

THIS PRINT COVERS CALENDAR ITEM NO.: 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Parking and Traffic

BRIEF DESCRIPTION:

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

SUMMARY:

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

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO _____ Maxine Louie

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

To approve various routine traffic and parking modifications.

Benefit to the SFMTA 2008 – 2012 Strategic Plan:

GOAL

- Goal 1 - Customer Focus: To provide safe, accessible, reliable, clean and environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy
- Objective 1.1 - Improve safety and security across all modes of transportation
- Goal 2 - System Performance: To get customers where they want to go, when they want to be there
- Objective 2.4 - Reduce congestion through major corridors
- Objective 2.5 - Manage parking supply to align with SFMTA and community goals

ITEMS:

- A. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA “S” (2-HOUR TIME LIMIT, 8 AM TO 9 PM, MONDAY THROUGH FRIDAY - 22nd Street, both sides, between Castro and Noe Streets (3800 block). **PH 3/6/09 Requested by Resident**
- B. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA “J” (2-HOUR TIME LIMIT, 9 AM TO 5 PM, MONDAY THROUGH FRIDAY - 12th Avenue, both sides, between Kirkham and Lawton Streets (1500 block). **PH 3/6/09 Requested by Resident**
- C. ESTABLISH - ONE-WAY STREET - Banbury Drive, westbound, from Stratford Drive to 19th Avenue. **PH 3/6/09 Requested by Resident**
- D. EXTEND - TOW-AWAY, NO PARKING ANYTIME - Monterey Boulevard, north side, from Circular Avenue to 16 feet easterly. **PH 3/6/09 Requested by Resident**
- E. ESTABLISH - NO PARKING ANYTIME - Evans Avenue, north side, from Napoleon Street to 315 feet easterly. **PH 3/6/09 Requested by SFMTA**
- F. ESTABLISH - 45-DEGREE ANGLED PARKING - 20th Avenue, west side, from Taraval Street to 115 feet southerly. **PH 3/6/09 Requested by SFMTA**
- G. ESTABLISH - PARKING METER AREA 3 (2 HOUR TIME LIMIT, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY) - Mission Street, east side, from Rolph Street to Allison Street. **PH 3/6/09 Requested by SFMTA**
- H. ESTABLISH - BUS BULBS - Mission Street, east side, from Geneva Avenue to 149 feet northerly (4-foot wide bulb replaces 125 foot bus zone); and Mission Street, west side, from Geneva Avenue to 167 feet southerly (4-foot wide bulb replaces existing 160' bus zone). **PH 3/6/09 Requested by SFMTA**
- I. REVOKE - BUS ZONE - Geneva Avenue, south side, from Mission Street to 180 feet westerly. **PH 3/6/09 Requested by SFMTA**
- J. ESTABLISH - BUS ZONE - Geneva Avenue, south side, from Mission Street to 150 feet easterly. **PH 3/6/09 Requested by SFMTA**
- K. ESTABLISH - TOW-AWAY NO STOPPING ANYTIME - Mission Street, west side,

from Geneva Avenue to 84 feet northerly (in conjunction with removal of right turn pocket); Geneva Avenue, north side, from Mission Street to 51 feet westerly (in conjunction with removal of right turn pocket); Geneva Avenue, south side, from Mission Street to 140 feet westerly (in conjunction with bus zone relocation); and Mission Street, east side, from Geneva Avenue to 90 feet southerly (in conjunction with addition of a northbound left turn pocket). **PH 3/6/09 Requested by SFMTA**

- L. REMOVE - BUS ZONES - 6th Avenue, east side, south of Anza Street; and 6th Avenue, west side, north of Anza Street (inbound and outbound bus stops for the 44-O'Shaughnessy). **PH 3/6/09 Requested by Resident**
- M. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "DD" - NEW (2-HR TIME LIMIT, 8:00 AM - 4:00 PM, MONDAY THROUGH FRIDAY AND RESCIND - 2-HR PARKING, 8 AM TO 4 PM, EXCEPT SATURDAYS AND SUNDAYS - Middlefield Drive, between Eucalyptus Drive and Ocean Avenue; Meadowbrook Drive, between Eucalyptus Drive and Sloat Boulevard; Forest View Drive, between Eucalyptus Drive and Sloat Boulevard; Inverness Drive, between Eucalyptus Drive and Sloat Boulevard; 26th Avenue, between Eucalyptus Drive and Sloat Boulevard; 25th Avenue, between Eucalyptus Drive and Ocean Avenue; Eucalyptus Drive, north side, between 26th Avenue and Middlefield Drive; Ocean Avenue, south side, between 25th and 26th Avenues; and Ocean Avenue, between 26th Avenue and Sylvan Drive. **PH 3/6/09 Requested by Resident**
- N. ESTABLISH - TOW-AWAY NO STOPPING ANYTIME AND SIDEWALK BULB-OUTS - 10th Street, west side, from Howard Street to 18 feet southerly (6-foot wide sidewalk bulb-out; removes parking meter #204); and Howard Street, south side, from 10th Street to 18 feet westerly (6-foot wide sidewalk bulb-out; removes parking meter #1401). **PH 3/6/09 Requested by SFMTA**
- O. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "X" (4-HOUR TIME LIMIT, 8 AM - 4 PM, MONDAY THROUGH FRIDAY - Tennessee Street, west side, from 22nd Street to 575 feet northerly, (900-1000 blocks); Tennessee Street, east side, from 22nd Street to 645 feet northerly, (900-1000 blocks); Tennessee Street, both sides, between 22nd and Tubbs Streets (1100 block); Minnesota Street, east side, between 19th and 20th Streets (700 block); Minnesota Street, both sides, between 20th and 22nd Streets (800-900 blocks); 19th Street, south side, between Minnesota and Tennessee Streets (700 block); 20th Street, south side, between Pennsylvania Avenue and Iowa Street (1100 block ,1123 and 1125 only); 22nd Street, both sides, between Minnesota and Tennessee Streets (800 Block); Minnesota Street, east side, at 22nd Street (1000 block, signs will not be posted on the street, but residents will be eligible for permits). **PH 1/30/09 Requested by Residents**

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

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

- A. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "S" (2-HOUR TIME LIMIT, 8 AM TO 9 PM, MONDAY THROUGH FRIDAY - 22nd Street, both sides, between Castro and Noe Streets (3800 block).
- B. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "J" (2-HOUR TIME LIMIT, 9 AM TO 5 PM, MONDAY THROUGH FRIDAY - 12th Avenue, both sides, between Kirkham and Lawton Streets (1500 block).
- C. ESTABLISH - ONE-WAY STREET - Banbury Drive, westbound, from Stratford Drive to 19th Avenue.
- D. EXTEND - TOW-AWAY, NO PARKING ANYTIME - Monterey Boulevard, north side, from Circular Avenue to 16 feet easterly.
- E. ESTABLISH - NO PARKING ANYTIME - Evans Avenue, north side, from Napoleon Street to 315 feet easterly.
- F. ESTABLISH - 45-DEGREE ANGLED PARKING - 20th Avenue, west side, from Taraval Street to 115 feet southerly.
- G. ESTABLISH - PARKING METER AREA 3 (2 HOUR TIME LIMIT, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY) - Mission Street, east side, from Rolph Street to Allison Street.
- H. ESTABLISH - BUS BULBS - Mission Street, east side, from Geneva Avenue to 149 feet northerly (4-foot wide bulb replaces 125 foot bus zone); and Mission Street, west side, from Geneva Avenue to 167 feet southerly (4-foot wide bulb replaces existing 160' bus zone).
- I. REVOKE - BUS ZONE - Geneva Avenue, south side, from Mission Street to 180 feet westerly.
- J. ESTABLISH - BUS ZONE - Geneva Avenue, south side, from Mission Street to 150 feet easterly.
- K. ESTABLISH - TOW-AWAY NO STOPPING ANYTIME - Mission Street, west side, from Geneva Avenue to 84 feet northerly (in conjunction with removal of right turn pocket); Geneva Avenue, north side, from Mission Street to 51 feet westerly (in conjunction with removal of right turn pocket); Geneva Avenue, south side, from Mission Street to 140 feet westerly (in conjunction with bus zone relocation); and Mission Street, east side, from Geneva Avenue to 90 feet southerly (in conjunction with addition of a northbound left turn pocket).
- L. REMOVE - BUS ZONES - 6th Avenue, east side, south of Anza Street; and 6th Avenue, west side, north of Anza Street (inbound and outbound bus stops for the 44-O'Shaughnessy).
- M. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "DD" - NEW (2-HR TIME

LIMIT, 8:00 AM - 4:00 PM, MONDAY THROUGH FRIDAY AND RESCIND - 2-HR PARKING, 8 AM TO 4 PM, EXCEPT SATURDAYS AND SUNDAYS - Middlefield Drive, between Eucalyptus Drive and Ocean Avenue; Meadowbrook Drive, between Eucalyptus Drive and Sloat Boulevard; Forest View Drive, between Eucalyptus Drive and Sloat Boulevard; Inverness Drive, between Eucalyptus Drive and Sloat Boulevard; 26th Avenue, between Eucalyptus Drive and Sloat Boulevard; 25th Avenue, between Eucalyptus Drive and Ocean Avenue; Eucalyptus Drive, north side, between 26th Avenue and Middlefield Drive; Ocean Avenue, south side, between 25th and 26th Avenues; and Ocean Avenue, between 26th Avenue and Sylvan Drive.

- N. ESTABLISH - TOW-AWAY NO STOPPING ANYTIME AND SIDEWALK BULB-OUTS - 10th Street, west side, from Howard Street to 18 feet southerly (6-foot wide sidewalk bulb-out; removes parking meter #204); and Howard Street, south side, from 10th Street to 18 feet westerly (6-foot wide sidewalk bulb-out; removes parking meter #1401).
- O. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "X" (4-HOUR TIME LIMIT, 8 AM - 4 PM, MONDAY THROUGH FRIDAY - Tennessee Street, west side, from 22nd Street to 575 feet northerly, (900-1000 blocks); Tennessee Street, east side, from 22nd Street to 645 feet northerly, (900-1000 blocks); Tennessee Street, both sides, between 22nd and Tubbs Streets (1100 block); Minnesota Street, east side, between 19th and 20th Streets (700 block); Minnesota Street, both sides, between 20th and 22nd Streets (800-900 blocks); 19th Street, south side, between Minnesota and Tennessee Streets (700 block); 20th Street, south side, between Pennsylvania Avenue and Iowa Street (1100 block ,1123 and 1125 only); 22nd Street, both sides, between Minnesota and Tennessee Streets (800 Block); Minnesota Street, east side, at 22nd Street (1000 block, signs will not be posted on the street, but residents will be eligible for permits).

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

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

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Rescinding San Francisco Municipal Transportation Agency (SFMTA) Board Resolution No. 08-129 and adopting a new resolution to authorize the SFMTA, through its Executive Director/CEO or his designee, to accept and expend a total of \$3,576,220 in FY 2007 Transit Security Grant Program (TSGP) Base Grant funds.

SUMMARY:

- The federal Department of Homeland Security (DHS) has formed the TSGP to create a sustainable effort for the protection of regional transit systems' critical infrastructure from terrorism. DHS has designated, the California Office of Homeland Security (OHS) to distribute TSGP grant funds to eligible transit agencies.
- On August 5, 2008, the SFMTA Board adopted Resolution No. 08-129, which authorized the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend \$3,576,220 in FY 2007 TSGP Base Grant and \$2,237,115 in TSGP Supplemental Grant funds, by authorizing the acceptance and expenditure of a combined total of \$5,900,000 in TSGP funds for critical security equipment.
- OHS has requested that there be separate governing board resolutions for the TSGP Base Grant and the TSGP Supplemental Grant instead of combining them into one resolution. Therefore, this action rescinds Resolution No. 08-129 and also authorizes the acceptance and expenditure of \$3,576,220 in FY 2007 TSGP Base Grant funds; a separate resolution will be submitted for the acceptance and expenditure of \$2,237,115 in TSGP Supplemental Grant funds.

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

This resolution rescinds SFMTA Board Resolution 08-129, dated August 5, 2008. This resolution (to be followed by a second resolution for a supplemental grant) also authorizes the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend a total of \$3,576,220 in FY 2007 TSGP Base Grant funds.

Goal

The SFMTA furthers the following goals of the Strategic Plan through acceptance of these funds:

- 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.

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

Objective 4.2: Ensure efficient and effective use of resources.

Description

The federal Department of Homeland Security (DHS) has formed the Transit Security Grant Program (TSGP) to create a sustainable effort for the protection of a regional transit system's critical infrastructure from terrorism. DHS has designated, the California Office of Homeland Security (OHS) to distribute TSGP grant funds to eligible transit agencies.

On August 5, 2008, the SFMTA Board adopted Resolution No. 08-129, which authorized the SFMTA to accept and expend \$5,900,000 in TSGP funds to purchase and install critical security equipment to enhance the security of the SFMTA's bus and rail systems. Resolution No. 08-129 did not indicate that the \$5,900,000 of TSGP funds is comprised of \$3,576,220 in Base Grant and \$2,237,115 in Supplemental Grant funds.

OHS has requested that there be separate governing board resolutions for the TSGP Base Grant and the TSGP Supplemental Grant instead of combining them into one resolution. Therefore, this resolution rescinds Resolution No. 08-129 and also authorizes the acceptance and expenditure of \$3,576,220 in FY 2007 TSGP Base Grant funds; a separate resolution will be submitted for the acceptance and expenditure of \$2,237,115 in TSGP Supplemental Grant funds.

ALTERNATIVES CONSIDERED

Not applicable.

FUNDING IMPACT

The \$3,576,220 in FY 2007 TSGP Base Grant funds to purchase and install critical security equipment is from federal Department of Homeland Security grant funds. There are no required matching funds.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

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

RECOMMENDATION

Staff recommends that the SFMTA Board approve this resolution to rescind Resolution No. 08-129 and adopt a new resolution to authorize the acceptance and expenditure of \$3,576,220 in FY 2007 TSGP Base Grant funds.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The federal Department of Homeland Security (DHS) has formed the Transit Security Grant Program (TSGP) to create a sustainable effort for the protection of regional transit system's critical infrastructure from terrorism; and

WHEREAS, As a DHS-designated State Administrative Agency, the California Office of Homeland Security (OHS) has the authority to distribute grant funds to eligible transit agencies; and

WHEREAS, The SFMTA applied for and received awards of \$3,576,220 in 2007 TSGP Base Grant and \$2,237,115 in TSGP Supplemental Grant funds to purchase and install critical security equipment to enhance the security of the SFMTA's bus and rail systems; and

WHEREAS, On August 5, 2008, the SFMTA Board of Directors adopted Resolution No. 08-129, which authorized the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend a combined total of \$5,900,000 in 2007 TSGP funds to purchase and install critical security equipment to enhance the security of the SFMTA's bus and rail systems; and

WHEREAS, OHS has requested that there be separate governing board resolutions for the TSGP Base Grant and the TSGP Supplemental Grant instead of combining them into one resolution; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors rescinds Resolution No. 08-129; and be it further

RESOLVED, That the SFMTA Board of Director authorizes the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend \$3,576,220 in FY 2007 Transit Security Grant Program Base Grant funds to purchase and install critical security equipment to enhance the security of the SFMTA's bus and rail systems; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO (or his designee) to execute any documents and perform any actions necessary for the purpose of obtaining financial assistance provided through the OHS.

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. : 10.4

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

This resolution authorizes the San Francisco Municipal Transportation Agency (SFMTA) Board, through its Executive Director/CEO or his designee, to accept and expend a total of \$2,237,115 in FY 2007 Transit Security Grant Program (TSGP) Supplemental Grant funds.

SUMMARY:

- The federal Department of Homeland Security (DHS) has formed the TSGP to create a sustainable effort for the protection of regional transit systems' critical infrastructure from terrorism. DHS has designated the California Office of Homeland Security (OHS) to distribute TSGP grant funds to eligible transit agencies.
- On August 5, 2008, the SFMTA Board adopted Resolution No. 08-129, which authorized the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend \$3,576,220 in FY 2007 TSGP Base Grant and \$2,237,115 in TSGP Supplemental Grant funds, by authorizing the acceptance and expenditure of a combined total of \$5,900,000 in TSGP funds for critical security equipment.
- OHS has requested that there be separate governing board resolutions for the TSGP Base Grant and the TSGP Supplemental Grant instead of combining them into one resolution. This resolution authorizes the acceptance and expenditure of \$2,237,115 in TSGP Supplemental Grant funds.

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

This resolution authorizes the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend a total of \$2,237,115 in FY 2007 TSGP Supplemental Grant funds.

Goal

The SFMTA furthers the following goals of the Strategic Plan through acceptance of these funds:

- 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.

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

Objective 4.2: Ensure efficient and effective use of resources.

Description

The federal Department of Homeland Security (DHS) has formed the Transit Security Grant Program (TSGP) to create a sustainable effort for the protection of a regional transit system's critical infrastructure from terrorism. DHS has designated the California Office of Homeland Security (OHS) to distribute TSGP grant funds to eligible transit agencies.

On August 5, 2008, the SFMTA Board adopted Resolution No. 08-129, which authorized the SFMTA to accept and expend \$5,900,000 in TSGP funds to purchase and install critical security equipment to enhance the security of the SFMTA's bus and rail systems. Resolution No. 08-129 did not indicate that the \$5,900,000 of TSGP funds is comprised of \$3,576,220 in Base Grant and \$2,237,115 in Supplemental Grant funds.

OHS has requested that there be separate governing board resolutions for the TSGP Base Grant and the TSGP Supplemental Grant instead of combining them into one resolution. Staff has submitted a companion resolution rescinding Resolution No. 08-129 and approving the acceptance and expenditure of the Base Grant. This resolution authorizes the acceptance and expenditure of \$2,237,115 in TSGP Supplemental Grant funds.

ALTERNATIVES CONSIDERED

Not applicable.

FUNDING IMPACT

The \$2,237,115 in FY 2007 TSGP Supplemental Grant funds to purchase and install critical security equipment is from federal Department of Homeland Security grant funds. There are no required matching funds.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

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

RECOMMENDATION

Staff recommends that the SFMTA Board approve this resolution to authorize the acceptance and expenditure of \$2,237,115 in FY 2007 TSGP Supplemental Grant funds.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The federal Department of Homeland Security (DHS) has formed the Transit Security Grant Program (TSGP) to create a sustainable effort for the protection of regional transit system's critical infrastructure from terrorism; and

WHEREAS, As a DHS-designated State Administrative Agency, the California Office of Homeland Security (OHS) has the authority to distribute grant funds to eligible transit agencies; and

WHEREAS, The SFMTA applied for and received awards of \$3,576,220 in 2007 TSGP Base Grant and \$2,237,115 in TSGP Supplemental Grant funds to purchase and install critical security equipment to enhance the security of the SFMTA's bus and rail systems; and

WHEREAS, On August 5, 2008, the SFMTA Board of Directors adopted Resolution No. 08-129, which authorized the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend a combined total of \$5,900,000 in 2007 TSGP funds to purchase and install critical security equipment to enhance the security of the SFMTA's bus and rail systems; and

WHEREAS, OHS has requested that there be separate governing board resolutions for the TSGP Base Grant and the TSGP Supplemental Grant instead of combining them into one resolution; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend \$2,237,115 in FY 2007 Transit Security Grant Program Supplemental Grant funds to purchase and install critical security equipment to enhance the security of the SFMTA's bus and rail systems; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO (or his designee) to execute any documents and perform any actions necessary for the purpose of obtaining financial assistance provided by the OHS.

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. : 10.5

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Resolution authorizing the San Francisco Municipal Transportation Agency (1) to acknowledge and adhere to procedures and conditions set forth by the Metropolitan Transportation Commission for allocation of Regional Measure 2 (RM-2) funds; and (2) to accept and expend \$450,000 of RM-2 funds for a Safe Routes to Transit project, for the purpose and amount included in the project application..

SUMMARY:

- On March 2, 2004, Bay Area voters passed Regional Measure 2 (RM-2), raising the toll on the seven State-owned toll bridges in the San Francisco Bay Area by \$1.00, effective July 1, 2004. Under the Regional Traffic Relief Plan, this extra dollar provides transit operating assistance and funding to specified capital projects within the region that reduce congestion or make improvements to travel in the toll bridge corridors.
- The RM-2 program provides \$20 million for Safe Routes to Transit projects that reduce congestion on State-owned Bay Area bridges by improving pedestrian access to transit facilities.
- The San Francisco Municipal Transportation Agency (SFMTA) has applied for \$450,000 in RM-2 funds to implement a Safe Routes to Transit project to improve pedestrian and disability access to the 24th Street & Mission BART Station.
- As the transportation planning, coordinating and financing agency of the nine-county Bay Area, the Metropolitan Transportation Commission (MTC) allocates RM-2 funds. MTC has adopted procedures and conditions that must be acknowledged and adhered to by recipients of RM-2 funds. The attached resolution incorporates the procedures and conditions established by the MTC that must be acknowledged and adhered to by the SFMTA in regard to the SFMTA's allocation of RM-2 funds.
- This action authorizes the SFMTA, through its Executive Director/CEO (or his designee), to acknowledge and adhere to the procedures and conditions established by the MTC in regard to the allocation of RM-2 funds as detailed in the attached resolution. Also, this action authorizes the SFMTA to accept and expend the allocation of \$450,000 in RM-2 funds to improve pedestrian and disability access to the 24th Street & Mission BART Station.

ENCLOSURES:

1. SFMTAB Resolution
2. Application: Initial Project Report and Cash Flow Plan
3. Opinion of Legal Counsel for Application

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

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

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

The SFMTA Board approval of this resolution would authorize the SFMTA to approve and adhere to procedures and conditions set forth by the MTC in regard to the SFMTA receiving an allocation of RM-2 funds. Also, the SFMTA Board approval of this resolution would authorize the SFMTA, through its Executive Director/CEO, to accept and expend \$450,000 in RM-2 capital funds to improve pedestrian and disability access to the 24th Street & Mission BART Station.

GOAL

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

- Goal 1 – Customer Focus: To provide safe, accessible, reliable, clean and environmentally sustainable service.
Objective 1.5 – Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, and rideshare).
- Goal 4 – Financial Capacity: To ensure financial stability and effective resource utilization.
Objective 4.2 – Ensure efficient and effective use of resources.

DESCRIPTION

On March 2, 2004, voters in San Francisco, Alameda, Contra Costa, Marin, San Mateo, Santa Clara and Solano Counties cumulatively passed Regional Measure 2 (RM-2), which will raise an estimated \$125 million each year to implement the Regional Traffic Relief Plan. The Regional Traffic Relief Plan will provide transit operating assistance and funding for specified capital projects within the region that reduce congestion or make improvements to travel in the toll bridge corridors. Funding for the Regional Traffic Relief Plan derives from a \$1.00 increase, effective July 1, 2004, in tolls on the region's seven State-owned toll bridges. As the transportation planning, coordinating and financing agency of the nine-county Bay Area, the Metropolitan Transportation Commission (MTC) allocates RM-2 funds.

The RM-2 program provides \$20 million to public agencies for Safe Routes to Transit projects that help reduce congestion on State-owned Bay Area bridges by improving pedestrian access to transit facilities. Specifically, funding is provided for the planning and construction of pedestrian access improvements in close proximity to transit facilities. The San Francisco Municipal Transportation Agency (SFMTA) has applied for the following:

- **24th Street & Mission BART Station Area Improvements:** This project will improve pedestrian and disability access to the station by installing curb bulb-outs at the 24th & Mission intersection, pedestrian countdown signals at two intersections, curb ramp improvements, and drainage improvements to facilitate the future construction of a raised crosswalk across Osage Alley.

In lieu of a separate funding agreement, MTC expects the SFMTA, through its governing board, to certify that the agency acknowledges and will adhere to the following conditions with respect to the project:

- compliance with provisions of MTC's RM-2 Policy Guidance (MTC Resolution No. 3636);
- consistency with the Regional Transportation Plan;
- SFMTA has taken into consideration the time necessary to obtain applicable environmental clearance and permitting approval for the project in requesting RM-2 funding;
- the RM-2 phase of the project is fully funded based on programmed and planned funding allocations, and results in an operable and useable segment;
- the enclosed Initial Project Report (IPR), which is the SFMTA's application document to MTC that describes the project and includes a detailed financial plan, has been approved by the SFMTA;
- approval of the cash flow plan for the project;
- SFMTA has adequate staffing resources to complete the project within the schedule set forth in the IPR;
- the project and purpose for which RM-2 funds are being requested are in compliance with applicable environmental requirements and regulations;
- the City and County of San Francisco, through the SFMTA, indemnifies and holds harmless MTC and its representatives against all claims, demands, liability, losses and expenses in connection with the allocation of RM-2 funds;
- any revenues or profits from any non-governmental use of property shall be used for public transportation services for which the project was initially approved;
- assets purchased with RM-2 funds shall be used for public transportation uses as intended; and
- the SFMTA will post signs at construction sites as applicable stating that the project is funded with RM-2 funds.

In conjunction with the IPR, which must be submitted to the MTC, also attached is the required Opinion of Counsel for the project, which states that (1) the SFMTA is an eligible implementing agency of projects in the RM-2 Regional Traffic Relief Plan; (2) the SFMTA is authorized to submit an allocation request for RM-2 funding; (3) no legal impediment exists that would preclude the SFMTA from making allocation requests for RM-2 funding; and (4) no pending or threatened litigation exists that might adversely affect the project or the ability of the MTA to carry out the project.

ALTERNATIVES CONSIDERED

Not applicable.

FUNDING IMPACT

The capital funds for this project are from:

- Regional Measure 2 - derived from a \$1.00 increase, effective July 1, 2004, in tolls on the region's seven State-owned toll bridges (\$450,000),
- Proposition K - a 2003 voter approved half-cent local transportation sales tax program administered by the San Francisco County Transportation Authority (\$130,000 in matching funds), and
- Livable Streets/Red Light Camera program – derived from fines collected from red light violators (\$5,000).

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The SFMTA received \$130,000 in local Proposition K funds from San Francisco County Transportation Authority as matching funds in July 2008.

The SFMTA has issued a Notice of Exemption that these projects are categorically exempt from Environmental Review (Categorical Exemption, Class 1 State CEQA Guidelines Section 15301(c)).

