below, Net Revenues from digital displays shall be allocated as follows: 75 percent of Net Revenues to Contractor and 25 percent of Net Revenues to the SFMTA until Contractor has recouped its Digital Infrastructure Costs for the digital displays, in accordance with the schedule in its rollout plan. Thereafter, the revenue allocation shall be allocated on a 50%/50% basis between Contractor and the SFMTA.

7.4.4. Cable Car Displays. All advertising on cable cars shall be in conformity with the character, style, and design of such Vehicles.

8. PAYMENTS

8.1. Payments by Contractor to SFMTA. During the term of this Agreement, Contractor shall pay to the SFMTA the amounts listed below, without any deduction or offset whatsoever. Contractor shall make

payments electronically in accordance with wiring or other remittance instructions provided in writing by the SFMTA.

8.1.1. Administrative Payments. Contractor shall pay \$500,000 (“base rate”) annually, as escalated each year by the percentage change in the most recently published 12-month average Bay Area CPI. Contractor shall pay the annual amount in 12 equal installments along with its MAG payment referenced in Section 8.1.4 below.

8.1.2. Marketing Support. Contractor shall contribute \$250,000 annually to the SFMTA marketing and community outreach program. Contractor shall pay the annual amount in 12 equal installments along with its MAG payment referenced in Section 8.1.4 below and the administrative payment referenced in Section 8.1.1. In addition, Contractor shall provide \$400,000 in media (print, TV, radio, web, outdoor, direct mail, etc.) and/or services (cumulatively, “Media Services”), either provided directly to the SFMTA or purchased (with approval of the Director) for the use of the SFMTA, as escalated each year by the percentage change in the most recently published 12-month average Bay Area CPI. Contractor shall be permitted to Barter Advertising Space in connection with securing the Media Services, as long as such Barter is secured in accordance with the provisions of Section 3.5.6. Contractor will ensure that the advertising value of Media Services bartered or purchased will be on a dollar-for-dollar basis, i.e., that the value of Media Services that Contractor receives will equal the cash value of Advertising Space Bartered or Traded for the Media Services according to the then current Schedule of Rates and Charges, as referenced in Section 9.9, or the fair market value of the Advertising Space, if it is less than the Schedule of Rates and Charges. Any unused Media Services in a given year shall not carry over into the following year. Contractor shall meet with representatives of SFMTA’s marketing department upon request to review SFMTA’s Media Services needs. Contractor shall track the amount of Media Services provided during each year of the Contract and shall provide monthly reports detailing Media Services provided to SFMTA.

8.1.3. Minimum Annual Guarantee (MAG). In accordance with Section 8.1.4, during each Fiscal Year of the Agreement, Contractor shall pay to the SFMTA the MAG amount set forth in Table 8.1.3 below.

Table 8.1.3: MAG Amount and Revenue Share Percentage

Fiscal Year	MAG	Revenue Share
2009-10	\$7,100,000	65%
2010-11	\$7,600,000	65%
2011-12	\$8,200,000	65%
2012-13	\$8,750,000	65%
2013-14	\$9,200,000	65%
2014-15	\$9,850,000	65%
2015-16	\$10,750,000	65%
2016-17	\$11,500,000	65%
2017-18	\$12,250,000	65%
2018-19	\$13,000,000	65%
2019-20*	\$14,000,000	65% *
2020-21*	\$14,750,000	65% *
2021-22*	\$16,000,000	65% *
2022-23*	\$17,000,000	65% *
2023-24*	\$18,250,000	65% *
2024-25*	\$19,500,000	65% *
2025-26*	\$20,750,000	65% *
2026-27*	\$22,250,000	65% *
2027-28*	\$23,750,000	65% *
2028-29*	\$25,500,000	65% *
Total	\$289,950,000	

*Assumes that the option(s) to extend the contract are exercised by the SFMTA

8.1.4 Payment of MAG. On or before the 1st day of each month during each Fiscal Year, Contractor shall pay the SFMTA 1/12th of the applicable MAG.

8.1.5 Annual Revenue Share. No later than 45 days after the end of each Fiscal Year, Contractor shall provide the SFMTA with documentation of its Gross and Net Revenues and Total Required Payments for the previous Fiscal Year as part of the Summary Report required by Section 9.2. Contractor shall apply the revenue share percentage designated in Table 8.1.3 above to the Net Revenues for the previous Fiscal Year to determine the SFMTA’s Annual Revenue Share. If the Annual Revenue Share exceeds the Total Required Payments made to the SFMTA pursuant to subsections 8.1.1 through 8.1.3, Contractor shall pay the SFMTA any difference between the Total Required Payments made and the Annual Revenue Share along with the documentation required above. In the event this Agreement terminates for any reason before the completion of a Fiscal Year, Contractor shall submit the documentation required by this subsection and any final payment required by this subsection within 60 Days of termination.

8.1.6 Proration. Notwithstanding the provisions of Section 3.8 and 3.9 of this Agreement, should the number of Vehicles (other than cable cars or historic streetcars) available for advertising drop, for a period of 90 Days or more, by at least 15 percent relative to the number of available Vehicles on January 1, 2009, Contractor shall be entitled to decrease monthly MAG payments (attributable to advertising on Vehicles) due to the SFMTA under Section 8.1.3 by the percentage of the decrease in available Vehicles (e.g., 25% if there is a decrease of 25%). For purposes of this Section, it is agreed that the number of available Vehicles (other cable cars or historic streetcars or the Muni reserve fleet) on January 1, 2009 was 934 Vehicles, and 15 percent of that number is 140 (the "Vehicle Availability Minimum"). The MAG payment shall be

recalculated each month according to this formula until the number of available Vehicles returns to the Vehicle Availability Minimum. The SFMTA agrees to provide Contractor with prior notice of any major Vehicle procurements and to discuss the proposed exterior specifications of the Vehicles with Contractor.

8.2 Late Payments. Payments from Contractor that are not paid when due will bear interest compounded daily from and after the date said payment was due until the date paid at the prime rate plus three percent. Acceptance of a late payment by SFMTA will not constitute a waiver of Contractor's default with respect to the overdue amount, nor prevent SFMTA from exercising any of the other rights and remedies granted under this Agreement or by law. SFMTA shall have no responsibility to notify Contractor of payments not received by the due dates.

8.3 Verification of Revenue. In each Contract Year covered by this Agreement, a verification of sales and revenues reported to the SFMTA by Contractor shall be made by a certified public accounting firm selected by the SFMTA. The SFMTA may assign the verification function to the Audits Division of the San Francisco Controller's Office. The cost of such verification shall be shared equally by SFMTA and Contractor. Alternatively, Contractor, at its sole expense, may have its certified public accounting firm perform the verification function. If it is determined as a result of any such verification that there has been a deficiency in percentage payments as required by this Agreement, then such deficiency shall become immediately due and payable with interest at 10%, or the maximum lawful rate, whichever is higher, from the date when said payment should have been made. If Contractor's accounting reports for any contract month shall be found to have understated Net or Gross Revenues by more than 2% and the SFMTA is entitled to any additional percentage payment as a result of said understatement and said understatement is material and intentional, then Contractor shall pay, in addition to the interest charges above, all of the costs and expenses of such audit.

9. REPORTS, INSPECTION AND REVIEWS

9.1. Annual Financial Statement. On or before the first day of the 5th calendar month following the close of Contractor's fiscal year, Contractor shall submit to City three copies of Contractor's annual financial statement prepared by an independent public accountant.

9.2. Summary Report. On or before the first day of the third calendar month following the close of Contractor's fiscal year, Contractor shall submit to the SFMTA a Summary Report detailing total Advertisement sales, revenues, expenditures, documentation of Gross and Net Revenues and Total Required Payments for the previous Fiscal Year, and the number of Advertising Contracts by type of Advertising Space.

9.3. Annual Inspection of Records. By September 1 for the City's prior Fiscal Year, Contractor shall make available at its place of business in San Francisco or the surrounding area for inspection by City of the following information:

9.3.1. The total revenues, earnings before income tax, depreciation, amortization and profit from advertising operations, both on a cash and accrual basis.

9.3.2. Comparable financial statistics relating to Contractor's advertising contracts for transit vehicles with other public or transit agencies in the Bay Area or other large metropolitan areas.

9.4. Sales Activity Report. A "Sales Activity Report" on the form attached hereto as Exhibit D, or an equivalent form approved by Director shall be prepared by Contractor and submitted to the Director on or before the 30th day of the following month.

9.5. Account Activity Summary by Display Location and Type. An "Account Activity Summary by Display Location and Type," on the form attached hereto as Exhibit D, or an equivalent form approved by the Director, shall be prepared monthly by Contractor and submitted to the Director on or before the 20th day of the following month. This summary shall include the following:

9.5.1. Advertising by Category. A percentage allocation of Gross and Net Revenues by Contractor's top five categories of advertisements (e.g., fashion, automotive, media, and beverage) and three categories of advertising clients. The three client categories shall be

(1) commercial/national accounts; (2) commercial/local accounts; and (3) other accounts. SFMTA may request new or additional categories during the term of this Agreement.

9.5.2. Bay Area-Wide Transit Contracts. If Contractor represents other transit properties in the San Francisco Bay Area (defined by the U.S. Bureau of Census as the San Francisco-Oakland and the San Jose Standard Metropolitan Statistical Areas), any Advertising Contract written for Bay Area-wide distribution and posting shall be identified as such on the face of such Advertising Contract. For all such Advertising Contracts, Contractor shall supply the SFMTA with the amount of total Gross Revenues, as well as the percentage of total Gross Revenues allocated to the SFMTA and the other transit properties.

9.6. Copies of Contracts. On or before the 20th day of each month, Contractor shall submit to SFMTA a copy of each Advertising Contract billed by the Contractor during the preceding month. On each such Contract, Contractor shall indicate the account type of each advertiser (*i.e.*, commercial-national; commercial-local; SFMTA/City; or non-profit public service announcement), and if the sale is for Bay Area-wide distribution, the allocation to SFMTA and the other Bay Area transit properties.

9.7. Maintenance and Service Logs. Contractor shall maintain accurate maintenance and service logs describing the dates and locations of all routine inspections conducted of Advertisements, Infrastructure and Advertising Spaces as required by this Agreement, as well as the date, the location and the nature of any maintenance or service activity conducted by Contractor. If Contractor conducts the maintenance or service in response to a complaint by the public, the log shall include the date and the nature of the complaint to which the Contractor has responded. If requested by the SFMTA, Contractor shall provide copies of such maintenance and service logs in an electronic format.

9.8. Media Trade Reports. Contractor shall supply SFMTA with quarterly reports of media Trade transactions authorized by Section 3.5.3 showing:

9.8.1. the cumulative total of consideration received for Barter or Trades received by the SFMTA since contract inception through the end of the previous quarter;

9.8.2. a list of new Trade offers for the quarter, showing amounts accepted by the SFMTA.

9.9. Schedule of Rates and Charges. On or before the first business day of each Calendar Year, Contractor shall provide to SFMTA a complete "Schedule of Rates and Charges" for all advertising charges under this Agreement, together with a similar schedule of rates for any other San Francisco Bay Area transit system for which Contractor has a transit advertising agreement. Each such schedule shall include a range (minimum and maximum) of all standard rates and charges for each type of Advertising Space and time available for rental; all time and quantity purchase discounts; discounted rates and charges for civic, charitable, non-profit and public service organizations; all fees and direct costs for labor and materials for carding, installation, maintenance, and removal of advertising; and terms, conditions and manner of payment by advertisers. Contractor shall submit to the SFMTA, in writing, any changes in rates and charges during the Contract Year not later than 15 days from the effective date of such change. In the event of any dispute relating to rates and charges, such dispute shall be resolved by the Director, whose decision shall be final and conclusive, unless arbitrary and capricious.

9.10. Garage Revenue. No later than 30 Days after the end of each quarter, Contractor shall provide a report ("Garage Report") that identifies the portion of the MAG attributable to all parking garages ("Garage MAG"). In the Garage Report, Contractor shall also itemize the portion of the Garage MAG and the overall garage revenue attributable to each parking garage.

10. SECURITY DEPOSITS

10.1. Requirement to Provide Financial Guarantees. Upon the Effective Date of this Agreement, Contractor shall provide, and shall maintain for the time periods specified herein, financial instruments and funds described in this Section 10 as security to ensure Contractor's performance of all terms and conditions of this Agreement and to compensate for any damage to City property and/or other actual costs to City for Contractor's violation of the terms of this Agreement, as further described below.

10.2. Letter of Credit

10.2.1. Requirements. No later than June 15, 2009, Contractor shall provide to City and shall maintain, throughout the term of this Agreement and for 90 Days after the expiration or termination of this Agreement or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs later, a confirmed, clean, irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation, in the amount of 50 percent of the MAG for Fiscal Year 2009-2010. The letter of credit must have an original term of one year, with automatic renewals of the full amount throughout the term of the Agreement. If Contractor fails to deliver the letter of credit as required, City may deem Contractor to be in default in the performance of its obligations hereunder. In such event, City, in addition to all other available remedies, may terminate the Agreement. The letter of credit must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the bank signed by the Director of Transportation of the San Francisco Municipal Transportation Agency on behalf of the City and County of San Francisco.

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

10.2.3. Extensions of Agreement. If the SFMTA exercises the option to extend the Agreement, as provided in Section 2, then no later than the first Day of the extended term Contractor must provide a new letter of credit in the amount of 50 percent of the MAG for fiscal Year 2019-2020 for the duration of any extension of the term of this Agreement.

10.2.4. Demand on Letter of Credit. The letter of credit will constitute a security deposit guaranteeing faithful performance by Contractor of the following terms, covenants, and conditions of this Agreement, including all monetary obligations set forth in such terms: (a) failure to pay any of the Total Required Payments under Section 8.1; (b) failure to replenish the Security Fund under Section 10.3; and (c) termination of this Agreement due to the default of the Contractor, in which case the City shall be entitled to the full amount of the Letter of Credit. Under any of the above circumstances, SFMTA may make a demand under the letter of credit for all or any portion of the Letter of Credit to compensate City for any loss or damage that they may have incurred by reason of Contractor's default, negligence, breach or dishonesty; provided, however, that City will present its written demand to said bank for payment under said letter of credit only after City first has made its demand for payment directly to Contractor, and five full Days have elapsed without Contractor having made payment to City. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the letter of credit those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the services described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of the letter of credit is so used or applied by City, Contractor, within 10 business days after written demand by City, shall reinstate the letter of credit to its original amount; Contractor's failure to do so will be a material breach of this Agreement.

10.2.5. Expiration or Termination of Letter of Credit. The letter of credit must provide for 60 Days' notice to City in the event of non-extension of the letter of credit; in that event, Contractor shall replace the letter of credit at least 10 business Days prior to its expiration. In the event the City receives notice from the issuer of the letter of credit that the letter of credit will be terminated, not renewed or will otherwise be allowed to expire for any reason during the period from the commencement of the term of this Agreement to 90 Days after the expiration or termination of this Agreement, or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs last, and Contractor fails to provide the City with a replacement letter of credit (in a form and issued by a financial institution acceptable to the City) within 10 Days following the City's receipt of such

notice, such occurrence shall be an event of default, and, in addition to any other remedies the City may have due to such default (including the right to terminate this Agreement), the City shall be entitled to draw down the entire amount of the letter of credit (or any portion thereof) and hold such funds in an account with the City Treasurer in the form of cash guarantying Contractor's obligations under this Agreement. In such event, the cash shall accrue interest to the Contractor at a rate equal to the average yield of Treasury Notes with one-year maturity, as determined by the Treasurer. In the event the letter of credit is converted into cash pursuant to this paragraph, upon termination of this Agreement, Contractor shall be entitled to a full refund of the cash (less any demands made thereon by the City) within 90 Days of the termination date, including interest accrued through the termination date.

10.2.6. Return of Letter of Credit. The letter of credit will be returned within 90 Days after the end of the term of this Agreement, provided that Contractor has faithfully performed throughout the life of the Agreement, Contractor has completed its obligations under the Agreement, there are no pending claims involving Contractor's performance under the Agreement and no outstanding disagreement about any material aspect of the provisions of this Agreement. In the event this Agreement is assigned, as provided for in Section 30, City will return or release the letter of credit not later than the effective date of the assignment, provided that the assignee has delivered to the City an equivalent letter of credit, as determined by City.

10.2.7. Excessive Demand. If City receives any payments from the aforementioned bank under the letter of credit by reason of having made a wrongful or excessive demand for payment, City will return to Contractor the amount by which City's total receipts from Contractor and from the bank under the letter of credit exceeds the amount to which City is rightfully entitled, together with interest thereon at the legal rate of interest, but City will not otherwise be liable to Contractor for any damages or penalties.

10.3. Security Fund. Contractor shall deposit into a City-controlled account the amount of \$250,000 to guarantee the performance of its obligations under the Agreement not secured by the Letter of Credit under Section 10.2. These obligations shall include, but not be limited to, failure to perform maintenance and repair work under Section 6.4, and failure to pay liquidated damages as provided in Section 15.2. Prior to withdrawal of any amounts from the Security Fund, SFMTA shall notify Contractor of its intent to withdraw and the circumstances requiring such withdrawal. Contractor shall have one business day to cure any default. After any withdrawal by City of amounts from the Security Fund, Contractor shall restore the Security Fund to its full amount within five business days. City shall return any amounts remaining in the Security Fund within 60 Days of the expiration or termination of this Agreement, or correction of any audit deficiencies after completion of a final audit under Section 23.11, whichever is later.

11. INSURANCE

11.1. 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:

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

11.1.2. Commercial General Liability Insurance (supported by the Commercial Umbrella Policy) with a minimum combined single limit of liability of \$25,000,000 each occurrence for bodily injury and property damage; with a minimum limit of liability of \$25,000,000 each person for personal and advertising injury liability; and a minimum limit of liability of \$25,000,000 each occurrence for products/completed operations liability. Such policy shall have a general aggregate limit of not less than \$25,000,000; and

11.1.3. 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.

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

11.2.1. Name as Additional Insured the City and County of San Francisco and the San Francisco Municipal Transportation Agency, and their officers, agents, and employees.

11.2.2. 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.

11.3. All policies shall provide 30 days' advance written notice to City of reduction or non-renewal of coverages or cancellation of coverages for any reason. Such notices shall be sent to the following address:

Director of Transportation
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

with a copy to:

Real Estate Division
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103

11.4. 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.

11.5. 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.

11.6. In the event of the breach of any provision of this Section on "Insurance," or in the event any notice is received which indicates any required insurance coverage will be diminished or cancelled, the Director shall have the option, notwithstanding any other provision of this Agreement to the contrary and in addition to other remedies provided for in this Agreement, immediately to declare a material breach of this Agreement and to suspend the further exercise by Contractor of all rights and privileges granted to Contractor under to this Agreement until such time as the Director determines that the required insurance has been restored to full force and effect and that all premiums have been paid for a period satisfactory to the Director.

11.7. Prior to the Effective Date and annually thereafter on the anniversary of the Effective Date 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.

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

11.9. Upon City's request, Contractor shall provide satisfactory evidence that Contractor has adequately provided for Social Security and Unemployment Compensation benefits for Contractor's Employees.

11.10. Contractor shall comply with the provisions of any insurance policy covering Contractor or the City, and with any notices, recommendations or directions issued by any insurer under such insurance policies so as not to adversely affect the insurance coverage.

12. 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.

13. 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.

14. LIABILITY OF CITY

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.