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

RECOMMENDATION

The SFMTA Board approval of this resolution would authorize the SFMTA to approve and adhere to procedures and conditions set forth by the MTC in regard to the SFMTA receiving an allocation of RM-2 funds. Also, the SFMTA Board approval of this resolution would authorize the SFMTA, through its Executive Director/CEO, to accept and expend \$450,000 in RM-2 capital funds to improve pedestrian and disability access to the 24th Street & Mission BART station.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, SB 916 (Chapter 715, Statutes 2004), commonly referred to as Regional Measure 2 (RM-2), identified projects eligible to receive funding under the Regional Traffic Relief Plan; and

WHEREAS, The Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for RM-2 funds, pursuant to Streets and Highways Code Section 30914(c) and (d); and

WHEREAS, The MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for RM-2 funding; and

WHEREAS, Allocations to MTC must be submitted consistent with procedures and conditions as outlined in RM-2 Policy and Procedures; and

WHEREAS, The Safe Routes to Transit Grant Program is eligible for consideration in the Regional Traffic Relief Plan of RM-2, as identified in California Streets and Highway Code Section 30914(c) or (d); and

WHEREAS, Under the Safe Routes to Transit Grant Program, the San Francisco Municipal Transportation Agency (SFMTA) of the City and County of San Francisco has applied for funding in the amount of \$450,000 to improve pedestrian and disability access to the 24th Street & Mission BART Station; and

WHEREAS, The SFMTA is an eligible implementing agency of transportation project(s) in RM-2 Regional Traffic Relief Plan funds; and

WHEREAS, The RM-2 allocation request, contained in the Initial Project Report (IPR) submitted for the project and incorporated by reference herein as though set forth at length, lists the project, purpose, schedule, budget, expenditure and cash flow plan for which the SFMTA is requesting that MTC allocate RM-2 funds; and

WHEREAS, The application for RM-2 funds includes the certification by legal counsel of SFMTA of assurances required for the allocation of funds by MTC; 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; and

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 \$450,000 of RM-2 funds for a Safe Routes to Transit project to improve pedestrian and disability access to the

24th Street & Mission BART Station; and, be it further

RESOLVED, That the SFMTA and its agents agree to comply with the provisions of the MTC's RM-2 Policy Guidance (MTC Resolution No. 3636); and be it further

RESOLVED, That the project to improve pedestrian and disability access to the 24th Street & Mission BART Station is consistent with the Regional Transportation Plan (RTP); and be it further

RESOLVED, That the year of funding for any design, right-of-way and/or construction phases has taken into consideration the time necessary to obtain environmental clearance and permitting approval for the project; and be it further

RESOLVED, That the RM-2 phase or segment is fully funded based on programmed and planned funding allocations, and will result in an operable and useable segment; and be it further

RESOLVED, That the SFMTA Board of Directors approves the IPR submitted with this resolution; and be it further

RESOLVED, That the SFMTA Board of Directors approves the cash flow plan submitted with this resolution; and be it further

RESOLVED, That the SFMTA has reviewed the project needs and has adequate staffing resources to deliver and complete the project within the schedule set forth in the IPR submitted with this resolution; and be it further

RESOLVED, That the SFMTA Board of Directors certifies that the project and purpose for which RM-2 funds is being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.*), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 *et seq.*) and, if relevant, the National Environmental Policy Act (NEPA), 42 USC Section 4-1 *et seq.*, and the applicable regulations there under; and be it further

RESOLVED, That the City and County of San Francisco, through the SFMTA, indemnifies and holds harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of SFMTA, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM-2 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM-2 funds as shall reasonably be considered necessary by MTC may be retained until disposition has been made of any claim for damages; and be it further

RESOLVED, That if any revenues or profits from any non-governmental use of property (or project) are collected, the SFMTA shall use those revenues or profits exclusively for the public transportation services for which the project(s) was initially approved, either for capital improvements or maintenance and operational costs; otherwise, MTC is entitled to a proportionate share equal to MTC's percentage

participation in the project(s); and be it further

RESOLVED, That assets purchased with RM-2 funds, including facilities and equipment, shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life, that the MTC shall be entitled to a present day value refund or credit (at MTC's option) based on MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to MTC in the same proportion that RM-2 funds were originally used; and be it further

RESOLVED, That the SFMTA shall post on both ends of the construction site(s) at least two signs visible to the public stating that the project is funded with RM-2 Toll Revenues; and be it further

RESOLVED, That the SFMTA Board of Directors delegates to the Executive Director/CEO (or his designee) the authority to make non-substantive changes or minor amendments to the IPR as he/she deems appropriate; 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; and be it further

RESOLVED, That a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the SFMTA application referenced herein.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Regional Measure 2 Initial Project Report (IPR)

Project Title:

24th Street & Mission BART Station Area Improvements

RM2 Project No.

20.30

Allocation History:

	MTC Approval Date	Amount	Phase
#1:			
#2			
#3			

Total: \$

Current Allocation Request:

IPR Revision Date	Amount Being Requested	Phase Requested
	\$450,000	Design and Construction

I. OVERALL PROJECT INFORMATION

A. Project Sponsor / Co-sponsor(s) / Implementing Agency

San Francisco Municipal Transportation Agency (SFMTA)

B. Project Description (please provide details)

Project Graphics to be sent electronically with This Application

The 24th Street & Mission BART Station in San Francisco's Mission District is a critical regional transit facility. The station is the seventh busiest in the 43 station BART system and accommodates over 20,000 riders daily. The station connects San Francisco with the greater Bay Area and provides access to major destinations such as hospitals (SF General and St. Luke's), mixed-use neighborhoods (Mission District, Bernal Heights, Potrero Hill, Noe Valley), the Mission Cultural Center, and art murals and shops along 24th Street.

This project will improve pedestrian and disability access to the station by installing curb bulb-outs at the 24th & Mission intersection, pedestrian countdown signals at two intersections, curb ramp improvements, and drainage improvements to facilitate the future construction of a raised crosswalk across Osage Alley.

C. Project Purpose

The 24th Street & Mission Station exhibits a high non-auto mode share (91%), despite current deficiencies in pedestrian amenities such as curb ramps or pedestrian signals at some intersections. This project can help maintain and increase the transit and pedestrian mode share of the BART Station by improving the quality, safety and ease of the pedestrian experience for those accessing the station and surrounding destinations. Specific benefits are detailed below:

Improve safety: This project is an important part of addressing the Mission District's significant pedestrian safety needs. The 24th & Mission Streets intersection had 5 pedestrian injury collisions reported in the five-year period from 2001-2006. In the 2000-2005 period, it ranked 22nd (tied) citywide for the most pedestrian injury collisions, with 7. The curb bulb-outs on Mission Street will reduce crossing distances and increase the visibility of pedestrians at corners by providing a raised curb that extends into the parking lane. The extended curb will also slow vehicle turns, reduce crosswalk infringement, and provide additional room for curb ramps.

Increase transit use: The project will significantly increase transit use by improving pedestrian access to the 24th & Mission BART Station and to major Muni bus stops at and near the station. If this project is implemented, the SFMTA estimates that there will be a 2% increase in transit riders reaching Muni and BART by non-auto transportation modes. The change will result from new passengers choosing to use transit as well as a conversion among existing riders who currently drive or are dropped off at the station by automobile. The proposed improvements and the associated increase in safety, convenience and comfort will draw nearby employees and residents who currently do not use BART or Muni to the transit

hub.

Reduce congestion: The Bay Bridge, San Mateo Bridge and Dumbarton Bridge carry drivers to San Francisco from Bay Area cities such as Oakland, Berkeley, Hayward, San Leandro, Union City, and Fremont. As a key regional transit facility, the 24th St./Mission BART Station provides the same connections by transit. This project will improve the ease and convenience of pedestrian and transit connections to/from the BART station. Improving the transit experience outside the station can help improve the overall attractiveness of public transit to drivers and result in new and more frequent use of transit by individuals prone to driving

The largest potential for congestion reduction from this project is on the Bay Bridge. In San Francisco, the 101 and 280 state and interstate highways run parallel to the BART line. Improving access to the 24th St./Mission BART Station can help to attract drivers and replace trips by car with trips by BART, thus reducing traffic congestion on 280, 101 and 80.

Improve accessibility for people with impaired mobility: Installation of ADA-compliant curb ramps will provide essential access between the sidewalk and the street for all pedestrians, including those with strollers, shopping carts, bicycles, walkers, and especially those with impaired mobility such as wheelchair users and/or seniors.

D. Impediments to Project Completion

There are currently no impediments to project completion.

E. Operability

The SFMTA's Department of Parking & Traffic (DPT) will be responsible for the maintenance of pedestrian signals and signs. Funding for maintenance will derive from operating funds and/or local funds (the San Francisco County Transportation Authority Prop. K 30-year, 1/2-cent Sales Tax funds). The Department of Public Works will maintain all curb bulb-outs and curb ramps.

II. PROJECT PHASE DESCRIPTION and STATUS

F. Environmental –

Does NEPA Apply: Yes Not Checked No Checked

This project received environmental clearance through a Notice of Categorical Exemption (dated June 5, 2008). The improvements will not significantly affect traffic level of service or the natural environment. There are minor impacts on parking supply, which is not considered an environmental impact by the City of San Francisco.

G. Design –

State standards and/or best practices are being used to design the project. ADA design standards will also be incorporated.

Preliminary design is underway, including conceptual design and identification of utility conflicts and other project constraints.

The SFMTA will work with the San Francisco Department of Public Works to design the curb drainage improvements and curb bulbs.

H. Right-of-Way Activities / Acquisition –

The project does not involve any right of way acquisition.

I. Construction / Vehicle Acquisition -

The SFMTA will coordinate with the San Francisco Department of Public Works to construct the drainage improvements and curb bulbs.

III. PROJECT BUDGET

J. Project Budget (Escalated to year of expenditure)

Phase	Total Amount - Escalated - (Thousands)
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	40
Design - Plans, Specifications and Estimates (PS&E)	102
Right-of-Way Activities /Acquisition (R/W)	n/a
Construction / Rolling Stock Acquisition (CON)	443
Total Project Budget (in thousands)	585

K. Project Budget (De-escalated to current year)

Phase	Total Amount - De-escalated - (Thousands)
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	40
Design - Plans, Specifications and Estimates (PS&E)	102
Right-of-Way Activities /Acquisition (R/W)	n/a
Construction / Rolling Stock Acquisition (CON)	443
Total Project Budget (in thousands)	585

IV. OVERALL PROJECT SCHEDULE

Phase Milestone	Planned (Update as needed)	
	Start Date	Completion Date

Phase Milestone	Start Date	Completion Date
Environmental Studies, Preliminary Eng. (ENV / PE / PA&ED)	4th qtr 2007/08	4th qtr 2008/09
Final Design - Plans, Specs. & Estimates (PS&E)	2nd qtr 2008/09	2nd qtr 2009/10
Right-of-Way Activities /Acquisition (R/W)	n/a	n/a
Construction (Begin – Open for Use) / Acquisition / Operating Service (CON)	2nd qtr 2009/10	4th 2009/10

V. ALLOCATION REQUEST INFORMATION

L. Detailed Description of Allocation Request

Amount being requested (in escalated dollars)	\$450,000
Project Phase being requested	Design and Construction
Are there other fund sources involved in this phase?	Yes
Date of anticipated Implementing Agency Board approval the RM2 IPR Resolution for the allocation being requested	April 7, 2009
Month/year being requested for MTC Commission approval of allocation	March 2009

M. Status of Previous Allocations (if any)

Not applicable.

N. Workplan

Workplan in Alternate Format Enclosed Not Checked

TASK NO.	Description	Deliverables	Completion Date
1	Env. Study	CEQA Categorical Exemption	June 2008
2	Preliminary Eng.	Conceptual Design	June 2009
3	Final Design	Plans, Specs, & Estimates	December 2009
4	Construction	Completed Project	June 2010

O. Impediments to Allocation Implementation

There are currently no impediments to allocation implementation.

VI. RM-2 FUNDING INFORMATION

P. RM-2 Funding Expenditures for funds being allocated

Checked **The companion Microsoft Excel Project Funding Spreadsheet to this IPR is included**

Next Anticipated RM-2 Funding Allocation Request

VII. GOVERNING BOARD ACTION

Check the box that applies:

Not Checked **Governing Board Resolution attached**

Checked **Governing Board Resolution to be provided on or before: April 10, 2009**

VIII. CONTACT / PREPARATION INFORMATION

Contact for Applicant's Agency

Name: Luis Montoya

Phone: (415) 701-4376

Title: Planner

E-mail: luis.montoya@sfmta.com

Address: 1 South Van Ness Avenue, 7th Floor, San Francisco, CA 94103

Information on Person Preparing IPR

Name: Leda Young

Phone: (415) 701-4336

Title: Principal Grants Analyst

E-mail: leda.young@sfmta.com

Address: 1 South Van Ness Avenue, 8th Floor, San Francisco, CA 94103

Applicant Agency's Accounting Contact

Name: Linda Coquia

Phone: (415) 701-4519

Title: Grants Accountant

E-mail: linda.coquia@sfmta.com

Address: 1 South Van Ness Avenue, 8th Floor, San Francisco, CA 94103

RM-2 Initial Project Report

TOTAL PROJECT FUNDING PLAN

(Amounts Escalated in Thousands)

Project Title:	24 th Street & Mission BART Station Area Improvements	Project ID:	20.3
Agency:	San Francisco Municipal Transportation Agency	Plan Date:	3/12/2009
TOTAL PROJECT: COMMITTED + UNCOMMITTED+TO BE DETERMINED			

Fund Source	Phase	Prior	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Future Committed	TOTAL
COMMITTED FUNDING PLAN (PROGRAMMED, ALLOCATED, APPROVED FUNDING)															
Livable Streets/Red Light Camera	PA&ED						5								5
RM-2	PA&ED					35									35
Prop K	PS&E					44									44
RM-2	PS&E					58									58
Prop K	CON					21	65								86
RM-2	CON						357								357
UNCOMMITTED FUNDING PLAN (NON-PROGRAMMED/ALLOCATED, BUT PLANNED FUNDING)															
FUNDING SOURCE STILL TO BE DETERMINED (LIST POTENTIAL SOURCES THAT WILL LIKELY BE PURSUED)															
Fund Source	Phase	Prior	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Future Committed	TOTAL
TOTAL PROJECT: COMMITTED + UNCOMMITTED + TBD FUNDING TOTAL															
Total						163	422								585

Comments:

Enter all funding for the project – both Committed and Uncommitted. Enter amounts in thousands and escalated to the year of funding

Eligible Phases: ENV (or PA&ED), PS&E, R/W or CON. For planning activates use ENV. For Vehicles, Equipment or Operating use CON. OK to use CT R/W SUP or CT CON SUP for Caltrans support, but not necessary (optional).

DEFINED SEGMENT FUNDING PLAN

(Amounts Escalated in Thousands)

Project Title:	24 th Street & Mission BART Station Area Improvements	Project ID:	20.3
Agency:	San Francisco Municipal Transportation Agency	Plan Date:	03/12/09
RM-2 DELIVERABLE SEGMENT - Fully Funded Phase or Segment of Total Project			

Fund Source	Phase	Prior	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Future Committed	TOTAL
RM-2 SEGMENT FUNDING TOTAL															
Total															

Comments:

(Complete this spreadsheet only if RM-2 funds are dedicated to deliver a specific phase or deliverable segment of the overall total project)

Enter funds on the RM-2 Deliverable Phase or Segment, ONLY if the RM-2 Phase or Segment is different from the overall total project. The RM-2 Segment must be Fully Funded and result in an operable or useable segment.

Enter only funds **Committed** to the RM-2 Funded Segment and only if different from Total Project. Enter amounts in thousands and escalated to the year of funding. DO NOT enter uncommitted funding - The RM-2 Phase or Segment must be fully funded.

Eligible Phases: ENV (or PA&ED), PS&E, R/W or CON. For planning activates use ENV. For Vehicles, Equipment or Operating use CON. OK to use CT R/W SUP or CT CON SUP for Caltrans support, but not necessary (optional).

EXPENDITURES TO-DATE BY PHASE AND FUND SOURCES

Phase	Fund Source	Date of Last Expenditure	Amount Expended to date (Thousands)	Available Balance Remaining (Thousands)
ENV / PA&ED			0	
PS&E			0	
R/W			0	
CON / Operating			0	
Total to date (in thousands)			0	

Comments:

As required by RM-2 Legislation, provide funds expended to date for the total project. Provide both expenditure by Fund Source and Expenditure by Phase, with the date of the last expenditure, and any available balance remaining to be expended.

Project ID: 20.3
 Date: 3/12/2009

**RM-2 FUNDING CASH FLOW PLAN For Allocation
 (RM-2 Allocation Funding Only)
 (Amounts Escalated in Thousands)**

TITLE OF PROJECT 24 th Street & Mission BART Station Area Improvements	RM2 Legislation ID: 20.3
NAME AND ADDRESS OF IMPLEMENTING AGENCY San Francisco Municipal Transportation Agency 1 South Van Ness Avenue San Francisco, CA 94103	

DETAIL DESCRIPTION	ESTIMATED HOURS	BASE RATE	TOTAL ESTIMATED COST (Dollars)
1. DIRECT LABOR of Implementing and Support Agency			
DPT Associate Engineer - 5207	190	53	10,019
DPT Transit Planner III - 5289	300	48	14,349
DPT Management Asst.	190	33	6,270
DPT Assistant Engineer - 5203	90	45	4,080
DPW Full Engineer - 5241	90	61	5,493
DPW Assoc. Engineer - 5207	180	53	9,540
DPW Asst. Engineer - 5203	240	45	10,800
DPW Junior Engineer - 5201	150	40	6,015
DPW Civil Eng. Asc. - 5364	110	37	4,121
DPW Sr. Clerk Typist- 1426	50	26	1,312
TOTAL DIRECT LABOR			71,998

2. DIRECT BENEFITS (Specify)	Benefit Rate	X BASE	Total
	31%	71,998	22,427
TOTAL BENEFIT			22,427

3. DIRECT CAPITAL COSTS (include construction, right-of-way, or vehicle acquisition)	Unit (if applicable)	Cost per Unit (\$)	Total
CON- Curb bulbs - 24th & Mission	2	\$ 97,020	194,040
CON- ADA curb ramps	13	\$ 9,377	121,901
CON- Pedestrian signals - 24th at S. Van Ness,Folsom	4	\$ 13,300	

			53,200
CON- Drainage reconfiguration - 24th at Osage	1	\$ 73,850	73,850
TOTAL DIRECT CAPITAL COSTS			442,991

4. CONSULTANTS (Identify purpose and or consultant)			Total
TOTAL CONSULTANTS			0

5. INDIRECT COSTS (Specify - explain costs, if any)	Overhead Rate	X BASE + Benefits	Total
Reimbursable Overhead, capped at 50%	50%	94,425	47,212
TOTAL OTHER DIRECT COSTS			47,212
6. TOTAL ESTIMATED COST			584,628

Comments:

--

Date: 3/12/2009

NOTICE OF CATEGORICAL EXEMPTION
California Environmental Quality Act (CEQA)

TO:

City and County of San Francisco
City Hall
County Clerk
1 Carlton B. Goodlett Place
San Francisco, CA 94102

FROM:

City and County of San Francisco
San Francisco Municipal Transportation Agency/Dept.
of Parking and Traffic
1 South Van Ness Ave
San Francisco, CA 94103

DATE: June 5, 2008

Project Title: 24th & Mission BART Station Area Access Improvements

Project Location – Specific: 24th Street intersections at: Osage Alley; Mission, Capp, Folsom Streets; S. Van Ness Ave.

Description of Nature, Purpose, and Beneficiaries of Project:

This project will provide pedestrian safety improvements at and near the 24th & Mission BART station. These include: 2 curb bulbs (corner sidewalk extensions) at 24th & Mission, plus pedestrian countdown signals, curb ramps (improved to standard), wayfinding signs, design for bike parking (not construction), and BART plaza streetscape improvements (bollards and an artistic fence). The curb bulbs will be within the parking lane and will be designed not to adversely affect vehicle turning movements or traffic capacity.

Name of Public Agency Approving Project: City and County of San Francisco

Name of Person or Agency Carrying Out Project: Municipal Transportation Agency / Department of Parking and Traffic

Exempt Status: Categorical Exemption

Reason why project is exempt: Categorically exempt from Environmental Review Class 1(c)(13) installation, modification and replacement of traffic signals, where no more than a negligible increase in the use of the street will result AND 1(c)(5) All work on sidewalks, curbs and gutters without changes in curb lines, including...additions of sidewalk bulbs when not in conjunction with a program for extensive replacement or installation.

Gerald Robbins Date
SFMTA/Department of Parking and Traffic

Contact Person: Frank Markowitz, Project Manager **Telephone:** (415) 701-4442

March 3, 2009

Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Eligibility for Regional Measure 2 funds

To Whom It May Concern:

This communication will serve as the requisite opinion of counsel in connection with the allocation to the Municipal Transportation Agency for funding from Regional Measure 2 Regional Traffic Relief Plan made available pursuant to Streets and Highways Code Section 30914(c) and (d) to improve pedestrian, bicycle and disability access to the 24th Street & Mission BART station.

1. The Municipal Transportation Agency is an eligible implementing agency for the Regional Measure 2 funding.
2. The Municipal Transportation Agency is authorized to submit an allocation request for Regional Measure 2 funding to improve pedestrian, bicycle and disability access to the 24th Street & Mission BART station.
3. I have reviewed the pertinent state laws and I am of the opinion that there is no legal impediment to the Municipal Transportation Agency making an application for Regional Measure 2 funds. Furthermore, as a result of my examinations, I find that there is no pending or threatened litigation that might in any way adversely affect the proposed project, or the ability of the Municipal Transportation Agency to carry out such project.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Robin M. Reitzes
Deputy City Attorney

THIS PRINT COVERS CALENDAR ITEM NO. : 10.6

**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 \$20,737 from the Bland Family Foundation for preservation and conservation of the Municipal Railway's Historic Photo Archives.

SUMMARY:

- One of the principal funding areas for the Bland Family Foundation is Historic Preservation.
- SFMTA has an urgent need to preserve and restore Muni's historic photo collection.
- SFMTA seeks authority to accept and expend \$20,737 in Bland Family Foundation funding to purchase equipment required to preserve and conserve its historic photo collection.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION BE RETURNED TO: Eileen Ross, 1 South Van Ness Avenue, 8th Floor

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

Purpose

The SFMTA Board approval of this resolution would authorize the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend \$20,737 in Bland Family Foundation funds for equipment for the preservation and conservation of Muni's historic photo archives.

Goal

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

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

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

Description

This action would authorize the Executive Director/CEO (or his designee) to accept and expend \$20,737 from the Bland Family Foundation to assist Muni's Photography Department in preserving and conserving Muni's historic photo archives by funding necessary equipment for the project. Muni's photo collection dates back well over 100 years and chronicles a unique history of transit and of San Francisco. This grant is in addition to a similar grant of \$10,737 from the Bland Family Foundation approved by this Board in 2007.

The Bland Family Foundation supports historic preservation and urban planning as primary areas of interest. The Foundation provides grants, including seed money, for program development and support, equipment and educational assistance.

In collaboration with the Muni Photographer and a group of volunteers, the Friends of the San Francisco Railway Archives, work is under way to preserve, conserve and develop an access plan for Muni's historical photograph collection.

Due to the age and current storage of the negatives, much of the collection is deteriorating. The entire collection needs to be conserved with modern materials and techniques so that the negatives and images will be preserved for easier access to Muni itself and to the interested public. Some of these techniques include: repackaging negatives, storing in a refrigerated environment, and digitizing all the images. Every day, the historic collection deteriorates a little more. Without attention, these images literally will turn into dust and we will lose a valuable and unique collection.

This is a sizeable historical collection that chronicles a part of San Francisco's historical heritage. As such, it is a treasure for all San Francisco. The Muni collection includes photos from the United Railroads of San Francisco and the Market Street Railway, privately own transportation companies that Muni ultimately acquired. This archive provides tremendous historical documentation not only of the

development of public transportation in San Francisco but also much of the physical development of the city itself over the last century.

The Photography Department continues documenting Muni's activities today, continuing a century's long heritage. The modern photography collection, dating from 1966 through today is a huge collection with literally tens of thousands of images.

All of these photographs have been the work of a succession of Head Photographers from John Mentz of the United Railroad and Market Street Railway, Horace Chaffee of the Department of Public Works, George Fanning, Marshall Moxom and Bill Owyang of the Public Utilities Commission through to Carmen Magana today.

In November 2008, the Mayor's Historic Preservation Fund Committee approved the SFMTA's application for \$36,890 to support Muni's Historic Photo Preservation Project. This grant will complement the grant funding from the Bland Family Foundation by funding two part-time archivists to identify the most at-risk historic negatives, scan those negatives, include all information available about those negatives into a data base and repackage them into archival materials, when necessary. Funding for this work will be transmitted to SFMTA through a work order. The SFMTA intends to submit additional funding requests of \$36,890 for two subsequent years to the Mayor's Historic Preservation Fund Committee. The Committee has indicated support for these requests, subject to substantial progress during this first year.

ALTERNATIVES CONSIDERED

Not applicable.

FUNDING IMPACT

The capital funds for this project are from:

- Bland Family Foundation Funds (\$20,737)
- No matching funds are required

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

RECOMMENDATION

Staff recommends that the SFMTA Board approve this resolution, which would authorize the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend \$20,737 of Bland Family Foundation Funds for preservation and conservation of Muni's historic photo archives.

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

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Bland Family Foundation provides grants for historic preservation and urban planning; and

WHEREAS, The Bland Family Foundation grant funds can be used for program development and support, equipment and educational assistance; and

WHEREAS, The Bland Family Foundation has approved an application from the SFMTA for a grant of \$20,737 for the purchase of equipment required to preserve the Municipal Railway's historic photo collection; and

WHEREAS, No local share of the project cost is required; 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 \$20,737 from the Bland Family Foundation for preservation and conservation of Muni's historic photo archives; 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. : 10.7

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Authorizing the award of San Francisco Municipal Transportation Agency Contract No. MR-1215, Muni Traction Power Feeder Circuits Upgrade Project, to Shimmick Construction Company, Inc., located at 8201 Edgewater Drive #202, Oakland, CA 94621, as the lowest responsive and responsible bidder, in the amount of \$5,537,450.