15. LIQUIDATED DAMAGES

15.1. Performance Standards. By entering into this Agreement, Contractor agrees that in the event Contractor fails to perform in accordance with the performance standards listed below, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the amounts listed in this Section 15.1 are not penalties, but are reasonable estimates of the loss that City will incur based on the delay or non-performance, established in light of the circumstances existing at the time this contract was awarded.

15.1.1. Maintenance Breaches. City may assess liquidated damages in the following amount for failure to complete maintenance or repair work required to be performed within 24 hours of notification from the SFMTA; provided that Contractor shall have one additional business day to perform such maintenance or repair work after notice from SFMTA: \$1,000 per occurrence per Day until the violation is remedied. The date of notification will be the earliest date of notification, as determined from records of notices received by Contractor under Section 6.4 of this Agreement.

15.1.2. Annual Financial Statement. Contractor's failure to submit any report with substantially all information as required under Section 9.1, will subject Contractor to liquidated damages in the amount of \$500.00 for each Day the report is late continuing until the report has been submitted with all required information.

15.1.3. Failure to Cure Audit Deficiencies. In the event that Contractor fails to cure an audit deficiency within the time periods reasonably imposed by the City under Section 23.11, City may impose liquidated damages not to exceed \$500 per Day per deficiency until the deficiency is cured to the satisfaction of the City.

15.1.4. Failure to Comply with Advertising Policy. In the event that Contractor fails to comply with the SFMTA's advertising policy, the City may impose liquidated damages in the amount of \$5,000.00 per Day if the Contractor fails to cure the violation within two Days after receipt of a written notice from the SFMTA. For purposes of this Section, a "violation" is a failure to comply in the context of a single Advertising Campaign.

15.2. Failure to Pay Liquidated Damages. Contractor agrees that if it fails to remit liquidated damages amounts assessed by City under this Section 15 or under any other section of this Agreement, City may deduct such damages from Contractor's Security Fund provided under Section 10.3 above. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's default failure to perform this Agreement in compliance with specified performance standards.

16. DEFAULT; REMEDIES

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

16.1.1. Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 15, 10, 11, 22.1, 22.2, 22.7, 22.26, 22.29, 22.27, or 22.30.

16.1.2. 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.

16.1.3. 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.

16.1.4. 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.

16.2. City's Rights on Default. 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 with 30 Days' written notice, 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.

16.3. No Waiver 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. TERMINATION FOR CONVENIENCE

The City may terminate this Agreement in whole, or from time to time part, whenever the Director shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to Contractor of a notice of termination specifying the extent to which the Agreement is terminated and the date on which termination becomes effective. After receipt of a notice of termination, Contractor shall (i) stop performance under this Agreement on the date and to the extent specified in such notice, (ii) enter into no additional Advertising Contract relating to Contractor's rights and interests under the portion of the Agreement terminated, (iii) assign to the City in the manner, at the times, and to the extent directed by the Director, all of the right, title, and interest of the Contractor under Advertising Contracts and subcontracts identified by the Director and related to the rights and interests terminated, and terminate all other contracts and subcontracts related to such rights or interests; and (iv) within 30 Days of the notice of termination, submit to the Director a statement of all outstanding liabilities and claims arising out of such termination of subcontracts, together with such information as may be required by the Director to evaluate such liabilities and claims. The determination of the Director on such liabilities and claims shall be administratively final.

18. RIGHTS AND DUTIES UPON TERMINATION OR EXPIRATION

18.1. If Contractor does not cure an Event of Default within 30 Days from the date of a notice of termination, City may terminate this Agreement and assume all Advertising Contracts. Termination of this Agreement by City shall not affect the obligations of the Contractor or the rights of City that accrued prior to such termination, except that as of the date of termination Contractor thereafter shall no longer be entitled to any revenues whatsoever from Advertising Contracts then in force.

18.2. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 1.5, 1.9, 1.17, 1.18, 1.20, 1.24 through 1.27, 1.29, 5.5, 6.1.1, 8.1.3, 8.1.5, 8.2, 11 through 13, 15, 22.1, 22.2, 22.4 through 22.9, 22.11.1, 22.11.2, 22.23 through 22.26, 22.30.

18.3. Any and all Advertisements that have been placed in Advertising Spaces as of the date of termination of this Agreement shall become the property of City and, at City's discretion, may remain on or in the Advertising Spaces, and Contractor shall not be entitled to possession of such materials. Contractor agrees to execute all documents necessary to give effect to this Section.

18.4. To the extent that this Agreement is terminated prior to expiration of the term specified in Section 2, this Agreement or the terminated portion of the 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.

19. LOCAL BUSINESS PARTICIPATION; EMPLOYMENT REQUIREMENTS

19.1. LBE PARTICIPATION. In accordance with the mutual commitment of the parties to encourage the use of Local Business Enterprises (LBEs) in performing work or supplying materials and services under this Agreement, Contractor shall comply with the following LBE provisions:

19.1.1. Commitment. To the extent that Contractor procures supplies or services in connection with this Agreement, or subcontracts or joint ventures work under this Agreement, Contractor agrees to utilize certified LBE firms in support of the SFMTA's LBE Program goals. Contractor further shall encourage advertisers and advertising agencies to utilize LBEs. Information pertaining to LBEs is available at the following: S.F. Human Rights Commission's website at www.sfhrc.org for the City's Local Business Enterprise Directory. Contractor may also obtain

information from the Contract Compliance Office ("CCO") of the SFMTA, at One South Van Ness Ave., 3rd floor, San Francisco, CA 94103, Phone: 415- 701-4443.

19.1.2. Nature of LBE Participation. LBE participation includes contracts with LBEs for any goods or services specifically required for the completion of the LBE Work. An LBE may participate as a prime contractor, subcontractor, joint venture partner with a prime contractor, or a supplier of materials or equipment to fulfill the LBE goal for the LBE Work.

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

19.1.4. Mentoring Program. Contractor agrees to use its best efforts to work with an LBE or LBE-eligible San Francisco firm(s) to become a supplier and fabricator of non-illuminated static advertising frames for this and other of Contractor's advertising contracts and to perform printing services for Contractor and its advertising clients. Contractor's work in this regard shall include, but not be limited to, providing specifications and samples of the product to the local firm(s) and assisting the firm(s) in becoming certified as an LBE, if the firm has not already been certified.

19.1.5. Quarterly Meetings. The Contractor shall meet with the CCO on a quarterly basis to review and update the projection of subcontracting and make any revisions necessary to achieve LBE participation.

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

(b) **LBE Subcontractor.** SFMTA counts the entire amount of the work performed or services provided by the LBE's own forces, including the cost of materials and supplies obtained for the work (except for materials and supplies purchased or leased from the Prime Consultant or supplier) and reasonable fees and commissions charged for the services. SFMTA does not count any work subcontracted by an LBE subcontractor to another firm as LBE participation by said LBE subcontractor. If the work has been subcontracted to another LBE, it will be counted as LBE participation by that other LBE.

(c) **LBE Joint Venture Partner.** SFMTA counts the portion of the work that is performed solely by the LBE's forces or if the work is not clearly delineated between the LBE and the joint venture partner, count the portion of the work equal to the LBE's percentage of ownership interest in the joint venture.

(d) **Other LBEs.** SFMTA counts the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from an LBE that is not a manufacturer or Regular Dealer. SFMTA does not count the cost of the materials and supplies.

(e) **Materials or Supplies.** SFMTA counts expenditures with LBEs for materials or supplies as follows:

(i) If the materials or supplies are obtained from an LBE Manufacturer, SFMTA counts 100% of the cost of the materials or supplies.

(ii) For purposes of this paragraph (e)1(i), an LBE Manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(iii) If the materials or supplies are purchased from an LBE Regular Dealer, SFMTA counts 60% of the cost of the materials or supplies.

(iv) For purposes of this Section, a Regular Dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

19.1.6. Substitution of Subcontractor and Suppliers. The Contractor may not terminate an LBE subcontractor or supplier for convenience and then perform the work with its own forces unless the Contractor first reviews the reasons for such decision with the CCO and receives the approval of the CCO. The CCO's approval may not be unreasonably withheld. In other situations, the Contractor must make good faith efforts to substitute another LBE for an original LBE subcontractor or supplier when the original LBE subcontractor or supplier is terminated or fails to complete the work on the contract. The Contractor will notify SFMTA in writing of any request to substitute an LBE subcontractor or supplier and provide the CCO with any documentation requested to support the substitution. The CCO must approve the request in writing in order for the substitution to be valid. The substitution may also have to be approved by the SFMTA Board of Directors.

19.1.7. Addition of Subcontractors and Suppliers. The Contractor shall notify the CCO prior to any addition of an LBE or non-LBE subcontractor or supplier to the Agreement and submit MTA Form No. 4 (Subcontractor Participation Declaration) from each new subcontractor or supplier. Any new LBE subcontractor or supplier approved by the CCO also must submit an MTA Form No. 5. MTA Form No. 4 and MTA Form No. 5 are attached as Exhibit E and Exhibit F, respectively.

19.1.8. Reporting Requirements. The Contractor will submit to the CCO copies of all signed subcontractor and supplier agreements or purchase orders within 10 Days of their execution. The Contractor shall maintain records of all LBE participation in the performance of the contract, including subcontracts entered into with certified LBEs and all materials purchased from certified LBEs. The Contractor shall submit LBE participation reports to City on a quarterly basis, or as otherwise directed by City. The reports shall identify the name and address of each LBE performing work on the project, and show the total dollar amount requested for payment and the total dollar amount actually paid to each LBE. Within 30 Days of completion of the subcontract or purchase order, or as otherwise directed by the CCO, the Contractor will submit a final summary LBE report to the CCO.

19.1.9. Enforcement. In order to establish its LBE program at the earliest possible date, Contractor shall designate an employee or consultant to act as a coordinator of Contractor's LBE obligations. Contractor's failure to make a good faith effort, as determined by the CCO, to encourage LBE participation or to comply with Section 19.1.4, will constitute a material breach of contract and in the event said breach is not cured within 60 Days from receipt of written notice of said breach, City will be entitled to have and elect among any of the remedies set forth in Section 16.2.

20. First Source Hiring Program

20.1. 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. 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.

20.2. 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 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:

20.2.1. 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.

20.2.2. 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.

20.2.3. 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.

20.2.4. 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.

20.2.5. 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.

20.2.6. Set the term of the requirements.

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

20.2.8. 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.

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

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

20.4. 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.

20.5. Liquidated Damages. Contractor agrees:

20.5.1. To be liable to the City for liquidated damages as provided in this section;

20.5.2. 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;

20.5.3. 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.

20.5.4. 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;

20.5.5. 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.

20.5.6. 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

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

20.5.8. 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.

20.6. 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.

21. REQUIRING MINIMUM COMPENSATION FOR COVERED EMPLOYEES

21.1. 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.

21.2. 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.

21.3. 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.

21.4. 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.

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

21.6. 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.

21.7. 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.

21.8. 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.

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

22. 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.

22.1. 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.

22.2. 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.

22.3. 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.

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

22.5. 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.

22.6. 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.

22.7. 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.

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

22.9. 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.

22.10. 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.

22.11. 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.

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

22.13. 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.

23. MISCELLANEOUS PROVISIONS

23.1. 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.

23.2. Taxes

23.2.1. 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.

23.2.2. 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:

(a) 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;

(b) 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.

(c) 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.

(d) 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.

23.3. 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. Contractor shall provide an experienced local sales force with the capability to acquire national advertising accounts, and adequate production personnel to assure the utmost in design, construction, placement and maintenance of Advertisements and Infrastructure, as well as a fully staffed business office in San Francisco.

23.4. 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.

23.5. 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.

23.6. 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.

23.7. 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.

23.8. 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.

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

To City: San Francisco Municipal Transportation Agency
Real Estate Division
One South Van Ness Ave. 8th floor
San Francisco, California 94103
Fax: (415) 701-4341

with a copy to:

San Francisco Municipal Transportation Agency
Attn: Contracts and Procurements
One South Van Ness Ave. 7th floor
San Francisco, California 94103

To Contractor: Titan Outdoor LLC
850 Third Avenue, 2nd Floor
New York, NY 10022
Attn: Donald R. Allman or Scott E. Goldsmith, Esq.

with a copy to:

Titan Outdoor LLC
333 Post Street, 3rd Floor
San Francisco, CA 94108

Attn: Brad Staten

Any notice of default must be hand-delivered or sent by registered mail.

23.10. 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.

23.11. Audit and Inspection of Records

23.11.1. Records. Contractor shall maintain all Records in accordance with generally accepted accounting principles. All Records shall be maintained throughout the term of this Agreement at Contractor's San Francisco office and shall be maintained for five years following termination or expiration of this Agreement in a safe and secure location within the San Francisco Bay Area.

23.11.2. City's Right to Inspect and Copy. Any duly authorized agent of City shall have the right to examine and/or copy all Records at any time during normal business hours, provided that Contractor shall be allowed at least 48 hours after City identifies Records it wishes to copy to mark any such Records as confidential or proprietary. Records created or maintained in an electronic format shall be available to the City and its agents for examination and/or copying in an electronic format.

23.11.3. Audits. Contractor will cooperate fully with the performance by City or its agents of Contract Performance and Operations Audits. A Contract Performance Audit may examine any and all aspects of the Contractor's obligations under this Agreement. An Operations Audit may examine the quality and effectiveness of Contractor's organizational Structure, internal controls, financial reporting and business practices. City may require each type of audit no more than once per calendar year. City shall provide Contractor with 15 Days' notice of any audit to be performed under this Section. The State of California or any federal agency having an interest in the subject matter of this Agreement will have the same rights conferred upon City by this Section.

23.11.4. Findings of Nonperformance. In the event that any audit conducted pursuant to Section 23.11.3 results in a determination that Contractor has failed to perform any material term of this Agreement, City will issue a written Finding of Nonperformance to Contractor. Such Finding of Nonperformance will include a calculation of liquidated damages for Contractor's failure to perform, using the measure of liquidated damages specified in Section 15.1.3. Contractor's failure to cure may result in an Event of Default pursuant to Section 16. Any failure of City to list any violation of the terms of this Agreement in the Finding of Nonperformance shall not constitute a waiver of the City's right to impose any other right or remedy that it has under this Agreement or applicable law with respect to that violation.

23.12. 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.

23.13. 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 as required by law.

23.14. 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.

23.15. Nondiscrimination; Penalties

23.15.1. 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.

23.15.2. 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.

23.16. 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.

23.17. 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.

23.18. 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.

23.19. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the

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

23.20. 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.

23.21. 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.

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

23.23. 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.

23.24. 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.

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

23.26. 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 232.22.

23.27. 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.

23.28. 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.

23.29. 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.

23.30. 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 21 of the Administrative Code, or debar the Contractor.

23.31. 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 Advertising Space or real property owned or leased by Contractor in the City and County of San Francisco within 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. Any failure of Contractor to comply with this Section of this Agreement shall constitute an Event of Default of this Agreement.

23.32. Food Service Waste Reduction Requirements. Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$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.

23.33. No Third Party Beneficiaries. Except as expressly provided herein, this Agreement is for the benefit of the signatories to the Agreement only and no other person or entity shall be entitled to rely on, receive any benefit from, or enforce against either party any provision of this Agreement.

23.34. Disputes. Disputes arising in the performance of this Agreement that are not resolved by agreement of the parties will be decided in writing by the Chief Financial Officer of the SFMTA. The decision will be administratively final and conclusive unless, within 10 Days from the date of such decision, the Contractor mails or otherwise delivers a written appeal to the Director. Any appeal must contain the following: (a) a statement of the Contractor's position, (b) a summary of the arguments supporting that position, and (c) any evidence supporting the Contractor's position. The decision of the Director will be administratively final and conclusive. Pending final resolution of a dispute hereunder, the Contractor must proceed diligently with the performance of its obligations under the Agreement. Under no circumstances may the Contractor or its subcontractors stop work due to an unresolved dispute. An alternative dispute resolution process may be used in lieu of the procedures set forth in this Section 53 if the City and contractor agree to such alternative procedures.

23.35. MacBride Principles--Northern Ireland. 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, Contractor acknowledges that it has read and understood this Section.

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

CITY	CONTRACTOR
By _____ NATHANIEL P. FORD, SR. Executive Director/CEO San Francisco Municipal Transportation Agency	TITAN OUTDOOR LLC
MTA Board of Directors Resolution No. _____ Dated: _____	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.
ATTEST: _____ Secretary, Municipal Transportation Agency Board of Directors	_____ Donald R. Allman Chief Executive Officer Titan Outdoor LLC 850 Third Avenue New York, NY 10022
Board of Supervisors Resolution No. _____ Dated: _____	
Attest: _____ Clerk of the Board	
Approved as to Form: Dennis J. Herrera City Attorney	
By: _____ Robin M. Reitzes Deputy City Attorney	

Exhibits

- A. Vehicles
- B. Installation and Maintenance Plan
- C. MTA Advertising Policy
- D. Sales Activity Report
- E. SFMTA LBE Form No. 4
- F. SFMTA LBE Form No. 5

EXHIBIT A

Vehicles

Approximate total fleet count: 1,066 vehicles*:

Distributed among 5 distinct vehicle types:

1. 511 Diesel Buses*
2. 331 Trolley Buses
3. 151 Breda Light Rail Vehicles
4. 40 Cable Cars
5. 33 Historic Streetcars

***(numbers include 51 reserve diesel coaches)**

EXHIBIT B

INSTALLATION AND MAINTENANCE PLAN

POSTING TIMELINE

Contractor shall ensure timely posting and removal of all Advertisements as specified in Section 6.5. Should SFMTA require removal of an Advertisement or Advertising Campaign (e.g., for failure to comply with its Advertising Policy), Contractor shall remove such Advertisements within 72 hours of written notification (for an Advertising Campaign) and 24 hours of written notification for a single Advertisement.

CLEANING SCHEDULE AND PRODUCTS

Contractor agrees to keep all advertising displays in pristine condition by ensuring that each advertising device is visited/inspected by an operations employee of Contractor as required under Section 6.3.

In furtherance of the requirements of Section 6.7, Contractor shall use its best efforts to use “green” products and technologies, including using green posting and cleaning materials as available.

MINIMIZING INTERFERENCE TO SFMTA OPERATIONS DURING MAINTENANCE AND INSTALLATION ACTIVITIES.

Contractor shall work with the SFMTA to ensure that its placement, maintenance and removal of advertisements shall not disrupt service or inconvenience passengers. Contractor’s operations group shall install advertisements mostly at night, but may perform work during the day with prior authorization from the Director.

RESPONSE TO HAZARDOUS CONDITIONS AND COMPLAINTS

As required under Section 6.4, Contractor shall repair any deficiency, including damage to an advertising display or Infrastructure within 24 hours of notification by the City. Contractor shall respond to and commence correction to any emergency condition within four hours.

Contractor shall respond to any question, request, concern or complaint within 24 hours after receipt.

STAFFING

Contractor intends to utilize its own employees for installation and maintenance of all Advertisements and Infrastructure. Contractor currently has 11 union employees and three operations managers in its San Francisco operation, which will increase by four additional employees to service the SFMTA inventory. Contractor will also have at least one specialist in San Francisco who will be dedicated to scheduling, charting and managing advertising inventory, arranging for the timely installation and removal of advertisements, and ensuring that paid occupancy space is maximized while vacant space is eliminated.

SAFETY

Contractor shall comply with all applicable and relevant federal, state and local safety and health rules and regulations, including, but not limited to, rules established in the United States by OSHA, the Federal and State EPA and the Federal and State Department of Transportation. Posting, cleaning and any related activity shall only be performed by Contractor personnel that have successfully completed safety training and all employees shall comply with all SFMTA safety requirements.