SUMMARY:

- On April 17, 2007, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 07-048, authorizing bid call for Contract No. MR-1215, Muni Traction Power Feeder Circuits Upgrade Project.
- The project provides for upgrading and reconstruction of Muni Metro System and Trolley Coach System power feeder networks system-wide. The purpose of this project is to upgrade feeder cable networks in priority locations to improve overall traction power reliability and capacity so that power consumption and voltage level demands by light rail vehicles and trolley coaches are sufficient to maintain revenue service.
- Three bids were received and opened on February 5, 2009. Staff recommends awarding Contract MR-1215 to Shimmick Construction Company, Inc., in the amount of \$5,537,450, as the lowest responsive and responsible bidder.
- Federal and local sources are providing funds for the work under this contract.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget & Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING CALENDAR ITEM _____

FINANCE DIRECTOR _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO Gigi Pabros

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

San Francisco Municipal Transportation Agency (SFMTA) Contract No. MR-1215, Muni Traction Power Feeder Circuits Upgrade Project, will upgrade feeder cable networks in priority locations to improve overall traction power reliability and capacity for present and future power consumption demands from light rail vehicles and trolley coaches.

GOAL

Contract No. MR-1215 would assist in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

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

Objective 1.1 Improve safety and security across all modes of transportation

Objective 1.2 Improve cleanliness of SFMTA stations and vehicles by providing a clean, comfortable experience

Objective 1.3 Reduce emissions as required by SFMTA Clean Air Plan

Objective 1.4 Improve accessibility across transit service

Objective 1.5 Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare)

Goal 2: Customer Focus: To get customers where they want to go, when they want to be there.

Objective 2.1 Improve transit reliability to meet 85% on-time performance standard

Objective 2.2 Ensure efficient transit connectivity and span of service

Objective 2.3 Fulfill bicycle and pedestrian network connectivity

Objective 2.4 Reduce congestion through major corridors

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

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

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

Objective 5.2 Improve facilities in which people are working

Objective 5.3 Improve internal communication and employee satisfaction

Objective 5.4 Increase internship and apprentice opportunities to fill critical positions (Determine current and future critical needs and create opportunities)

Objective 5.5 Improve SFMTA's ability to grow and retain strong leadership (Succession Planning)

Objective 5.6 Improve the performance management process across all classifications (Increase the number of performance expectation discussions and employee assessments)

Objective 5.7 Develop Leadership and Management Training

Objective 5.8 Improve work/life balance of employees

Objective 5.9 Improve access to Human Resource System Information

Objective 5.10 Improve access to knowledge capital across the SFMTA (HR Portal)

DESCRIPTION

Scope of Work

The Muni Traction Power Feeder Circuits Upgrade Project is identified in the latest San Francisco Municipal Railway Short Range Transit Plan under Infrastructure Program and within the Overhead Rehabilitation Program. Replacement of the feeder cable network in priority locations will substantially improve the overall traction power system reliability and capacity for present and future power load demands from light rail streetcars and trolley coaches. This project improves feeder power availability and reliability so that power consumption and voltage level demands by light rail vehicles and trolley bus coaches are sufficient to maintain revenue service.

The main scope of work for this project will upgrade the following feeder circuits:

- CA-11 (Scott St. & Duboce Ave. to Market Street Subway), circuit E-2 (Church St. & 19th St. to Church St. & Clipper St.)
- Circuit D-27 (downtown financial district)
- Circuit JU-2 (Judah Substation at Judah St. & 32nd Ave. to Judah St. & 48th Ave.)
- Circuit RA-1 (Randolph Substation at 19th Ave. & Byxbee St. to 19th Ave. & Denslowe Dr.)
- Circuit RA-2 (Randolph Substation at 19th Ave. & Byxbee St. to Broad St. & Plymouth Ave.)
- Circuit SJ-12 (San Jose Substation at San Jose Ave. & Oneida Ave. to Broad St. & Plymouth Ave.)
- Circuit T-1 (Taraval Substation at 41st Ave. & Taraval St. to Taraval St. & 22nd Ave.)
- Circuit WP-13 (West Portal Substation at Ulloa St. & Wawona St. to Taraval St. & 23rd Ave.)
- Circuit WP-22 (Sloat Blvd. & St. Francis Circle to 19th Ave. & Denslowe Dr.)
- Install a new feeder manual switch near the intersection of Kearny and Post Streets.

Bids and Bid History

The SFMTA Board of Directors adopted Resolution No. 07-048 on April 17, 2007, authorizing bid call for Contract No. MR-1215, Muni Traction Power Feeder Circuits Upgrade Project.

The engineer's estimate at the time of advertising was \$6,300,000 and the time allotted to complete the work was 366 calendar days. The contractor will be subject to substantial liquidated damages should it fail to restore revenue service for the Muni Metro System and Trolley Coach System at \$2,500/hour or fraction thereof. Additional liquidated damages are applicable for interruptions to Muni Operations and for other delays resulting from the contractor's work.

Bids Received

On February 5, 2009, SFMTA's Transportation Planning and Development Division received and opened three bid proposals, as follows:

<u>Bidder</u>	<u>Bid Amount</u>
1 Shimmick Construction Company, Inc. 8201 Edgewater Drive #202 Oakland, CA 94621	\$5,537,450
2 Schembri Construction 1485 Bayshore Blvd. #130 San Francisco, CA 94124	\$5,547,140
3 McGuire and Hester 9009 Railroad Avenue Oakland, CA 94603	\$5,649,765

Staff has reviewed the three bid proposals and determined that Shimmick Construction Company, Inc. is the lowest responsive and responsible bidder.

A copy of the contract is not included since it was bid as advertised.

The Contract Compliance Office has determined that Shimmick Construction Company, Inc. has submitted information documenting their commitment to achieve the 15 percent Small Business Enterprise participation goal established for this contract and will commit to meet Non-discrimination Equal Employment Requirements of the contract and Shimmick is in compliance with Chapter 12B Equal Benefits Provision of the San Francisco Administrative Code.

ALTERNATIVES CONSIDERED

The project team held discussions with Maintenance staff concerning whether the traction power feeder circuits upgrade work should be done by in-house staff. The preference was to have a contractor replace and/or reconstruct the traction power feeder circuit system and adjacent infrastructure because contractors have enough crews with electrical and construction expertise to complete the work within the limited available time and within minimal shutdown hours. Staff determined that contracting out was the best practical alternative.

FUNDING IMPACT

This contract is funded by Federal grants and local matching funds from the San Francisco County Transportation Authority (SFCTA) and other sources. Staff anticipates that the SFCTA will approve the request for \$600,000 in matching funds at its Board meeting scheduled for March 24, 2009.

The budget and financial plan for this project is presented in Enclosure 2 of the calendar item.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

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

PAGE 5

No approvals from any other agency are required for the award of this contract.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to execute SFMTA Contract No. MR-1215, Muni Traction Power Feeder Circuits Upgrade Project, to Shimmick Construction Company, Inc., as the lowest responsive and responsible bidder, for a contract amount of \$5,537,450 and a term of 366 calendar days.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Muni Traction Power Feeder Circuits Upgrade Project is part of the Overhead Rehabilitation Program of the San Francisco Municipal Railway Infrastructure Program; and,

WHEREAS, The work to be performed under this project will replace the feeder cable network in priority locations in order to substantially improve the overall traction power system reliability and capacity for present and future power load demands for the Muni Metro System and the Trolley Coach System; and,

WHEREAS, On April 17, 2007, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 07-048, authorizing bid call for Contract No. MR-1215, Muni Traction Power Feeder Circuits Upgrade Project; and,

WHEREAS, On February 5, 2009, Muni received and publicly opened three bid proposals; and,

WHEREAS, SFMTA determined that Shimmick Construction Company, Inc., located at 8201 Edgewater Drive #202, Oakland, CA 94621, is the lowest responsible and responsive bidder, with a bid amount of \$5,537,450; and,

WHEREAS, The project is funded by 80% Federal grants and 20% local funding sources, including the San Francisco County Transportation Authority; and,

WHEREAS, The time allowed for completion of the work under this contract is 366 calendar days after issuance of the Notice to Proceed; and,

WHEREAS, The Contract Compliance Office has determined that Shimmick Construction Company, Inc. has submitted information documenting their commitment to achieve the 15 percent Small Business Enterprise participation goal established for this contract; now, therefore, be it,

RESOLVED, That SFMTA Board of Directors authorizes the Executive Director/CEO to execute SFMTA Contract No. MR-1215, Muni Traction Power Feeder Circuits Upgrade Project to Shimmick Construction Company, Inc., as the lowest responsive and responsible bidder, in an amount not to exceed \$5,537,450 and a term of 366 calendar days.

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

Secretary, Municipal Transportation Agency Board

ENCLOSURE 2

Contract No. MR-1215

Muni Traction Power Feeder Circuits Upgrade Project Project Budget and Financial Plan

PROJECT BUDGET

Category	Budget
Project Study (Pre-CER)	\$700,000.00
Conceptual Engineering Phase	\$450,000.00
Detail Design Phase	\$995,000.00
Construction Phase	
Construction Management	\$1,255,000.00
Construction Contract MR-1215	\$5,537,450.00
Construction Contingency	\$553,745.00
Maintenance Support/Bus Substitution	\$250,000.00
Other City Department	\$120,000.00
Other Direct Cost	\$225,000.00
Advanced Construction	\$542,000.00
Project Contingency	\$871,805.00
Total	\$11,500,000.00

FINANCIAL PLAN

Project Funding Source	Amount
Federal Grant	\$9,200,000.00
Local Grants	
Prop B Sale Tax and Local Bridge Toll	\$2,300,000.00
Total	\$11,500,000.00

THIS PRINT COVERS CALENDAR ITEM NO. 10.8

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

DIVISION: MUNI OPERATIONS

BRIEF DESCRIPTION:

SFMTA staff requests that the SFMTA Board of Directors authorize the Executive Director/CEO to execute Contract No. CS-900, As-Needed Specialized Engineering Services for SFMTA Rail Vehicle Projects, with Booz Allen Hamilton Inc. for an amount not to exceed \$5,000,000 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-900, As-Needed Specialized Engineering for Rail Vehicle Projects.
- On October 27, 2008, the SFMTA received a single written proposal for Contract CS-900 from Booz Allen Hamilton, Inc.
- Staff reviewed the CS-900 proposal submitted by Booz Allen Hamilton, Inc. and determined that it meets the terms and conditions of the RFP. Staff now requests that the SFMTA Board authorize the Executive Director/CEO to execute Contract CS-900 with Booz Allen Hamilton, Inc. for a total amount not to exceed \$5,000,000 and a term not to exceed five years.

ENCLOSURES:

1. SFMTA Board Resolution
2. Contract CS-900 Agreement

APPROVALS:

DIRECTOR OF DIVISION
PREPARING ITEM

DATE

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-900 to Booz Allen Hamilton Inc. to provide technical and professional services on an “as-needed” basis for a total contract amount not to exceed \$5,000,000 and a term not to exceed five years.

GOAL

Contract CS-900 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: To ensure financial stability and effective resource utilization.

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

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

- 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 necessitated by the enactment of the American Recovery and Reinvestment Act.

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-900 for an amount not to exceed \$5,000,000 and for a term not to exceed five years.

The RFP was advertised on September 3, 2008 and a single proposal was submitted on October 27, 2008 in response to the advertisement. The sole proposal submitted by Booz, Allen Hamilton Inc. met the conditions of the Request for Proposal.

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 American Recovery and Reinvestment Act, 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 percent 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-900, As-Needed Specialized Engineering Services for SFMTA Rail Vehicle Projects with Booz Allen Hamilton Inc. for an amount not to exceed \$5,000,000 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; 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, 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-900, As-Needed Specialized Engineering for SFMTA Rail Vehicle Projects, for an amount not to exceed \$5,000,000 and a term not to exceed five years; and,

WHEREAS, The SFMTA issued the Request for Proposals (“RFP”) on September 3, 2008 and received a single proposal from Booz Allen Hamilton Inc. in response to the RFP; and,

WHEREAS, SFMTA staff has reviewed and evaluated the single proposal, and determined that it meets the terms and conditions of the RFP; 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 25% SBE participation goal for this contract; and,

WHEREAS, Contract No. CS-900 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-900, As-Needed Specialized Engineering Services for SFMTA Rail Vehicle Projects, with Booz Allen Hamilton Inc. for an amount not to exceed \$5,000,000 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 3
San Francisco Municipal Railway Contract CS-900
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 rail profiling.
19. Conducting wheel profiling.

ENCLOSURE 4
San Francisco Municipal Transportation Agency Contract CS-900
As-Needed Specialized Engineering Services for SFMTA Rail 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:

Booz Allen Hamilton Inc
Prime-Project management

LTK Engineering
Vehicle Engineering, electrical and structural

Lea + Elliott, Inc.
Safety, Train Control, Historics, Procurement

A Train Enterprises-DBE
Structural Engineering

Kal Krishnan Consulting Services-DBE
Cost Estimating

Lansor Associates-DBE
Reporting

PH Adams & Associates-DBE
Operations and Maintenance

Railcar Quality Services-DBE
QA Oversight and Audits, Inspection and testing of vehicles; Startup and Testing

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

AND

**BOOZ ALLEN HAMILTON
FOR**

**AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR
SFMTA RAIL VEHICLE PROJECTS**

CONTRACT NO. CS-900

CCO NO. 08-1001

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.....	3
B. Effective Date	3
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.....	5
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.....	7
	(v)	Non-Reimbursable Expenses	7
	(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	8
	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	9
9.		Disallowance.....	10
10.		Taxes	10
	A.	Obligation of Consultant.....	10
	B.	Possessory Interest	10
11.		Payment Does Not Imply Acceptance of Work.....	10
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.....	11
15.		Insurance	12
	A.	Coverages.....	12

B.	Requirements of Insurance Policies.....	12
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.....	14
I.	Subconsultant Insurance.....	14
16.	Indemnification.....	14
A.	General Indemnity.....	14
B.	Limitations.....	15
C.	Intellectual Property Infringement.....	15
17.	Incidental and Consequential Damages.....	15
18.	Liability of City.....	15
19.	Standard of Performance.....	15
20.	Default; Remedies.....	15
A.	Event of Default.....	15
B.	Remedies.....	16
C.	No Preclusion of Remedies.....	16
21.	Termination for Convenience.....	16
A.	Exercise of Option to Terminate for Convenience.....	16
B.	Duties of Consultant Upon Notice of Termination.....	16
C.	Invoice for Services Performed.....	17
D.	Non-Recoverable Costs.....	17
E.	Deductions.....	17
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.....	18
24.	Proprietary or Confidential Information of City.....	18
25.	Notices to the Parties.....	19
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	20
	C. Flowdown to Subconsultants	20
	D. Audit	20
	E. Rights of State or Federal Agencies.....	20
29.	Subcontracting	20
	A. Approval of City	20
	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	21
	A. Provision of Forms to Eligible Employees	21
	B. Failure to Comply	21
	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	22
	A. Consultant Shall Not Discriminate	22
	B. Subcontracts	22
	C. Nondiscrimination in Benefits	22
	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	23
37.	Drug-Free Workplace Policy	23

38.	Resource Conservation	23
39.	Compliance with Americans with Disabilities Act.....	23
40.	Sunshine Ordinance	23
41.	Public Access to Meetings and Records	23
42.	Limitations on Contributions	24
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.....	27
	C. Hiring Decisions	28
	D. Exceptions.....	28
	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.....	30
49.	Administrative Remedy for Agreement Interpretation	30
50.	Agreement Made in California; Venue.....	30
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.....	31
	C. Interest on Unpaid Amounts	31
56.	Disputes.....	31
	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	32
58.	Protection of Private Information	32
59.	Graffiti Removal	32
60.	Food Service Waste Reduction Requirements.....	33
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
BOOZ ALLEN HAMILTON INC.**

This Agreement is made this **7th** day of April, 2009 in the City and County of San Francisco, State of California, by and between: **Booz Allen Hamilton Inc., 101 California Street, Suite 3300, San Francisco, CA 94111** ("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 Operations Division of the MTA provides the professional and technical services required to implement capital and other projects for 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.

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. 4051-08/09, dated November 03, 2008

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 Booz Allen Hamilton 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 CCO No. 08-1001 .
- 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, 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 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:

- Total profit for Consultant and subconsultant on Consultant and subconsultant's work effort shall be negotiated as fixed fee not to exceed eleven percent (11%) of Consultant and 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 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 her 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.**

(ix) **Non-reimbursable Costs.** Labor hours spent preparing invoices, preparing contracting documents (e.g. DBE forms), and preparing Task orders are not allowed. Principal-in-Charge hours are limited to one hour per month, if required. Project oversight charges in addition to the Task Manager are not allowed. Overtime charges are not allowed without prior approval.

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 and shall also be staffed at the local Consultant offices within the San Francisco Bay Area for all such time:

Janet Gallegos

Jean Luc Picard

Ed Moore

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 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.

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 Five Million Dollars (\$5,000,000).

B. Method of Computing Compensation.

(i) Direct Labor Rates. The direct labor rates in Exhibit C shall be fixed at that level until 12 months after effective date of this Agreement. Direct Salary Rates in Exhibit C may be adjusted 12 months after the effective date of this Agreement but the average increase shall be no more than 3%. 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 combined overhead and salary burden rates as shown on the Schedule of Overhead Rates attached as Exhibit D. The rates in Exhibit D may be adjusted annually with prior written approval from the Chief Operating Officer, or his or her Designee. 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. All travel expenses are to be pre-approved by the SFMTA and Consultant must obtain the best air fare 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

(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, as described in section 15.K. below; and
- (ii) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (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 (engineer's errors and omissions) Insurance, as described in section 15.C. below.

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 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.
- (iii) Insurance certificates shall contain a statement that the referenced General Liability Insurance and Professional Liability Insurance policies have been endorsed or otherwise provide the Coverage required by Section 15.A. above and Section 15.C. below for Consultant and its subconsultants with respect to work under this Agreement.
- (iv) Consultant shall certify to the City that all subcontractors have named the City as an additional insured on all applicable insurance policies.

C. Professional Liability Insurance. Without in any way limiting Consultant's liability pursuant to the "Indemnification" section of this Agreement, Consultant must maintain

in force, during the full term of the Agreement, Professional Liability (engineer's errors and omissions) Insurance providing from the effective date of this Agreement, and shall maintain practice insurance covering the Consultant for its and their negligent acts, errors or omissions, with limits not less than \$30,000,000 per claim and in the aggregate arising from its and their performance of services under this Agreement.

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

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

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

Ms. Trinh Nguyen
Project Manager
Municipal Transportation Agency
1 South Van Ness Avenue
San Francisco, CA 94103-5417

E. 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 five years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

G. 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.

H. Proof of Insurance. Before commencing any operations under this Agreement, Consultant shall do the following: (1) furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above, and (2) furnish complete copies of policies promptly upon City request in the event of a claim and upon receipt of a signed nondisclosure agreement. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

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

J. 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 and employees and the Consultant listed as additional insureds.

K. Waiver of Subrogation. Consultant hereby agrees to waive its own right to recovery as well as the subrogation of any claim against the City which any insurer of Consultant may acquire from Consultant by virtue of the payment of any loss. Consultant agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

(i) Consultant's Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for claims arising from work performed by the Consultant, its employees, agents and subcontractors for the City.

L. General Coverage Limits. The City shall be notified should more than 50% of the Consultant's aggregate limits be eroded during any single coverage period including any extended reporting period. The City has the sole right to review and request adjustments or increases to coverage under this agreement during the term of the agreement including the extended reporting periods, if applicable.

M. Deductible and Self-Insured Retentions. All deductibles and self-insured retentions must be declared to and be approved by the City. The Consultant shall maintain collateral posted with its insurance carriers to ensure payment of all loss amounts including defense costs as well as estimated claims expenses that fall within the deductible or self insured retention levels.

16. Indemnification

A. General Indemnity. To the fullest extent permitted by law, Consultant shall assume the defense of, indemnify and save harmless the City, its boards, commissions, officers, and

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

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 in then performance of Consultant's services under this Agreement.

17. Incidental and Consequential Damages

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

18. Liability of City

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

19. Standard of Performance

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

20. Default; Remedies

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

(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: Janet Gallegos
Project Manager
Booz Allen Hamilton
101 California Street, suite 3300
San Francisco, CA 94111

Gallegos_Janet@bah.com
Fax: (415) 627 4283

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 Director of Transportation Planning and Development shall be administratively final and conclusive. This section applies to all disputes unless a specific provision of this Agreement provides that the MTA Liaison's decision as to a particular dispute is final.

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 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

Municipal Transportation Agency
Board of Directors
Resolution No. _____

Adopted: _____

Attest: _____
Secretary, SFMTA Board

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
John I. Kennedy
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

Booz Allen Hamilton

Company Name

03564.

City Vendor Number

101 California Street , Suite 3300

Address

San Francisco, Ca 94111

City, State, ZIP

(415) 391 1900

Phone Number

36-251-3626

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," 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 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-900

Project Title:

Project No.: _____

TASK ORDER DESCRIPTION

Task Title			
<input type="checkbox"/> New Task Order		<input type="checkbox"/> Revised Task Order	
Work to be Performed			
Schedule			
A.		Start Date:	
Estimated Completion Date:			
Budget Amount: \$		Index Code:	
Deliverables			
Descriptions		Date Req'd.	Quantity
APPROVALS			
Approved		_____	
		MTA Liaison	
Approved		_____	
		Senior Program Manager, Operations.	

EXHIBIT C

**Direct Salary Rates by Position or Class for
Consultant and all Sub-consultants**

<u>Position</u>		<u>Direct Salary (Hourly)</u>
Booz Allen Hamilton		
	THOMS,JANNET M	\$ 104.44
	FRASER,GAVIN	\$ 74.19
	KLUGE,BOUDEWYN	\$ 71.48
	SHETH,GITA M	\$ 70.23
	CONKLIN,JAMES F	\$ 63.66
	STUART,CAMERON D	\$ 63.61
	BHANJI,SANDEEP B	\$ 62.82
	MOORE,EDMOND S	\$ 61.44
	CRUZ,MARCANGELO S	\$ 61.33
	WILCOX,DANNIE A	\$ 40.56
	PICARD, JEAN LUC	\$ 76.66
	GALLEGOS,JANET E	\$ 74.79
<u>ASE</u>		Direct Rate
	OLIVER, WANDA	\$ 89.59
	GUEVIN, GARY	\$ 52.64

<u>Position</u>		<u>Direct Salary (Hourly)</u>
Subconsultants		
<u>LTK Engineering</u>		Direct
	CHILDIR, MARK	\$ 44.72
	DIBRITO, DOMINIC	\$ 84.76
	GOLUCKI, MARK	\$ 54.24
<u>Lea + Elliott</u>		
	KENNEDY, JOHN	\$ 89.29
	MARTIN, CHARLIE	\$ 80.06
	GREEN, MARTIN	\$ 74.49
	CARTWRIGHT, ELAINE	\$ 68.14
	LI, JANICE	\$ 65.38
<u>A-Train</u>		
	WINEMAN, SARAH	\$ 54.40
	LIEBOWITZ, BRIAN	\$ 33.67
<u>KKCS</u>		
	TOMLINSON, STAN	\$ 71.23
	LEWIS, ORVAL	\$ 34.65
<u>Lansor Associates</u>		
	LARSON, KATHY	\$ 39.74
<u>Phil Adams</u>		
	ADAMS, PHIL	\$ 77.74
<u>RQS</u>		
	LEE, LAIN	\$ 39.88
	PERRY, DAVID	\$ 31.45
	KHUMALO, LEE	\$ 31.45

EXHIBIT D

SCHEDULE OF OVERHEAD RATES

Booz Allen Hamilton

Cost Center	Description	Overhead
12	Leading Edge Application (BAH Site)	180.6%
16	Operations Services and Analysis	129.7%
17	Systems Management	149.0%
22	Leading Edge Application (Client site)	124.5%

ASE

Temporary Band	143.2%
Technical Band	136.8%

LTK Engineering

151.8%

Lea + Elliott

185.7%

A-Train

137.5%

KKCS

104.0%

Lansor Associates

77.7%

Phil Adams

120.0%

RQS

148.3%

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
**SMALL BUSINESS ENTERPRISE (SBE) PROGRAM FOR PROFESSIONAL AND
TECHNICAL SERVICES**

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

REQUEST FOR PROPOSALS (RFP)

FOR

**CONTRACT NO. CS-900:
AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR
SFMTA RAIL VEHICLES**

(CCO No. 08-1001)

AND

**CONTRACT NO. CS-901:
AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR
SFMTA RUBBER TIRE VEHICLES**

(CCO No. 08-1014)

FTA FUNDED

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
SMALL BUSINESS ENTERPRISE 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

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

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

FOR FEDERALLY-FUNDED PROJECTS

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

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

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

FOR FEDERALLY-FUNDED PROJECTS

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

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-Peguese, CCO Certification Unit

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

State Program:

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

City Program:

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

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

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

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

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

POST AWARD SUBMITTAL

**☐ SFMTA SBE FORM No. 7
SUBCONSULTANT PAYMENT DECLARATION**

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

TRANSMITTAL TO: Contract Compliance Office
COPY TO: Project Manager
From: Prime Consultant: _____ Date Transmitted: _____

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

Contract No.: _____ Contract Title: _____
 Contract Awarding Department: _____
 Progress Payment No.: _____ Period Ending: _____
 Amount Received: \$ _____ Date: _____ Warrant/Check No.: _____

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

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

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

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

□

SFMTA SBE FORM No. 8

DECLARATION – AMENDMENTS OF PROFESSIONAL SERVICE CONTRACTS

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

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

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

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

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

Owner/Authorized Representative (Signature): _____ Date: _____

Owner/Authorized Representative (Print): _____ Title: _____

□ **SFMTA SBE FORM No. 8**

**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

THIS PRINT COVERS CALENDAR ITEM NO. : 10.9

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

DIVISION: Operations

BRIEF DESCRIPTION:

Requesting authorization for the Executive Director/CEO to execute Contract No. 583-02, Complete Rehabilitation of SFMTA Streetcar Car No.1, to Brookville Equipment Corporation, for an amount not to exceed \$1,883,193, and a term of three years.