EXHIBIT C

MTA Advertising Policy Effective October 16, 2007

Advertising on Municipal Transportation Agency ("MTA") property, or as authorized under any contract with the MTA, constitutes a nonpublic forum. No such advertisement shall:

- be false, misleading or deceptive;
- concern a declared political candidate or ballot measure scheduled for consideration by the voters in an upcoming election, or an initiative petition submitted to the San Francisco Department of Elections;
- appear to promote the use of firearms;
- be clearly defamatory;
- be obscene or pornographic;
- advocate imminent lawlessness or violent action;
- promote alcoholic beverages or tobacco products;
- infringe on any copyright, trade or service mark, title or slogan;

In addition, all advertisements on MTA property or as authorized under any MTA contract shall include the following language: "The views expressed in this advertisement do not necessarily reflect the views of the San Francisco Municipal Transportation Agency."

Any pilot programs or experimental advertisements must be submitted and approved by the MTA Executive Director/Chief Executive Officer at least sixty (60) days prior to implementation.

This policy shall be effective upon adoption but shall not be enforced to impair the obligations of any contract in effect at the time of its approval. It shall be incorporated into any new contract for advertising on MTA property including any new contract for advertising on transit shelters effective on or after December 7, 2007.

The MTA Board of Directors reserves the right to amend this policy at any time with written notice to any affected advertising contractor.

MTA contracts granting advertising rights shall include this Policy as an attachment and must require the following:

- The contractor must comply with the advertising standards set forth in this Policy, as they may be amended from time to time.
- The contractor must display only those advertisements that are in compliance with this Policy.
- The contractor must promptly remove any advertisements that are in violation of this policy upon written demand by the MTA Executive Director/Chief Executive Officer, in conformity with state and federal law.

EXHIBIT D

(1) Sales Activity Report:

Contract #	Advertiser's Name	Client Category	Advertisement Category	Quantity Sold per Week/Month	Advertisement Rate	Gross Revenues	Commission	Net Revenues
		(1)	(2)					

- (1) Commercial National, Commercial Local, Municipal Public Service, etc.
 (2) Fashion, Media, Automotive, etc.

(2) Account Activity Summary by Display Location:

The same information as above by Display Type, External and Internal

(3) Account Activity Summary by Display Type:

Categories of Advertising Clients

Categories of Advertisers	% of Net Monthly Revenues (less Agency Commission)
Commercial – National	%
Commercial – Regional/Local	%
Municipal	%
Public Service	%

(4) Bay Area Distribution of Contracts:

Contract #	Gross Revenues	% Muni	% *	% *

* Insert names of other Bay Area transit properties

EXHIBIT E
SFMTA LBE FORM No. 4

LBE SUBCONSULTANT PARTICIPATION DECLARATION

**(To be submitted by the prime consultant or subconsultant, as appropriate,
to the SFMTA Contract Compliance Office)**

(Name and Title)

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

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

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

Name and Address of LBEs	HRC LBE Certi- fication No.	Lic.#	Gender		Ethnicity	Type of Work (Describe)	% and/or \$ Amount of Contract
			M	F			

Total dollar value of LBE work: \$ _____ = _____ % of LBE Participation

Total dollar value of Proposal Price \$ _____ 100%

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

Owner or Authorized Representative (Signature)

Dated: _____

EXHIBIT F
SFMTA LBE FORM No. 5

LOCAL BUSINESS ENTERPRISE ACKNOWLEDGMENT DECLARATION

(Every listed LBE subconsultant or supplier (including lower tier subconsultant) must submit the completed declarations to the Prime Consultant. The Prime Consultant shall submit completed declarations to the SFMTA Contract Compliance Office.)

(Owner or Authorized Representative and Title)

declares that _____ will award
(Name of Prime Consultant)

_____ [(%) percent and/or (\$) amount], of subcontract or

_____ [(%) percent and/or (\$) amount] of a purchase order of the total value of the
prime contract to _____ (Name of your firm).

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

Nature of work to be performed by LBE: _____

FORM OF OWNERSHIP FOR LOCAL BUSINESS ENTERPRISE

Sole Proprietorship _____ Partnership _____ Joint Venture _____ Corporation _____

Limited Liability Partnership _____ Limited Liability Corporation _____

LIST OWNERS

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Percentage of LBE Stockholders: _____

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

LIST INSURANCE POLICIES AND BONDING ARRANGEMENTS

Name of Policy _____ Party Insured _____

Name of Policy _____ Party Insured _____

Name of Policy _____ Party Insured _____

For Prime Consultants and Subconsultants Only:

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

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

For Suppliers or Manufacturers Only:

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

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

ADDITIONAL SUBCONTRACTING BY SUBCONSULTANTS:

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

b. _____ We will subcontract _____ [% and/or \$ amount] of our work to _____

(Name of Subconsultant)

Indicate owners' ethnicity and gender _____

I declare under penalty of perjury under the laws of the State of California that the above information is true and correct; and that our firm is a certified LBE as defined under the City's Local Business Enterprise Program.

Owner/Authorized Representative (Signature)

Name & Title (Please Print)

Address

Telephone No.

END OF SFMTA LBE FORM No. 5



January 29, 2009

BY ELECTRONIC MAIL

Mr. Nathaniel P. Ford, Sr.
Executive Director/CEO
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th floor
San Francisco, CA 94103

Re: Titan Worldwide/Response to Anonymous Letter

Dear Mr. Ford:

I am writing in response to the anonymous letter that was received by SFMTA staff. While we are happy to respond to the letter and clear up the defamatory and inaccurate implications it contained, we feel it is important to note that the letter was written by an individual that chose not to identify himself/herself. We suspect that the author had an ulterior motive and was upset at the SFMTA's selection of Titan as your next advertising contractor. We take great pride in our company and are concerned that this individual chose to make irresponsible allegations. We are investigating the source of the letter and if the identity of the individual is revealed, we will take all appropriate actions against that person.

That said, Titan is financially sound and we have had absolutely no departures in our long-standing Senior Management team. In fact, we have recently added additional members to our team that will help continue our role as the largest and most experienced Transit Advertising contractor in the United States.

Financial Strength

Since June 2004, Titan has been awarded 17 major-market public Transit Advertising contracts in the United States, the largest out-of-home advertising contract in Ireland, as well as running all major rail advertising contracts in the United Kingdom. We have become the concessionaire of choice for Transit Authorities wishing to increase revenue associated with their Transit Advertising properties and represent 5 of the 6 largest transit authorities in the United States (6 of the 7 largest if you include the SFMTA). We believe that the primary reason that Transit Authorities have awarded their contracts to Titan is that we have performed admirably in the administration of our agreements and that we have developed a reputation for our integrity, work ethic and commitment to our Transit Authority Senior Partners. We have a Senior Management team that has worked diligently to ensure that we provide the highest level of service and generate the maximum amount of non-farebox revenue for our partners.

Titan has maintained increasing annual gross sales since the company's inception. We generated \$61M in Net Sales in 2005, in 2006 we generated \$242M, and in 2007, Titan Worldwide's full year Net Revenue was \$472M. Besides the acquisition of the UK Maiden business in 2006, this extreme growth has been achieved through increased levels of advertising sales under new and existing contracts, as well as higher advertising rates. We have achieved double digit increases in sales revenues in the majority of transit markets we have entered, an accomplishment that is indicative of our focused and dedicated sales effort.

Titan's profitability has similarly increased dramatically over the years. For the last three (3) years Titan's Billboard Cash Flow was \$13.5M in 2005, \$22.4M in 2006 and \$59.2M in 2007. Titan's Pro Forma EBITDA over the last three years grew 5 fold from \$6.1M in 2005 to \$30.2M in 2007. In 2008, our full year net revenue at constant exchange rates is projected to be \$481M, a 2% increase over revenues generated in the prior year. This amount does not include any future contract wins or acquisitions. Titan Worldwide will continue to leverage fixed costs in 2008 which is projected to result in a \$60.3M Billboard Cash Flow. Pro Forma EBITDA is estimated at \$30.9M, a 2% increase versus 2007.

Titan has achieved the profitability detailed above by bidding aggressively and responsibly on Transit Advertising Contracts. All of our existing Transit Authority agreements are cash-flow positive. We have been able to bid aggressively because of our sole focus on Transit Advertising and our ability to significantly increase sales over our predecessor's performance. We are therefore very comfortable with the Minimum Annual Guarantees in the Agreement and expect the SFMTA contract to be profitable in the first year.

Titan Worldwide has extremely strong financial support from our Lead Investor, Welsh, Carson, Anderson & Stowe ("WCAS"), which is committed to our future success and expansion and fully supports Titan Worldwide's bid in connection with this project. Founded in 1979, WCAS is the largest North American private equity investor in information and business services, healthcare, and communications with over \$16 billion of capital under management. Since inception, they have invested in over 140 companies in their core industries and have funded over 650 follow-on acquisitions. Across all WCAS Partnerships, the current portfolio consists of 30 companies with combined revenues of \$18 billion and EBITDA of \$4 billion. WCAS' strategy is to buy growing businesses in their target industries and build value through internal growth and acquisitions, realizing superior returns for their investors. In addition we also maintain a senior credit facility with G.E. Capital, Credit Suisse, First Boston and BNP Paribas. We are therefore financially strong and have the ability to meet all of our obligations in the coming years.

Senior Management

While there is no reference to "Senior Management departures" in the letter, we understand that the package included an old article from a United Kingdom newspaper that reported management changes in our London office. In April 2006, we acquired what was then the largest independently held out-of-home advertising company in the UK. While we did have a few mid-level departures from the predecessor company, those departures were our choice and the individuals who left had very little management responsibility in the UK (and absolutely none in the US or for the worldwide company).

There have been absolutely no departures from our worldwide Senior Management team. We provided detailed bios of our Senior Management team in our response to the RFP. The individuals listed below are involved in every aspect of our business and form a highly capable team. Moreover, while at Transportation Displays Incorporated ("TDI") William M. Apfelbaum, Titan's Chairman, and I successfully administered approximately 150 revenue contracts for Transit Authorities in the United States (including the SFMTA contract), Canada, the London Underground and major bus and rail properties throughout the United Kingdom and Ireland. I have listed members of the team below and have also provided the number of years that they have served in their current position:

Senior Management Employee	Position	Number of Years with Titan
William M. Apfelbaum	Chairman	7 Years
Donald R. Allman	President & CEO	7 Years
David Neglio	President – Transit Division	5 years
Reid Schuster	President – Sales and Marketing	6 Years
Scott E. Goldsmith	EVP & General Counsel	7 Years
Craig Abolt	EVP & CFO	2 Years
Morten Gotterup	EVP	3 Months
Jamie Lowe	SVP & General Manager (NY)	4 Years
Dave Etherington	SVP – Marketing	3 Years
Steve Hillwig	SVP – North American Operations	2 Years

Along with our local San Francisco/Bay Area staff, the individuals listed above will be responsible for administering the SFMTA advertising contract. We are excited to get started with our partnership and look forward to a long and mutually beneficial relationship with the SFMTA. We trust that this letter will have allayed any concerns you might have in connection with the completely baseless statements and implications that were made in the anonymous letter.

Please feel free to call me at (212) 909-7645 if you should have questions or require any further information.

Donald R. Allman
 President & Chief Executive Officer
 Titan Outdoor LLC

cc: Scott E. Goldsmith, Esq.

THIS PRINT COVERS CALENDAR ITEM NO. 13

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

DIVISION: MUNI OPERATIONS DIVISION

BRIEF DESCRIPTION:

On September 3, 2008, pursuant to SFMTA Board authorization, SFMTA staff advertised a Request for Proposals ("RFP") for Contract CS-901, As-Needed Specialized Engineering Services for SFMTA Rubber Tire Vehicle Projects. SFMTA staff now requests authorization to award and execute this contract to Jacobs Engineering Group, Inc. to provide technical and professional services for a total contract amount not to exceed \$4,000,000 and a term not to exceed five years.

SUMMARY:

- The SFMTA Board of Directors adopted Resolution No. 08-123 on July 15, 2008 authorizing the Executive Director/CEO to issue an RFP for SFMTA Contract CS-901, As-Needed Specialized Engineering for SFMTA Rubber Tire Vehicle Projects.
- On October 27, 2008, the SFMTA received two written proposals for Contract CS-901 from Jacobs Engineering Group, Inc. and Lea & Elliott, Inc.
- A selection committee reviewed the CS-901 proposals and conducted interviews with both proposers and ranked Jacobs Engineering Group, Inc. highest.
- Staff requests that the SFMTA Board award Contract CS-901 to Jacobs Engineering Group, Inc. and authorize the Executive Director/CEO to execute the contract for a total amount not to exceed \$4,000,000 and a term not to exceed five years.

ENCLOSURES:

1. SFMTA Board Resolution
2. Contract CS-901 Agreement
3. Contract CS-901 Scope of Work
4. Contract CS-901 Consultant Team Organization

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION

BE RETURNED TO

Trinh Nguyen

ASSIGNED MTAB CALENDAR DATE:

PAGE 2.

PURPOSE

This calendar item requests authorization to award and execute Contract CS-901 to Jacobs Engineering Group Inc. to provide technical and professional services on an “as-needed” basis for a total contract amount not to exceed \$4,000,000 and a term not to exceed five years.

GOAL

Contract CS-901 would assist in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

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.
- 1.3 Reduce emissions as required by SFMTA Clean Air Plan.
- 1.4 Improve accessibility across transit services.

Strategic Plan Goal 4: Financial Capacity

- Objective 4.2: Ensure efficient and effective use of resources.

Strategic Plan Goal 5: 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.

- 5.1 Increase resources available for employees in performing their jobs (tools, staff hours, etc); and
- 5.2 Improve facilities in which people are working.

DESCRIPTION

Due to the unpredictability and variety of project work, the need for professional services and other assistance required for SFMTA projects sometimes exceeds the availability of in-house staff or requires specialized expertise. If these services cannot be obtained when needed, it will adversely impact and possibly delay SFMTA projects. This is particularly true now when there will be a tremendous need for additional assistance should the federal government enact the Economic Recovery legislation as anticipated.

PAGE 3.

This contract will enable staff to obtain technical and professional services and other assistance on short notice to assist and supplement staff on an as-needed basis in order to meet the time restraints imposed by the funding sources.

The use of as-needed services is closely monitored. When a project team determines that in-house staff needs assistance to complete the project work on schedule, they request the authorization of the Chief Operating Officer to utilize as-needed professional services. Upon approval, a scope of work is prepared and given to the consultant for a cost proposal. The project team independently estimates the consultant's cost to do the proposed work. Once the Chief Operating Officer approves the negotiated task order and the Controller certifies that funding is available, a Notice to Proceed to perform the work is given to the Consultant.

Purpose and Scope of Contract:

The selected consultant is to provide a broad range of specialized services and staff to complete task orders issued by the San Francisco Municipal Transportation Agency, either by direct assignment of its own personnel or through sub-consultants, including, but not limited to, drafting Requests for Proposals, design analysis, engineering calculations, reliability, safety, and maintainability analyses.

The scope of work under this contract is described in Attachment 2.

Selection Process:

The SFMTA Board of Directors adopted Resolution No. 08-123 on July 15, 2008, authorizing the Executive Director/CEO to issue a Request for Proposals (RFP), receive proposals, select the highest ranking proposal, and negotiate Contract CS-901 for an amount not to exceed \$4,000,000 and for a term not to exceed five years.

The RFP was advertised on September 3, 2008 and two proposals were submitted on October 27, 2008 in response to the advertisement. The proposals were submitted by Jacobs Engineering Group, Inc. and Lea & Elliot, Inc. A diverse Selection Committee, comprised of SFMTA staff, evaluated the two proposals, and selected Jacobs Engineering, Inc. as the highest ranking proposer.

ALTERNATIVES CONSIDERED

It is the policy of the SFMTA Muni Operations Division to be staffed completely and sufficiently to perform the base load of the essential work of the Division. However, due to the unpredictability and variety of project work, including the need to respond quickly to meet the requirements of the proposed federal Economic Recovery legislation, the need for professional services and other assistance required for SFMTA projects sometimes exceeds the availability of in-house staff or requires specialized expertise. This contract will be used when the task requires specialized expertise not available in-house or when project demand exceeds staff availability.

PAGE 4.

FUNDING IMPACT

Task orders under this contract will be funded through existing approved budgets for projects requiring services. The first \$1 Million to support this project has been identified in the Operating Budget.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

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

The Contract Compliance Office has confirmed the consultant's commitment to meeting the 25% SBE participation goal for this contract.

The Contract Compliance Office and the City Attorney's Office have reviewed this calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to execute Contract No. CS-901, As-Needed Specialized Engineering Services for SFMTA Rubber Tire Vehicle Projects, with Jacobs Engineering, Inc. for an amount not to exceed \$4,000,000 and term not to exceed five years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) provides professional services for SFMTA Muni Operations rehabilitation and maintenance projects;

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

WHEREAS, SFMTA Board of Directors adopted Resolution No. 08-123 on July 15, 2008, authorizing the Executive Director/CEO to issue a Request for Proposals (RFP), receive proposals, select the highest ranking proposal, and negotiate Contract No. CS-901, As-Needed Specialized Engineering for SFMTA Rubber Tire Vehicle Projects, for an amount not to exceed \$4,000,000 and a term not to exceed five years;

WHEREAS, The SFMTA issued the Request for Proposals (“RFP”) on September 3, 2008 and received two proposals from Jacobs Engineering, Inc. and Lea & Elliott in response to the RFP;

WHEREAS, A Selection Committee evaluated the two proposals, and selected Jacobs Engineering, Inc. as the highest ranking proposer;

WHEREAS, Federal, state, and local sources will provide funding for the services on an as-needed, project-by-project basis;

WHEREAS, The Contract Compliance Office has confirmed the consultant’s commitment to meeting the 25% SBE participation goal for this contract;

WHEREAS, Contract No. CS-901 addresses Strategic Plan Goal 1, 4 and 5 by improving customer service, increasing resources available for employees in performing their jobs; and improving facilities in which people are working; now, therefore, be it,

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute Contract No. CS-901, As-Needed Specialized Engineering Services for SFMTA Rubber Tire Vehicle Projects, with Jacobs Engineering, Inc. for an amount not to exceed \$4,000,000 and a term not to exceed five years.