SUMMARY:

- On June 17, 2008, the MTA Board adopted Resolution No. 08-095, which authorized the Executive Director/CEO to issue a Request for Proposals for Contract No. 583-02, Complete Rehabilitation of SFMTA Car No. 1, and an RFP was issued on July 8, 2008.
- On October 17, 2008, the SFMTA received one proposal from Brookville Equipment Corporation (BEC).
- A selection committee reviewed the BEC's proposal and conducted a contract negotiation.
- The Contract Compliance Office has confirmed the consultant's commitment to meeting the 5% SBE participation goal for this contract
- Staff requests that the SFMTA Board authorize the Executive Director/CEO to execute Contract No 583-02 with BEC for a total amount not to exceed \$1,883,193 and a term of three years.
- The City Attorney's Office has reviewed this calendar item.

ENCLOSURES:

1. SFMTA Board Resolution
2. Contract No. 583-02 Agreement

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION Trinh Nguyen _____

BE RETURNED TO

ASSIGNED MTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

Requesting authorization for the Executive Director / CEO to execute Contract No. 583-02, Complete Rehabilitation of SFMTA Streetcar Car No.1, to Brookville Equipment Corporation to rehabilitate SFMTA Historic Streetcar No. 1 (Car No. 1), for an amount not to exceed \$1,883,193, for a term of three years.

EXPLANATION

The active historic streetcar fleet is a collection of electric rail vehicles on the F-Market & Wharves line, carrying nearly 20,000 trips per weekday. These include 15 Presidents' Conference Committee Cars (PCCs), nine cars designed by Peter Witt that were bought from Milan, Italy, and other historic streetcars from the U.S. and around the world. Muni currently runs 24 historic streetcars in regular revenue service.

The popularity of the F-line and planned future expansion service requires Muni to add vehicles to the historic fleet. There are several procurements and rehabilitation projects moving forward to expand the size of the fleet.

Car No. 1, Muni's first streetcar, began service in 1912. It needs a complete rehabilitation before it can be returned to revenue service. This car needs to be returned to its original appearance so that it can be presented at the Muni 100-Year Anniversary Ceremony in 2012 as Muni's first car in operation. The complete rehabilitation includes body, frame, interior and exterior work; lead paint removal; repainting of the interior and exterior; mechanical and electrical work; safety features; accessibility improvements; and other work to prepare the car for revenue service. When completed, this car will be available to operate on the F-Line and the future E-Line.

On June 17, 2008, the SFMTA Board adopted Resolution No. 08-095, which authorized the Executive Director/CEO to issue a Request for Proposals ("RFP") for Contract No. 583-02, Complete Rehabilitation of SFMTA Car No. 1. On July 8, 2008, SFMTA issued an RFP for the work. On October 17, 2008, the SFMTA received one proposal from Brookville Equipment Corporation (BEC). A selection committee reviewed and evaluated BEC's proposal and determined that it met the terms and conditions of the RFP, and SFMTA staff has negotiated a contract with BEC.

PAGE 3.

ALTERNATIVES CONSIDERED

The only alternative is not to rehabilitate this Car No. 1, which would impact SFMTA's F-Line service and E-Line service and this historic streetcar would not be presented in the Muni's 100-Year Anniversary Ceremony as the first Muni car in operation.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Civil Service Commission approved this contract on August 18, 2008.

The Contract Compliance Office has confirmed the consultant's commitment to meeting the 5% SBE participation goal for this contract.

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

FUNDING

This project will be funded through local and federal sources.

STRATEGIC PLAN GOALS

This project will meet the following goals of the SFMTA Strategic Plan:

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

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

Objective 1.2 - Improve cleanliness of SFMTA stations and vehicles by providing a clean, comfortable experience

Objective 1.3 - Reduce emissions as required by the SFMTA Clean Air Plan

Objective 1.4 - Improve accessibility across transit service

Objective 1.5 - Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare)

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

Objective 2.1 - Improve transit reliability to meet 85% on-time performance standards

Objective 2.2 - Ensure efficient transit connectivity and span of service

Objective 2.4 - Reduce congestion through major corridors

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

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

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

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO or his Designee to execute Contract No. 583-02, Complete Rehabilitation of SFMTA Streetcar Car No.1, to Brookville Equipment Corporation for an amount not to exceed \$1,883,193, for a term of three years.

**PROJECT BUDGET AND FINANCIAL PLAN:
PROGRAM BUDGET**

No.	Project List	Budget	Status
1	Safety Enhancement for 9 Milan Cars	\$1,183,431	In Planning
---	1807, 1811, 1814, 1815, 1818, 1856, 1859, 1893, 1895		
2	Car # 1: Rehabilitation	\$2,486,505	Request to Award
---	With estimated contracting cost of \$1,751,000		
3	Rehabilitation and Overhaul Program for PCC Fleet	\$24,771,112	Proposals are being reviewed
---	11 NJ PCC : (1070, 1071, 1072, 1076, 1077, 1078, 1073, 1074, 1075, 1079, 1080)	N/A	N/A
---	4 DE (1006, 1008, 1009, 1011) + 1 SE (1040) PCC	N/A	N/A
---	With estimated contracting cost of \$19,972,289		
4	Major Overhaul of 16 former SEPTA PCC (MK PCC)	\$3,016,898	In Planning
---	1007 (DE), 1010 (DE), 1015 (DE), 1050, 1051, 1052, 1053, 1055, 1056, 1057, 1058, 1059, 1060, 1061, 1062, 1063	Partially Funded	N/A
---	TOTAL PROGRAM COST ESTIMATE	\$31,457,946	----

PROGRAM FUNDING PLAN

CA-03-0708	\$5,407,608
CA-90-Y533-00 (Section 5307)	\$5,499,496
CA-05-0215	\$2,294,104
CA 90-X957	\$1,668,473
CA 90-X957	\$1,378,051
CA 90-0040	\$2,068,000
CA 90-0124	\$1,106,000
CA 03-0673	\$4,791,550
CA 03-0708	\$893,423
CA 90-0424	\$276,000
Regional Measure 2	\$1,090,000
SFMRIC #58	\$849,189
Prop B Res. 02-74	\$605,499
Prop B Res. 03-51	\$4,499
Prop K - (in request)	\$3,526,054
TOTAL FUNDING PLAN	\$31,457,946

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) operates the Municipal Railway (Muni), which has 24 historic streetcars in revenue service; and,

WHEREAS, The popularity of the F-line and planned future expansion service requires Muni to add vehicles to its historic streetcar fleet; and,

WHEREAS, On June 17, 2008, the MTA Board adopted Resolution No. 08-095, which authorized the Executive Director/CEO to issue a Request for Proposals for Contract No. 583-02, Complete Rehabilitation of SFMTA Car No. 1; and,

WHEREAS, The SFMTA issued a Request for Proposals (“RFP”) on July 8, 2008, and received a single proposal from Brookville Equipment Corporation (BEC); in response to the RFP; and,

WHEREAS, A selection committee reviewed and evaluated the single proposal, determined that it meets the terms and conditions of the RFP, and negotiated a contract with BEC in amount not to exceed \$1,883,193, for a term of three years; and,

WHEREAS, SFMTA has capital funding for this project from federal and local sources; and,

WHEREAS, The Contract Compliance Office has confirmed the consultant’s commitment to meeting the 5% SBE participation goal for this contract; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO or his Designee to execute Contract No. 583-02, Complete Rehabilitation of SFMTA Streetcar Car No.1, to Brookville Equipment Corporation, for an amount not to exceed \$1,883,193, and a term of three years.

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

Secretary, Municipal Transportation Agency Board

CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

AGREEMENT

BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO

AND BROOKVILLE EQUIPMENT CORPORATION

FOR THE

COMPLETE REHABILITATION OF SFMTA STREETCAR CAR NO. 1

SFMTA CONTRACT NO. 583-02
(CCO No. 08-1016),

TABLE OF CONTENTS

	<u>Page</u>
1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.....	3
2. Term of the Agreement.....	3
3. Effective Date of Agreement	3
4. Services Contractor Agrees to Perform	4
5. Compensation	4
6. Guaranteed Maximum Costs.....	4
7. Payment; Invoice Format.....	5
8. Submitting False Claims; Monetary Penalties.....	5
9. Disallowance.....	5
10. Taxes.....	5
11. Payment Does Not Imply Acceptance of Work.....	6
12. Qualified Personnel.....	6
13. Responsibility for Equipment	6
14. Independent Contractor; Payment of Taxes and Other Expenses.....	7
14.1. Independent Contractor.....	7
14.2. Payment of Taxes and Other Expenses.....	7
15. Insurance; Bonds.....	8
15.1. Insurance	8
15.2. Bonds	9
16. Indemnification.....	10
16.1. General Indemnity	10

16.2.	Limitations	10
16.3.	Intellectual Property Infringement.....	10
17.	Incidental and Consequential Damages	10
18.	Liability of City	10
19.	Liquidated Damages	11
20.	Default; Remedies.....	11
20.1.	Event of Default.....	11
20.2.	Remedies.....	12
21.	Termination for Convenience	12
21.1.	Exercise of Option	12
21.2.	Contractor Actions.....	12
21.3.	Contractor Invoice	13
21.4.	Non-Recoverable Costs	13
21.5.	Deductions	13
21.6.	Survival.....	13
22.	Rights and Duties Upon Termination or Expiration.....	13
22.1.	Survival of Sections	13
22.2.	Contractor Duties.....	13
23.	Conflict of Interest	14
24.	Proprietary or Confidential Information of City.....	14
25.	Notices to the Parties	14
26.	Ownership of Results.....	14
27.	Works for Hire	15
28.	Audits and Inspection of Records.....	15
29.	Subcontracting	15

30.	Assignment	15
31.	Non-Waiver of Rights.....	16
32.	Earned Income Credit (EIC) Forms	16
	32.1. Provision of Forms to Employees.....	16
	32.2. Failure to Comply	16
	32.3. Flowdown to Subcontractors	16
	32.4. Terms	16
33.	Claims	16
34.	Nondiscrimination; Penalties	17
	34.1. Contractor Shall Not Discriminate	17
	34.2. Subcontracts.....	17
	34.3. Nondiscrimination in Benefits	17
	34.4. Condition to Contract.....	17
	34.5. Incorporation of Administrative Code Provisions by Reference.....	18
35.	MacBride Principles—Northern Ireland.....	18
36.	Tropical Hardwoods and Virgin Redwood Ban	18
37.	Drug-Free Workplace Policy	18
38.	Resource Conservation	18
39.	Compliance with Americans with Disabilities Act.....	18
40.	Sunshine Ordinance	19
41.	Public Access to Meetings and Records	19
42.	Notification of Limitations on Contributions	19
43.	Requiring Minimum Compensation for Covered Employees	20
44.	Requiring Health Benefits for Covered Employees	21
45.	First Source Hiring Program.....	23

45.1.	Incorporation of Administrative Code Provisions by Reference.....	23
45.2.	First Source Hiring Agreement.....	23
45.3.	Hiring Decisions	25
45.4.	Exceptions.....	25
45.5.	Liquidated Damages	25
45.6.	Subcontracts.....	26
46.	Prohibition on Political Activity with City Funds	26
47.	Preservative-treated Wood Containing Arsenic	26
48.	Modification of Agreement.....	27
48.1.	Modification in Writing.....	27
48.2.	Extra Work.....	27
49.	Authority of Engineer	27
50.	Agreement Made in California; Venue.....	28
51.	Construction.....	28
52.	Entire Agreement	28
53.	Compliance with Laws	28
54.	Services Provided by Attorneys.....	28
55.	Disputes	28
55.1.	Notice of Dispute	28
55.2.	Resolution of Disputes.....	29
55.3.	No Cessation of Work.....	29
55.4.	Alternative Dispute Resolution.....	29
55.5.	Claims for Additional Compensation	29
55.6.	Disputes among Consultant Partners	29
56.	Severability	29

57.	Protection of Private Information	29
58.	Graffiti Removal	30
59.	Food Service Waste Reduction Requirements.....	30
60.	Time of Essence	31
61.	Technical Specifications	31
	61.1. Fabrication	31
	61.2. Omission	31
	61.3. Priority	31
	61.4. Design Review	31
	61.5. Preliminary Drawings	32
	61.6. Materials/Accessories Responsibility	32
62.	Project Planning, Scheduling and Control.....	32
	62.1. Introduction.....	32
	62.2. Scheduling Terms	32
	62.3. Descriptions of Submittals.....	33
	62.4. Early Completion Schedule	34
	62.5. Process Review Meetings	34
	62.6. Modifications to the Schedule	34
63.	Assumption of Risk of Loss.....	34
64.	FTA Requirements.....	35
65.	SBE Requirements	35

Exhibits

**City and County of San Francisco
Municipal Transportation Agency
Municipal Railway Department
One South Van Ness 7th Floor
San Francisco, California 94107**

**Agreement between the City and County of San Francisco and
Brookville Equipment Corporation**

This Agreement is made this _____ in the City and County of San Francisco, State of California, by and between: Brookville Equipment Corporation (“Contractor”) and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its San Francisco Municipal Transportation Agency (“SFMTA”).

Recitals

A. SFMTA wishes to obtain the services of a qualified firm to rehabilitate SFMTA’s Car No. 1.

B. A. Request for Proposal (“RFP”) was issued on July 08, 2009, and City selected Contractor as the highest qualified scorer 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.

D. Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number 4012-08/09 on August 18, 2008;

Now, THEREFORE, the parties agree as follows:

Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of the contract documents, it shall have the meaning set forth herein.

Acceptance: The formal written acceptance by the City and County of San Francisco that all work, or a specific portion thereof, under the contract has been satisfactorily completed.

Award: Notification from the City to Contractor of acceptance of Contractor’s proposal, subject to the execution and approval of a satisfactory Contract therefore and bond to secure the performance thereof, and to such other conditions as may be specified or otherwise required by law.

Car No. 1: The Muni historic streetcar that will be rehabilitated under this Contract.

Certification: Certification by the Controller that funds necessary to make payments as required under the contract are available in accordance with the City's Charter.

City: City and County of San Francisco, a municipal corporation.

Conformed Contract Documents: The contract documents revised to incorporate information included in the proposal for Complete Rehabilitation of SFMTA Streetcar Car No. 1 (Car No. 1) accepted by the City.

Contract (Agreement): The written Contract executed by the City and Contractor, covering the performance of the work and furnishing of labor, materials, equipment, tools, and services, including work incidental to the procurement, to include all Conformed Contract Documents, Contractor's proposal, the Contract Bonds or other security, and all supplemental agreements entered into.

Contract Modification: A written order, issued by the City to Contractor, covering changes in the Contract documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes.

Contractor: The Proposer to whom award is made.

Controller: Controller of the City.

Days: Unless otherwise designated, the word "days" refers to working days of the City.

Engineer: The SFMTA Engineer assigned to the Contract or designated agent.

SFMTA: The San Francisco Municipal Transportation Agency, an agency of the City with responsibility for the Municipal Railway Department and the Department of Parking and Traffic.

Muni: The San Francisco Municipal Railway, the public transit system of the City under the supervision and control of the San Francisco Municipal Transportation Agency.

Notice To Proceed: A written notice to the Contractor of the date on which it shall begin prosecution of the work to be done under the contract.

Project Manager: The Project Manager assigned to the Contract for the SFMTA of the City, or designated agent.

Proposal: The technical and management information and prices submitted by Contractor in response to the Request for Proposals.

Request for Proposals; RFP: The Request for Proposals issued by the SFMTA on July 08, 2008 for rehabilitation of Car No. 1.

Subcontractor: Any individual, partnership, firm, or corporation, which undertakes integrally on the Project the partial or total design, manufacture, or performance of one or more items of work under the terms of the contract. As used herein, the terms subcontractor and supplier are synonymous.

Technical Specifications: The specifications, provisions, and requirements that detail the work and the materials, products (including the methods of manufacture, construction, assembly, and testing), and other requirements relative thereto.

Work: The furnishing of all labor, supervision, services, products, materials, machinery, equipment, tools, supplies, and facilities and the performance of all requirements called for by the Contract and necessary to the completion thereof.

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

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

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

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

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

2. Term of the Agreement

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

3. Effective Date of Agreement

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

4. Services Contractor Agrees to Perform

The scope of this Agreement covers the rehabilitation of SFMTA Car No. 1. The Contractor agrees to perform the services provided for in Volume II of the Contract, "Technical Specifications," and in the Contractor's Proposal, according to the Project Delivery Schedule set forth in Exhibit A.

5. Compensation

In no event shall the amount of this Agreement exceed One Million, Eight Hundred Eighty-Three Thousand, One Hundred Ninety-Three Dollars (\$1,883,193). The breakdown of costs associated with this Agreement appears in the Price Schedule (Exhibit B-1), incorporated by reference as though fully set forth herein.

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

In no event shall City be liable for interest or late charges for any late payments. City will not make price adjustments to this Contract to protect Contractor from economic inflation.

6. Guaranteed Maximum Costs

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

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

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

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

7. Payment; Invoice Format

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

Progress payments shall be made by the City to Contractor at the address specified in the section entitled "Notices to the Parties." Progress payments shall be made as set forth in the Payment Schedule (Exhibit B-2).

8. Submitting False Claims; Monetary Penalties

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

9. Disallowance

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

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

10. Taxes

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

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

(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.

11. Payment Does Not Imply Acceptance of Work

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

12. Qualified Personnel

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

13. Responsibility for Equipment

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

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

Payment of Taxes and Other Expenses

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

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

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

under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance; Bonds Insurance

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

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

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

(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) Garage keepers' legal liability insurance, comprehensive form, with limits not less than \$1,000,000 each occurrence.

(v) The shipping contractor shall carry, at a minimum, physical damage insurance (including destruction, damage, fire and theft) in the amount of not less than \$1,000,000 and commercial liability insurance in the amount of not less than \$1,000,000.

(b) Commercial General Liability, Business Automobile Liability Insurance, Garagekeepers' Legal Liability and Shippers Coverage policies must provide the following:

(i) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees, and must include coverage for bodily injury and property damage.

(ii) That such policies are primary insurance to any other insurance available to the Additional Insured, 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. Policies shall contain the following endorsements: a waiver of subrogation and severability of interest.

(c) All policies shall provide 30 days' advance written notice to City of cancellation mailed to the following address:

San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor.
San Francisco, CA 94103
Attn: Ms. Trinh Nguyen
Contract No. : 583-02 (CCO 08-1016)

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

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

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

(g) Before commencing any operations under this Agreement, Contractor shall do the following: (a) furnish to City certificates of insurance, and additional insured policy endorsements with insurers with ratings comparable to A-, -VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverage's set forth above, and (b) furnish complete copies of policies promptly upon City request.

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

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

Bonds

(j) Within 20 days following the receipt of a notice of recommended award of contract and until completion of all Contract obligations and acceptance by City of the final remanufactured PCC, the Contractor shall furnish to City a performance bond and a labor and materials bond, each in the amount not less than 50% of the total Contract amount as modified by all Contract Modifications, to guarantee Contractor's faithful performance of all obligations of the Contract and to guarantee Contractor's payment to all suppliers of labor and materials under this Contract, excluding the period covered by the warranty bond described in Subsection (b) below. Contractor may provide a letter of credit in lieu of Performance Bond, and or Labor and Material Bonds.

(k) From acceptance by City of the Car No. 1, and throughout the warranty period of the vehicle (including paint/corrosion) of Car No. 1, Contractor shall supply a maintenance or warranty bond or irrevocable letter of credit in the amount of \$250,000 to guarantee Contractor's warranty of performance of Car No. 1 and all spare parts.

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

(m) During the period covered by the Agreement, if any of the sureties upon the bond shall become insolvent or, in the opinion of SFMTA, unable to pay promptly the

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

16. Indemnification

General Indemnity. To the fullest extent permitted by law, Contractor shall assume the defense of, indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnities"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subcontractors) 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 Contractor and subcontractor to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

Limitations

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

(b) Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnity or the Contractors of any Indemnity.

(c) Contractor'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.

Intellectual Property Infringement. Contractor shall also indemnify, defend and hold harmless all Indemnities 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 Contractor's services under this Agreement.

17. Incidental and Consequential Damages

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

18. Liability of City

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

19. Liquidated Damages

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in the Project Delivery Schedule (Exhibit A), City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the amounts listed below for each day of delay beyond scheduled milestones and timelines are not a penalty, but are a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by SFMTA.

Failure to deliver Car No. 1 by the times stated in Exhibit A	\$300 per vehicle per day
Failure to deliver all other Project deliverables	\$300 per day

20. Default; Remedies

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

- (a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57 or 58.
- (b) 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.
- (c) Contractor (i) is generally not paying its debts as they become due, (ii) 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, (iii) makes an assignment for the benefit of its creditors, (iv) 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 (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) 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, (ii) 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 (iii) ordering the dissolution, winding-up or liquidation of Contractor.

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 Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

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

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

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

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

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

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

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

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

Non-Recoverable Costs. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection 21.3. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection 21.3.

Deductions. In arriving at the amount due to Contractor under this Section, City may deduct: (a) all payments previously made by City for work or other services covered by Contractor's final invoice; (b) any claim which City may have against Contractor in connection with this Agreement; (c) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (21.4); and (d) 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.

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

22. Rights and Duties Upon Termination or Expiration

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

Contractor Duties. Subject to the immediately preceding subsection 22.1, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work

in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

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

24. Proprietary or Confidential Information of City

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

25. Notices to the Parties

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

To City: San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor.
San Francisco, CA 94103
Attn: Ms. Trinh Nguyen
Contract No. : 583-02 (CCO 08-1016)
Phone: (415) 701-4602
Fax: (415) 701-5328

To Contractor: Brookville Equipment Corporation
175 Evans Street
Brookville, PA 15825
Attn: Mr. Andrew Cable
Phone: (814) 849-6046
Fax: (814) 849-5229

Any notice of default must be sent by registered mail.

26. Ownership of Results

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

27. Works for Hire

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

28. Audits and Inspection of Records

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

29. Subcontracting

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

30. Assignment

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

31. Non-Waiver of Rights

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

32. Earned Income Credit (EIC) Forms

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

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

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

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

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. Claims

Contractor shall not be entitled to the payment of any additional compensation for any action, or failure to act, by the Engineer, including failure or refusal to issue a Contract Modification or for the happening of any event, thing, occurrence, or other cause, unless Contractor shall have given the Engineer due written notice of potential claim.

The written notice of potential claim shall set forth the reasons for which Contractor believes additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. The said notice as above required must

have been given to the Engineer prior to the time that Contractor shall have performed the work giving rise to the potential claim for additional compensation, or in all other cases, within 15 days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.

It is the intention of this Section that differences between the parties arising under and by virtue of the Contract be brought to the attention of the Engineer at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly be taken. Contractor hereby agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written notice of potential claim as herein required was filed.

34. Nondiscrimination; Penalties 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.

Subcontracts

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

Nondiscrimination in Benefits

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

Condition to Contract

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

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) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

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

36. Tropical Hardwoods and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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

38. Resource Conservation

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

39. Compliance with Americans with Disabilities Act

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

40. Sunshine Ordinance

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

41. Public Access to Meetings and Records

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

42. Notification of Limitations on Contributions

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

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

43. Requiring Minimum Compensation for Covered Employees

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.

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.

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 reputedly presumed to be retaliation prohibited by the MCO.

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.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

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.

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.

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.

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

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

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.

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:

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

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

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

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

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

(f) Set the term of the requirements.

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

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

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

Hiring Decisions

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

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.

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:

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

(k) 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;

(l) 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.

(m) 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;

(n) 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:

(i) 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

(ii) 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;

(iii) 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

(iv) 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.

Subcontracts

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

46. Prohibition on Political Activity with City Funds

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

47. Preservative-treated Wood Containing Arsenic

As of July 1, 2003, 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, chromate copper arsenate preservative, ammonia cal copper zinc arsenate preservative, or ammonia cal

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

48. Modification of Agreement

Modification in Writing. 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. Contractor shall cooperate with the SFMTA to submit to the Contract Compliance Office any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

Extra Work. The City may order changes in the work under this Agreement and may order extra materials and extra work in connection with the performance of the Agreement, and the Contractor shall promptly comply with such orders, except that:

(a) If changes ordered in design, workmanship, services, or materials are of such a nature as to increase or decrease the cost, or the time required to execute the change in scope of work, the City shall make a reasonable and proper adjustment in the contract price, delivery schedule, or both as agreed upon by the Contractor and the City as the reasonable and proper allowance for the increase or decrease required.

(b) No order for any alteration, modification, or extra that will increase or decrease the cost of the work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the Project Manager. No oral statement of any person whatsoever shall in any manner or degree modify or otherwise affect the terms of this contract, which include the requirements of the Technical Specifications.

49. Authority of Engineer

The Engineer shall decide all questions, which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions, which may arise as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. In discharging the responsibilities outlined above, the Engineer shall at all times act fairly and reasonably. Any appeal of the Engineer's decisions shall be in accordance with the provisions of Section 56 of this Agreement. As with any claim, change, extra or additional work, Contractor shall be paid in accordance with the payment provisions of this Contract when the dispute is finally resolved.

Should any questions arise as to the meaning and intent of the Contract, the matter shall be referred to the Engineer, who, with input from SFMTA staff and from the Contractor, shall

decide the true meaning and intent of the Contract. The Engineer's decision in this regard shall be administratively final and conclusive.

50. Agreement Made in California; Venue

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

51. Construction

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

52. Entire Agreement

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

53. Compliance with Laws

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

54. Services Provided by Attorneys

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

55. Disputes

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

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 Contract Consultant mails or otherwise furnishes a written appeal to the Chief Operating Officer, or his/her designee. In connection with such an appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Chief Operating Officer shall be administratively final and conclusive. This section applies to all disputes unless a specific provision of this Agreement provides that the Engineer's decision as to a particular dispute is final.

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 Engineer.

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

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 subconsultants stop work due to an unresolved dispute.

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.