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
Agreement for As-Needed Specialized Engineering Services
San Francisco Municipal Railway Contract CS-901

**AGREEMENT BETWEEN
CITY AND COUNTY OF SAN FRANCISCO'S
MUNICIPAL TRANSPORTATION AGENCY**

AND

**JACOBS ENGINEERING GROUP, INC.
FOR**

**AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR
SFMTA RUBBER TIRE VEHICLE PROJECTS
CONTRACT NO. CS-901
CCO NO. 08-1014**

TABLE OF CONTENTS

	<u>Page</u>
1. Definitions.....	1
2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.....	3
3. Term of the Agreement.....	3
A. Term.....	4
B. Effective Date.....	4
4. Services Consultant Agrees to Perform.....	4
A. Scope of Agreement.....	4
B. Priority of Documents.....	4
C. Information and Data.....	4
D. Presentations.....	4
E. Compliance with Laws.....	4
F. Task Requirements.....	4
(i) Scope of Work.....	4
(ii) Consultant Proposal.....	4
(iii) Negotiation of Cost and Profit.....	5
(iv) Record of Negotiations.....	5
(v) Controller Certification.....	5
(vi) Notice to Proceed.....	5
(vii) Changes.....	5
(viii) Failure to Agree on Terms of Task.....	6
G. Key Team Members.....	6
H. Current Workload and Available Resources.....	6
I. Information and Data.....	6
J. Transmittal of Work Product.....	6
K. Reproduction of Work Product.....	6
L. Agency’s Responsibilities Regarding Submittals.....	6
5. Compensation.....	7
A. Amount.....	7
B. Method of Computing Compensation.....	7

	(i)	Direct Labor Rates	7
	(ii)	Overhead	7
	(iii)	Reimbursable Costs	7
	(iv)	Out-of-Pocket Expenses.....	8
	(v)	Non-Reimbursable Expenses	8
	(vi)	Use of Public Transportation	8
6.		Payment.....	8
	A.	General.....	8
	B.	Invoices.....	8
		(i) Form of Invoice.....	8
		(ii) Progress Payment Form	8
	C.	Documentation for Payment	9
	D.	Payment of Invoices.....	9
		(i) Monthly Payments	9
		(ii) Final Payment	9
		(iii) No Interest on Late Payments	9
	E.	Payment of Subconsultants.....	9
7.		Guaranteed Maximum Costs.....	9
8.		Submitting False Claims; Monetary Penalties	10
9.		Disallowance.....	10
10.		Taxes.....	10
	A.	Obligation of Consultant.....	10
	B.	Possessory Interest.....	10
11.		Payment Does Not Imply Acceptance of Work.....	11
12.		Qualified Personnel.....	11
13.		Equipment.....	11
	A.	Responsibility for Equipment	11
	B.	Ownership of Equipment	11
14.		Independent Contractor; Payment of Taxes and Other Expenses.....	11
	A.	Independent Consultant	11
	B.	Payment of Taxes and Other Expenses.....	12
15.		Insurance.....	12
	A.	Coverages.....	12

B.	Requirements of Insurance Policies.....	13
C.	Notice.....	13
D.	Claims-Made Form.....	13
E.	General Annual Aggregate Limit.....	13
F.	Lapse of Insurance.....	13
G.	Proof of Insurance.....	13
H.	No Decrease of Liability.....	13
I.	Subconsultant Insurance.....	13
16.	Indemnification.....	14
A.	General Indemnity.....	14
B.	Limitations.....	14
C.	Intellectual Property Infringement.....	14
17.	Incidental and Consequential Damages.....	14
18.	Liability of City.....	14
19.	Standard of Performance.....	14
20.	Default; Remedies.....	15
A.	Event of Default.....	15
B.	Remedies.....	15
C.	No Preclusion of Remedies.....	15
21.	Termination for Convenience.....	15
A.	Exercise of Option to Terminate for Convenience.....	15
B.	Duties of Consultant Upon Notice of Termination.....	16
C.	Invoice for Services Performed.....	16
D.	Non-Recoverable Costs.....	16
E.	Deductions.....	17
F.	Survival of Payment Obligation.....	17
22.	Rights and Duties Upon Termination or Expiration.....	17
A.	Survival of Provisions.....	17
B.	Duties Upon Termination.....	17
23.	Conflict of Interest.....	17
24.	Proprietary or Confidential Information of City.....	17
25.	Notices to the Parties.....	18
26.	Ownership of Work Product.....	19

27.	Works for Hire	19
28.	Audit and Inspection of Records.....	19
	A. Access to Records	19
	B. Maintenance of Records	19
	C. Flowdown to Subconsultants	19
	D. Audit	19
	E. Rights of State or Federal Agencies.....	19
29.	Subcontracting	19
	A. Approval of City	19
	B. Substitutions of Subconsultants	20
	C. Additions of Subconsultants	20
	D. SBE Firms.....	20
30.	Assignment	20
31.	Non-Waiver of Rights.....	20
32.	Earned Income Credit (EIC) Forms	20
	A. Provision of Forms to Eligible Employees	20
	B. Failure to Comply	20
	C. Flowdown to Subconsultants	21
	D. Terms	21
33.	Small Business Enterprise Program.....	21
	A. General.....	21
	B. Compliance with SBE Program	21
	C. SBE Goal	21
	D. Non-Discrimination in Hiring.....	21
34.	Nondiscrimination; Penalties	21
	A. Consultant Shall Not Discriminate	21
	B. Subcontracts.....	21
	C. Nondiscrimination in Benefits	21
	D. Condition to Contract.....	22
	E. Incorporation of Administrative Code Provisions by Reference	22
35.	MacBride Principles--Northern Ireland	22
36.	Tropical Hardwood and Virgin Redwood Ban	22
37.	Drug-Free Workplace Policy	22

38.	Resource Conservation	22
39.	Compliance with Americans with Disabilities Act.....	23
40.	Sunshine Ordinance	23
41.	Public Access to Meetings and Records.....	23
42.	Limitations on Contributions	23
43.	Requiring Minimum Compensation for Covered Employees	24
44.	Requiring Health Benefits for Covered Employees.....	25
45.	First Source Hiring Program.....	26
	A. Incorporation of Administrative Code Provisions by Reference	26
	B. First Source Hiring Agreement.....	26
	C. Hiring Decisions	27
	D. Exceptions.....	27
	E. Liquidated Damages	28
	F. Subcontracts.....	29
46.	Prohibition on Political Activity with City Funds	29
47.	Preservative-treated Wood Containing Arsenic.....	29
48.	Modification of Agreement.....	29
49.	Administrative Remedy for Agreement Interpretation	29
50.	Agreement Made in California; Venue.....	29
51.	Construction.....	30
52.	Entire Agreement.....	30
53.	Compliance with Laws	30
54.	Services Provided by Attorneys.....	30
55.	Prompt Payment of Subconsultants	30
	A. Progress Payments	30
	B. Retention.....	30
	C. Interest on Unpaid Amounts.....	30
56.	Disputes.....	30
	A. Notice of Dispute	31
	B. Resolution of Disputes.....	31
	C. No Cessation of Work.....	31
	D. Alternative Dispute Resolution.....	31
	E. Claims for Additional Compensation	31

F.	Disputes among Consultant Partners	31
57.	Severability	31
58.	Protection of Private Information	31
59.	Graffiti Removal	32
60.	Food Service Waste Reduction Requirements.....	32
61.	Sole Benefit.....	33
62.	FTA Requirements.....	33

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

**AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
AND JACOBS ENGINEERING GROUP, INC**

This Agreement is made this **[insert day]** day of **[insert month]**, 2009, in the City and County of San Francisco, State of California, by and between: **Jacobs Engineering Group, Inc., 160 Spear Street, Suite 330, San Francisco, CA 94105** ("Consultant"), and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency ("MTA").

Recitals

A. The Transportation Planning and Development Division of the MTA provides the professional and technical services required to implement capital and other projects of the San Francisco Municipal Railway ("Muni").

B. The Agency wishes the services of a consulting firm to provide as-needed specialized engineering services in support of the MTA's various projects.

C. On July 15, 2008, the SFMTA Board of Directors ("SFMTA Board") adopted Resolution No. 08-123, which authorized the Executive Director/CEO to issue and advertise a Request for Proposals for as-needed specialized engineering services for rubber tire vehicle projects.

D. Consultant submitted a proposal in response to the Request for Proposals and the SFMTA successfully concluded contract negotiations with the Consultant.

E. On _____, the SFMTA Board adopted Resolution No. _____, authorizing the Executive Director/CEO to award and execute this Agreement with Consultant for said services.

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

G. Approval for said Agreement was obtained from Civil Service Commission by PSC No. _____, dated _____.

Now, THEREFORE, the parties agree as follows:

1. Definitions

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

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

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

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

E. Controller means the Controller of the City.

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

G. Consultant is _____ Jacobs Engineering Group, Inc. _____.

H. Contract Compliance Office (CCO) is the SFMTA office that administers compliance with federal regulations governing the Disadvantaged Business Enterprises/Equal Employment and Non-Discrimination Programs, in addition to the Small Business Enterprise Program, and the City's Human Rights Commission's Local Business Enterprise/Non-Discrimination Program. The Contract Compliance reference numbers for this RFP is 08-1014.

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

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

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

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

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

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

O. Key Personnel are those participants on a project who contribute in a substantive, measurable way to the projects development.

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

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

R. Project Manager / Project Engineer: The designated SFMTA employee who will assume all duties and responsibilities and have the right and authority assigned to the Project Manager in the Contract in connection with completion of Work in accordance with the Contract.

S. Proposal refers to the Consultant's written response/submittal to the RFP.

T. Request for Proposals; RFP refers to the Request for Proposals for As-Needed Specialized Engineering Services for Rubber Tire Vehicle Projects issued by the SFMTA on September 3, 2008.

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

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

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

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

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

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

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

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

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

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

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

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

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

3. Term of the Agreement

A. Term Subject to Section 2, the term of this Agreement shall be five (5) years from the Effective Date of the Agreement.

B. Effective Date. This Agreement shall become effective when the Controller has certified to the availability of funds for the first Task Order issued.

4. Services Consultant Agrees to Perform

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

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

C. Information and Data The Consultant shall request in writing any information and data it will require to perform task orders. The Consultant shall identify the timing and priority for which this information and data will be required. The Consultant and City shall reach agreement as to the availability and delivery time for this data and information during initial task negotiations.

D. Presentations. In the performance of assigned tasks, the Consultant, if requested by City, shall prepare graphic and written presentations, and participate in presentations of said material to various City departments, commissions, and interested community groups.

E. Compliance with Laws. Consultant shall comply with requirements of all applicable codes, regulations, and current written interpretation thereof published and in effect during Consultant's services. In the event of changes in such codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by Consultant and which result in a substantive change to the construction documents, Consultant shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of responding to such changes. Consultant shall be responsible, however, to identify, analyze and report to the City pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including changes to the California Building Codes and San Francisco Building Code to adopt provisions of the International Building Code and other amendments.

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

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

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

(a) A work plan that includes a detailed description by subtask of the work to be performed and the means and methods that will be used to perform it;

(b) Milestones for completion for each subtask and deliverables at each milestone;

(c) Personnel and the sub-consultants assigned to each part of the work along with a resume or curriculum vitae that indicates why such personnel are qualified to perform the work; and identifies prior experience in performing work of this nature;

(d) A detailed cost estimate for each task or subtask showing:

(1) Estimated hours for both Consultant and subconsultant personnel. Labor hours for preparing monthly invoices or filling out required DBE forms will not be allowed. Consultant will manage sub-consultants so additional sub-consultant program management labor hours will not be allowed. Overtime labor hours will not be allowed without prior written approval. If overtime is approved, it will be billed at the billing rates listed and not at one and one half times the billing rate;

(2) Billing rates for either "Field" or "Home" as agreed to with the City per task, as listed in Exhibit C for Consultant and billing rates for subconsultants, as listed in Exhibit D. The labor cost for each task or subtask will be the billing rates for each individual multiplied by the hours in (1) above;

(3) Estimated reasonable out-of-pocket expenses;

(4) Proposed profit as follows:

- Proposed profit of Consultant's work effort as fixed fee amount not to exceed seven percent (7%) of Consultant's estimated direct salaries and overhead costs; and
- For work performed by all subconsultants, proposed total mark up for Consultant on subconsultant's work effort as a fixed fee not to exceed two percent (2%) of sub-consultant's total labor charges

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

(iv) **Record of Negotiations.** If agreement is reached, the Contracting Section will document the negotiations and agreement in a Record of Negotiations and obtain the approval of the Chief Operating Officer or his or her Designee of the agreement as defined in the Record of Negotiations.

(v) **Controller Certification.** Upon approval of the Chief Operating Officer or his or her Designee, the Contracting Section will request certification from the Controller that adequate funds are available to proceed with the task as agreed.

(vi) **Notice to Proceed.** After certification, the Contracting Section will send to the Consultant a written NTP and Task Number. The Consultant is required to use the task number when submitting invoices to the Contracting Section for payment. The Consultant shall not commence work on any task until it receives a written NTP for the task.

(vii) **Changes.** Agreed lump sum prices and fixed profits for subtasks and tasks above cannot be modified unless there is a material change in the scope of work of the task. If there is a material change in the scope of work of a task, then a proposal, negotiations, Record of Negotiations and approval of the Record of Negotiations by the Chief Operating Officer or his or Designee shall be required before changes to agreed lump sum prices and fixed profits can be

approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.

(viii) Failure to Agree on Terms of Task. In the event that City and Consultant cannot reach agreement on the terms of the task order, City may either cancel the task order and have the work accomplished through other available sources, or City may direct the Consultant to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. **Under no circumstances may the Consultant refuse to undertake a City-ordered task.**

G. Key Team Members. Work under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. The Consultant agrees that the following key team members shall be committed and assigned to work on the Project to the level required by SFMTA for the term of the Agreement:

Marty Portillo

Bob Highfill

Glen Cross

Tom Brush

Charlie Hahn

Michael Voris

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

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

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

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

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

L. Agency's Responsibilities Regarding Submittals. Agency will review and comment on Consultant's submittals generally within four calendar weeks of submittal. The Agency and Consultant will establish a timetable of submittals and reviews in the initial

coordination meetings and include such a timetable in the Program Management/Implementation Plan. Agency's review and comments of Consultant submittals shall in no way relieve the Consultant of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the Agency relieve the Consultant of its independent responsibility to provide submittals and deliverables in full compliance with local, state and federal codes, regulations and standards.

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

5. Compensation

A. Amount. Compensation under this Agreement shall be based on either a negotiated lump sum price per task or subtask, or actual direct costs plus a negotiated fixed profit per subtask and task. In no event shall the amount of this Agreement exceed 4 Million Dollars (\$4,000,000).

B. Method of Computing Compensation.

(i) Billing Labor Rates. The billing labor rates in Exhibits C and D shall be fixed at that level until 12 months after effective date of this Agreement. Billing Labor Rates in Exhibits C and D may be adjusted 12 months after the effective date of this Agreement but the average increase shall be no more than three percent (3%). Consultant will submit each individual's actual pay increase and a 3% calculated increase. The City may choose which rate will be applied to each individual. Any individual salary adjustments above three percent (3%) will require prior written approval from the Chief Operating Officer or his or her Designee.

(ii) Overhead. The Consultant's compensation under this Agreement will be based on and shall not exceed the fully loaded billing rates as shown on Exhibits C and D. The Consultant's and subconsultants' combined overhead and salary burden rates are subject to audit in compliance with Federal requirements.

The overhead rates including any adjustment to such rates as provided for above, are subject to reimbursement as described in this paragraph. Within one hundred eighty (180) days of the end of Consultant's fiscal year that immediately follows the expiration or any earlier termination of this Agreement, Consultant shall submit to the SFMTA Liaison, Consultant's and all sub-consultants' actual rates during the term of this Agreement. For each rate paid to the Consultant that exceeds the Consultant's or any sub-consultant's actual rate, the Consultant shall reimburse to the City the total difference between the rate paid and Consultant's or sub-consultant's actual rate during the term of this Agreement. Consultant shall reimburse City within thirty (30) days of written notice from City seeking reimbursement. For each actual overhead rate of Consultant or sub-consultant that exceeds the rate paid to Consultant, City shall pay to Consultant the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Consultant within sixty (60) days of City's receipt of all of Consultant's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Consultant's rates as provided above.

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

(iv) Out-of-Pocket Expenses. The SFMTA will reimburse Consultant for the actual cost of approved out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups. All travel expenses are to be pre-approved by the SFMTA and Consultant must obtain the best air fare available in a timely fashion.

(v) Non-Reimbursable Expenses. Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Consultant and subconsultant personnel relocation costs and entertainment or personal expenses of any kind will not be reimbursable under this Contract. Office and field supplies/equipment expenses will also not be reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for this Project. Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis as listed in Exhibit D will also not be reimbursable by the SFMTA under this Contract. Vehicle expenses calculated on a cost-per-mile basis for travel within a fifty (50) mile radius of the City will not be reimbursable.

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

6. Payment

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

B. Invoices.

(i) Form of Invoice. Invoices furnished by Consultant under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. The Consultant shall submit invoices in quadruplicate for all allowable charges incurred in the performance of the Agreement. No invoice shall be rendered if the total work done under this Agreement since the last invoice amounts to less than Fifteen Hundred Dollars (\$1,500), except that an invoice may be submitted if three (3) months have elapsed since the last invoice was submitted. No more than one invoice shall be submitted in a month.

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

C. Documentation for Payment. Invoices shall be submitted together with the Monthly Progress Reports, Monthly Cost Control Report and Monthly Update Schedule, and shall be submitted by the 21st day of each month for work performed in the preceding month. The Monthly Cost Control Report shall include the current completed percentages for each task and subtask, the current estimated labor hours and cost for each Discipline to complete each of the tasks, an itemized breakdown of dollars and hours by employee and by subtask for all prime and subconsultant charges for the month being invoiced (accounting for a minimum of 28 calendar days of the month), and an itemized breakdown of out-of-pocket expenses by task incurred since the previous billing, along with copies of bills of materials and expenses incurred. Failure to submit a complete Monthly Cost Control Report, Monthly Updated Schedule and Monthly Progress Report by the due date shall constitute cause for suspension of invoice payments.

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

D. Payment of Invoices.

(i) Monthly Payments. Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Appendix B of this Agreement, that the Executive Director/CEO of the SFMTA, in his sole discretion, concludes has been performed as of the last day of the immediately preceding month in accordance with the performance milestones and work delivery schedule attached to this Agreement as Appendix B. City shall make payment to Consultant at the address specified in the section entitled "Notices to the Parties." All amounts paid by City to Consultant shall be subject to audit by City.

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

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

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

7. Guaranteed Maximum Costs

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

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

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

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

8. Submitting False Claims; Monetary Penalties

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

9. Disallowance

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

10. Taxes

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

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

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

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

(iii) Consultant, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the 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.

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

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

11. Payment Does Not Imply Acceptance of Work

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

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Consultant or its subconsultants. Consultant's personnel and subconsultants shall comply with the licensing requirements of the State of California in their respective professional fields. Persons employed by Consultant and its subconsultants who are not subject to licensing requirements of California law are exempt from the requirements of this Section 12. Consultant will comply with City's reasonable requests regarding assignment of personnel, but Consultant must supervise all personnel, including those assigned at City's request.

13. Equipment

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

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

14. Independent Contractor; Payment of Taxes and Other Expenses

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

withholdings, unemployment compensation, insurance, and other similar responsibilities related to Consultant's performing services and work, or any agent or employee of Consultant providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Consultant or any agent or employee of Consultant.

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

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

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

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

15. Insurance

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

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

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

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

(iv) Professional liability insurance as follows:

(a) From the effective date of this Agreement, each partner of the joint association constituting the Consultant shall maintain professional liability insurance coverage with limits not less than \$1,000,000 each claim/annual aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this

Agreement. Such insurance shall be maintained a claim reporting period for a period not less than three (3) years following completion of services.

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

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

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

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

Ms. Trinh Nguyen
Project Manager
SFMTA Operation
1 South Van Ness Avenue
San Francisco, CA 94103-5417

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

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

F. 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.

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

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

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

16. Indemnification

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

B. Limitations

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

(ii) Consultant assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the Consultants of any Indemnitee.

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

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

17. Incidental and Consequential Damages

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

18. Liability of City

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

19. Standard of Performance

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

20. Default; Remedies

A. Event of Default. Each of the following shall constitute an event of default (“Event of Default”) under this Agreement:

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

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

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

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

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

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

21. Termination for Convenience

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

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

- (i) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- (ii) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (iii) Terminating all existing orders and subcontracts.
- (iv) At City's direction, assigning to City any or all of Consultant's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (v) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (vi) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- (vii) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Consultant and in which City has or may acquire an interest.