56. Severability

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

57. Protection of Private Information

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

58. Graffiti Removal

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

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

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

59. Food Service Waste Reduction Requirements

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.

60. Time of Essence

Time is of the essence in this Agreement.

**61. Technical Specifications
Fabrication**

Car No. 1 shall be rehabilitated and guaranteed in accordance with the "Technical Specifications," Volume 2 of the Agreement and Contractor's Proposal.

Omission

Notwithstanding the Technical Specifications or other data provided by the Engineer, the Contractor shall have the responsibility of supplying all parts and details required to make the car complete and ready for service even though such details may not be specifically mentioned in the specifications. Items that are installed by SFMTA shall not be the responsibility of the Contractor unless they are included in this contract or should have been installed by the Contractor. If additional repairs are needed to make Car No. 1 complete and ready for service beyond what is in the specifications, these repairs will be handled by change orders through a Contract Modification, as approved by SFMTA and the SFMTA Board.

Priority

In the event of any deviation between the description of the scope of work in the Technical Specifications and in the Contractor's Proposal, the Technical Specifications shall govern.

Design Review

Prior to completion of car rehabilitation, the Contractor and the Engineer shall agree to the specific details of the rehabilitation. These details may include, but not be limited to, items such as: engineering and design details, test plans and procedures, appropriate training, sub-

suppliers equipment, colors, wording, and placement of numbers and signs. In cases where consensus cannot be reached, the opinion of the Engineer as to design details shall be administratively final unless clearly arbitrary or capricious. Disputes regarding cost and other matters shall be subject to the provisions of Sections 33 and 55. When plans, drawings, requests for information, procedures or other contract deliverables are submitted to SFMTA for approval and/or comments, the Contractor shall delineate any deviations from the Contract specifications in such deliverables. SFMTA shall approve, disapprove and/or comment on such deliverables within 30 days after receipt. However, no extension of time will be allowed for review of submittals that have been disapproved. Such disapproved submittals shall be resubmitted and will be reviewed and returned within 30 days after subsequent receipt. Neither review nor approval of any plans, drawings, procedures, other contract deliverables or the materials supplied under this contract shall in any way relieve the Contractor of its obligations to perform work under the provision of this Contract.

Preliminary Drawings

Preliminary drawings shall provide enough detail to conduct preliminary engineering evaluations of structural, electrical, mechanical, and other subsystems. Drawings shall show the general arrangement of equipment layout and subsystems and such detail as is necessary to give a comprehensive idea of the product contemplated.

Materials/Accessories Responsibility

The Contractor shall be responsible for all materials and workmanship in the construction of the coach and all accessories used, whether the same are manufactured by the Contractor or purchased from a subcontractor. This provision excludes equipment leased or supplied by SFMTA, except insofar as such equipment is damaged by the failure of a part or component for which the Contractor is responsible, or except insofar as the damage to such equipment is caused by the Contractor during the manufacture of the vehicle.

62. Project Planning, Scheduling and Control

Introduction

This Section specifies the requirements for project planning, scheduling and progress reporting to be performed by the Contractor in conjunction with the Contract work. Critical Path Method scheduling (CPM) shall be employed by the Contractor for planning, scheduling and reporting all work required by the Contract Documents.

Scheduling Terms

(a) **Baseline Schedule:** The detailed CPM schedule, prepared by the Contractor, indicating the Contractor's plan for executing the Contract work. This schedule shall include the Contractor's logic network drawings, all schedule network reports and all schedule resource reports. The Baseline Schedule shall conform to all requirements of the Contract Documents. The Baseline Schedule shall be revised as necessary to incorporate approved Contract modifications. The Contractor's performance or other avoidable delays shall not be considered justification for Baseline Schedule revision.

(b) Current Schedule: The updated logic network and supporting reports indicating actual progress to date and forecasted logic and progress for the remaining work. The update will be, at a minimum, to the same level of detail as the Baseline Schedule.

(c) Supplemental Schedule(s): Detailed schedules prepared by the Contractor, at the request of the Engineer, to substantiate proposed Contractor changes that may have a schedule impact.

(d) Summary Level Bar Chart: A summary level bar chart schedule encompassing the entire Contract and indicating all Contract required milestones or Contractor identified milestone events.

(e) Monthly Plan and Reports: A detailed plan of the work, in bar-chart format, to be accomplished in the coming weeks. Relationships between the Monthly Plan and Current Schedule activities shall be identified. Contractor shall provide SFMTA with daily project and production status and schedule reports by E-mail. Contractor shall also provide monthly and quarterly schedule reports in Microsoft Project and Power Point, or SFMTA-approved equivalents, and per SFMTA Engineer requirements for reporting to funding agencies.

(f) As-Built Schedule: The resulting schedule incorporating all actual activity durations, milestone completions and Contract extensions as accomplished or incurred during the Contract duration. The Contractor shall submit this As-Built Schedule to the City at the completion of the Contract work.

(g) Work Day: Any day except Saturdays, Sundays, City and U.S. legal holidays. If multiple shifts per day or extended hours (more than eight hours per shift) are scheduled, this is to be noted with the particular scheduled activities to which this applies.

(h) Use of Float: Float identified in the baseline, or Current Schedule is jointly owned by the City and the Contractor. Its use must be approved in the scheduling update process.

Descriptions of Submittals

(i) Baseline Schedule: The Contractor shall submit a Baseline Schedule and shall include the following aspects:

(i) The program logic, to be initially reviewed and approved by SFMTA prior to Initial Design Review.

(ii) The costs and resources, as required, attributable to each activity of the accepted Baseline Schedule. Costs shall be allocated by bid item and shall match bid amounts.

(iii) All activities related to major subsystems for Car No. 1.

The schedule documents, reports, lists, computer software with documentation and computer diskettes and E-mail files are required with each submittal. The Baseline Schedule shall be developed using Microsoft Project Software or approved equal. The Baseline Schedule shall be submitted within 30 days from NTP or by the first design review meeting, whichever comes first.

(j) Management Work Plan: Contractor shall submit a Management Work Plan within thirty (30) days after NTP. The Management Work Plan shall include protocols, procedures, and assignments of responsibility for key personnel and correspondence forms for all phases of the contract and all project activities for the duration of the contract. Once the Management Work Plan is approved, key personnel shall not be substituted without approval from the SFMTA. If the Contractor plans to substitute key personnel, a 30-day advance notice,

and qualification of new personnel shall be required. At the request of the SFMTA, or when approved changes are made, the Contractor's Management Work Plan shall be updated to include the latest revision to the project scope or other changes in project circumstances.

Early Completion Schedule

The Contractor may submit a schedule, which contains completion dates in advance of the dates specified in this Contract. The City may reject the schedule and require the Contractor to furnish a schedule indicating completion by the end of the originally scheduled Contract period. The City shall not be liable for damages, loss of profit, or any additional compensation as a result of such rejection.

Process Review Meetings

(k) On dates mutually agreed upon by the City and the Contractor, Schedule and Progress Review meetings will be held. The City, the Contractor, and if necessary, the appropriate subcontractors, shall attend the meetings. During the Schedule and Progress Review meetings, the Contractor's schedule submission will be discussed and revised by the Contractor as necessary. The City may require the Contractor to modify any portions of the schedule because of "behind schedule" activities. The marked-up schedule documents from this meeting will serve as the Current Schedule until the Contractor incorporates the change in the computer program and produces the updated Current Schedule. City participation in the schedule review process shall not relieve the Contractor from the required milestone completion dates of the Baseline Schedule in effect.

(l) **Schedule Monitoring and Progress Reporting:** At monthly intervals, and at other times at the request of the City, the Contractor shall update the prior month's Current Schedule indicating progress during the reporting period, the latest schedule status, any approved Contract modifications and any proposed logic changes. The schedule update shall be prepared concurrently with, and be an integral part of, progress evaluation and reporting.

Modifications to the Schedule

When requested by the Engineer, the Contractor shall submit supplemental schedules to the Engineer to substantiate proposed Contract changes that may have an impact on the schedule. Contractor shall submit such schedules to the Engineer for review and approval within three (3) working days from the request; otherwise, any proposed Contract change will not be considered by the City.

On approval of a Contract modification by the City, the approved change will be incorporated in the Baseline Schedule during the monthly update process.

63. Assumption of Risk of Loss

Prior to acceptance of Car No. 1, the Contractor shall bear risk of loss of the car, including any damage sustained during transportation to the delivery site or during acceptance testing. The City shall assume risk of loss of the car only after acceptance.

64. FTA Requirements

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

65. SBE Requirements

Consultant shall comply with the SBE provisions contained in Exhibit D, 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.

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

CITY

Municipal Transportation Agency

Nathaniel P. Ford, Sr.
Executive Director/CEO

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Robin M. Reitzes
Deputy City Attorney

Municipal Transportation Agency
Board of Directors

Resolution No. _____

Dated: _____

By _____
Roberta Boomer, Secretary
SFMTA Board of Directors

Exhibits:

- Exhibit A: Project Delivery Schedule
- Exhibit B-1: Price Schedule
- Exhibit B-2: Payment Schedule
- Exhibit C: FTA Requirements For Personal Services And Procurement Contracts
- Exhibit D: SBE Requirements

CONTRACTOR

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.

Andrew Cable
V.P. of Special Projects
175 Evans Street
Brookville, PA 15825

City vendor number: 65901

EXHIBIT A

PROJECT DELIVERY SCHEDULE

Base Contract:

1. The rehabilitated Car No. 1 shall be delivered and ready for acceptance testing within 365 calendar days from the date of SFMTA's Notice to Proceed to the Contractor.
2. SFMTA will test this car for a period not to exceed 1,000 miles or 60 days, whichever comes first.
3. All other Project deliverables are due to SFMTA no later than 1 month after Car No. 1 is delivered, including spare parts, training materials, documents, etc.

Deliveries:

All deliveries to SFMTA shall be to an SFMTA-specified Historic Streetcar facility, weekday working hours, Monday through Friday, 9 a.m. – 3 p.m., except SFMTA holidays, or as otherwise specified in writing by SFMTA. Contractor shall provide at least 48 hours notice to SFMTA prior to delivery.

EXHIBIT B -1

PRICE SCHEDULE

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Price Total</u>
1.	Complete Rehabilitation of Car No. 1 including Site Support & and Warranty, (all sales taxes included)		\$1,743,693
2.	Spare parts (TBD): Not to Exceed including shipping costs		\$100,000
3.	Shipment of Car No. 1		\$39,500
TOTAL BASE CONTRACT PRICE			\$
(All Applicable Tax should be included)			<u>\$1,883,193</u>

EXHIBIT B -2

PAYMENT SCHEDULE

Completion of all carbody rehabilitation and successful inspection	20% of the amount of Line Item 1 above
Completion of carbody painting	15% of the amount of Line Item 1 above
Completion of all vehicle rehabilitation and successful inspection	25% of the amount of Line Item 1 above
Successful completion of all vehicle acceptance testing at SFMTA above	35% of the amount of Line Item 1
Final acceptance of contract	5% of Line Item 1
Spare Parts	95% of Line Item 2 upon delivery and acceptance; 5% at final acceptance of contract
Shipping	95% of Line Item 3 upon delivery and acceptance of car by SFMTA in San Francisco; 5% on final acceptance of contract

NOTE: Payment for the rehabilitation of Car No. 1 will not be made until completion of listed items on this payment schedule, proper receipt of an invoice requesting payment, and acceptable completion of all contract terms.

EXHIBIT C

FTA REQUIREMENTS FOR FEDERALLY FUNDED PERSONAL SERVICES AND PROCUREMENT CONTRACTS

I. DEFINITIONS

- A. **Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- B. **Contractor** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.
- C. **Cooperative Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.
- D. **Federal Transit Administration (FTA)** is an operating administration of the U.S. DOT.
- E. **FTA Directive** includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.
- F. **Grant Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.
- G. **Government** means the United States of America and any executive department or agency thereof.
- H. **Project** means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.
- I. **Recipient** means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.
- J. **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.

- K. Third Party Contract** means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.
- L. Third Party Subcontract** means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.
- M. U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

II. FEDERAL CHANGES

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

III. ACCESS TO RECORDS

- A.** The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- B.** The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C.** The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

IV. DEBARMENT AND SUSPENSION

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

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

- A.** The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and

shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

- B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VI. CIVIL RIGHTS

- A. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:
 - 1. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - 2. **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 - 3. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees

that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

VII. PATENT RIGHTS (*applicable to contracts for experimental, research, or development projects financed by fta*)

- A. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.
- B. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

VIII. RIGHTS IN DATA AND COPYRIGHTS (*applicable to contracts for planning, research, or development financed by fta*)

- A. **Definition.** The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- B. **Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.

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

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

Any subject data developed under this Agreement, whether or not a copyright has been obtained; and

Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.

3. **FTA Intention.** When FTA awards Federal assistance for a experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City’s use the costs of which are financed with Federal transportation funds for capital projects.

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

5. **Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
 6. **Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.
 7. **Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- C. **Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- D. **Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- IX. **Contract Work Hours and Safety Standards** (*applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)
- A. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
 - B. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.

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

X. ENERGY CONSERVATION REQUIREMENTS

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

XI. CLEAN WATER REQUIREMENTS *(applicable to all contracts in excess of \$100,000)*

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

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

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

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

XIII. PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

XIV. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

XVII. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR

661.7, and include microcomputer equipment, software, and small purchases (\$100,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

XVIII. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

XIX. RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

XX. BUS TESTING *(applies to contracts for rolling stock)*

To the extent applicable, the Contractor (or Manufacturer) agrees to comply with the requirements of 49 U.S.C. § 5323(c) and FTA implementing regulations at 49 CFR Part 665, and shall perform the following:

- A. A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the Recipient at a point in the procurement process specified by the Recipient which will be prior to the Recipient's final acceptance of the first vehicle.
- B. A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
- C. If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the Recipient prior to Recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the

change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

- D. If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

XXI. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS (*applies to contracts for rolling stock*)

To the extent applicable, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(l) and FTA implementing regulations at 49 CFR Part 663, and to submit the following certifications:

- A. **Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.
- B. **Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.
- C. **Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XXII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the

Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

XXIII. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

XXIV. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, 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.

XXV. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS *(applicable to each contract for transit operations performed by employees of a contractor recognized by fta to be a transit operator)*

- A. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:
 - 1. **General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees

employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

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

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

B. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

APPENDIX D

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

SBE REQUIREMENTS

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

I. POLICY

The San Francisco Municipal Transportation Agency (SFMTA), recipient of federal financial assistance from the Federal Transit Administration (FTA), is committed to and has adopted, a Small Business Enterprise (SBE) Program to implement the Disadvantaged Business Enterprise regulations in 49 C.F.R. Part 26 (the "Regulations"), issued by the Department of Transportation (DOT).

It is the policy of the SFMTA to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which SBEs can compete fairly for contracts and subcontracts relating to SFMTA's construction, procurement and professional services activities. To this end, SFMTA has developed procedures to remove barriers to SBE participation in the bidding and award process and to assist SBEs to develop and compete successfully outside of the SBE program. In connection with the performance of this contract, the Contractor will cooperate with SFMTA in meeting these commitments and objectives.

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or Subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate.

A. Applicability

Pursuant to 49 C.F.R. Sections 26.3 and 26.21, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement an SBE Program in accordance with the Regulations. The Regulations are incorporated into this Program as though fully set forth herein. This Program applies to all SFMTA contracts that are funded, in whole or in part, by DOT federal financial assistance.

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 C.F.R. 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 SFMTA is responsible for adherence to this policy. The Director of the SFMTA Contract Compliance Office (CCO) shall be responsible for the development, implementation and monitoring of this program. It is the expectation of the Municipal Transportation Board of Directors and the Executive Director/CEO that all SFMTA personnel shall adhere to the provisions and the spirit of this program.

D. Prohibited Discrimination

SFMTA shall 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 basis of (the fact or perception of a person's) race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

SFMTA shall 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 C.F.R. Section 26.13.

II. DEFINITIONS

Any terms used in SFMTA's SBE Program that are defined in 49 C.F.R. Section 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. An SBE is defined as follows:

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 and is certified under any of the following programs: the State of California's Small Business Program with the Department of General Services, the California Unified Certification Program with a U.S. Department of Transportation recipient, or the City and County of San Francisco's LBE program with the Human Rights Commission.

III. SBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

A. SBE Participation Goal

A goal of 3% SBE participation has been established for this contract. This SBE goal will apply to the following types of contracts or scope of work in the contract: Construction – Building, Heavy; Construction-Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection, Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering services (to include professional and technical 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. Determining the Amount of SBE Participation

The SFMTA strongly encourages the prime contractor to make every good faith effort to include SBEs to perform meaningful work in all aspects of the projects. To

accomplish this goal, the following guidance is provided:

1. SBE Participation

SBE participation includes contracts (other than employee contracts) with SBEs for any goods or services specifically required for the completion of the work under the Agreement. An SBE may participate as a prime contractor/consultant, subcontractor/consultant, joint venture partner with a prime or consultant, vendor of material or supplies incorporated or expended in the work, or a supplier of other services such as shipping, transportation, testing, equipment rental, insurance services and other support services necessary to fulfill the requirements of the Agreement.

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

SBE participation includes that portion of the contract work actually performed by a certified SBE with its own forces. An SBE may participate as a prime contractor, subcontractor, joint venture partner, or vendor or supplier of materials or services required by the contract.

An SBE's participation can only be counted if it is performing a commercially useful function.. An SBE is performing a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the SBE is not responsible for at least 30% of the work with its own forces, or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function.

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 work in dollars and the percentage of the total contract bid price. The Contractor shall also determine the total amount of SBE participation for the entire contract. The Contractor shall count SBE participation according to the following guidelines:

a. SBE Prime Contractor

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 Contractor.

b. SBE Subcontractor

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 Contractor) and reasonable fees and commissions charged for the services. Do not count any work subcontracted by an SBE subcontractor to another firm as SBE participation by said SBE subcontractor. 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 (except regular dealers of bulk items such as petroleum, cement and gravel who own and operate distribution equipment in lieu of maintaining a place 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.

C. Submission of Certification for SBEs

All firms wishing to work for the City and County of San Francisco must be certified as bona fide SBEs with the SFMTA. This requires submission of the completed certification applications for either SBEs, DBEs, or LBEs. For information where to obtain applications for these certifications, please contact the SFMTA Contract Compliance at:

San Francisco Municipal Transportation Agency
Contract Compliance Office
One South Van Ness Avenue
San Francisco, California 94103
(415) 701-4362

D. Prompt Payment to Subcontractors

In accordance with SFMTA's SBE Program, no later than thirty (3) days from the date of Contractor's receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors 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.

IV. MONITORING AND COMPLIANCE

A. SBE Records; Reporting Requirements

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

B. Noncompliance; Administrative Remedies

SFMTA will implement appropriate mechanisms to ensure that its prime contractors and subcontractors comply with SBE Program regulatory requirements. SFMTA will apply legal and contractual remedies available under federal, state and local law.

SFMTA will also include a monitoring and enforcement mechanism to verify that the work committed to SBEs at contract award is actually performed by the SBEs. This mechanism will provide for a running tally of actual SBE attainments and include a provision ensuring that SBE participation is credited toward overall or contract goals only when payments are actually made to SBE firms.

**Complete Rehabilitation
of
SFMTA Streetcar Car No. 1 (Car No. 1)**

CONTRACT No. 583-02
(CCO No. 08-1016)

Volume 2
Technical Specifications

Table of Contents:

1.	General:	3
2.	Streetcar Disassembly	9
3.	Carbody	10
4.	Operator's Area	15
5.	Lighting	20
6.	Auxiliary Electrical	21
7.	Propulsion Power	22
8.	Miscellaneous	24
9.	Trucks	24
10.	Air Supply and Air Applied Friction Brakes	27
11.	Management	28
12.	Material and Workmanship	29
13.	Acceptance of Streetcars	29
14.	Warranties	31

TECHNICAL SPECIFICATION

1. General:

The SFMTA streetcar No. 1 is equipped with cam controllers and air-applied friction brakes. A substantial portion of the streetcar is made from wood. The roof is canvas covered wood.

This specification describes the rehabilitate of streetcar No. 1.

The Contractor shall be fully aware of the historical nature of the vehicle and note that it is the SFMTA's intent to preserve the design and integrity of the original interior and exterior to the greatest extent possible. For example, if slotted brass screws or hot rivets were originally used, then they should be used again or a substitute fastener if it closely resembles the original.

The SFMTA will hold the Contractor responsible for any damage to historic Streetcar components caused during the Contractor's possession of the Streetcar.

1.1. Deliverables

In addition to remanufacturing the Streetcars, the Contractor shall be required to submit a series of documents. These documents are known as Deliverables. All Deliverables listed in this Technical Specification are to be submitted to the Engineer for approval on letter-sized sheets. Drawings and schematics can be provided on larger sheets if necessary for readability. Each deliverable will be accompanied with a cover letter on the Contractor's letter-head and assigned a unique tracking number. **On time submittal of the deliverable is of the utmost importance since the work or subsequent work associated with each Deliverable shall not begin until the Engineer has approved the Deliverable.**

1.2. Technical Data Package (TDP):

Copies of all of the non-recurring deliverables are to be collected into a single package called the Technical Data Package. A hard copy set is to be provided in three ring binders and is to be delivered upon SFMTA's acceptance of the last car. In addition, each TDP deliverable is to be digitally converted into an Adobe Portable Document Format PDF file. Every six months starting after the Notice to Proceed, the Contractor will provide a write-once compact disc recorded with all of the TDP deliverables up to that point and a final CD after vehicle delivery with all the as-built information. A listing of all the deliverables included in the TDP is shown in table 2.

Table 2: TDP Deliverables	Page
Management Plan	5
Production Plan	5
As-Built Drawings	5
Bill of Materials	6
Vendor Data	6
Maintenance Instructions	6
Manufacturing/Repair Procedures	7
Quality Control Plan	7
Test and Commisioning Plan	7

State and Federal Requirements	8
Disassembly Plan	9
Carbody Repair Plan	10
Primer Materials	10
Carbody Repair Plan	11
Destination Signs	13
Advertising Frames	13
Glass Etching	13
Decorative Glass	14
Anti-Graffiti Shield	14
Air Horn	14
Gong	15
Operator's Seat	15
Separation Panel	15
Fare Box Plate	15
Windshield Wipers	15
Lighting System Design	21
LVPS Design	21
Battery Specifications	22
Battery Box Design	22
Propulsion Power Plan	23
Tow Bar	24
Truck Repair Plan	24
Axle Bearing Design	26
Truck Rebuild Plan	26
Air Compressor Plan	27
Braking System	28
Sander System Mod	28
Circuit Test	29
Water Tightness Test	29
Alternate Parts	29
Acceptance Test	30
Acceptance Report	30

1.3. Car History Book (CHB)

Deliverables that are associated with the build history of the Streetcar will first be approved by the Engineer and then stored in a Car History Book (CHB). The Contractor will provide a CHB in two formats: the first a hard copy in a 3 ring binder, the second digitally scanned in PDF and burned onto a write once compact disc. The CHB is to be delivered at the point of SFMTA's final acceptance of the Streetcar. A summary of all the deliverables to be included in the CHB is shown in table 3.

Table 3 CHB Deliverables	Page
Procedures Sign Off Sheets	7
Quality Control Reports	7
Test and Commissioning Reports	7
Pre-Shipment Inspection	8
Disassembly Report	9
Subassembly Report	9

Carbody Inspection and Repair Report	10
Particular Carbody Repairs	11
Carbody Inspection Report	11
Lighting System Test	21
Motor Build Records	23
Propulsion Test	23
Truck Inspection Report	24
Hub Pressing Pressure Report	26
Braking System Test	28
Sander System Test	28
Water Tightness Results	29
Salvageable Parts	29

1.3.1. Management Plan

The Contractor shall provide a management plan describing the Contractor's project team organization listing the personnel responsible for the project's completion, their individual areas of responsibility, their qualifications, and their contact information. As the personnel resources change during the life of the project, the contractor will provide an updated management plan.

TDP DELIVERABLE: Management Plan

1.3.2. Production Plan with Schedule:

The Contractor shall provide a detailed Production Plan with Schedule. The plan shall list all non-recurring tasks such as engineering, planning, procurement, and facilities preparation. For each Streetcar the plan shall list the manufacturing procedures, quality control inspections, and test and commissioning tasks.

The plan shall include a schedule showing the planned start and finish dates for each task. The schedule shall be provided in the form of a Gantt chart. If at any time during the life of the project, the Contractor determines the planned schedule is not accurate, then the Contractor shall immediately provide SFMTA with an updated schedule.

TDP DELIVERABLE: Production Plan

1.3.3. As-Built Drawings

The TDP shall include as-built detail and assembly drawings for all modifications the Contractor performs on the Streetcars. The drawings will be assigned unique drawing numbers and arranged in a top-down tree structure with each assembly drawing having a parts list listing the appropriate sub-assemblies, detail drawings and all other components necessary to complete the assembly. Each item in the parts list shall have a unique name and part number. If an original manufacturer's part number exists, then that number shall be used, otherwise a new number shall be assigned.

Contact information for the relevant sub-suppliers or part manufacturers will be provided in the Notes section of each drawing.

Any additional information necessary to complete the manufacture of the part or assembly such as materials, machined tolerances, shaft sizes, bolt torque values, lubrication requirements, wire size/specification, etc. will be included in the Notes

section of the drawings.

All designs, to the greatest extent possible, must retain the original vintage style of the Streetcar. New components visible to the public shall appear; to the greatest extent possible, as if from the original design of the Streetcar.

The Contractor shall make no changes to the Streetcar which extends the dynamic envelope in any direction.

TDP DELIVERABLE: As-Built Drawings

1.3.4. Streetcar Bill of Materials (BOM):

The TDP shall include an indented as-built BOM listing all components installed or reinstalled on the Streetcars with a unique name, part number and quantity. The BOM shall be provided in hard copy and a digital copy in Microsoft Excel format. The BOM shall match and include the items in the as-built assembly drawings. The BOM will also include all components reinstalled on the Streetcar and all new components not included in the as-built drawings.