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

- (i) The reasonable cost to Consultant, without profit, for all services and other work City directed Consultant to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Consultant's direct costs for services or other work. Any overhead allowance shall be separately itemized.
- (ii) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (i), provided that Consultant can establish, to the satisfaction of City, that Consultant would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.
- (iii) The reasonable cost to Consultant of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.
- (iv) A deduction for the cost of materials to be retained by Consultant, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

D. Non-Recoverable Costs. In no event shall City be liable for costs incurred by Consultant or any of its subconsultants after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (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). Cost of preparing the invoices and task order proposals are to be considered part of the overhead costs, therefore will be non-recoverable costs.

Costs for travel between offices within 50 miles of the City will not be chargeable to the City. All travel expenses outside 50 miles of the City shall be approved by the Project Manager in writing prior to travel dates.

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

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

22. Rights and Duties Upon Termination or Expiration

A. Survival of Provisions. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 57, and 58.

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

23. Conflict of Interest

Through its execution of this Agreement, Consultant acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement. Consultant further acknowledges that it is aware of requirements concerning the filing of Statements of Economic Interest, California Fair Political Practices Commission Form 700, under the requirements of California Government Code section 7300 et seq. and the San Francisco Campaign and Governmental Code section 3.1-102, and that Consultant shall ensure that its employees and subconsultants are aware of those requirements and comply with them.

24. Proprietary or Confidential Information of City

Consultant understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Consultant may have access to private or confidential information which may be owned, controlled by, or licensed to the City and that

such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Consultant agrees that all information disclosed by City to Consultant shall be held in confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information, as a reasonably prudent consultant would use to protect its own proprietary data.

25. Notices to the Parties

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

To MTA: Ms. Trinh Nguyen
Project Manager
SFMTA Muni Operation
1 South Van Ness Avenue
San Francisco, CA 94103-5417

To Consultant: Robert Highfill
Project Manager
Jacobs Engineering Group, Inc.
160 Spear Street, Suite 330,
San Francisco, CA 94105

Any notice of default must be sent by registered mail.

26. Ownership of Work Product

Any interest of Consultant or its Subconsultants, in its Work Product shall become the property of and will be transmitted to City. However, Consultant may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

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

28. Audit and Inspection of Records

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

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

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

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

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

29. Subcontracting

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

B. Substitutions of Subconsultants. Substitutions may be made for any subconsultants or subcontractors listed in the Exhibits for: (i) failure to perform to a reasonable level of professional competence; (ii) inability to provide sufficient staff to meet the Project requirements and schedules; or (iii) unwillingness to negotiate reasonable contract terms or compensation.

C. Additions of Subconsultants. The City will reserve the right to request specific subconsultants with specific expertise to be added to the team to provide services under this Agreement if the City determines that specific expertise is lacking in the project team.

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

30. Assignment

The services to be performed by Consultant are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Consultant unless first approved by City by written instrument executed and approved as required by SFMTA policy and City ordinance. Consultant and the partners of any joint venture or association that Consultant may establish for the Project, or any of the Consultant's subconsultants may incorporate or change their business names; provided such incorporation or change does not decrease their obligation or liability under this Agreement. This Agreement shall be binding upon the City and the Consultant and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any funds due or to become due there under may be assigned by the Consultant without the prior written consent and approval of the City.

31. Non-Waiver of Rights

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

32. Earned Income Credit (EIC) Forms

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

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

B. Failure to Comply. Failure to comply with any requirement contained in subparagraph (A) of this Section shall constitute a material breach by Consultant of the terms of this Agreement. If, within 30 days after Consultant receives written notice of such a breach, Consultant fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Consultant fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

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

D. 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.

33. Small Business Enterprise Program.

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

B. Compliance with SBE Program. Consultant shall comply with the SBE provisions contained in Attachment 2 of the Request for Proposals, which are incorporated by reference as though fully set forth herein, including, but not limited to, achieving and maintaining the SBE goal set for the total dollar amount awarded for the services to be performed under this Agreement. Failure of Consultant to comply with any of these requirements shall be deemed a material breach of this Agreement.

C. SBE Goal. The goal for SBE participation is 25 percent of the total dollar amount awarded for the services to be performed under this Agreement.

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

34. Nondiscrimination; Penalties

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

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

C. Nondiscrimination in Benefits. Consultant does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave,

health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

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

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

35. MacBride Principles—Northern Ireland.

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

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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

38. Resource Conservation

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

39. Compliance with Americans with Disabilities Act

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

40. Sunshine Ordinance

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

41. Public Access to Meetings and Records

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

42. Limitations on Contributions

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

chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

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

44. Requiring Health Benefits for Covered Employees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45. First Source Hiring Program

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

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

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

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

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

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

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

(vi) Set the term of the requirements.

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

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

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

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

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

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

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

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

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

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

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

(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;

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

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

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

46. Prohibition on Political Activity with City Funds

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

47. Preservative-treated Wood Containing Arsenic

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

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 as required by law.

49. Administrative Remedy for Agreement Interpretation

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

50. Agreement Made in California; Venue

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

51. Construction

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

52. Entire Agreement

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

53. Compliance with Laws.

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

54. Services Provided by Attorneys

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

55. Prompt Payment of Subconsultants

A. Progress Payments. In accordance with SFMTA's SBE Program, no later than three (3) working days from the date of Consultant's receipt of progress payments by the City, the Consultant shall pay any subconsultants for work that has been satisfactorily performed by said subconsultants, unless the prime consultant notifies the CCO Director in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between the prime consultant and the subconsultant. Within five (5) working days of such payment, Consultant shall provide City with a declaration under penalty of perjury that it has promptly paid such subconsultants for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

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

C. 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.

56. Disputes

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

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

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

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

E. 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.

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

57. Severability

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

58. 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 Contactor 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.

59. Graffiti Removal

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

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

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

60. Food Service Waste Reduction Requirements

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

considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

61. Sole Benefit

This Agreement is intended for the sole benefit of the City and the Consultant, and is not intended to create any third-party rights or benefits..

62. FTA Requirements

The provisions contained in "FTA Requirements for Personal Services Contracts," attached as Exhibit E are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

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

CITY

Municipal Transportation Agency

By _____
Nathaniel P. Ford, Sr.
Executive Director/CEO

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
John I. Kennedy
Deputy City Attorney

Municipal Transportation Agency
Board of Directors
Resolution No. _____

Adopted: _____

Attest: _____
Secretary, SFMTA Board

CONSULTANT

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

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

Authorized Signature

Printed Name

Title

Company Name

City Vendor Number

Address

City, State, ZIP

Phone Number

Federal Employer ID Number

EXHIBITS

- A. Services To Be Provided By Consultant
- B. Task Order Form
- C. Direct Salary Rates By Position Or Class For Consultant And All Sub-consultants
- D. Overhead Rates For Consultant And All Sub-consultants
- E. FTA Requirements for Personal Services Contracts
- F. Small Business Enterprise (SBE) Program for Professional and Technical Services

EXHIBIT A

SERVICES TO BE PROVIDED BY CONSULTANT

1. Description of Services

Consultant agrees to perform the services described below. Services shall be provided in conformance with the City's "Request for Proposals, As-Needed Specialized Engineering Services for Rubber Tire Vehicle Projects," as approved under SFMTA Board Resolution #08-123 dated July 15, 2008, the Proposal submitted by the Consultant on October 27, 2008, and as required under this Agreement.

The Consultant will provide specialized engineering and quality control services for the implementation and completion of the various rubber tire vehicle procurement and rehabilitation projects, including, but not limited to drafting Request for Proposals, design analysis, engineering calculations, reliability, safety, maintainability, and Mean Distance Between Failure (MDBF), quality control inspection, administrative support, vehicle acceptance and testing, warranty administration and competency gap analysis. The Consultant will provide competent professional staff (subject to review and approval by SFMTA's Project Manager) and services in specialties described below, either by direct assignment of its own personnel or through sub-consultants. The services for which staff and services are to be provided by the Consultant to support the project include, but are not limited to:

1. Performing detailed design review, data analysis, calculation and investigation of the various sub-systems of the vehicle to enable the SFMTA project team to make sound decisions regarding the reliability and feasibility of the products being offered by the vehicle manufacturer.
2. Drafting specifications, and reviewing and making recommendations on all designs, including, but not limited to, conceptual design preliminary and final design reviews.
3. Providing technical review and assessment of transportation systems.
4. Advising the SFMTA on key issues, including deviation from project requirements.
5. Reviewing, coordinating and recommending approval of project submittals including:
 - a. Overall vehicle design documents (including hardware and software functionality and performance)
 - b. Test plans, procedures and reports
 - c. Training plans and materials
 - d. Design and Application drawings and manuals
6. Performing quality control and resident inspection during production, including witnessing First Article testing at the vendor's facilities and on SFMTA property.
7. Ensuring all required tests, operations, measurements and inspections are satisfactorily performed and documented by the vehicle manufacturers and sub-suppliers.
8. Providing periodic inspection and progress reports, and meeting minutes.

9. Witnessing, reviewing and conducting acceptance tests of vehicles delivered to the SFMTA.
10. As directed by the SFMTA's project manager, make sure that all O&M manuals, as-built drawings, warranties and other closeout documents are obtained and accepted by the appropriate parties.
11. As directed by the SFMTA's project manager, ensure that all training, spare parts, special tools, special test equipment, maintenance and operation manuals, and other deliverables are properly provided to the appropriate parties.
12. Assist the SFMTA engineers in reviewing and redlining deliverables:
 - a. Design documents
 - b. Test plans, procedures and reports
 - c. Training plans and materials
13. Prepare Final Project Report summarizing the entire project process, including a discussion of the successes and aspects requiring improvements.
14. Provide cost and price analyses of contracts, change orders, task orders, and contract modifications in accordance with FTA guidelines, change order estimating, schedule and delay analysis, constructability review, forensic cost and accounting analyses, and dispute analysis and review.
15. Providing additional staffing on an as-needed basis in the areas of inspection, engineering and quality assurance expertise for SFMTA's vehicle rehabilitation and procurement projects.
16. Providing risk and sensitivity analyses for capital/operating expenses and revenues.
17. Preparing Fleet Management Plans.
18. Conducting safety analysis, compatibility analysis of the configuration and integration of project deliverables into Muni's shop facilities and infrastructure, and certification activities of documents that include, but are not limited to: reports, databases, spreadsheets, and vehicle interface documentation.
19. Conducting rail profiling.
20. Conducting wheel profiling

2. Reports

Consultant shall submit written reports as requested by the SFMTA. Format for the content of such reports shall be determined by the SFMTA. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies,

shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

3. SFMTA Liaison

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

Ms. Trinh Nguyen
Project Manager
SFMTA Muni Operation
1 South Van Ness Avenue
San Francisco, CA 94103-5417
(415) 701-4602

EXHIBIT B

**MUNICIPAL TRANSPORTATION AGENCY
TASK ORDER FORM**

Contract Title: As-needed Systems
Engineering Services

Contract No.: CS-901

Project Title:

Project No.: _____

TASK ORDER DESCRIPTION

the Executive Director/CEO to execute Contract No. CS-901, As-Needed Specialized Engineering Services for SFMTA Rubber Tire Vehicle Projects, with Jacobs Engineering, Inc. for amount not to exceed \$4,000,000 and a term not to exceed five years.

Task Title

New Task Order

Revised Task Order

Work to be Performed

Schedule

A.

Estimated Completion Date:

Start Date:

Budget Amount: \$

Index Code:

Deliverables

Descriptions

Date Req'd.

Quantity

APPROVALS

Approved _____
MTA Liaison

Approved _____
Manager, Operation Engineering

EXHIBIT C

Billing Rates by Position or Class for Consultant

	Fringe Benefits%		G&A %		Combined Overhead %	Multiplier (includes fee)
Home Office	25.30%	+	94.70%	=	120.00%	2.35
Field Office	25.30%	+	68.70%	=	94.00%	2.08
Part-time Field	0.00%	+	68.70%	=	68.70%	1.81
Fee					7%	

Names	Classification	Base Rate		Effective Date of Hourly Rate		Field Billing Rate	Home Billing Rate
Broussard, David	Project Controls	\$66.00		1/26/2009	9/30/2009	\$137.00	\$155.36
Costello, Chris	Test/Systems Engineer	\$62.72		1/26/2009	9/30/2009	\$130.19	\$147.64
Cross, Glen	QA/QC Manager	\$87.14		1/26/2009	9/30/2009	\$180.89	\$205.13
Gilks, Steve	Test/Systems Engineer	\$49.63		1/26/2009	9/30/2009	\$103.03	\$116.83
Gorski, Sandra	Project Coordinator	\$26.48		1/26/2009	9/30/2009	\$54.97	\$62.33
Highfill, Bob	Project Manager	\$88.19		1/26/2009	9/30/2009	\$183.06	\$207.60
Hogan, John	O&M	\$75.06		1/26/2009	9/30/2009	\$155.81	\$176.69
Meissner, Wayne	Procurement	\$69.01		1/26/2009	9/30/2009	\$143.25	\$162.45
Portillo, Marty	Principal-In-Charge	\$86.54		1/26/2009	9/30/2009	\$179.64	\$203.72
Su, Sandy	Project Controls	\$56.57		1/26/2009	9/30/2009	\$117.43	\$133.17
Turman, Lindsey	Project Coordinator	\$25.75		1/26/2009	9/30/2009	\$53.45	\$60.62
Wang, Sharon	Project Controls	\$34.93		1/26/2009	9/30/2009	\$72.51	\$82.23
Brush, Tom*	Procurement O&M Manager	\$90.00		1/26/2009	9/30/2009	\$162.46	NA
Hahn, Charlie*	Trolley Engineer	\$75.00		1/26/2009	9/30/2009	\$135.38	NA
Lythgo, Chris*	All Fuels	\$95.00		1/26/2009	9/30/2009	\$171.48	NA
Voris, Michael*	Trolley Engineer	\$75.00		1/26/2009	9/30/2009	\$135.38	NA

*No fringe benefits are applied to these employees

EXHIBIT D

Billing Rates by Position or Class for Sub-Consultants

Firm	Name	Classification	Billing Rate
A Train Enterprises	Sarah Wineman	Engineering Support, Vehicle Structures	\$137.62
	Brian Leibowitz	Engineering Support, Materials/Manufacturing	\$86.78
Acumen	Jeffrey Nazareno	Technical Writer	\$148.79
	Michael McCoy	O&M	\$184.21
	Te-Chuan Chang	Project Controls	\$170.04
	Ofeibia Laud-Darku	Administrative Assistant	\$65.18
All Train	Obe Schrader	Insepction/Testing PM	\$175.00
	Bill DeRycke	Insepction/Testing	\$154.00
	Ed Agarand	Insepction/Testing	\$154.00
B&C	Tom Tolentino	Sr. Engineer, Inspection/Testing	\$188.92
	David Coury	Sr. Engineer, System	\$162.49
	Corssia Ringer	Engineer, Safety	\$125.35
EF Enterprises	Brent Sumrall	Quality Control Manager	\$85.00
	Larry Bailey	Inspector	\$50.00
	Ryan Farrar	Inspector	\$50.00
	Kenneth Lutkus	Inspector	\$50.00
Interfleet	Stephen Bonina	Vehicle Engineer	\$184.79
	Nigel Davies	Inspection/Testing	\$211.54
	Stephen Noonan	Inspection/Testing	\$212.98
	Frederick Woolsey	Inspection/Testing	\$178.33
Railcar	Lain Lee	QA/QC Manager, Lead Inspector	\$104.34
	Rick Gonzales	Sr. Bus Technician & Maintenance Inspector	\$81.00
	Robert Galla	Bus Quality Inspector	\$62.34
	Scott Osterhoudt	Bus Quality Inspector	\$62.34
	Jim Kosheluk	Bus Quality Inspector	\$62.34
	Will McPhail	Bus Quality Inspector, Maintenance Specialist	\$72.00
	Robert Eisenberg	Bus Quality Inspector, Maintenance Specialist	\$72.00
All subconsultants costs are subject to 2% markup			

EXHIBIT E

FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

1. DEFINITIONS

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

B. 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.

2. FEDERAL CHANGES

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

3. 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).

4. DEBARMENT AND SUSPENSION

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

5. 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.

6. CIVIL RIGHTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the 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:

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

(ii) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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.

7. 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.

8. 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.

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

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

(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.

(iii) FTA Intention. When FTA awards Federal assistance for a experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not

completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.

(iv) Hold Harmless. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

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

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

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

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.

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

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

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

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

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

10. 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.

11. 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.

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

A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

13. 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.

14. 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.

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

17. 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.

18. 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.

19. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

20. 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:

(i) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either

for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

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

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

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.

EXHIBIT F

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY SMALL BUSINESS ENTERPRISE (SBE) PROGRAM REQUIREMENTS ARCHITECTS, ENGINEERS, PLANNERS, ENVIRONMENTAL SCIENTISTS AND OTHER PROFESSIONAL SERVICES FOR FEDERALLY-FUNDED PROJECTS

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

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

B. FORMS SUBMITTED WITH PROPOSAL
(CONTINUED)

SBE - 15

- SFMTA SBE Form No. 2 – SBE Consultant Participation – Good Faith Efforts (*See Page SBE-18*)
- SFMTA SBE Form No. 2A – Bidders List (*See Page SBE-20*)
- SFMTA SBE Form No. 2B –SBE Consultant/Joint Venture Partner/Subconsultant –Gross Revenue Declaration (*See Page SBE-21*)
- SFMTA SBE Form No. 3 – Questionnaire on Recruitment, Hiring, and Training Practices for Contractors (*See Page SBE-22*)
- SFMTA SBE Form No. 4 – SBE Subconsultant Participation Declaration (*See Page SBE-28*)
- SFMTA SBE Form No. 5 – Small Business Enterprise Acknowledgment Declaration (*See Page SBE-29*)
- SCHEDULE B – IF APPLICABLE

C. FORMS SUBMITTED AT POST-AWARD

SBE - 16

- SFMTA SBE Form No. 6 – Progress Payment Report (*See Page SBE-31*)
- SFMTA SBE Form No. 7 - Subconsultant Payment Declaration (*See Page SBE-33*)
- SFMTA SBE Form No. 8 – Amendment/Modification Declaration Professional Services & Construction Contracts (*See Page SBE-35*)
- SFMTA SBE Form No. 9 – Contractor Exit Report and Declaration (*See Page SBE-37*)

POLICY

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

A. Applicability

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

B. Objectives

The objectives of this program are to:

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

C. Administration of Program

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

D. Prohibited Discrimination

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

SFMTA does not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this program with respect to individuals in the groups or categories or having the characteristics listed above.

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

E. Non-Discrimination in Employment

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

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

DEFINITIONS

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

Small Business Enterprise (SBE)

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

B. Contractor

The term "Contractor" includes consultants.

III. SBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

A. SBE Participation Goal

The Contract Compliance Office has established a twenty-five percent (25%) Small Business Enterprise participation goal for each contract. Small business firms may qualify for this program by enrollment in either the State of California's Small Business Program with the Department of General Services ("State Program"), the California Unified Certification Program with a U.S. Department of Transportation recipient ("Federal DBE program"), or the City and County of San Francisco's LBE program with the Human Rights Commission ("City Program"). This SBE goal will apply to the following types of contracts or scope of work in the contract: Architecture & Engineering Services (to include professional and technical services), Computer Programming and Design, Drafting (design services); Landscape Architecture; Building Inspection; Public Relations; Telecommunications; Merchant Wholesalers, Durable Goods, and Machinery and Equipment Rental (construction) ("SBE Work".)

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

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

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

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

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

B. SBE Income Thresholds For Certain Types of Contracts

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

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

C. SBE Participation

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

1. Nature of SBE Participation

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

2. Function

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

3. Determining the Amount of SBE Participation.

The Contractor shall determine the amount of SBE participation for each SBE performing work on the contract in terms of both the total value of the individual SBE work in dollars and the percentage of the total contract bid price for the SBE Work. The Contractor shall achieve the SBE participation goal specified for the entire SBE Work, including any amendments to the SBE Work.

a. SBE Prime Consultant

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

b. SBE Subconsultant

Count the entire amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work (except for materials and supplies purchased or leased from the Prime Consultant or supplier) and reasonable fees and commissions charged for the services. Do not count any work subcontracted by an SBE subconsultant to another firm as SBE participation by said SBE subconsultant. If the work has been subcontracted to another SBE, it will be counted as SBE participation by that other SBE.

c. SBE Joint Venture Partner

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

d. SBE Regular Dealer

Count 60% of the costs of materials and supplies obtained from an SBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly bought, kept in stock and sold or leased to the public in the usual course of business. This applies whether an SBE is a prime contractor or subcontractor.

e. Other SBEs

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

f. Materials or Supplies

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

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

D. Meeting the SBE Participation Goal

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

E. Submission of Certification for SBEs

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

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

San Francisco Municipal Transportation Agency (SFMTA)

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

Firms that wish to be certified as DBEs can obtain DBE certification applications from SFMTA at the above address. Completed DBE certification applications can be returned to SFMTA or another certifying agency. Certification applications can be obtained by downloading from website http://www.dot.ca.gov/hq/bep/business_forms.htm or by calling (415) 701-4436. A list of certifying agencies is provided on the DBE certification application.

State Program:

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

City Program:

Human Rights Commission
 25 Van Ness Ave. #800
 San Francisco, CA 94102
 Attn: Certification Unit
 (415) 252-2500
http://www.sfgov.org/site/sfhumanrights_page.asp?id=45141

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

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

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

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

\$11,000,000 – \$13,999,999	6
(> = \$14M, for each additional \$3 million in consultant fees, add one additional trainee)	

- B. The intent of this Program is to provide technical training and job opportunities in a professional office environment for economically disadvantaged individuals as on-the-job trainees. These training opportunities will be executed through the duration of this contract. In hiring prospective trainee, the Consultant shall comply with the non-discrimination provisions pursuant to local, state and federal laws.
- C. Trainees shall be obtained through First Source Hiring Program. Outreach should be done to include individuals from the communities that have experienced high rates of unemployment. A list of the designated resources may be obtained from SFMTA.
- D. The Professional Engineering Services Trainee Program consists of participation of individuals as on-the-job trainees based on the project cost. The trainee program will be implemented by the Consultant for this project. The individuals will be hired as regular employees of the firms(s) and shall receive any benefits that they may be entitled to under State labor laws.
1. The trainee must be hired in a discipline related to professional engineering services or meaningful support or technical position by the Consultant.
 2. No existing employee may be counted towards meeting the trainee goal. However, the new trainees can be part of the pool of new employees that the Consultant may have to hire anyway for a new project of this magnitude and therefore need not be an “extra” cost to the Consultant or to the City.
 3. The Consultant may utilize trainees on other projects it has within San Francisco Bay Area, where trainees can execute work for other projects after the effective date of the Notice to Proceed.
 4. The Consultant is responsible for providing On-The-Job Training (OJT). The Consultant shall hire the trainee on a full-time basis for at least 12 months or on part-time basis for 24 months, offering him/her OJT, which allows the trainee to progress on a career path. The Consultant may hire the trainee(s) for the duration of the project.
 5. The Consultant should submit to SFMTA for approval a job description and summary of the training program for each trainee, with the proposed rate of pay (commensurate with the job requirements).
 6. A trainee qualified in this program is defined as a socially and economically disadvantaged individual who:
 - a. Is unemployed, has a history of unemployment, or who is currently in a job training program; and
 - b. Will receive training in a non-trade discipline associated with the Professional Engineering Services industry.
 7. The term “socially and economically disadvantaged individual” shall have the meaning, as the term is defined in 49 CFR Section 26.5, and shall also include persons with disabilities.
 8. The Consultant shall provide the necessary tools and/or office equipment (i.e., computers, desks and chairs) for trainees to perform the assigned duties. The Consultant shall provide travel costs if the individual has to travel 50 miles or more from his/her assigned work site for the purpose of getting the job done.

9. The Consultant shall design a training program specifically for the trainee. The program shall include, but not be limited to company's personnel policy procedures manual, benefit package and OJT duties and responsibilities. The trainees are not permitted to work in trade positions performing covered work.
10. The Consultant can replace a trainee if there is documentation to demonstrate that the trainee did not perform satisfactorily the key requirements as identified in the job descriptions. The Consultant can apply the time accumulated by the original trainee toward satisfying the contract requirement.
11. The Consultant shall provide SFMTA within thirty (30) working days of Notice to Proceed, the following information in order to expedite time in securing the appropriate person to participate during the project.
 - a. Indicate number of trainees to be hired. The hiring of trainees can be phased in over a period of time.
 - b. Provide the name and telephone number of Consultant's contact person.
 - c. The Consultant shall provide a job description used to recruit the trainee(s). Indicate the specific skills/disciplines for the job.
 - d. A college degree is not a requirement for a trainee and the job description should so indicate.
- E. The Consultant shall submit to SFMTA on a monthly basis a Workforce information report on the status of the trainees.
- F. The SFMTA Contract Compliance Office will monitor the contract trainee requirements for compliance.
- G. The Consultant agrees that the City may withhold pending and future progress payments should the Consultant not demonstrate good faith efforts toward satisfying the required number of trainee hours.
- H. The Consultant Team is responsible for sponsoring the trainee(s). Each team member's contribution toward the cost of a trainee should be based on the contract percentage amount received.

V. EVALUATION OF PROPOSALS

A. CCO Evaluation

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

1. Evaluation of Proposals

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

2. Determination of Amount of SBE Participation

The CCO shall review the total dollar value of the work and the percentage of the total contract bid price reported on the proposer's Consultant/Joint Venture and Subconsultant

Participation Report (SFMTA SBE FORM No. 1) for accuracy and shall compare it to the contract-specific goal, if any, established for the contract.

3. Evaluation of SBE Certification Status

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

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

4. Good Faith Efforts

If the amount of SBE participation does not meet the SBE goal, the CCO shall review the good faith efforts report (SFMTA SBE Form 2) submitted by the proposer with its proposal. A proposer must submit a report explaining the steps taken and the reasons the efforts were not successful to obtain SBE participation. The CCO shall determine whether, prior to submission of the proposal, the proposer has performed the quality, quantity and intensity of efforts that demonstrate a reasonably active and aggressive attempt to meet the established SBE goal.

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

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

- a.** Soliciting through all reasonable and available means (e.g. attendance at pre-proposal meetings, advertising and/or written notices) the interest of all certified SBEs who have the capability to perform the work of the contract. The proposer must solicit this interest within sufficient time to allow the SBEs to respond to the solicitation. The proposer must determine with certainty if the SBEs are interested by taking appropriate steps to follow up initial solicitations.
- b.** Selecting portions of the work to be performed by SBEs in order to increase the likelihood that the SBE goal(s) will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate SBE participation, even when the prime consultant might otherwise prefer to perform these work items with its own forces.

- c. Providing interested SBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- d. (i) Negotiating in good faith with interested SBEs. It is the proposer's responsibility to make a portion of the work available to SBE subconsultants and suppliers and to select those portions of the work of material needs consistent with the available SBE subconsultants and suppliers, so as to facilitate SBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of SBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for SBEs to perform the work.
(ii) A proposer using good business judgment would consider a number of factors in negotiating with subconsultants, including SBE subconsultants, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for a proposer's failure to meet the contract SBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime consultant to perform the work of a contract with its own organization does not relieve the proposer of the responsibility to make good faith efforts. Prime consultants are not, however, required to accept higher quotes from SBEs if the price difference is excessive or unreasonable.
- e. Not rejecting SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The consultant's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the consultant's efforts to meet the project goal.
- f. Making efforts to assist interested SBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- g. Effectively using the services of available small business community organizations; small business consultants' groups; local, state, and Federal small business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of SBEs.

B. Recommendation for Award of Contract

1. SFMTA CCO's Recommendation for Award

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

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

C. Successful Proposer

Substitution of Subconsultants and Suppliers

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

2. Addition of Subconsultants and Suppliers

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

3. Prompt Payment to Subconsultants

In accordance with SFMTA's SBE Program, no later than three (3) working days from the date of Consultant's receipt of progress payments by the City, the Consultant shall pay any subconsultants for work that has been satisfactorily performed by said subconsultants, unless the prime consultant notifies the CCO Director in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between the prime consultant and the subconsultant. Within five (5) working days of such payment, Consultant shall provide City with a declaration under penalty of perjury that it has promptly paid such subconsultants for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

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

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

4. Reporting Requirements

The Consultant shall maintain records of all SBE participation in the performance of the contract, including subcontracts entered into with certified SBEs and all materials purchased from certified SBEs. The Consultant shall submit SBE participation reports to SFMTA on a monthly basis, or as otherwise directed by the CCO. The reports shall identify the name and address of each SBE performing work on the project, and show the total dollar amount requested for payment and the total dollar amount actually paid to each SBE. Within thirty (30) days of completion of the contract, or as otherwise directed by the CCO, the Consultant shall submit a final summary SBE report to the CCO.

D. Administrative Remedies

1. Monitoring SBE Participation

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

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

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

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

2. Enforcement Mechanisms

a. Reporting to DOT

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

E. CONFIDENTIALITY

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

VI. SUBMISSION OF FORMS AND INSTRUCTIONS

A. Required Forms

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

	FORMS SUBMITTED WITH PROPOSAL	
--	--------------------------------------	--

SFMTA SBE Form No. 1	Consultant/Joint Venture Partner and Subconsultant Participation Report	SBE - 17
SFMTA SBE Form No. 2	SBE Consultant/Subconsultant – Good Faith Efforts	SBE – 18
SFMTA SBE Form No. 2A	Bidders List	SBE – 20
SFMTA SBE Form No. 2B	SBE Consultant/Joint Venture Partner/Subconsultant Gross Revenue Declaration	SBE – 21
SFMTA SBE Form No. 3	Questionnaire on Recruitment, Hiring, and Training Practices for Consultants	SBE – 22
SFMTA SBE Form No. 4	Subconsultant Participation Declaration	SBE – 28
SFMTA SBE Form No. 5	Small Business Enterprise Acknowledgment Declaration	SBE – 29
SCHEDULE B	Joint Venture Participation Form	From CCO, if needed.
FORMS SUBMITTED AT POST AWARD		
SFMTA SBE Form No. 6	Progress Payment Report	SBE – 31
SFMTA SBE Form No. 7	Subconsultant Payment Declaration	SBE - 33
SFMTA SBE Form No. 8	Declaration – Modification of Professional Service Contracts	SBE - 35
2. SFMTA SBE Form No. 9	Consultant Exit Report and Declaration	SBE - 37

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

B. FORMS SUBMITTED WITH PROPOSAL:

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

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

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

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

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

Each Proposer shall submit with its proposal a written report (SFMTA SBE Form No. 2) with supporting documentation covering all actions taken by the proposer to meet the SBE goal prior to the submittal of the proposal. This form must be submitted regardless whether or not the proposer's Consultant/Joint Venture and Subconsultant Participation

Report (SFMTA SBE Form No. 1) indicates that the SBE goal has been met. If the CCO requires further information following its review of the report, the proposer shall submit such information within five days of the request.

SFMTA SBE FORM No. 2A - BIDDERS LIST

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

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

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

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

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

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

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

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

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

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

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

Schedule B - Joint Venture Participation Form (If applicable)

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

C. FORMS SUBMITTED AT POST AWARD

SFMTA SBE FORM NO. 6 - PROGRESS PAYMENT REPORT

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

SFMTA SBE FORM No. 7 - SUBCONSULTANT PAYMENT DECLARATION

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

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

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

SFMTA SBE FORM No. 9 - CONSULTANT EXIT REPORT AND DECLARATION

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

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

-
-
-

PROPOSER _____

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



SFMTA SBE FORM No. 2

SBE CONSULTANT/SUBCONSULTANT PARTICIPATION – GOOD FAITH EFFORTS

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

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

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

Contract Number:	_____	Contract Name:	_____
Proposer’s Name:	_____	CCO Staff Assigned:	_____

Please supply the following information:

1. Attending any presolicitation or proposal meetings scheduled by the awarding department to inform all proposers of SBE Program requirements for the project for which the contract is awarded.
2. List below the names and dates of all certified SBEs solicited by direct mail for this project or print out a list of SBE contacted via the States’ SBE website, City’s HRC website, or UCP DBE website. List the dates and methods used for following up initial solicitations to determine with certainty whether the SBEs were interested. Attach copies of letters and supporting documentation.

-
3. Summarize below the items of work for which the Proposer requested subconsultant services supplied by SBEs, the information furnished interested SBEs regarding work requirements and any breakdown of tasks into economically feasible units to facilitate SBE participation. Where there are SBEs available for doing portions of the work normally performed by the proposer with its own staff, the proposer will be expected to make portions of such work available for SBEs.

SUBMIT WITH PROPOSAL

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

a. List the names of rejected SBEs:

b. Summarize below discussions and/or negotiations:

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

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

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

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

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

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

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

SFMTA SBE FORM No. 2A
BIDDERS LIST

(Supply the following information for all firms bidding or quoting on this contract. If any information is not included, specify reason why you could not obtain the information.)

PROPOSER'S NAME: _____

Name/ Federal I.D. or State I.D. No.	Address	Phone	SBE Certified (CUCP DBE, CITY LBE, STATE SBE)		Yrs. in Business	Annual Gross Receipts of Firm
			Yes	No		

PROPOSER: _____

SFMTA SBE FORM No. 2B

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

(TO BE COMPLETED BY SBE CONSULTANT/JOINT VENTURE PARTNER/SUBCONSULTANT)

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

Contract Number: _____ Contract Title: _____

SECTION I

Name: _____ Vendor Number: _____

Address: _____

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

SECTION II

(Check Ownership and Certification Type check all that apply)

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

DECLARATION

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

Name and Title (Print) _____

Signature _____ Date _____

- PROPOSER:** _____
-

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

Professional or Technical Services

Instructions

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

SFMTA FORM No. 3

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

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

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

Name of Company: _____

Address: _____

Location of Company Workforce (Check one):

_____ San Francisco

_____ Other Location, provide address:

- _____

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

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

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

 4. Describe briefly how employees at various levels are hired (see Workforce Breakdown #8).

A. Technicians and/or others.

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

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

-- Participation in training programs.

-- Participation in apprenticeship programs.

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

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

-- Participation in scholarship fund.

-- Participation in clerical training programs.

SUBMIT WITH PROPOSAL

-- Participation in "other" programs.

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

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

8. Complete workforce breakdown. (Separate form, Page SBE-26.)

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

SFMTA SBE FORM No. 3

WORKFORCE DATA SPREADSHEET #1

8. Please fill out this workforce breakdown

Name of firm: _____

Address: _____

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

3/30/95

COMPLETED BY Name: _____ Title: _____ Date: _____

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

**SFMTA SBE FORM No. 3
WORKFORCE DATA SPREADSHEET #2**

8a. Hires in last 12 months

Name of firm: _____

Address: _____

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

3/30/95

COMPLETED BY Name: _____ Title: _____ Date: _____

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

PROPOSER _____

SFMTA SBE FORM No. 4

SBE SUBCONSULTANT PARTICIPATION DECLARATION

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

(Name and Title)

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

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

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

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

Total dollar value of SBE work: \$ _____ = _____ % of SBE Participation
Total dollar value of Proposal Price \$ _____ 100%

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

Owner or Authorized Representative (Signature)

Dated: _____

PROPOSER: _____

SFMTA SBE FORM No. 5

SMALL BUSINESS ENTERPRISE ACKNOWLEDGMENT DECLARATION

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

(Owner or Authorized Representative and Title)

declares that _____ will award
(Name of Prime Consultant)

_____ [(%) percent and/or (\$) amount], of subcontract or

_____ [(%) percent and/or (\$) amount] of a purchase order of the total value of the
prime contract to _____ (Name of your firm).

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

Nature of work to be performed by SBE: _____

FORM OF OWNERSHIP FOR SMALL BUSINESS ENTERPRISE

Sole Proprietorship _____ Partnership _____ Joint Venture _____ Corporation _____

Limited Liability Partnership _____ Limited Liability Corporation _____

LIST OWNERS

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Percentage of SBE Stockholders: _____

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

LIST INSURANCE POLICIES AND BONDING ARRANGEMENTS

Name of Policy _____ Party Insured _____

Name of Policy _____ Party Insured _____

Name of Policy _____ Party Insured _____

For Prime Consultants and Subconsultants Only:

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

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

For Suppliers or Manufacturers Only:

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

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

ADDITIONAL SUBCONTRACTING BY SUBCONSULTANTS:

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

b. _____ We will subcontract _____ [% and/or \$ amount] of our work to _____
(Name of Subconsultant)

Indicate owners' ethnicity and gender _____

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

Owner/Authorized Representative (Signature)

Name & Title (Please Print)

Address

Telephone No.

END OF SFMTA SBE FORM No. 5



SFMTA SBE FORM No. 6
PROGRESS PAYMENT REPORT

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

TRANSMITTAL To: Project Manager Copy: Contract Compliance Office

From: Consultant _____ Date Transmitted: _____

PART 1: Fill in all blanks and check the box below.	
Contract Number:	Contract Title:
Reporting Period (Month and Year): _____	
Corresponding Progress Payment No.: _____	
<u>Note:</u> The information submitted on Parts 1 and 2 of this form is accurate for the progress payment period immediately preceding that of the current payment application attached herewith.	
1. Amount of Prime Contract	\$
2. Amount of Change Orders, Amendments and Modifications to Date	\$
3. Total Contract to Date including Change Orders, Amendments and Modifications (Line 1 + Line 2)	\$
4. Amount Invoiced this Reporting Period	\$
5. Total Amount Paid to Date including Retention (excluding Line 4)	\$
6. Amount of Progress Payment Requested to Date (Line 4 + Line 5)	\$
7. Percent Complete (Line 6 ÷ Line 3)	
8. Reporting Period - From (date):	To (date):

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

Owner/Authorized Representative (Signature)

Owner/Authorized Representative

Name & Title (Please Print) Date

Name & Title (Please Print) Date

Firm Name

Firm Name

() _____
Telephone Fax

() _____
Telephone Fax

**☐ SFMTA SBE FORM No. 7
SUBCONSULTANT PAYMENT DECLARATION**

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

TRANSMITTAL TO: Contract Compliance Office

COPY TO: Project Manager

From: Prime Consultant: _____ Date Transmitted: _____

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

Contract No.: _____ Contract Title: _____

Contract Awarding Department: _____

Progress Payment No.: _____ Period Ending: _____

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

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

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

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

POST AWARD SUBMITTAL

Owner/Authorized Representative (Signature) Owner/Authorized Representative (Signature)

Name (Please print/type) Name (Please print/type)

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

Firm Name Firm Name

Telephone Fax Telephone Fax

POST AWARD SUBMITTAL

DECLARATION – AMENDMENTS TO PROFESSIONAL SERVICE CONTRACTS

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

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

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

END OF SFMTA SBE FORM No. 8

SFMTA SBE FORM No. 9

CONSULTANT EXIT REPORT AND DECLARATION

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

TRANSMITTAL To: Project Manager Copy: Contract Compliance Office
From: Consultant:
Date Transmitted:

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

Reporting Date:

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

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

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name (Please print/type)

Name (Please print/type)

Title (Please print/type) Date

Title (Please print/type) Date

Firm Name

Firm Name

() Telephone () Fax

() Telephone () Fax

POST AWARD SUBMITTAL

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

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

END OF SFMTA SBE FORM No. 9

ENCLOSURE 3
San Francisco Municipal Railway Contract CS-901
As-Needed Specialized Engineering Services
Scope of Services

The services for which staff and services are to be provided by the consultant include, but are not limited to:

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

14. Providing additional staffing on an as-needed basis in the areas of inspection, engineering, and quality assurance expertise.
15. Providing risk and sensitivity analyses for capital/operating expenses and revenues.
16. Preparing Fleet Management Plans.
17. Conducting safety analysis, compatibility analysis of the configuration and integration of project deliverables into Muni's shop facilities and infrastructure, and certification activities of documents that include, but are not limited to: reports, databases, spreadsheets, and vehicle interface documentation.
18. Conducting wheel profiling.