The components of subassemblies shall also be included in the BOM; however, at a lower indenture level than the top level and only new non-identical components need be included at these lower levels. For example, if the Contractor out-sources the overhaul of a major subassembly to a subcontractor, then the subcontractor shall provide a BOM of non-original components installed on the subassembly. The Contractor will then incorporate the subassembly's BOM into the overall Streetcar BOM.

The BOM should resemble an itemized parts catalogue in its final organization.

TDP DELIVERABLE: Bill of Materials

1.3.5. Component Vendor's Data:

The Contractor shall provide sub-suppliers' component and materials MSDS sheets, catalog cuts, spec sheets, vendor drawings, etc sufficient that the SFMTA will be able to properly use and maintain the component.

TDP DELIVERABLE: Component Vendor's Data:

1.3.6. Instructions and Training for Maintenance and Operations:

For any modification from the original Streetcar or part substitution to the Streetcar performed by the Contractor or sub-contractor that requires periodic maintenance or special repair procedures, the Contractor shall provide detailed maintenance instructions in the TDP sufficient that the components can be properly maintained by the SFMTA. In addition, a training course (with written material) for new systems shall be provided per SFMTA approval.

For any modification that requires the Streetcar be operated in any way different from the original Streetcar, the Contractor shall provide Operating Instructions pertaining to the modification.

TDP DELIVERABLE: Maintenance Instructions

1.3.7. Manufacturing/Repair Procedures and Sign Off Sheets:

The Contractor shall provide manufacturing/repair procedures for any special repair procedures, such as roof replacement or hot riveting. These shall be the same procedures as supplied to the Contractor's work crew. The procedures shall describe in detail the steps required to rehabilitate the Streetcar. If the Contractor out-sources out the rehabilitate of any major subassembly to a sub-contractor, then the Contractor shall also require the sub-contractor to provide manufacturing procedures.

Special processes for repair of the Carbody are to be described in especially thorough detail, describing any special tools that will be used: such as ultrasound, dye penetrant, welding equipment, welding materials, Welder's certifications, industry welding practices used, etc.

The Contractor shall provide sign off sheets for each of the procedures. As each of the procedures is completed for each Streetcar, the Contractor shall sign and date the sign off sheet confirming the work has been completed.

TDP DELIVERABLE: Manufacturing/Repair Procedures

CHB DELIVERABLE: Manufacturing/Repair Sign Off Sheets

1.3.8. Quality Control Plan and Reports:

The Contractor shall provide a Quality Control Plan to be approved by the Engineer. The plan shall describe the Contractor's quality control processes, material review procedures, and quality Control inspection and test processes.

The plan shall allow the Engineer to perform his/her own inspections at any time during the manufacturing process to verify the work is being performed in accordance with the Technical Specification.

The plan shall include inspection points in which the work up to that point is inspected and determined to meet the Quality Control criteria or is otherwise dispositioned by the Material Review Board before any additional work shall continue.

As each Quality Control Inspection is completed, the Contractor shall provide a signed and dated report documenting the results of the inspection

TDP DELIVERABLE: Quality Control Plan (QCP)

CHB DELIVERABLE: Quality Control Reports (QCP)

1.3.9. Test and Commissioning Plan and Reports:

The Contractor shall provide a plan to test and commission the rehabilitated Streetcar. The plan shall include procedures to verify if each of the Streetcar's rehabilitated systems meets the performance requirements of the Technical Specification.

The Contractor shall provide reports documenting the results of each test and commissioning procedure for the Streetcar. The Contractor shall sign and date each test report upon completion.

The Contractor shall weigh the completed vehicle and document the weight in the Test and Commissioning Report.

The Contractor shall be responsible to provide an approved test procedure and a witness for the AW3 brake rate testing. All necessary test equipment including supplying and loading/unloading ballast for AW3 testing shall be provided by the SFMTA. At the discretion of the Engineer, the AW3 brake rate may be calculated by testing the vehicle at AW0 and calculating the AW3 brake rate based on the AW0 brake rate.

The testing shall include a roof waterproofing test that takes into consideration the construction of the vehicle and does not saturate the vehicle with water.

TDP DELIVERABLE: Test and Commission Plan
CHB DELIVERABLE: Test and Commissioning Reports

1.3.10. State and Federal Requirements:

In addition to the requirements of the Technical Specification, the Contractor shall make the Streetcars compliant with the following State and Federal regulations:
California Public Utilities Commission (CPUC) General Order 143-B: Safety Rules and Regulations Governing Light Rail Traffic, Title 8: Special Provisions for Historical Streetcars.

<http://www.cpuc.ca.gov/published/Graphics/598.PDF>

Code of Federal Regulations (CFR) Title 49, Part 38: Americans With Disabilities Act (ADA) Accessibility Specifications For Transportation Vehicles.

http://www.access.gpo.gov/nara/cfr/waisidx_03/49cfr38_03.html

The Contractor shall submit a plan describing how the Streetcars will be made compliant with these requirements.

TDP DELIVERABLE: State and Federal Requirements Plan

1.3.11. Other Deliverables

In addition to the Deliverables list in this chapter, other Deliverables are listed throughout the Technical Specification.

1.4. SFMTA Furnished Drawings, Schematics, and Documents

Copies of Streetcar related drawings, schematics and documents from SFMTA's archives will be made available to the Contractor. They are to be used for reference purposes only and do not necessarily reflect the current or final configuration of the Streetcar being rehabilitated.

1.5. Shipment & Possession

1.5.1. Contractor Taking Possession of the Streetcar

The Contractor shall take possession of the Streetcar from SFMTA's facility in San Francisco, California.

1.5.2. Pre-Shipment Inspection and Inventory

The Contractor shall conduct a pre-shipment inspection and inventory to determine the condition and completeness of the Streetcar prior to the Streetcar being loaded onto the transport vehicle for shipment to the Contractor's facility. The Contractor shall prepare an inspection and inventory report and include it in the CHB. The Contractor shall be responsible for all damage to the Streetcar and missing parts not listed on the report.

CHB DELIVERABLE: Pre-Shipment Inspection and Inventory Report

1.5.3. Streetcar Shipment

The Contractor is responsible for all shipments of the Streetcar from the point the contractor takes possession of the Streetcar at SFMTA's facility to the point of which SFMTA accepts the rehabilitated Streetcar after return to SFMTA's facility. The Contractor shall also provide shipping to SFMTA for all spare parts. The Contractor shall be responsible for shipping all SFMTA provided parts to his location. The Contractor is responsible for all damage or missing parts that occurs during the shipments.

The Contractor shall pick up and deliver the streetcar between the hours 9:00am and 2:00pm, unless requested by or approved by the Engineer. The pick up or delivery location is 2301 San Jose Ave, San Francisco or other San Francisco location if designated by the Engineer. The Contractor shall provide at least 24 hours notice of pick up and only during business hours.

2. Streetcar Disassembly

The Streetcar and all subassemblies shall be completely disassembled, removing all items not welded or riveted to the carbody. If a towbar pin chain is welded to the carbody, it too must be removed. Items removed from the carbody that are to be reused are to be cleaned, tagged and stored in a location dedicated to this project.

Parts that can be repaired and reused are to be removed with great care as to not cause damage.

2.1. Disassembly Plan:

The Contractor shall provide a Streetcar disassembly plan. This plan shall describe how the removed items are to be inspected, tagged, cataloged and stored or whether they will be disposed of or returned to SFMTA. Item tags will list the Streetcar the item was removed from, the date removed, and the part number. The plan will describe the storage area sufficiently so a particular item removed from a Streetcar can be located and inspected.

Again, the Contractor is to be aware of the historical value of the streetcar's components and handle them accordingly.

TDP DELIVERABLE: Disassembly Plan

2.2. Disassembly Report:

The Streetcar will have a disassembly report, cataloging the items removed from the Streetcar and showing the item's storage location or whether the item was disposed of.

CHB DELIVERABLE: Disassembly Report.

2.3. Hazardous materials:

The contractor shall remove all Hazardous materials from the Streetcar and dispose of them in accordance with all applicable laws, Federal and State regulations.

2.4. Subassembly Inspection:

At the end of the disassembly process for each Streetcar, the Contractor will perform a detailed inspection of the subassemblies that are to be reused and provide a Subassembly Inspection Report.

CHB DELIVERABLE: Subassembly Inspection Report.: A Subassembly Inspection Report is to be included in the Car History Book.

2.5. Deferred Work:

If during any of the disassembly inspection processes, it is determined and agreed to by both parties that a particular task doesn't need to be performed due to the good condition of the component, then the Contractor will credit back the SFMTA the monetary value of the task as agreed to by both parties.

3. Carbody

Steel structure damaged by accident, corrosion, or previous repair is to be repaired or replaced such that the original structural integrity of the streetcar is retained. Damaged body skins are to be repaired or replaced. Plastic body filler thickness not to exceed 1/8" inch.

All rotted or damaged wood framing is to be replaced with clear, air-dried, knot free oak or ash. Wood joints are to be mortise and tenon or other strong joint if approved by the engineer. All wood used is to be dry oak or ash per National Hardwood Lumber Association FAS grade or similar if approved by the Engineer.

Air vents are to be repaired or replaced as needed and painted. Splash guards are to be replaced.

Historically, the roof was a one-piece sheet of #8 duck canvas (no slices or joints), wetted, stretched, and shrunk prior to securing to the carbody. Then secured with copper nails and painted with three coats of an elastomeric black paint. The Contractor is to recommend to the SFMTA if other materials with longer service lives but with the same look are available. The Contractor is to then replace the roof with the original type canvas, copper nails and elastomeric paint or the new materials if agreed to by the SFMTA.

TDP DELIVERABLE: Carbody Repair & Paint Plan

3.1. Cleaning, Gritblasting, and Primer Coating

The carbody, including any removed metal components that are either to be reused or used as templates, are to be cleaned and gritblasted down to the clean bare metal such that no paint, dirt, grease, or rust exists anywhere throughout. Care shall be taken during the gritblasting process to minimize warping of the carbody panels.

The Contractor shall primer the carbody, interior and exterior, and components before flash rusting occurs.

The suggested primer materials are:

Chassis: PPG Zinc Rich Primer System no. ZNP101 followed by PPG Corashield no. P7972 underbody protection (protects the Zinc Rich from abrasion and road wear)
All other body panels: PPG Epoxy Primer systems DEP351 or F3950C.

Although these are the suggested primer materials, responsibility for the effectiveness, suitability, and application of the primer materials remains with the Contractor. Primer materials shall be approved by the Engineer.

TDP DELIVERABLE: Primer Materials

3.2. Carbody Inspection and Repair Report.

The Contractor shall inspect the stripped Carbody, also including the sub structure, frame, ducts, channels, splash guards and equipment boxes and provide a report describing each item of damage found. The check off sheet is to be included with the report.

CHB DELIVERABLE: Carbody Inspection and Repair Report.

3.3. Carbody Repair Plan & Procedure

The Contractor shall provide a stand-alone repair plan and procedure to fix the damage or possibly reverse the modifications described in the Initial Carbody Inspection Report. The plan will describe the procedures, list the materials, and reference the applicable engineering documents to refurbish the carbody to the original geometry, sound structural integrity, good sheathing flatness and good general fit and finish. The repair plan will include the addition of any modifications performed by the Contractor. Any applicable engineering analysis or design drawings necessary to show how the repairs will provide the structural integrity of the original Streetcar's design are to be included. General recurring repair procedures can be included in the TDP and then referenced in the CHB. Procedures unique to a particular Streetcar are to be included in the CHB.

TDP DELIVERABLE: Carbody Repair Plan.

CHB DELIVERABLE: Particular Carbody Repairs

3.4. Carbody Repairs

The Contractor will make repairs in accordance with the approved Carbody Repair Plan.

The repaired carbody will be inspected to assure the Carbody Repair Plan has been followed.

CHB DELIVERABLE: Repaired Carbody Inspection Report.

In the CHB, the Contractor shall provide a Repaired Carbody Inspection Report based on the findings of the repaired carbody inspection.

3.5. Stepwells

For Streetcars with stepwells, the Contractor shall repair/replace steps, and stepwell structure and panels to new condition. For streetcars with moving steps, the Contractor shall provide new mechanisms, steps and edging.

3.6. Rear Stepwell

For enclosed Streetcars with a rear stepwell, the Contractor shall provide new rear stepwell(s). The stepwell shall be designed to accommodate a treadle switch. For streetcars with moving rear steps, the Contractor shall provide new mechanisms, steps and edging.

3.7. Anticlimbers

The Contractor shall repair or replace the anticlimbers as necessary to regain the original form fit and function.

3.8. Prime and Paint

Each of the SFMTA's historic street cars has it's own multicolored paint scheme for both the interior and exterior. Decals and stripping is also required. The Engineer shall provide the paint scheme to the Contractor.

All exterior metal components like life-guards, retrievers, pantograph gates, etc... are to be stripped to the bare metal, repaired, primed and painted gloss black unless specified by the Engineer.

The Contractor shall prime the entire Streetcar carbody throughout. The underfloor area shall be painted and inside of equipment boxes are to be painted white. The following paint materials are to be used:

- PPG DPU174 High Solids Polyurethane Primer
- PPG NCP280 2.1 VOC Primer Surfacer
- PPG Delta DUHS Basecoat/Clearcoat

Paint shall be applied per the manufacturer's instructions. The carbody finish shall be glossy and free of flaws, runs, sags or orange peel texture.

The Contractor shall provide a steel sample coupon, prepared and painted identical to and along with the carbody to be used for a paint adhesion test. The coupon shall pass an adhesion test to be included in the Carbody Repair Plan and Car History Book.

3.9. Subfloor

The Contractor shall install a new subfloor. The subfloor shall be made from 3/4 inch marine grade plywood. Marine grade plywood must meet the Engineered Wood Association APA 3/4" Marine Grade standard.

Panel edges shall be epoxy sealed. Tapping plates shall be incorporated into the floor system design to allow mounting of the seat pedestals. All floor panel joints shall be ship-lapped and be made on a supporting member and a flexible, polyurethane sealant/adhesive equivalent to Sikaflex 221 shall be applied between joints of the panels. The floor panels shall be attached to the carbody structure using stainless steel flat head countersunk fasteners. The entire floor is to be smoothed with an epoxy patching compound.

Any water drainage camber built into the original floor design will remain intact.

3.10. Floor Covering

Flooring is to be replaced with gray or black RCA rubber, smooth under the seats, ribbed in the aisle way. The Engineer will provide the Contractor whether the flooring is gray or black.

The Contractor shall provide floor covering in the aisle way. It will be black RCA Transit-Flor 3/16" thick Double Grooved Ribbed Transit Flooring with the ribs running lengthwise. The floor covering will be bonded to the subfloor with RCA epoxy adhesive. The step covering will be black RCA Transit-Flor Fiber Reinforced Rubber Step Treads with 22-gauge steel backing and straight ribbed yellow nosing. The floor covering in the area under the seats will be black RCA 1/8" thick Smooth Surface Transit Flooring. The floor covering in the vestibules and at platforms shall be installed at 90 degrees to facilitate easy cleaning. The floor covering shall be installed with RCA floor epoxy.

3.11. Passenger Seats

The Contractor shall renovate all passenger seats. Wooden seat components are to be repaired or duplicated in matching hardwood, stain, and polyurethane coatings. Rattan covered seating is to receive new springs and padding and new "transit weave" rattan.

Metal seat frames shall be inspected, cleaned and stripped, repainted, repaired if necessary and reinstalled. Any missing parts are to be replaced. Seats with sliding seat backs are to receive new bearings and any worn areas of the mechanisms are to be repaired.

3.12. Wheelchair Accommodation and ADA compliance

If the Streetcar is not already equipped for wheelchair accessibility, then the Contractor shall equip the car in a manner similar to SFMTA's other Streetcars. SFMTA is to supply the wheelchair bridge. The Contractor shall supply the bridge cabinet.

3.13. Stanchions

The Contractor shall provide, refurbish, or replace, and install stanchions and hand grips as needed to meet the CPUC requirements. New stanchions shall be designed to match

the historic nature of the Streetcar.

3.14. Interior Panels and Trim

The Contractor shall renew or replace the interior panels, ceiling panels, window trim and air diffusers to new condition. Ceiling panels are to be replaced.

The interior trim is to be carefully marked and removed. If it is in good condition, it is to be stripped of the old varnish or paint, refinished and reinstalled. Trim that is not in salvageable condition is to be replaced with new trim of the same wood type, shaped and finished to match the original trim.

3.15. Destination Signs

The Contractor shall propose to the Engineer for approval to either rebuild or install destination sign mechanisms with new curtains that match the historic nature of the Streetcar. Exterior route signs are to be made new and installed with stainless steel hardware.

TDP DELIVERABLE: Destination Signs

3.16. Advertising Frames

The contractor shall propose to the Engineer for approval and install advertising and public service announcement frames that match the historic nature of the Streetcar.

TDP DELIVERABLE: Advertising Frames

3.17. Glass and Glazing:

The Contractor shall provide all new laminated safety glass per ANSI Z26.1 throughout the Streetcar. Each pane shall be identified so with permanent etching on the inside lower right corner to be approved by the Engineer.

TDP DELIVERABLE: Glass Etching

3.17.1. Windshields and Other Fixed Glass

For the windshields, and other fixed glass, the Contractor shall install all new glass, wood sashes, jambs, and sills. Sash to glass joints are to be sealed. The wood is to be clear mahogany finished to match the original. Joints are to be mortise and tenon or other strong joint if approved by the Engineer. The sizes and profiles of all the wood pieces are to match the original.

New Leather straps are to be installed on the Operator's drop sashes.

Decorative glass is to be reused if in good condition. Damaged or missing decorative glass is to be replaced with similar glass to be approved by the Engineer.

TDP DELIVERABLE: Decorative Glass

3.17.2. Window Sashes

For windows that open, the Contractor shall install all new glass, wood sashes, jambs,

sills, guides and hardware. The wood is to be clear mahogany finished to match the original. Joints are to be mortise and tenon or other strong joint if approved by the Engineer. The sizes and profiles of all the wood pieces are to match the original. Sash to glass joints are to be sealed. Moving windows are to function properly. Guide area of jambs to be painted to match Streetcar exterior. Outer edge of sashes shall be painted to match Streetcar exterior.

3.18. Anti-Graffiti Shield

The Contractor shall provide a clear plastic film protection to minimize etching on the inside of all passenger windows, port hole windows, and rear windows. The contractor shall submit the film and its application to the Engineer for approval.

TDP DELIVERABLE: Anti-Graffiti Shield

3.19. Wiring

All of the existing wiring is to be removed and disposed of in accordance with all applicable rules, laws and regulations.

The Contractor shall install all new wiring throughout the Streetcar. Rockbestos Surprenant Cable Exane wiring or equivalent if approved by the Engineer. Wire sheathing is to meet the fire, smoke and toxicity requirements of NFPA 130. Permanent individually coded wire markers are to be attached to the ends of each wire. Wire markers are to be placed at three inches and eight inches from the wire terminations.

For wiring harnesses running in inaccessible raceways, the Contractor shall install 10% extra wires terminated at the ends of the harnesses.

If possible, the Contractor is to make use of existing raceways and wire channels. Wiring within reach of the crew or passengers is to be enclosed in metal conduit. Exterior conduit is to be watertight. Conduit ends are to have wire strain relief fittings. To the greatest extent possible, undercar wiring is to be enclosed in watertight metal conduit.

3.20. Air Horn

The Contractor shall install an air horn under the car, under each cab, as close to the front as is practical. The Contractor shall demonstrate that the installed horn will produce 85dBA at 100 feet away from the Streetcar. Control of the horn shall be from a floor mounted plunger, painted red. SFMTA streetcar No. 162 shall be used as example of the plunger location and installation. A cut-out valve shall be installed under the Streetcar. The Contractor shall submit the horn system design for the Engineer's approval before installation.

TDP DELIVERABLE: Air Horn

3.21. Air Bell (Gong)

The Contractor shall install a air activated bell under the car, under each cab, as close to the front as is practical. The Contractor shall demonstrate that the installed bell will produce 75dBA at 100 feet away from the Streetcar. Control of the bell shall be from a

floor mounted plunger. SFMTA streetcar No. 162 shall be used as example of the plunger location and installation. A cut-out valve shall be installed under the Streetcar. The Contractor shall submit the bell system design for the Engineer's approval before installation.

TDP DELIVERABLE: Gong

4. Operator's Area

4.1. Operator's Seat

The Operator's seats are to be refurbished to new condition or replaced with new seat. A new seat shall be approved by the Engineer.

TDP DELIVERABLE: Operator's Seat

4.2. Separation Panel and Vestibule bulkheads

Streetcars with vestibules are to have the outside of the bulkheads refinished to match the Streetcar's interior paint scheme. The Engineer will provide the paint scheme to the Contractor. The bulkhead doors are to be refurbished to open, close, and lock properly. Bulkhead glass is to be met the fixed glass requirements. The doors shall always be unlocked for inside operation.

Streetcars without vestibules are to have a separation panel between the back of the Operator's seat and the passenger compartment. Existing separation panels or shades can be refurbished and reused if approved by the Engineer.

TDP DELIVERABLE: Separation Panel

4.3. Fare Collection

The Contractor shall provide and install farebox mounting plates and any necessary under-floor reinforcement. The mounting plate installation will match those of SFMTA's other Streetcars to the greatest extent possible and is to be approved by the Engineer. Mounting plate drawing shall be furnished by the Engineer.

The Contractor shall install a 12 VDC power circuit from the 12 VDC output of the LVPS and any necessary conduit for the fareboxes. There will be approximately three feet of free wire at the farebox location that is to be looped off and secured.

TDP DELIVERABLE: Fare Box Plate

4.4. Windshield Wipers

The Contractor shall refurbish or install new windshield wiper mechanisms. The Contractor is responsible to assure the wipers work correctly. If the Streetcar did not originally have wipers, the Contractor shall design and install a new wiper system with a blade for the center windshield pane. The wiper installation design shall follow the period design of the vehicle to the greatest extent possible. Design to be approved by the Engineer.

TDP DELIVERABLE: Windshiled Wipers

4.5. TransLink®

The Contractor shall install all wiring for the installation of the TransLink® equipment. TransLink® equipment consists of a Drivers Display unit mounted in the Operator's area and Card Readers mounted on stanchions located near each right side front door. Two sets of equipment are required for the double ended cars. The Engineer shall supply the wiring information. The TransLink® system will be connected to the 24V bus. The free length of wire at the end shall be looped, tied off and inaccessible to the passengers.

4.6. Radio And Public Announcement System (PA)

4.6.1. Contractor Supplied Items (two sets required for double-ended cars)

The Contractor shall supply the following items:

- * Motorola Syntor Radio Cable TKN-8127B
- * Motorola Alarm Cable TKN8130A
- * Motorola Filter Tray Cable 30-5827T01
- * Motorola Power Filter TLN5277B
- * Motorola 15Amp Fuse Holder 0984277B01
- * Motorola 15Amp Fuse 6500136969
- * Motorola EA Switch 40-8260M03
- * Motorola Transmitter/Receiver Radome Antenna RRA4739A
- * Radio Engineering 25" Microphone 480117BK
- * Radio Engineering Transit PA Amplifier 700168
- * Atlas Sound Loudspeaker Assembly APF-15 & L20-100 & BX-3A
- * 3 Amp Circuit Breaker, for the VETAG
- * DPDT Switch for the PA
- * Aluminum ground plane, 14" x 13"

The Contractor shall also provide any number of various brackets, hardware, connectors, or lengths of stranded oil/grease/abrasion resistant wire that are necessary to complete the installation.

4.6.2. SFMTA Supplied Items

SFMTA will supply and install the following:

- * Motorola Mobile Data Terminal T1941 (includes handset, speaker, mounting tray and Terminal head).
- * Motorola Transmitter/Receiver T34RTA
- * Power blocks and terminal strip

4.6.3. Radio Installation Detail

In each cab, the Contractor shall install all of the Contractor supplied components listed above except the Power Filter, Motorola 15 amp fuse and 15 amp fuse holder, which will be installed by SFMTA. The Contractor will install the balance of the components necessary to complete the installation.

The Contractor shall provide a watertight locking Radio Compartment vertically mounted to the wall on the right side of the Operator's area for mounting the Transmitter/Receiver, power blocks and terminal strip. The Contractor shall install threaded inserts to mount the equipment. The radio system shall only be active at the operating end. Final design details for radio switching scheme, mounting provisions, compartments, and wiring shall require approval by the Engineer.

The Contractor shall be responsible for the routing of all cables. To the maximum extent possible, the cables shall be hidden from view. If visible, they shall be enclosed in conduit. All undercar cabling shall be protected in waterproof conduit. The ends of all cables shall be labeled. All free lengths of wire shall have a 12" diameter slack loop at both ends. Fixed length cables shall split any extra length evenly between the two ends. The Contractor shall provide mounting provision and watertight locking box for the radio terminal head and handset on the interior panel to the left of the Operator and below the window. The Contractor shall install threaded inserts to mount the Terminal head. The Filter Tray Cable shall run from the Terminal head location into the Radio compartment with the white connector towards the Terminal head. The Syntor Radio Cable shall run from the Terminal head location into the Radio Compartment with the blue/white connector towards the Terminal head.

The Data Terminal speaker shall be mounted on the Operator console between the gang switch and the windshield. Two 16 AWG wires shall run from the speaker to the Terminal head location.

The PA microphone shall be mounted on the left corner of the Operator's console. SFMTA will install the handset. The Contractor shall install the PA microphone and threaded inserts for the mounting of the handset. Two 16 AWG-shielded wires shall run from the microphone through the gang switch and to the audio input of the PA amplifier. The Contractor shall install a Low Voltage Power Supply (LVPS) in the underseat compartment as shown in the equipment layout diagram. The PA amplifier shall be mounted in the cabinet below the Operator's console. The LVPS shall provide power to the Motorola Transmitter/Receiver, the PA amplifier, Next Bus GPS system, Headlights and the Farebox.

Shielded 14 AWG positive (red) negative (black) and ground (white) wires for the Farebox shall run under the floor and extend 36" into the cab beyond the Farebox mounting location. The wires shall be terminated with an AMP connector to be designated by the Engineer.

12 AWG positive (red) and ground (black) wires for the Transmitter/Receiver shall run to the Radio Cabinet.

16 AWG positive (red) and ground (black) wires shall run to the PA amplifier.

The DPDT switch for the PA shall be mounted on the console and labeled "Interior," "Exterior," and "Both."