ENCLOSURE 4
San Francisco Municipal Transportation Agency Contract CS-901
As-Needed Specialized Engineering Services for SFMTA Rubber Tire Vehicle Projects
Consultant Team Organization

Work under this contract will be performed by task orders on as-needed basis. The anticipated participation by each team member is as yet undetermined. The consultant team has affirmed its commitment to meeting the 25% SBE participation goals of this contract.

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

Jacobs Engineering Group, Inc.
Prime-Project management

Acumen Building Enterprise-DBE
Project Management Support, Systems Engineering, Design Review

All Transit Consultants LLC-SBE
Procurement, Systems Engineering, Design Review, Testing

A Train Enterprises, Inc.-DBE
Procurement, Systems Engineering, Design Review

B&C Transit Consultants, Inc-DBE
Systems Engineering, Testing

EF Enterprises-DBE/SBE
Procurement, Quality Control, Inspection, Testing

Interfleet Technology
Procurement, Systems Engineering , Testing

Railcar Quality Services-DBE
Procurement, Quality Assurance, Quality Control, Inspections

THIS PRINT COVERS CALENDAR ITEM NO. 14

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

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Requesting authorization for the Executive Director/CEO to execute San Francisco Municipal Transportation Agency Contract No. CS-146, As-Needed Specialized Engineering Services, with Anil Verma Associates, Inc. to provide technical and professional services on an "as-needed" basis for a total contract amount not to exceed \$3,000,000 and a term not to exceed five years.

SUMMARY:

- The proposed Contract No. CS-146, As-Needed Specialized Engineering Services, provides professional engineering services to assist and supplement staff on an as-needed basis.
- SFMTA Board of Directors adopted Resolution No. 07-004 on January 2, 2007, authorizing the Executive Director/CEO to issue a Request for Proposals (RFP) for Municipal Transportation Agency Contract No. CS-146, As-Needed Specialized Engineering Services, for a total contract amount not to exceed \$3,000,000 and a term not to exceed five years.
- SFMTA issued an RFP on February 14, 2008 and received written proposals from Anil Verma Associates, Inc. and Booz Allen and Hamilton, Inc. on March 19, 2008.
- A selection committee reviewed the proposals and conducted interviews with both proposers and ranked Anil Verma Associates, Inc. highest based on its written proposal and the oral presentation/interview.

ENCLOSURES:

1. SFMTAB Resolution
2. Scope of Services
3. Consultant Team Organization
4. Consultant Agreement w/o Exhibits

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

_____ Gigi Pabros _____

ASSIGNED MTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

Requesting authorization to award and execute San Francisco Municipal Transportation Agency Contract No. CS-146, As-Needed Specialized Engineering Services, to Anil Verma Associates, Inc. to provide technical and professional services on an “as-needed” basis for a total contract amount not to exceed \$3,000,000 and a term not to exceed five years.

GOAL

Contract No. CS-146 would assist in the implementation of the following goal, objectives, and initiatives in the SFMTA Strategic Plan:

- Goal 5: 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); and

Objective 5.2 Improve facilities in which people are working.

DESCRIPTION

It is the policy of the Transportation Planning and Development Division to be staffed completely and sufficiently to perform the base load of the essential work of the Division. However, due to the unpredictability and variety of project work, the need for professional services and other assistance required for SFMTA projects sometimes exceeds the availability of in-house staff or requires specialized expertise. If these services cannot be obtained when needed, it will adversely impact and possibly delay SFMTA projects. This contract will enable staff to obtain technical and professional services and other assistance on short notice to assist and supplement staff on an as-needed basis.

The use of as-needed services is closely monitored. When a project team determines that in-house staff needs assistance to complete the project work on schedule, they request the authorization of the Senior Director of Transportation Planning and Development to utilize as-needed professional services. Upon approval, a scope of work is prepared and given to the consultant for a cost proposal. The project team independently estimates the consultant’s cost to do the proposed work. Once the Senior Director approves the negotiated task order and the Controller certifies that funding is available, a Notice to Proceed to perform the work is given to the Consultant.

Purpose and Scope of Contract:

The selected consultant is to provide a broad range of specialized services and staff to complete task orders issued by the San Francisco Municipal Transportation Agency, either by direct assignment of its own personnel or through sub-consultants, including, but not limited to, initial planning and programming, specialized analytical studies, construction support and management, and start-up and operations planning. The scope of work under this contract is described in Enclosure 2.

Selection Process:

SFMTA Board of Directors adopted Resolution No. 07-004 on January 2, 2007 authorizing the Executive Director/CEO to issue an RFP, receive proposals, select the highest-ranking proposal, and negotiate Contract No. CS-146, As-Needed Specialized Engineering Services, for an amount not to exceed \$3,000,000 and for a term not to exceed five years.

PAGE 3.

The RFP was advertised on February 14, 2008 and two proposals were submitted on March 19, 2008 in response to the advertisement. The proposals were submitted by Anil Verma Associates, Inc. and Booz Allen & Hamilton, Inc. A Selection Committee, comprised of SFMTA staff, evaluated the two proposals, and selected Anil Verma Associates, Inc. as the highest ranking proposer.

ALTERNATIVES CONSIDERED

It is the policy of the Transportation Planning and Development Division to be staffed completely and sufficiently to perform the base load of the essential work of the Division. However, due to the unpredictability and variety of project work, the need for professional services and other assistance required for SFMTA projects sometimes exceeds the availability of in-house staff or requires specialized expertise. This contract will be used when the task requires specialized expertise not available in-house or when project demand exceeds staff availability.

FUNDING IMPACT

Task orders under this contract will be funded through existing approved budgets for project requiring services.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

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

The Contract Compliance Office has confirmed the consultant's commitment to meeting the 30% SBE participation goal for this contract.

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

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to award and execute Contract No. CS-146, As-Needed Specialized Engineering Services, with Anil Verma Associates, Inc., for an amount not to exceed \$3,000,000 and a term not to exceed five years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION NO. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) provides professional services for SFMTA infrastructure projects; and,

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

WHEREAS, The SFMTA Board of Directors adopted Resolution No. 07-004 on January 2, 2007 authorizing the Executive Director/CEO to issue a Request for Proposals (RFP), receive proposals, select the highest ranking proposal, and negotiate Contract No. CS-146, As-Needed Specialized Engineering, for an amount not to exceed \$3,000,000 and a term not to exceed five years; and,

WHEREAS, The SFMTA issued an RFP on February 14, 2008; and,

WHEREAS, The SFMTA received two proposals on March 19, 2008 in response to the RFP; and,

WHEREAS, A selection committee evaluated the two proposals, and selected Anil Verma Associates, Inc. as the highest-ranking proposer; and,

WHEREAS, Federal, state, and local sources will provide funding for the services on an as-needed, project-by-project basis; and,

WHEREAS, The Contract Compliance Office has confirmed the consultant's commitment to meeting the 30% SBE participation goal for this contract; and,

WHEREAS, Contract No. CS-146 addresses Strategic Plan Goal 5 by increasing resources available for employees in performing their jobs; and improving facilities in which people are working; now, therefore, be it,

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to award and execute Contract No. CS-146, As-Needed Specialized Engineering Services, with Anil Verma Associates, Inc., for an amount not to exceed \$3,000,000 and a term not to exceed five years.

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

San Francisco Municipal Transportation Agency Contract No. CS-146 As-Needed Specialized Engineering Services

Scope of Services

The services for which staff and services are to be provided by the consultant include, but are not limited to:

1. Design and inspection of trackwork, including special trackwork.
2. Preparation of project management plans and assistance as required by FTA.
3. Preparation of QA oversight, audits, plans, training and assistance as required by FTA.
4. Preparation of contract documents.
5. Troubleshooting, inspection, testing and safety certification of transit vehicles and equipment as required for rehabilitation/modification/repair.
6. Design, prototype testing, and evaluation of alternative products and systems to improve vehicle reliability.
7. Assessment of the condition of capital assets; preparation of estimates of the cost to replace and bring the assets to and maintain them in a state of good repair.
8. Annual ultrasonic rail testing per SFMTA SOP "Track Inspection and Maintenance" to identify internal rail defects.
9. Predicting, analyzing, preventing and mitigating noise and vibration from transit operations, and equipment, and designing and monitoring mitigation measures.
10. Special inspections required by the San Francisco Building Code or the Department of Building Inspection and metallurgical and other inspection and testing requested by SFMTA.
11. Cost and price analyses of contracts, change orders, task orders, and contract modifications in accordance with FTA requirements; change order estimating and negotiation; schedule and delay analysis; constructability review; forensic cost and accounting analyses; and dispute analysis and review.
12. Preliminary and system hazard analyses, failure modes and effects analyses, single point of failure analysis, hazard level classification, and safety certification of systems.
13. Geotechnical investigations and reports, including recommendations on pile design, and design criteria to limit seismic damage to acceptable levels.
14. Systems engineering, including systems integration, Central Control and communications systems analysis, special engineering of GPS driven systems, strategic analysis of SFMTA's human and automated systems, systems integration, safety processes, configuration management, and related work.
15. Preparation of operations and maintenance manuals and procedures, maintenance plans, and training to maintain facilities, systems, and equipment.
16. Start-up and commissioning of systems, including integration and pre-revenue "dryrun" testing, developing test procedures, instrumenting vehicles and equipment, conducting tests, and providing test reports and analyses.
17. Risk and sensitivity analyses for capital/operating expenses and revenues.
18. Preparation of fleet management plan.
19. Additional staffing on an as-needed basis in the areas of inspection, construction management, engineering, and quality assurance.
20. Fare/revenue collection policy analysis and business strategy for fare infrastructure renovation/replacement; overall analysis of Agency's need for a complete fare program; and support services for regional fare system.
21. Technical services related to developing a plan and meeting the objectives of the Climate Action Plan as required by San Francisco's Proposition A, passed in November 2007.
22. Technical review and assessment of transportation systems.

ENCLOSURE 3

San Francisco Municipal Transportation Agency Contract No. CS-146
As-Needed Specialized Engineering Services

Consultant Team Organization

Work under this contract will be performed by task orders on as-needed basis. The anticipated participation by each team member is as yet undetermined. The consultant team has affirmed its commitment to meeting the 30% SBE participation goals of this contract.

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

Anil Verma Associates, Inc. – SBE

Anil Verma Associates, Inc. will provide overall program coordination, including being responsible for Project Management, Project Controls, Quality Control and Quality Assurance. It will also manage the Capital Improvement requirements of this project by performing Condition Assessment and Cost Analysis.

The Allen Group, LLC

The Allen Group, LLC will provide the fare/revenue collection policy analysis and business strategy for fare infrastructure renovation/replacement together with the overall analysis of SFMTA's need for a complete fare program.

Biggs Cardosa Associates, Inc.

Biggs Cardosa Associates, Inc. will provide the facility evaluation and upgrading including the geotechnical work and special inspection testing, if required.

Chaudhary & Associates, Inc. – SBE

Chaudhary & Associates, Inc. will provide design and inspection of trackwork including specification for annual ultrasonic rail testing.

Elcon Associates, Inc.

Elcon Associates, Inc. will provide systems engineering, including systems integration, central control and communications systems analysis, special engineering of GPS driven systems, strategic analysis of SFMTA human automated systems, safety processes, configuration management and related work.

Geotechnical Consultants, Inc. – SBE

Geotechnical Consultants, Inc. will provide the geotechnical investigations and reports, including recommendations on pile design and design criteria to limit seismic damage to acceptable levels.

Inspection Services, Inc. – SBE

Inspection Services, Inc. will provide the special inspections required by San Francisco Building Code and/or the Department of Building Inspection and metallurgical and other inspection and testing required by SFMTA.

Lea+Elliott, Inc.

Lea+Elliott, Inc. will provide the planning, procurement, design, implementation and rehabilitation, if applicable, of the transportation systems. It will also provide technical review and assessment in order to prepare the fleet management plans.

LTK Engineering Services

LTK Engineering Services will provide the design, prototype testing and evaluation of alternate products and systems to improve vehicle reliability. It will also provide systems engineering; preparation of operations and maintenance manuals and procedures, maintenance plans and training; and start-up and commissioning of systems.

P H Adams & Associates – SBE

P H Adams & Associates will provide the risk and sensitivity analyses for capital/operating expense and revenues.

Western Infrastructure Laboratories

Western Infrastructure Laboratories will provide ultrasonic rail testing to identify internal rail defects.

Wilson, Ihrig & Associates – SBE

Wilson, Ihrig & Associates will provide prediction and analysis including the design and monitoring mitigation measures of the noise and vibration generated from transit operations and equipment.

AGREEMENT BETWEEN
CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

AND

ANIL VERMA ASSOCIATES, INC.

FOR

AS-NEEDED SPECIALIZED ENGINEERING SERVICES

CONTRACT NO. CS-146

CCO No. 07-987

TABLE OF CONTENTS

	<u>Page</u>
1. Definitions.....	1
2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.....	3
3. Term of the Agreement.....	4
A. Term.....	4
B. Effective Date	4
4. Services Consultant Agrees to Perform	4
A. Scope of Agreement.....	4
B. Priority of Documents.....	4
C. Information and Data	4
D. Presentations	4
E. Compliance with Laws	4
F. Task Requirements.....	5
(i) Scope of Work	5
(ii) Consultant Proposal	5
(iii) Negotiation of Cost and Profit	5
(iv) Record of Negotiations	5
(v) Controller Certification.....	6
(vi) Notice to Proceed.....	6
(vii) Changes.....	6
(viii) Failure to Agree on Terms of Task.....	6
G. Key Team Members.....	6
H. Current Workload and Available Resources.....	6
I. Information and Data	6
J. Transmittal of Work Product	6
K. Reproduction of Work Product.....	6
L. Agency’s Responsibilities Regarding Submittals.....	7
5. Compensation	7
A. Amount	7

B.	Method of Computing Compensation.....	7
(i)	Direct Labor Rates	7
(ii)	Overhead.....	7
(iii)	Reimbursable Costs	8
(iv)	Out-of-Pocket Expenses.....	8
(v)	Non-Reimbursable Expenses	8
(vi)	Use of Public Transportation	8
6.	Payment.....	8
A.	General.....	8
B.	Invoices.....	8
(i)	Form of Invoice.....	8
(ii)	Progress Payment Form	9
C.	Documentation for Payment	9
D.	Payment of Invoices.....	9
(i)	Monthly Payments	9
(ii)	Final Payment	10
(iii)	No Interest on Late Payments.....	10
E.	Payment of Subconsultants.....	10
7.	Guaranteed Maximum Costs.....	10
8.	Submitting False Claims; Monetary Penalties.....	10
9.	Disallowance.....	11
10.	Taxes.....	11
A.	Obligation of Consultant.....	11
B.	Possessory Interest.....	11
11.	Payment Does Not Imply Acceptance of Work.....	11
12.	Qualified Personnel.....	12
13.	Equipment.....	12
A.	Responsibility for Equipment	12
B.	Ownership of Equipment	12
14.	Independent Contractor; Payment of Taxes and Other Expenses.....	12
A.	Independent Consultant	12
B.	Payment of Taxes and Other Expenses.....	13
15.	Insurance.....	13

A.	Coverages.....	13
B.	Requirements of Insurance Policies.....	14
C.	Notice.....	14
D.	Claims-Made Form.....	14
E.	General Annual Aggregate Limit.....	14
F.	Lapse of Insurance.....	14
G.	Proof of Insurance.....	14
H.	No Decrease of Liability.....	14
I.	Subconsultant Insurance.....	15
16.	Indemnification.....	15
A.	General Indemnity.....	15
B.	Limitations.....	15
C.	Intellectual Property Infringement.....	15
17.	Incidental and Consequential Damages.....	16
18.	Liability of City.....	16
19.	Standard of Performance.....	16
20.	Default; Remedies.....	16
A.	Event of Default.....	16
B.	Remedies.....	17
C.	No Preclusion of Remedies.....	17
21.	Termination for Convenience.....	17
A.	Exercise of Option to Terminate for Convenience.....	17
B.	Duties of Consultant Upon Notice of Termination.....	17
C.	Invoice for Services Performed.....	18
D.	Non-Recoverable Costs.....	18
E.	Deductions.....	18
F.	Survival of Payment Obligation.....	18
22.	Rights and Duties Upon Termination or Expiration.....	18
A.	Survival of Provisions.....	18
B.	Duties Upon Termination.....	18
23.	Conflict of Interest.....	19
24.	Proprietary or Confidential Information of City.....	19
25.	Notices to the Parties.....	19

26.	Ownership of Work Product	20
27.	Works for Hire	20
28.	Audit and Inspection of Records.....	20
	A. Access to Records	20
	B. Maintenance of Records	20
	C. Flowdown to Subconsultants	21
	D. Audit	21
	E. Rights of State or Federal Agencies.....	21
29.	Subcontracting	21
	A. Approval of City	21
	B. Substitutions of Subconsultants	21
	C. Additions of Subconsultants	21
	D. SBE Firms	21
30.	Assignment	21
31.	Non-Waiver of Rights.....	22
32.	Earned Income Credit (EIC) Forms	22
	A. Provision of Forms to Eligible Employees	22
	B. Failure to Comply	22
	C. Flowdown to Subconsultants	22
	D. Terms	22
33.	Small Business Enterprise Program.....	22
	A. General.....	22
	B. Compliance with SBE Program	22
	C. SBE Goal	23
	D. Non-Discrimination in Hiring.....	23
34.	Nondiscrimination; Penalties	23
	A. Consultant Shall Not Discriminate	23
	B. Subcontracts.....	23
	C. Nondiscrimination in Benefits	23
	D. Condition to Contract.....	23
	E. Incorporation of Administrative Code Provisions by Reference	23
35.	MacBride Principles--Northern Ireland	24
36.	Tropical Hardwood and Virgin Redwood Ban	24

37.	Drug-Free Workplace Policy	24
38.	Resource Conservation	24
39.	Compliance with Americans with Disabilities Act.....	24
40.	Sunshine Ordinance	24
41.	Public Access to Meetings and Records	25
42.	Limitations on Contributions	25
43.	Requiring Minimum Compensation for Covered Employees	25
44.	Requiring Health Benefits for Covered Employees.....	27
45.	First Source Hiring Program.....	28
	A. Incorporation of Administrative Code Provisions by Reference	28
	B. First Source Hiring Agreement.....	28
	C. Hiring Decisions	30
	D. Exceptions.....	30
	E. Liquidated Damages	30
	F. Subcontracts	31
46.	Prohibition on Political Activity with City Funds	31
47.	Preservative-treated Wood Containing Arsenic.....	31
48.	Modification of Agreement.....	32
49.	Administrative Remedy for Agreement Interpretation	32
50.	Agreement Made in California; Venue.....	32
51.	Construction	32
52.	Entire Agreement	32
53.	Compliance with Laws	32
54.	Services Provided by Attorneys.....	32
55.	Prompt Payment of Subconsultants	32
	A. Progress Payments	32
	B. Retention.....	33
	C. Interest on Unpaid Amounts	33
56.	Disputes.....	33
	A. Notice of Dispute	33
	B. Resolution of Disputes.....	33
	C. No Cessation of Work.....	33
	D. Alternative Dispute Resolution.....	33

E.	Claims for Additional Compensation	33
F.	Disputes among Consultant Partners	34
57.	Severability	34
58.	Protection of Private Information	34
59.	Graffiti Removal	34
60.	Food Service Waste Reduction Requirements.....	35
61.	Sole Benefit.....	35
62.	FTA Requirements.....	35

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

**AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND
ANIL VERMA ASSOCIATES, INC.**

This Agreement is made this ___day of _____, 20___, in the City and County of San Francisco, State of California, by and between: **Anil Verma Associates, Inc., 444 So. Flower St., Los Angeles, CA 90071** ("Consultant"), and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency ("SFMTA", or "Agency").