16 AWG wire shall connect the audio output side of the PA amplifier through the DPDT switch to the PA speakers and exterior loudspeaker.

A waterproof exterior PA loudspeaker shall be installed hidden outside the car near the front door. Design to be approved by the Engineer.

The emergency call pushbutton (EA switch) shall be mounted to the underside of the Operator's console or on the outside of the radio equipment compartment. The Alarm Cable shall be routed from the EA switch to the Terminal Head with the black/white connector towards the Terminal head.

The Radome Antenna shall be mounted on the roof of the Streetcar between the roof shroud and the front trolley pole. An aluminum ground plane size 14" x 13" is required. Design to be approved by the Engineer. The antenna should be installed in the center of the ground plane. A drawing of the antenna base is shown below. The RG58AU coaxial cable that comes with the antenna shall be snaked through the ceiling to the radio compartment. A removable cover on the ceiling shall provide access to the antenna.

The Contractor shall demonstrate that the PA functions properly, that there is power at the Transmitter/Receiver, and that there is power at the fare box mounting location.

4.7. Next Bus Equipment

The Contractor shall locate an adequate location in each cab for the installation of Next Bus equipment when the cars are returned to SFMTA. The contractor shall route low voltage power leads to the Next Bus mounting locations. SFMTA will provide a drawing of Next Bus equipment installation requirements. The Next Bus system will be connected to a 12VDC output from the LVPS .

4.8. Vetag, Remote Switch Operation

In each cab, the Contractor shall provide and install the following Vecom/Peek Industries VETAG system components for remote operation of track switches and other possible future applications.

HP2 Transponders & Connector Assy	28836221-02
Cable XPDR – CCB	28826213-01
Cable CCB Input	28816192-02
TWC Code Control Box	28846134

The equipment for each car shall include two variable-code transponders, code control boxes, and multi-conductor connecting cables. A transponder shall be mounted according to the manufacturer's instructions under each cab, and shall be accessible and removable from under the car. The Transponders shall be connected via multi-conductor cable to the code control boxes to be mounted conveniently for the Operator's use. The receiver coils shall be mounted from the car body approximately 10 inches above the rail on the centerline of the car and in front of each truck.

The VETAG equipment will be connected to the 24VDC bus and protected by a 3 Amp circuit breaker.

4.9. Storage Locker

The Contractor shall design and install a locking storage locker for use by the Operator. If possible, the locker shall accommodate approximately 2 cubic feet. Lock information to be provided by the Engineer.

4.10. Front Destination Sign

The front destination sign shall be a roller curtain type with a modern manual crank mechanism. The messages, font, and style of the existing destination sign scroll shall be duplicated.

4.11. Doors and Gates

The pantograph gates are to be refurbished or replaced with new mechanisms. Interior wood doors are to be rebuilt and refurbished.

4.12. Grab Handles

Leather grab handles are to be replaced with leather replicas.

5. Lighting

5.1. Interior Lighting

The 600VDC lighting system is to be replaced with a 24VDC system. The original light fixtures are to be cleaned, repaired, re-socketed for standard Edison bases, and reused whenever possible. Replacement fixtures if required are to be approved by the Engineer. Broken parts are to be replaced with original equipment whenever possible. Fixtures shall be reinstalled using new lamps, new heat resistant fiber seals, and new stainless steel fasteners. All lighting modifications shall be approved by the Engineer. The light bulbs to be used are Philips 28V 50W rough service bulbs, or equivalent.

5.1.1. Operator's Overhead Light

The Contractor shall provide a new ceiling mounted light fixture to illuminate the operator's controls. The fixture shall be the same as the new fare box light and shall meet the same requirements. A switch shall be conveniently located near the Operator's controls.

5.2. Exterior Lights

All Exterior lighting fixtures shall be refurbished or replaced. Exterior lighting fixtures shall be waterproof. All exterior lights shall operate from the 24 VDC power supply. All new and refurbished fixtures shall be installed using new lamps, new seals, and new stainless steel fasteners.

5.2.1. Headlight

The Contractor shall rebuild the headlight assemblies with a new reflector and fitted with a standard 12V halogen automobile headlight bulb. The headlight shall be powered by a 12 VDC output of the LVPS. The headlight fixture shall be modified to meet the

requirements of CPUC General Order 143. Modification shall be approved by the Engineer.

5.2.2. Tail and Stop Lights

The Contractor shall refurbish the existing tail light assemblies:

If necessary, the tail light shall be modified to meet the requirements of CPUC General Order 143. The tail lights shall be on when the opposite headlight is on.

If not already equipped, the Tail Light assembly and Streetcar shall be modified to also function as a Stop Light. A light, discernibly brighter than the tail light will come on whenever the brakes are applied.

5.2.3. Marker Lights

The Contractor shall install Marker Lights in the lower corners of the Streetcar. The lights shall switch between red and amber depending on the direction of the Streetcar. They shall be selected from standard types suitable for use on trucks, light rail vehicles, or buses using LED bulbs.

5.3. Emergency Lighting

Emergency lighting shall consist of at least three interior lamps at the vehicle ends, and at least two interior lamps within the middle section of the vehicle. A timing relay shall be installed to allow these lamps to be illuminated for one hour upon loss of the 600VDC overhead line.

5.4. Lighting System Test

The Contractor shall perform testing to verify the lighting system works as specified.

TDP DELIVERABLE: Lighting System design

CHB DELIVERABLE: Light System Test Report

6. Auxiliary Electrical

6.1. Low Voltage Power Supply (LVPS)

The Contractor shall install a solid state IGBT converter to provide low voltage power to the vehicle's subsystems. The Contractor shall install the LVPS under the passenger seating similar to the installation in SFMTA car No. 162 (see diagram). The LVPS shall be adequately ventilated. The LVPS shall convert the 600 VDC input into three output voltages: 120 VDC, 24 VDC, and 12 VDC.

The 120 VDC shall be used for the control of the propulsion relays. The 24 VDC is used as the main low voltage output (lighting, doors, windshield wiper, etc) and to keep the batteries charged. The 12 VDC is for the radio, PA, Vetag, NextBus, TransLink®, fare collection, and headlight loads.

The Contractor shall size the LVPS such that output power is 150% of the calculated peak combined loads. The LVPS shall be protected against dead short conditions, starting inrush currents, and have a input line filter for protection from the unregulated voltage

transient swings in the overhead line power supply.

The Contractor shall propose the LVPS design to the Engineer before installation including an LVPS load analysis of normal and emergency connected loads.

TDP DELIVERABLE: LVPS Design

6.2. Trolley Poles

The Contractor shall install all new original style forward and back-up trolley poles and base assemblies including bases, poles, hooks, trolley boards, cleats, standoffs, braces, and hardware. If original style trolley pole assemblies are not available, then the existing assemblies shall be rebuilt with new springs, new pins and bushings, and all new hardware. All hardware including standoffs, braces, hook, etc shall be stainless steel. All trolley boards and cleats shall be red oak. All wooden parts shall be painted with Pittsburgh Paint's 6-9 Exterior Oil Wood Primer and Pittsburgh Paint's 6-9 Exterior Oil Wood Primer and 7-809 Safety Black high gloss paint.

A new power cable and conduit shall connect the front trolley pole to the rear trolley pole power cable. The Contractor shall provide a design for the cable routing to the Engineer for approval.

The Contractor shall provide a safety harness lanyard on the trolley pole boards, per California OSHA standards.

6.3. Catchers

A new catcher, rope and mounting plate shall be installed on each end of the car in a location to be approved by the Engineer. The Contractor is to propose the catcher for Engineer's approval.

6.4. Storage Batteries

The Contractor shall remove the existing vehicle battery and install a new NiCad nominal 24 VDC battery. Technical specifications shall be provided to the Engineer for approval prior to final selection.

The batteries shall be protected against overcharging, overheating, and deep discharge with an automatic trip of the battery circuit breaker. The battery circuit breaker shall be approved by the Engineer prior to selection.

The status of the 24V bus voltage shall be provided by a voltmeter at the cab console. The contractor shall propose options for an analog and a digital voltmeter. The Contractor shall provide for equal charging of the batteries by the

The Contractor shall propose a method for keeping the battery charged under conditions of very low voltage and high auxiliary loading.

TDP DELIVERABLE: Battery Charging & Specifications

6.5. Battery Box

The batteries shall be installed inside the vehicle underneath the passenger seats as shown on the layout diagram. The batteries shall be placed on top of a rolling tray to allow for easy removal, servicing and replacement. The tray and batteries shall have a locking device that prevent movement during a sudden stop or when going around a turn.

TDP DELIVERABLE: Battery Box Design

6.6. Lightning Arrestor

Contractor shall replace the lightning arrestors with a new weather proof unit of the similar design and appearance. An appropriate approved ground connection shall be provided. If the old lightning arrestors are found to contain PCB, the lightning arrestors shall be disposed using proper handling and disposal procedures for PCB materials.

7. Propulsion Power

7.1. Cam Controllers

The Contractor shall rebuild the cam controllers with new wiring, contacts, springs, insulation, arc shoots and bearings. All asbestos shall be removed and disposed in accordance with relevant laws and regulations. Equipment covers shall be cleaned, painted black and shall have new water seals installed. The rebuilt propulsion system shall perform like new.

7.2. Overhead Circuit breaker

The Contractor shall rebuild the overhead circuit breaker with new parts, hardware, shunts, fuse, stationary and moveable contacts. Over load coil shall be replaced with new coil. Old coil if found to be serviceable, to be returned to MUNI.

7.3. Reverser

The Contractor shall clean the reverser of all old oil and lubricant. The Contractor shall install all new contacts (both stationary and moveable, new hardware, new lubrication. Electric coils shall be replaced with new ones. New gaskets, seals and valves. New bearings shall be installed. Manual "emergency" reverser to be rebuilt, new cables, springs, rods to be cleaned and checked for cracks, and manual reverser to be tested for function. New wiring, contacts, springs, insulation, arc shoots and bearings.

7.4. Switch group

The Contractor shall clean the switch group all old oil and lubricant. The Contractor shall install all new contacts both stationary and moveable, arc horns, new hardware, and new lubrication. Electric coils shall be replaced with new. New gaskets, seals and shall be replaced. All new arc shoots and other shielding to be made with new materials. All new wiring, contacts, springs, insulation, arc shoots and bearings.

7.5. Traction Motors

The Contractor shall overhaul the traction motors: The armature, main field and interpole coils are to be rewound and vacuum pressure impregnated. All coils and windings shall use fused kapton insulation or equivalent winding insulation if approved by the Engineer.

All commutators shall be replaced with new components. Motor shafts are to be replaced with new unless agreed to by the Engineer that the existing shafts are in satisfactory condition. The armature core laminations shall be inspected and tested with a core loss tester for burnt and damaged laminations. The core is to be restacked as needed. All brushes and brush holders are to be replaced. Traction motor bearings shall be replaced with new bearings on all traction motors. Bearing shall be installed, lubricated and adjusted. Salvageable coils, windings, commutators and brush holders shall be returned to Muni. The motor end bearing seats and matching bearing retainers shall be inspected and repaired as needed.

The Contractor shall test each motor including final shaft Total Indicated Runout (TIR), the commutator TIR and dynamic balance values. Motor build and test records are to be included in the CHB.

CHB DELIVERABLE: Motor Build Records

7.6. Resistors

The Contractor shall replace the resistors with a modern stainless grid. In the case of over current in circuit, the grids are to be sacrificial to the car wiring.

Based on these specifications for the Propulsion Power system, the Contractor shall provide a Propulsion Power rebuild and test plan to the Engineer for approval.

TDP DELIVERABLE: Propulsion Power Rebuild & Test Plan

CHB DELIVERABLE: Propulsion Test Report

8. Miscellaneous

8.1. Tow Bar, Pin, and Bar Storage

The Contractor shall furnish a new tow bar for all cars. The Contractor shall add two strips of reflective tape to the sides of the tow bar. The Contractor shall furnish a new tow bar pin with a handle and chain on each anti-climber. The pin shall be attached to the anti-climber by welding the tether chain to the anti-climber. It shall have a 1/4 "hole in the lower end to allow a hitch pin.

The Contractor shall propose a test of the tow bar for the Engineer's approval. The Contractor shall conduct the test for the engineer's witness.

The Contractor shall install a new storage mount under the car. Design to be approved by the Engineer.

TDP DELIVERABLE: Tow Bar

8.2. Flag holders and Rope Hooks

Missing or damaged flag holders are to be repaired or replaced.

8.3. Life Safety Guard

The contractor shall rebuild and refinish the eclipse fenders and life guards.

9. Trucks

The trucks shall be repaired and overhauled to like new condition:

Truck inspection and repair procedures and acceptance criteria shall be submitted to the Engineer for approval.

TDP DELIVERABLE: Truck Inspection and Repair Plan

CHB DELIVERABLE: Truck Inspection Report

9.1. Inspection and Disassembly

After removal of the truck from the Streetcar and before disassembly is begun, each truck shall be inspected for signs of possible failure, such as oil leak traces suggesting housing cracks.

The trucks shall then be cleaned and completely disassembled. All parts are to be cleaned, tagged, cataloged and inventoried.

9.2. Truck Frames, Bolsters, Swing Arms, Brake Linkages and Brackets:

The truck frame, bolster, swing arm components, wear plates and all the various linkages and brackets are to be thoroughly grit blasted down to the paint free, rust free metal. The components shall be carefully inspected for cracks by magnetic particle, dye penetrant or other nondestructive testing method. These tests shall be performed by technicians certified for their use. All components shall also be inspected for wear or corrosion damage.

An inspection report shall be generated, which shall document the inspection and any defects found and the recommended repairs.

Crack, wear and corrosion repairs shall be performed as described in the repair procedures and re-inspected before paint is applied.

After repairs and final inspection, the components shall be painted with one coat of sealer, one coat of primer and one coat of black finish paint.

9.3. Matching Center Plates, King Pin and Side Bearings (Bearers)

The matching center Plates, king pin assemblies and side bearings are to be cleaned inspected, repaired or replaced and lubricated. King pins are to be renewed.

The Side Bearer bracketry is to be cleaned, inspected, repaired or replaced, and painted black. New shims, bearer plates, rollers and roller bearings are to be installed.

9.4. Gear Assembly

The bull (ring) gear and pinion are to be replaced with new identical spur or helical gears, unless agreed to by the Engineer that the existing gears are in satisfactory condition. Damage to the gear unit housing shall be corrected.

Prior to re-assembly and after any repairs have been completed, the gear unit housings shall be painted on the outside with one coat of sealer, one coat of primer and one coat of

gloss black finish paint.

All oil seals and gaskets shall be replaced with new like items. Gear cases are to be refurbished as necessary to assure there are no oil leaks.

The axle and gear unit shall be re-assembled. New nuts, bolts, lock washers, and locking devices shall be used for re-assembly. Upon re-assembly the ring gear backlash shall be within 0.008" to 0.012". The gear unit shall be run on a test stand to verify proper overhaul and re-assembly and to detect leaks, overheating, noisy operation, etc.

9.5. Axles

New axles shall be furnished. They shall have an exterior finish in accordance with Section 1 of the AAR Wheel and Axle Manual.

Axles shall be made in accordance with AAR Specification M-101.

Each axle shall be ultrasonically inspected per AAR Specification M-101 and magnetic particle inspected following finish machining.

Axles shall be marked in accordance with the AAR Wheel and Axle Manual except that all axles shall also be serialized.

The Bull gear is to be pressed onto the axle to AAR standards.

Non-mating, exposed areas of the axle/hub/tire assembly is to receive one coat of sealer, one coat of primer and one coat of gloss black finish paint.

9.6. Axle Bearings

The Contractor shall provide and install new axle journal bearings. The new journal bearings are to be made of high leaded bearing bronze of an appropriate alloy and are to be Babbitt lined. The new bearings are to be identical to the original bearing to the greatest extent possible. Changes from the original design are to be submitted to the Engineer for approval.

The journal bearing box is to be grit blasted, inspected, repaired as necessary, receive one coat of sealer, one coat of primer and one coat of gloss black finish paint. New oil seals are to be installed. Journal box cover, including spring shall be replaced as needed, and will not leak oil. New journal pads and lubricant shall be installed.

TDP DELIVERABLE: Axle Bearing Design

9.7. Motor Mount and Bearing

The motor mounts are to be cleaned, inspected for cracks, repaired as necessary, and painted black. New springs and hardware are to be installed.

The motor/axle bearings are to be cleaned, inspected, repaired if damaged and rebabbitted. Motor axle bearing caps are to be cleaned and checked for cracks, and

repaired if damaged. The bearings caps shall not leak fluid. New bearing locating pins are to be installed. New hardware shall be installed.

9.8. Wheel and Axle Assemblies

New wheel hubs and bull gears shall be pressed onto the axles. Axle pressing records shall be maintained and provided to SFMTA as part of the CHB. Wheel pressing pressure charts shall show a steadily increasing pressure until the final wheel position is obtained; no fall off in pressure or erratic pressure trace will be acceptable. New AAR compliant tires are to be pressed onto the wheel hubs and machined to the SFMTA profile. Mounting procedures and pressures shall be per the A.A.R. Wheel and Axle Manual.

CHB DELIVERABLE: Hub Pressing Pressure

9.9. Rubber Parts

All rubber parts shall be replaced with new parts of same type, hardness and load-deflection characteristics unless otherwise approved. Substitute rubber parts are to be approved by the Engineer.

9.10. Springs

The springs shall be replaced with new springs of the same type, size and characteristics.

9.11. Truck Reassembly

After all of the individual components have been rehabilitated, modified or replaced according to these specifications, the truck shall be reassembled. Reassembly of the truck shall include installation and assembly of the truck frames, bolster, wheels, axle and gear assembly, springs, traction motors, friction brakes, truck wiring and their associated parts.

New rubber parts shall be used through out the reassembly process. New nuts and bolts, of grade 5 or higher shall be used in reassembling the truck. Any non-standard or special fasteners that are not suitable for reuse shall be replaced with new like items.

The reassembled truck shall be lubricated and completed to a condition that is ready for installation onto a car and operation.

The trucks shall be checked for correct tram of the frame and wheels and adjusted if out of tram.

TDP DELIVERABLE: Truck Rebuild Plan

10. Air Supply and Air Applied Friction Brakes

The Contractor shall rebuild the entire air supply and friction braking systems to new condition. This shall include new air piping, new drain cocks, refurbished or new air tanks, refurbished or new calibrated air gauges, new air valves, cleaned and serviced emergency valves and relay valves, rebuilt air cylinder, new fittings and all new hardware. Brake levers, guides and linkages are to be inspected, renewed, re-bushed and new hardened linkage pins are to be installed. Damaged linkages are to be repaired or replaced. Main brake levers to each truck are to be replaced, as is all knuckle couplings,

and related pins. Hand brake mechanism, rods, rod guides, chains, pawls, dogs, are to be cleaned, repaired, replaced as needed and serviced. Goose neck hand to have a retaining chain installed. Hand brake shall function to CPUC General Order 143.

Automatic slack adjusting device shall be rebuilt and made to function.

10.1. Brake linkages

All brake levers (live and dead levers) including all linkages and anchor points, wear points and or guides are to be renewed, re-bushed and new linkage pins are to be installed. Damaged linkages are to be or replaced. Brake toggles are to be renewed and new wear cups applied. All new hardware shall be installed. Brake pins are to be hardened. New adjusting turn buckles at each truck to be installed.

Brake beams and brake heads are to be made new and shall be fitted to the existing SFMTA brake shoes. New brake shoe keeper pins are to be provided.

10.2. Governor

The Contractor shall clean the compressor governor of all old oil and lubricant. The Contractor shall install all new contacts (both stationary and moveable), new hardware, new lubrication, new gaskets, seals and valves, all new wiring, contacts, springs, insulation, arc shoots and bearings. The cut-in pressure shall be set for 75psi. The cut-out pressure shall be set to 90psi.

10.3. Air Compressor Motor

The air compressor motor is to be rebuilt and documented to the same standard as the traction motors.

10.4. Air Compressor Pump

The Contractor shall completely rebuild the air compressor pump unless an inspection, agreed to be the Engineer, determines that existing damage cannot be repaired. If the compressor cannot be repaired the Contractor shall make a good faith effort to find a suitable compressor of the same make and model. If an equivalent vintage compressor cannot be found, the Contractor shall propose a new compressor to the Engineer for approval.

Final compressor installation whether original or replacement is within the scope of the specification.

TDP DELIVERABLE: Air Compressor Plan

10.5. Air Compressor Filter

The Contractor shall install air compressor filter.

10.6. Brake System testing

The Contractor must show through testing that the Streetcar can meet the requirements of the CPUC, specifically:

”SERVICE BRAKING SYSTEM. Every historical streetcar shall be equipped with a

service braking system adequate to control the movement of and to stop and hold stationary such vehicle in a safe manner under all conditions of loading on any grade on which it is operated.”

“Every historical streetcar shall meet the following maximum stopping distance from an initial speed of 20 miles per hour under all conditions of loading on level, dry, tangent track: Maximum Stopping Distance from the Point of First Operation of the Brake Actuator: 120 feet”

“PARKING BRAKES. Every LRV shall be equipped with parking brakes which can be applied without assistance of any electric, hydraulic, pneumatic, or other form of non-mechanical energy. Such brakes shall be adequate to hold the LRV stationary under all conditions of loading of any grade on which it is operated.”

If the Contractor can show that the braking system was rebuilt to new condition and the Streetcar cannot pass the Stopping Distance test, then the Contractor shall modify the Streetcar such that it will pass the test. Modifications shall be approved by the Engineer. The Contractor shall demonstrate through test that the air supply system can come up to 100psi from 0psi within five minutes and with power off can hold pressure without losing more than one atmosphere for five minutes.

The Contractor shall demonstrate through test that, with the supply air cutoff, the brake cylinder can hold air and keep the brakes applied for five minutes.

TDP DELIVERABLE: Braking System Mod
CHB DELIVERABLE: Braking system and Air Supply Test

10.7. Sander System

The Contractor shall refurbish the sanding system to new condition. The Contractor shall demonstrate that the sanding system works properly. The refurbishing plan and testing of the sander system is to be submitted to the Engineer for approval.

TDP DELIVERABLE: Sander System Mod
CHB DELIVERABLE: Sander System test

11. Management

11.1. The Engineer

Throughout this Specification, the "Engineer" is defined as SFMTA's Project Engineer or assigned representative.

11.2. The Contractor

Throughout this Specification, the "Contractor" is defined as the prime Contractor.

12. Material and Workmanship

12.1. Material responsibility

Unless otherwise denoted, the Contractor shall supply all material and labor necessary to complete this project.

12.2. Test and Troubleshoot

All new, modified, or serviced circuits and electrical components shall be tested to assure proper function. A test plan shall be submitted to the Engineer for approval.

TDP DELIVERABLE: Circuit Test

12.3. Water tightness Test

The Contractor shall propose and conduct a water tightness test subject to the Engineer's approval.

TDP DELIVERABLE: Water Tightness Test Procedure

CHB DELIVERABLE: Water Tightness Results

12.4. Alternate Parts and Materials

All specific parts and materials called out for in this Specification are considered possible components for the Contractor's selection; however, the Contractor is responsible for the design and function of all components whether specifically mentioned or not. The Contractor can use alternates if approved by the Engineer.

TDP DELIVERABLE: Alternate Parts List

12.5. Salvageable Parts

The Engineer shall have the right to review any and all parts removed from the vehicle but not reinstalled. All such parts deemed salvageable by the Engineer shall be cleaned, boxed, and delivered to the Muni by the Contractor.

CHB DELIVERABLE: Salvagable Parts

13. Acceptance of Streetcars

13.1. Delivery Preparation

The Streetcars shall be delivered to SFMTA clean inside and out.

13.2. Procedure

The Contractor shall provide acceptance test procedures for the streetcar. Once the streetcar has been delivered, the SFMTA will conduct the acceptance testing; however, the Contractor is highly encouraged to have representation on-site and to participate in the testing as any failure of the streetcar to pass a test will require the Contractor to respond within 48 hours.

Prior to the final acceptance, the streetcar will undergo a 100 mile burn-in in which any failure will be repaired by the Contractor or the SFMTA if agreed to by the Engineer and the burn-in mileage will restart at zero unless otherwise agreed to by the Engineer.

TDP DELIVERABLE: Acceptance Test Plan

CHB DELIVERABLE: Acceptance Test Report

13.3. Repairs Prior To Acceptance

The Engineer may require the Contractor, or its designated representative, to perform repairs after non-acceptance, or the Contractor may request that the work be done by SFMTA personnel with reimbursement by the Contractor. SFMTA shall be informed in advance of any modifications made to the vehicle during the acceptance period.

13.4. Repairs by Contractor

If the Engineer requires the Contractor to perform repairs after non-acceptance of the Streetcar, the Contractor's representative must begin the repair within 5 working days after receiving notification from the Engineer of failure of acceptance tests.

The Contractor shall provide, at its own expense, all spare parts, tools, and labor required to complete the repairs. At the Engineer's option, the Contractor may be required to remove the Streetcar from SFMTA property while repairs are being affected. The Contractor shall then provide a space to complete the repairs, and shall diligently pursue the repairs.

13.5. Repairs by SFMTA

If the Engineer agrees to a request by the Contractor for SFMTA to perform repairs on a Contractor-owned Streetcar prior to SFMTA acceptance, SFMTA shall correct or repair the defect using parts supplied by the Contractor specifically for this repair. Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this procedure shall be submitted by the Engineer to the Contractor for reimbursement or replacement of parts. The Contractor shall provide forms for these reports.

If the Contractor supplies parts for repairs being performed by SFMTA before acceptance of the Streetcar, these parts shall be shipped prepaid to SFMTA by the Contractor within 10 working days after receipt of the request for said parts. The Contractor may request that defective components covered by this provision be returned to the manufacturing plant. The total cost for supplying such parts and labor shall be paid by the Contractor. SFMTA shall be reimbursed by the Contractor for labor. The amount shall be determined by multiplying the number of man-hours actually required to correct the defect by the current top mechanic's hourly overtime wage rate, which includes fringe benefits and possibly overhead cost, plus the cost of towing the Streetcar if such action was necessary. The use of SFMTA labor will not relieve the Contractor from the responsibility to ensure that repairs are carried out in accordance with proper procedures.