Recitals

A. The Transportation Planning and Development Division of the SFMTA provides the professional and technical services required to implement capital and other projects of the SFMTA.

B. The Agency wishes the services of a consulting firm to provide as-needed specialized professional engineering and construction management services in support of the SFMTA's various projects.

C. On January 2, 2007, the SFMTA Board of Directors ("SFMTA Board") adopted Resolution No. 07-004, which authorized the Executive Director/CEO to request proposals for as-needed specialized engineering services.

D. Consultant submitted a proposal in response to the Request for Proposals, which proposal was rated highest by the selection committee.

E. On _____, the SFMTA Board adopted Resolution No. _____, which authorized the Executive Director/CEO to execute this Agreement with Consultant for said services.

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

G. Approval for said Agreement was obtained from Civil Service Commission by PSC No. _____, dated _____.

Now, THEREFORE, the parties agree as follows:

1. Definitions

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

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

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

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

E. Controller means the Controller of the City.

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

G. Consultant is Anil Verma Associates, Inc.

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

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

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

K. DPT refers to the former Department of Parking and Traffic, a Division of the SFMTA.

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

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

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

O. Key Personnel are those participants on a project who contribute in a substantive, measurable way to the projects development.

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

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

R. Project Manager / Project Engineer: The designated SFMTA employee who will assume all duties and responsibilities and have the right and authority assigned to the Project

Manager in the Contract in connection with completion of Work in accordance with a Task Order.

S. Proposal refers to the Consultant's written response/submittal to the RFP.

T. Request for Proposals; RFP refers to the Request for Proposals for Contract No. CS-146, As-Needed Specialized Engineering Services, issued by the SFMTA on February 14, 2008.

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

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

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

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

Y. SFMTA Liaison. The SFMTA employee responsible for administering this contract.

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

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

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

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

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

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

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

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

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

3. Term of the Agreement

A. Term Subject to Section 2, the term of this Agreement shall be five (5) years from the Effective Date of the Agreement.

B. Effective Date. This Agreement shall become effective when the Controller has certified to the availability of funds for the first Task Order issued and a written Notice to Proceed has been issued to the Consultant.

4. Services Consultant Agrees to Perform

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

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

C. Information and Data The Consultant shall request in writing any information and data it will require to perform task orders. The Consultant shall identify the timing and priority for which this information and data will be required. The Consultant and City shall reach agreement as to the availability and delivery time for this data and information during initial task negotiations.

D. Presentations. In the performance of assigned tasks, the Consultant, if requested by City, shall prepare graphic and written presentations, and participate in presentations of said material to various City departments, commissions, and interested community groups.

E. Compliance with Laws. Consultant shall comply with requirements of all applicable codes, regulations, and current written interpretation thereof published and in effect during Consultant's services. In the event of changes in such codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by Consultant and which result in a substantive change to the construction documents, Consultant shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of responding to such changes. Consultant shall be responsible, however, to identify, analyze and report to the City pending changes to codes and regulations that would reasonably be expected to affect the design of the

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

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

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

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

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

(b) Milestones for completion for each subtask and deliverables at each milestone;

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

(d) A detailed cost estimate for each task or subtask showing:

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

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

(3) Estimated reasonable out-of-pocket expenses;

(4) Proposed profit as follows:

- Proposed profit of Consultant's work effort as fixed fee amount not to exceed ten percent (10%) of Consultant's estimated direct salaries and overhead costs; and
- For work performed by all subconsultants, proposed total profit for Consultant and subconsultant on subconsultant's work effort as fixed fee not to exceed twelve percent (12%) of sub-consultant's estimated direct salaries and overhead costs.

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

(iv) **Record of Negotiations.** If agreement is reached, the Contracting Section will document the negotiations and agreement in a Record of Negotiations and obtain the approval of Director of Transportation Planning and Development Division of the agreement as defined in the Record of Negotiations.

(v) **Controller Certification.** Upon approval of the Director of Transportation Planning and Development, the Contracting Section will request certification from the Controller that adequate funds are available to proceed with the task as agreed.

(vi) **Notice to Proceed.** After certification, the Contracting Section will send to the Consultant a written NTP and Task Number. The Consultant is required to use the task number when submitting invoices to the Contracting Section for payment. The Consultant shall not commence work on any task until it receives a written NTP for the task.

(vii) **Changes.** Agreed lump sum prices and fixed profits for subtasks and tasks above cannot be modified unless there is a material change in the scope of work of the task. If there is a material change in the scope of work of a task, then a proposal, negotiations, Record of Negotiations and approval of the Record of Negotiations by the Director of Transportation Planning and Development shall be required before changes to agreed lump sum prices and fixed profits can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.

(viii) **Failure to Agree on Terms of Task.** In the event that City and Consultant cannot reach agreement on the terms of the task order, City may either cancel the task order and have the work accomplished through other available sources, or City may direct the Consultant to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. **Under no circumstances may the Consultant refuse to undertake a City-ordered task.**

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

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

I. 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 Task Order proposal. The Consultant and Agency shall reach agreement as to the availability and delivery time for this information and data prior to finalizing the Task Order.

J. Transmittal of Work Product. When requested by Agency's Project Manager, and after completion of each task and subtask, the Consultant shall transmit to Agency all Work Product (duplicates and originals) produced or accumulated in the course of its and its subconsultants' work on this Agreement. The Consultant's Project Manager and Key Personnel shall have thoroughly reviewed and approved all Work Product and signed off as such prior to transmitting them to Agency. After the City's acceptance of any signed and stamped Work Product, City will take responsibility for any changes in the Work Product that have not been authorized by the Consultant.,

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

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

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

5. Compensation

A. Amount. Compensation under this Agreement shall be based on either a negotiated lump sum price per task or subtask, or actual direct costs plus a negotiated fixed profit per subtask and task. In no event shall the amount of this Agreement exceed Three Million Dollars (\$3,000,000).

B. Method of Computing Compensation.

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

(ii) **Overhead.** The Consultant's compensation under this Agreement will be based on and shall not exceed the combined overhead and salary burden rates as shown on the Schedule of Overhead Rates attached as Exhibit D. The rates in Exhibit D will be adjusted annually upon an audit of the Consultant's and subconsultants' financial records. The Consultant's and subconsultants' combined overhead and salary burden rates are subject to audit in compliance with Federal requirements.

The overhead rates attached as Exhibit D, including any adjustment to such rates as provided for above, are subject to reimbursement as described in this paragraph. Within one hundred eighty (180) days of the end of Consultant's fiscal year that immediately follows the expiration or any earlier termination of this Agreement, Consultant shall submit to the SFMTA Liaison, Consultant's and all sub-consultants' actual rates during the term of this Agreement. For each rate paid to the Consultant that exceeds the Consultant's or any sub-consultant's actual rate, the Consultant shall reimburse to the City the total difference between the rate paid and Consultant's or sub-consultant's actual rate during the term of this Agreement. Consultant shall reimburse City within thirty (30) days of written notice from City seeking reimbursement. For each actual overhead rate of Consultant or sub-consultant that exceeds the rate paid to Consultant, City shall pay to Consultant the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Consultant within sixty (60)

days of City's receipt of all of Consultant's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Consultant's rates as provided above.

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

(iv) Out-of-Pocket Expenses. The SFMTA will reimburse Consultant for the actual cost of approved out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups.

(v) Non-Reimbursable Expenses. Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Consultant and subconsultant personnel relocation costs and entertainment or personal expenses of any kind will not be reimbursable under this Contract. Office and field supplies/equipment expenses will also not be reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for this Project.

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

6. Payment

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

B. Invoices.

(i) Form of Invoice. Invoices furnished by Consultant under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. The Consultant shall submit invoices in quadruplicate for all allowable charges incurred in the performance of the Agreement.

Each invoice must contain the following information:

- (a) Contract Number
- (b) Task Order Number
- (c) Description of the work performed or services rendered
- (d) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced
- (e) Overhead costs
- (f) Other direct costs
- (g) Subconsultant costs supported by invoice itemization in the same format as described here
- (h) Fixed Fee for current invoice period and amount of Fixed Fee paid as of date of invoice. Fixed fee will be calculated as a prorated portion of the total fixed fee for the task for which Consultant seeks payment
- (i) Total costs
- (j) SBE utilization report (MTA Form 6)
- (k) Certified payroll records substantiating all labor charges for Consultant and all subconsultants shown on the invoice

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

C. Documentation for Payment. Invoices shall be submitted together with the Monthly Progress Reports, Monthly Cost Control Report and Monthly Update Schedule, and shall be submitted by the 21st day of each month for work performed in the preceding month. The Monthly Cost Control Report shall include the current completed percentages for each task and subtask, the current estimated labor hours and cost for each Discipline to complete each of the tasks, an itemized breakdown of dollars and hours by employee and by subtask for all prime and subconsultant charges for the month being invoiced (accounting for a minimum of 28 calendar days of the month), and an itemized breakdown of out-of-pocket expenses by task incurred since the previous billing, along with copies of bills of materials and expenses incurred. Failure to submit a complete Monthly Cost Control Report, Monthly Updated Schedule and Monthly Progress Report by the due date shall constitute cause for suspension of invoice payments.

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

D. Payment of Invoices.

(i) Monthly Payments. Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Appendix B of this Agreement, that the Executive Director/CEO of the SFMTA, in his sole discretion, concludes has been

performed as of the last day of the immediately preceding month in accordance with the performance milestones and work delivery schedule attached to this Agreement as Appendix B. City shall make payment to Consultant at the address specified in the section entitled "Notices to the Parties." All amounts paid by City to Consultant shall be subject to audit by City.

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

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

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

7. Guaranteed Maximum Costs

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

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

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

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

8. Submitting False Claims; Monetary Penalties

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

falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Disallowance

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

10. Taxes

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

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

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

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

(iii) Consultant, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the 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.

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

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

11. Payment Does Not Imply Acceptance of Work

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

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Consultant or its subconsultants. Consultant's personnel and subconsultants shall comply with the licensing requirements of the State of California in their respective professional fields. Persons employed by Consultant and its subconsultants who are not subject to licensing requirements of California law are exempt from the requirements of this Section 12. Consultant will comply with City's reasonable requests regarding assignment of personnel, but Consultant must supervise all personnel, including those assigned at City's request.

13. Equipment

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

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

14. Independent Contractor; Payment of Taxes and Other Expenses

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

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

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

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

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

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

15. Insurance

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

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

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

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

(iv) Professional liability insurance as follows:

(a) From the effective date of this Agreement, each partner of the joint association constituting the Consultant shall maintain professional liability insurance coverage with limits not less than \$1,000,000 each claim/annual aggregate with respect to negligent acts,

errors or omissions in connection with professional services to be provided under this Agreement. Such insurance shall be maintained for a period of not less than three (3) years following completion of services.

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

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

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

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

Shahnam Farhangi
Manager, Contracts and Quality Management
San Francisco Municipal Transportation Agency
1 South Van Ness Ave., 3rd floor
San Francisco, CA 94103

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

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

F. 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.

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

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

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

16. Indemnification

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

B. Limitations

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

(ii) Consultant assumes no liability whatsoever for the negligence or willful misconduct of any Indemnitee or the Consultants of any Indemnitee.

(iii) Consultant's indemnification obligations of claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Consultant's negligence or other breach of duty. As to Professional Liability claims only, Consultant has no obligation to assume the defense of the City. However, should the City seek reimbursement from Consultant for the costs associated with its defense of such claims arising out this contract (including court costs, investigation costs, and attorneys fees) or for the amount of any judgment or settlement resulting from such claims, Consultant waives any objection it may have at any time regarding the reasonableness or appropriateness of (a) the City's costs; (b) the amount of any settlement or judgment; or (c) any decision of the City regarding defense strategy or whether or not to appeal a judgment.

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

17. Incidental and Consequential Damages

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

18. Liability of City

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

19. Standard of Performance

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

20. Default; Remedies

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

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

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

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

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

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

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

21. Termination for Convenience

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

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

- (i) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- (ii) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (iii) Terminating all existing orders and subcontracts.
- (iv) At City's direction, assigning to City any or all of Consultant's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (v) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (vi) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- (vii) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Consultant and in which City has or may acquire an interest.

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

(i) The reasonable cost to Consultant, without profit, for all services and other work City directed Consultant to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead pursuant to Article 5.B.ii and Exhibit D of this agreement,. Any overhead allowance shall be separately itemized. Consultant may also recover the reasonable cost of preparing the invoice.

(ii) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection in compliance with Article 5 – Compensation.

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

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

D. Non-Recoverable Costs. In no event shall City be liable for costs incurred by Consultant or any of its subconsultants after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (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. Deductions. In arriving at the amount due to Consultant under this Section, City may deduct: (i) all payments previously made by City for work or other services covered by Consultant's final invoice; (ii) any claim which City may have against Consultant in connection with this Agreement; and (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (D).

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

22. Rights and Duties Upon Termination or Expiration

A. Survival of Provisions. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 57, and 58.

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

furnished to City. This subsection shall survive termination of this Agreement. Prior to the effective date of any termination, City and Consultant shall negotiate a termination agreement, which shall set forth, among other things, the rights and obligations of the parties as to any unfinished work product of Consultant performed under this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Consultant acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement. Consultant further acknowledges that it is aware of requirements concerning the filing of Statements of Economic Interest, California Fair Political Practices Commission Form 700, under the requirements of California Government Code section 7300 et seq. and the San Francisco Campaign and Governmental Code section 3.1-102, and that Consultant shall ensure that its employees and subconsultants are aware of those requirements and comply with them.

24. Proprietary or Confidential Information of City

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

25. Notices to the Parties

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

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

Shahnam Farhangi
Manager, Contracts and Quality Management
San Francisco Municipal Transportation Agency
1 South Van Ness Ave., 3rd floor

San Francisco, CA 94103
Tel: 415-701-4284
Fax: 415-701-4300
Shahnam.Farhangi@sfmta.com

To Consultant:
Anil Verma, AIA
President
Anil Verma and Associates, Inc.
444 So. Flower Street, Suite 1688
Los Angeles, CA 90071
Tel: (213) 624-6908
Fax: (213) 624-1188
anilverma@earthlink.net

Any notice of default must be sent by registered mail.

26. Ownership of Work Product

Any interest of Consultant or its Subconsultants, in its Work Product shall become the property of and will be transmitted to City. However, Consultant may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

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

28. Audit and Inspection of Records

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

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

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

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

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

29. Subcontracting

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

B. Substitutions of Subconsultants. Substitutions may be made for any subconsultants or subcontractors listed in Exhibit G, for: (i) failure to perform to a reasonable level of professional competence; (ii) inability to provide sufficient staff to meet the Project requirements and schedules; or (iii) unwillingness to negotiate reasonable contract terms or compensation.

C. Additions of Subconsultants. The City will reserve the right to request specific subconsultants with specific expertise to be added to the team to provide services under this Agreement if the City determines that specific expertise is lacking in the project team or if the City believes it is in the City's best interest to assign a particular subconsultant to the Consultant.

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

30. Assignment

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

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

31. Non-Waiver of Rights

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

32. Earned Income Credit (EIC) Forms

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

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

B. Failure to Comply. Failure to comply with any requirement contained in subparagraph (A) of this Section shall constitute a material breach by Consultant of the terms of this Agreement. If, within 30 days after Consultant receives written notice of such a breach, Consultant fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Consultant fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

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

D. 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.

33. Small Business Enterprise Program.

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

B. Compliance with SBE Program. Consultant shall comply with the SBE provisions contained in Exhibit F, 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.

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

D. 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.

34. Nondiscrimination; Penalties

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

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

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

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

E. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Consultant shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such

Chapters. Without limiting the foregoing, Consultant understands that pursuant to §12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Consultant and/or deducted from any payments due Consultant.

35. MacBride Principles—Northern Ireland.

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

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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

38. Resource Conservation

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

39. Compliance with Americans with Disabilities Act

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

40. Sunshine Ordinance

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

41. Public Access to Meetings and Records

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

42. Limitations on Contributions

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

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

44. Requiring Health Benefits for Covered Employees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45. First Source Hiring Program

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

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

(i) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate

modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

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

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

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

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

(vi) Set the term of the requirements.

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

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

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

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

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

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

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

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

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

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

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

(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;

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

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

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

46. Prohibition on Political Activity with City Funds

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

47. Preservative-treated Wood Containing Arsenic

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

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 as required by law.

49. Administrative Remedy for Agreement Interpretation

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

50. Agreement Made in California; Venue

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

51. Construction

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

52. Entire Agreement

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

53. Compliance with Laws.

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 and in force during the term of the Agreement.

54. Services Provided by Attorneys

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

55. Prompt Payment of Subconsultants

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

subconsultants, unless the prime consultant notifies the CCO Director in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between the prime consultant and the subconsultant. Within five (5) working days of such payment, Consultant shall provide City with a declaration under penalty of perjury that it has promptly paid such subconsultants for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

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

C. 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.

56. Disputes

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

B. Resolution of Disputes. Disputes arising in the performance of this Agreement that are not resolved by negotiation between the SFMTA Liaison and Consultant's shall be decided in writing by the SFMTA Manager of Contracts 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 Director of Transportation Planning and Development, or his/her designee. In connection with such an appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Transportation Planning and Development shall be administratively final and conclusive. This section applies to all disputes unless a specific provision of this Agreement provides that the SFMTA Liaison's decision as to a particular dispute is final.

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

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

E. 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.

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

57. Severability

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

58. 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.

59. Graffiti Removal

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

Consultant shall remove all graffiti from any real property owned or leased by Consultant in the City and County of San Francisco within forty eight (48) hours of the earlier of Consultant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Consultant to breach any

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

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

60. Food Service Waste Reduction Requirements

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

61. Sole Benefit

This Agreement is intended for the sole benefit of the City and the Consultant, and is not intended to create any third-party rights or benefits..

62. FTA Requirements

The provisions contained in "FTA Requirements for Personal Services Contracts," attached as Exhibit E are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

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

CITY

Municipal Transportation Agency

By _____
Nathaniel P. Ford, Sr.
Executive Director/CEO

SFMTA Board of Directors

Resolution No. _____
Adopted: _____

Attest:

Roberta Boomer, Secretary
SFMTA Board of Directors

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Robin M. Reitzes
Deputy City Attorney

CONSULTANT

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

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

Authorized Signature

Printed Name

Title

Company Name

CITY VENDOR NUMBER

Address

City, State, ZIP

Phone Number

Federal Employer ID Number