SFMTA shall be reimbursed by the Contractor for defective parts that must be replaced to correct the defect. The reimbursement shall include taxes and shipping where applicable.

14. Warranties

14.1. Definitions

"Acceptance," as used in this Section, means the act of an authorized representative of the Engineer to approve specific services rendered, as partial or complete performance of

the Contract.

"Correction," as used in this Section, means the elimination of a defect.

"Defect," as used in this Section means any condition or characteristic in any Material and/or Equipment or services furnished by the Contractor under the Contract that is not in compliance with the requirements of the Contract.

"Material and/or Equipment," as used in this Section, means the completely rehabilitated Car No. 1 (including all parts and equipment installed in them) and other deliverables furnished by the Contractor under the provisions of the Contract.

14.2. Title

The Contractor covenants and warrants that SFMTA continuously retains good and exclusive title to all vehicles, subcomponents, parts and supplies supplied by SFMTA to the Contractor as part of this Contract, that the Contractor shall not assign or have any lien or mortgage of any type applied against these goods, and that all additions made to the vehicles furnished under the Contract shall vest in SFMTA immediately upon acceptance by SFMTA of such additions. Title to the spare parts to be delivered under this Contract shall vest in the SFMTA immediately upon acceptance by the SFMTA.

14.3. General

The Contractor warrants that all Material and/or Equipment, and installation thereof, meets all requirements and standards set by the Specifications. All Material and/or Equipment shall be repaired /rehabilitated as specified in the Specifications. All new Material and/or Equipment shall be the best of its kind or quality, reasonably fit for its intended use as set forth in the Specifications, and of safe, substantial, and durable construction. All installation shall be performed in a good and workmanlike manner and shall be safe and installed to operate in the manner intended in the Specifications. The Contractor further warrants that any Material and/or Equipment, and installation thereof, shall conform to representations and descriptions, either oral or written, made by the Contractor, and to any literature, sample, or other vehicle information supplied by the Contractor in its Technical Proposal.

14.4. Payment of Suppliers and Subcontractors

The Contractor warrants that all workers, subcontractors and suppliers will be paid by the Contractor prior to the Contractor rendering any invoice to SFMTA for such services, so that at the time SFMTA makes final payment to the Contractor, no part of the performance under the Contract shall be subject to any claim.

14.5. Material and/or Workmanship

In addition to all warranties under or implied by law or required by the Specifications, the Contractor expressly warrants all Material and/or Equipment, including all parts and labor, against any defect in design, material or workmanship that may be discovered by SFMTA within two (2) years from the date of final acceptance of Car No. 1. The Contractor shall make any necessary repairs to and any replacements of all or parts of the Material and/or Equipment, during the warranty period set forth above, at no cost to

SFMTA and to SFMTA 's sole satisfaction. As additional security for these guarantees, the Contractor shall, prior to SFMTA 's release of final payment, furnish separate Maintenance (or Guarantee) Bonds as provided in the Terms and Conditions of the Contract.

14.6. Additional Warranties

1. If the customary standard warranties for the Material and/or Equipment, and installation thereof, exceed the period specified in Section 14.5, such warranties shall run to SFMTA.
2. If separate or additional warranties covering the Material and/or Equipment are furnished by the manufacturer, supplier, or seller of component part or parts of any item of said Material and/or Equipment, SFMTA shall have the right, but not the duty, to benefit from these separate or additional warranties, along with the primary warranties set forth herein above. SFMTA shall look only to Contractor for fulfillment of all warranty requirements expressed and implied by the making of the Contract.
3. The existence of any separate or additional warranties that run to the Contractor from the manufacturer, supplier, or installer of a component part of an item of Material and/or Equipment shall not relieve the Contractor of its obligation to repair or replace any of the Material and/or Equipment on account of faulty design, manufacture or workmanship during the warranty period. SFMTA shall not be required to look to any other party for fulfillment of warranty provisions.
4. If the Contractor becomes aware at any time before acceptance by SFMTA that a defect exists in any Material and/or Equipment or services, the Contractor shall (i) promptly correct the defect and (ii) promptly notify SFMTA, in writing, of the defect.
5. If SFMTA determines that a defect exists in any Material and/or Equipment or services accepted by SFMTA under the Contract, SFMTA shall promptly notify the Contractor of the defect, in writing, within 90 days after discovery of the defect. Upon timely notification of the existence of a defect, or if the Contractor independently discovers a defect in accepted Material and/or Equipment or services, the Contractor shall submit to SFMTA, in writing, within 15 days a recommendation for corrective actions, together with supporting information in sufficient detail for SFMTA to determine what corrective action, if any, shall be undertaken.
6. The Contractor shall promptly comply with any timely written direction from SFMTA to correct or partially correct a defect, at no cost to the SFMTA.
7. The Contractor shall also prepare and furnish to SFMTA data and reports applicable to any correction required under this Section (including revision and updating of all other affected data called for under the Contract) at no cost to the SFMTA.
8. In the event of timely notice of a decision not to correct, or only to partially correct, the Contractor shall submit a technical and cost proposal within fifteen (15) days

to amend the Contract to permit acceptance of the affected Material and/or Equipment or services in accordance with the revised requirement, and an equitable reduction in the Contract Price shall promptly be negotiated by the parties and be reflected in a Change Order to the Contract.

9. Any Material and/or Equipment or parts thereof corrected or furnished in replacement and any services performed shall also be subject to the conditions of this Section to the same extent as the Material and/or Equipment or services initially accepted. The warranty, with respect to these supplies, parts or services, shall be equal in duration to that set above, and shall run from the date of delivery of the corrected or replaced Material and/or Equipment.

10. The Contractor shall not be responsible under this Section for the correction of defects in SFMTA-furnished property, except for defects in installation, unless the Contractor performs, or is obligated to perform, any modifications or other work on such property. In that event, the Contractor shall be responsible for correction of defects that result from the modifications or other work.

11. If SFMTA returns Material and/or Equipment to the Contractor for correction or replacement under this Section, the Contractor shall be liable for transportation charges up to an amount equal to the cost of transportation by the usual commercial method of shipment from the place of delivery specified in the Contract (irrespective of the f.o.b. point or the point of acceptance) to the Contractor's plant and return to the place of delivery specified in the Contract. The Contractor shall also bear the responsibility for the supplies while in transit.

14.7. Remedies Available to SFMTA

1. The rights and remedies of SFMTA provided in this Section shall not be affected in any way by any terms or conditions of the Contract concerning the conclusiveness of inspection and acceptance; and are in addition to and do not limit any rights afforded to SFMTA by any other Section of the Contract.

2. Within 30 days after receipt of the Contractor's recommendations for corrective action and adequate supporting information, SFMTA, at its sole discretion, shall give the Contractor written notice not to correct any defect, or to correct or partially correct any defect within a reasonable time at either Contractor's facility or at a SFMTA provided location, as determined by SFMTA.

3. In no event shall SFMTA be responsible for any extension or delays in the scheduled deliveries or periods of performance under the Contract as a result of the Contractor's obligations to correct defects, nor shall there be any adjustment of the delivery schedule or period of performance as a result of the correction of defects unless provided by a Change Order with adequate consideration to SFMTA.

4. This clause shall not be construed as obligating SFMTA to increase the Contract Price.

5. Any failure or refusal of the Contractor to take corrective action as required by this Section shall be grounds for Termination for cause.

Conceptual Equipment Layout Diagram

Diagram available by contacting the Project Manager

THIS PRINT COVERS CALENDAR ITEM NO. :

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance & Information Technology

BRIEF DESCRIPTION:

Financial stability is of the utmost importance to the San Francisco Municipal Transportation Agency (“SFMTA”) as well as transparency of charges and changes in charges to users of the transportation system. Therefore, it is the SFMTA Board of Directors' desire to implement an Automatic Indexing Implementation Plan (“AIIP”) to increase charges which are not otherwise governed by law beginning Fiscal Year 2011.

SUMMARY:

- On April 15, 2008, the SFMTA Board of Directors approved for Fiscal Year 2011 and going forward, a policy of indexing charges that are not otherwise governed by law and directed the SFMTA to prepare and present an Automatic Indexing Implementation Plan (“AIIP”) for approval by the SFMTA Board of Directors.
- On August 5, 2008, the SFMTA Board of Directors received a presentation which included several models for automatic increases.
- Of the four models presented, the Board approved a blended formula which included a combination of the Bay Area CPI and a cost driver with specific impact to the SFMTA.
- The Board requested that several cost drivers be explored including labor and fuel as well as others. This information was presented to the Board on November 4, 2008.
- On November 4, 2008, the Board agreed that the index should be based on a blended formula, half on the Bay Area CPI and half on changes in SFMTA labor costs, in the two year operating budget as required by the Charter.
- At this meeting, the Board of Directors is asked to formally adopt an Automatic Indexing Implementation Plan (“AIIP”).

ENCLOSURES:

1. Automatic Indexing Implementation Plan (“AIIP”)
2. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION BE RETURNED TO: Sonali Bose, 1 So. Van Ness Ave., 8th flr.

ASSIGNED SFMTAB CALENDAR DATE: _____

Purpose

To establish a more predictable and transparent mechanism for setting charges which are not otherwise governed by law as part of the two-year Operating Budget process required in the Charter.

Goal

Approval of the proposed resolution will support:

- Goal 4 of the SFMTA's Strategic Plan, "Financial Capacity," which is to ensure financial stability and effective resource allocation; and
- Goal 3 of the SFMTA's Strategic Plan, "External Affairs/Community Relations," which is to improve the customer experience, community value and enhance the image of the SFMTA.

Description

In a 2007 November study entitled "*Fare Policy Regarding Regular and/or Inflation related ("Programmed") Price Increases*" by the NYU Wagner Rudin Center for Transportation Policy & Management¹, the following is stated:

This approach, referred to in this report as "programmed fare increases," appears to offer benefits to both transit agencies and their customers. Customers experience smaller fare increases which, though more frequent, are more predictable and therefore more acceptable. Agencies appear to experience less of an impact on ridership and the predictability of these regular increases facilitates capital programs, service improvements, and financial planning [...]

The SFMTA Board discussed the implementation of a similar policy during the FY 2009 and 2010 Operating Budget process and on April 15, 2008, approved, in concept, an Automatic Indexing Implementation Plan ("AIIP") to increase charges which are not otherwise governed by law beginning Fiscal Year 2011 and requested discussion of a formal AIIP at a future Board meeting.

On August 5, 2008, the SFMTA Board discussed four different methodologies for the calculation of the index and agreed to use a Blended Formula in the AIIP. The Blended Formula proposed included a combination of the Bay Area CPI and labor costs, defined as salaries and benefits, as follows:

PAGE 3

¹ <http://wagner.nyu.edu/rudincenter/farepolicy.pdf>

Assume Bay Area CPI = 3.0% and Assume Labor Cost Increase = 3.5% then
Annual Automatic Inflation = $3.0\% \div 2 + 3.5\% \div 2 = 1.50\% + 1.75\% = 3.25\%$

The rationale for proposing the use of labor costs in the formula was based on the following: 1) over 60% of operating costs are labor; 2) the floor for labor increases for operators is set by the City Charter and tied to the average of the two highest operator wage schedules for comparable transit agencies in the country; 3) the SFMTA has the authority to negotiate and approve labor agreements; 4) labor costs are the least volatile of all the expenditure line items; and 5) it is an expenditure line item with the most information available during the budget process.

At the August 5, 2008 meeting, the Board requested that several cost drivers be explored including labor and fuel as well as others. This information was presented to the Board on November 4, 2008.

On November 4, 2008, the Board agreed that the index should be based on the Blended Formula as proposed on August 5, 2008, and requested an AIP for implementation in Fiscal Year 2011 be presented at a future Board meeting for approval.

The Blended Formula shall be applied to transit fares, parking citations, parking garage rates, and all other charges consistent with applicable law and any statutory maximums. Any applicable increase shall round up to the nearest \$0.25, \$0.50 or \$1.00 depending on the base charge and the rounding impact does not result in more than a 10% increase.

To the extent that application of the AIP results in an increase in transit fares, such an increase must be submitted to the San Francisco Board of Supervisors as part of the SFMTA's budget or as a budget amendment pursuant to Charter section 8A.108(a).

Alternatives Considered

The SFMTA Board considered various methodologies and cost drivers as discussed above.

Funding Impact

No funds required to approve the AIP but approval will result in stability of funding sources for the Operating Budget beginning in FY 2011.

Recommendation

Based on the above, it is recommended that the SFMTA Board of Directors authorize the use of the Blended Formula in the AIP and apply the AIP every two years concurrently with the SFMTA Budget. Furthermore, it is recommended that the SFMTA use the California

Department of Finance's Bay Area CPI-U forecast.² Finally, it is recommended that the Board approve the following Blended Formula:

$$\text{Automatic Inflator} = [\text{Bay Area CPI-U} \div 2] + [2\text{-year Operating Budget Labor Cost Change} \div 2]$$

and round up the Automatic Inflator to the nearest \$0.25, \$0.50 or \$1.00 depending on which is appropriate given the base charge and ensure that the rounding impact does not result in more than a 10% increase.

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

² http://www.dof.ca.gov/HTML/FS_DATA/LatestEconData/FS_Forecasts.htm

Automatic Indexing Implementation Plan (“AIIP”)

Financial stability is of the utmost importance to the San Francisco Municipal Transportation Agency (“SFMTA”). It is the SFMTA Board of Directors' desire to create a more predictable and transparent mechanism for setting charges which are not otherwise governed by law.

PURPOSE

To establish a more predictable and transparent mechanism for setting charges which are not otherwise governed by law as part of the two-year Operating Budget process required in the Charter.

POLICY

It is the policy of the SFMTA Board of Directors:

- To create a more predictable and transparent mechanism for setting charges which are not otherwise governed by law.
- To apply the following methodology for indexing charges:
 - Automatic Inflator = [Bay Area CPI-U ÷ 2] + [2-year Operating Budget Labor Cost Change ÷ 2] where the Bay Area CPI-U forecast used will be from the California Department of Finance; and
 - Round up the Automatic Inflator to the nearest \$0.25, \$0.50 or \$1.00 depending on which is appropriate given the base charge and ensure that the rounding impact does not result in more than a 10% increase
- To re-evaluate, during the SFMTA Budget process, the adequacy of the Automatic Inflator
- Conduct a public hearing or public notification during the SFMTA Budget process to inform the public about the proposed Automatic Inflator
- To set the Automatic Inflator for a two-year period concurrently with the two-year SFMTA Operating Budget
- To reserve the right to forego an Automatic Inflator if the SFMTA Budget projections allow
- To reserve the right to set a higher Automatic Inflator if required or to set a different Automatic Inflator for each of the two years in the Operating Budget depending on the Operating Budget projections
- To the extent that application of the AIIP results in an increase in transit fares, such an increase must be submitted to the San Francisco Board of Supervisors as part of the SFMTA's budget or as a budget amendment pursuant to Charter section 8A.108(a).

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (“SFMTA”) Board of Directors is responsible for approving a two-year budget pursuant to the City's Charter; and

WHEREAS, The Board of Directors now determines it is in the best interest of the SFMTA and the users of the transportation system to establish an Automatic Indexing Implementation Plan (AIIP) for setting charges which are not otherwise governed by law to create a more predictable and transparent mechanism for setting these charges;

WHEREAS, These funds are part of the Municipal Transportation Fund as designated in Section 8A.105 of the City's Charter; and

WHEREAS, The AIIP shall be applied to transit fares, parking citation fines, parking garage rates, and all other charges consistent with applicable law and any statutory maximums; and

WHEREAS, The resulting charge shall be rounded to the nearest \$0.25, \$0.50 or \$1.00 depending on which is appropriate given the base charge; and

WHEREAS, To the extent that application of the AIIP results in an increase in transit fares, such an increase must be submitted to the San Francisco Board of Supervisors as part of the SFMTA's budget or as a budget amendment pursuant to Charter section 8A.108(a); and

WHEREAS, These charges will be budgeted in the two-year operating budget and a public hearing will be held in compliance with Charter section 16.112 and the SFMTA Board’s Rules of Order informing the public regarding possible changes to charges; and

WHEREAS, The Board of Directors, during the SFMTA Budget process, will review the adequacy of the Automatic Inflator; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves the following methodology for indexing charges not otherwise governed by State law: Automatic Inflator = [Bay Area CPI-U ÷ 2] + [2-year Operating Budget Labor Cost Change ÷ 2] by using the California Department of Finance's Bay Area CPI-U forecast to be applied to transit fares, parking citation fines, parking garage rates, and other relevant charges and rounding up the Automatic Inflator to the nearest \$0.25, \$0.50 or \$1.00 depending on which is appropriate and subject to any statutory maximums.

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. : 14

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Taxis and Accessible Services

BRIEF DESCRIPTION:

Requesting the San Francisco Municipal Transportation Agency Board of Directors to adopt criteria establishing the type of information, which, if contained in a complaint made against person or a corporation alleging the illegal operation of a taxi business or vehicle, would be sufficient to warrant an investigation pursuant to California Government Code § 53075.7-53075.9.

SUMMARY:

- California Government Code § 53075.7-53075.9 authorize the SFMTA to adopt criteria that, if shown, would be sufficient to warrant initiating an investigation against an illegal taxi service provider (one without a permit issued by the SFMTA or predecessor agency).
- This resolution lists such criteria for adoption by the SFMTA Board.
- In addition, the resolution sets a fine amount of \$5,000 if, following a hearing, it is established that the person or corporation was illegally providing taxi service, and allows the SFMTA to also assess the costs of the investigation and interest on any delinquent payments of the fine or assessments.
- The resolution establishes that any fines, interest or assessments that are collected may only be used for the purpose of enforcement against operators of illegal taxi businesses and vehicles.

ENCLOSURES:

1. SFMTAB Resolution
2. Government Code §§ 53075.7-53075.9

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Chris Hayashi

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

To adopt criteria that would allow initiation of investigations against taxi business and vehicle operators, a fine amount and authority to assess investigation costs against any person or corporation found to be illegally operating such business or vehicle.

GOAL

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

This item will further these goals and objectives by improving the safety of taxi customers by reducing the probability that they will use illegal taxi services that do not guarantee driver training or mandate background checks and which may not be properly insured.

DESCRIPTION

This item establishes criteria that, if contained in a complaint made against a taxi business or person operating a taxi vehicle, would be sufficient for the initiation of an investigation against the person or business. California Government Code §§ 53075.7-53075.9 authorize a local taxi regulator to establish such criteria for the purpose of commencing enforcement against persons or corporations who illegally hold out taxi services to the public without a permit issued by the SFMTA or predecessor agency.

If the SFMTA determines that the investigation supports a hearing, this resolution authorizes the Executive Director/CEO or his or her designee, to issue a citation and set the date and time for a hearing. If, following a hearing, the person or business is determined to have illegally operated a taxi service, the fine is set at \$5,000, the maximum allowed by state law. Additionally, this resolution authorizes the SFMTA in its discretion to assess investigations costs against the person or business, and interest if payments are delinquent.

In accordance with state law, this resolution specifies that all proceeds from fines assessments or interest must be used for enforcement against operators of illegal taxi services.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

The only alternative to adopting these criteria and the fine amount is to not adopt them, which would prevent SFMTA of taking advantage of the provisions of California Government Code §§ 53075.7-53075.9. The result would be to allow illegal taxi business and vehicle operators to

PAGE 3.

continue to solicit customers from the unsuspecting public.

FUNDING IMPACT

There are estimated to be approximately 30 illegal taxi businesses in San Francisco. If, after investigation and hearing, each one is fined \$5,000 and the fine is collected, the resulting revenue would amount to \$150,000. To the extent that the investigations and hearings increase agency costs, those costs can be assessed against the violators or recovered from the fine revenues.

The start-up operations are covered by the enforcement funding of the Division of Taxis and Accessible Services, which are in turn paid through taxi industry permit fees.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

RECOMMENDATION

Staff requests the SFMTA Board of Directors to adopt these criteria and penalties so that the Division of Taxis and Accessible Services can begin enforcement against operators of illegal taxi businesses and vehicles.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, There are 1500 licensed taxicab vehicles in San Francisco, and several thousand licensed drivers; and,

WHEREAS, Legitimate San Francisco taxi drivers have to compete for fares with unlicensed operators, and legitimate taxi businesses lose customers who call for service to illegal entities that are listed in the Yellow Pages; and,

WHEREAS, California Government Code §§ 53075.7-53075.9 authorize a local regulator to initiate a complaint against an illegal taxi operator upon making certain findings as defined by the local regulator; and,

WHEREAS, The SFMTA Board of Directors wishes to adopt criteria for initiating investigation against illegal taxi operators and a fine amount for illegal operation of a taxi service; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors adopts the following criteria establishing the type of information, which, if contained in a complaint against person or a corporation alleging the illegal operation of a taxi business or vehicle, would be sufficient to warrant an investigation pursuant to California Government Code § 53075.7-53075.9:

1. That the business or vehicle does not have a permit issued by the SFMTA or predecessor agency to operate the business or the vehicle; and
2. That the business or vehicle picks up customers from street hails and/or by dispatch; and
3. That the business or vehicle holds itself out to the public as a taxicab service by any indicia, including but not limited to factors such as vehicle dress, operator insignia, business advertising or signage, or any other perceptible means of soliciting passengers for hire; and, be it further

RESOLVED, That if, in the judgment of the Executive Director/CEO or his or her designee the investigation shows that the criteria above are true, the Executive Director/CEO or his or her designee may issue a citation notifying the person or corporation of the time, date and location of a hearing to establish whether the person or corporation is operating an illegal taxi business or vehicle; and, be it further

RESOLVED, That if, following a hearing, it is established that a business or vehicle operator is illegally holding out to the public to perform taxi services, the fine amount shall be \$5,000.00 for each violation; and, be it further

RESOLVED, That SFMTA may additionally elect to assess the costs of the investigation, as well as interest on any delinquent payment of the fine or assessment, against any person or corporation found to have illegally performed taxi services; and, be it further

RESOLVED, That all fines, interest and assessments collected pursuant to Government Code §§ 53075.7-53075.9 shall be used for enforcement against illegal taxi businesses and vehicles in San Francisco.

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

GOVERNMENT CODE

Sec. 53075.7.

(a) Upon receipt of a complaint containing sufficient information to warrant conducting an investigation, the local agency shall investigate any business that advertises or operates taxicab transportation service for hire. The local agency shall, by ordinance, resolution, or other appropriate procedure, adopt criteria that establishes the type of information, if contained in a complaint, that is sufficient to warrant an investigation. Pursuant to this investigation, the local agency shall do all of the following:

- (1) Determine which businesses, if any, are required to have in effect a valid taxicab certificate, license, or permit as required by ordinance, but do not have that valid authority to operate.
- (2) Inform any business not having valid authority to operate that it is in violation of law.
- (3) Within 60 days of informing the business pursuant to paragraph (2), institute civil or criminal proceedings, or both, pursuant to the governing municipal code or other authority of jurisdiction.

(b) For purposes of this section:

- (1) "Advertises" means any action described in subdivision (b) of Section 53075.9.
- (2) "Local agency" means the local entity responsible for the regulation, including, but not limited to, the certification, licensing, or permitting of, and enforcement of rules, regulations, or ordinances governing, taxicabs within the local jurisdiction.

Sec. 53075.8. (a) The Legislature finds and declares that advertising and use of telephone service is essential for a taxicab transportation service to obtain business and conduct intrastate passenger transportation services. Unlawful advertisements by taxicabs operating without a valid taxicab certificate, license, or permit required by any ordinance has resulted in properly certificated, licensed, and permitted taxicab operators competing with these taxicabs operating without a proper taxicab certificate, license, or permit using unfair business practices. Taxicabs operating without a proper taxicab certificate, license, or permit have also exposed passengers to unscrupulous persons who portray themselves as lawful operators. Many of these taxicabs operating without a proper taxicab certificate, license, or permit have been found to have also been operating without insurance, or in an unsafe manner, thereby placing their passengers at risk.

(b) (1) The Legislature further finds and declares that the termination of telephone service utilized by taxicabs operating without proper authority is essential to ensure the public safety and welfare. Therefore, local agencies should take enforcement action, as specified in this section, to disconnect telephone service of unauthorized taxicab operators who unlawfully advertise passenger transportation services in yellow page directories and other publications. The enforcement actions provided for by this section are consistent with the decision of the California Supreme Court in *Goldin v. Public Utilities Commission* (1979) 23 Cal. 3d 638.

(2) For purposes of this section, a telephone corporation or telegraph corporation, or a corporation that holds a controlling interest in the telephone or telegraph corporation, or any

business that is a subsidiary or affiliate of the telephone or telegraph corporation, that has the name and address of the subscriber to a telephone number being used by a unauthorized taxicab operator shall provide the local agency, or an authorized officer or employee of the local agency, upon demand, and the order of a magistrate, access to this information. A magistrate may only issue an order for the purposes of this subdivision, if the magistrate has made the findings required by paragraph (2) of subdivision (f).

(c) (1) In addition to any other remedies that may be available bylaw, if a local agency determines that a taxicab transportation service has operated within the local agency's jurisdiction in violation of the local agency's ordinance adopted under Section 53075.5, the local agency may notify the taxicab operator that the local agency intends to seek termination of the operator's telephone service. The notice shall be sent by certified mail to the operator at the operator's last known mailing address. If the local agency is unable to determine the operator's mailing address, the local agency shall post the notice for at least 10 calendar days.

(2) The notice shall contain sufficient information to identify the taxicab transportation service, to inform the taxicab operator of the alleged violations of the local agency's ordinance, and the procedures for protesting the allegations contained in the notice.

(d) The taxicab operator, within 10 calendar days of the date of the notice, may contest the allegations contained in the notice by filing a written protest with the local agency. The local agency shall schedule a hearing on the protest within 21 calendar days of receiving the protest.

(e) The governing body of the local agency, or any person or persons as may be designated by the governing body, shall hear the protest. The local agency shall have both the burden of providing that the use made, or to be made, of the telephone service is to holdout to the public to perform, or to assist in performing, services as a taxicab transportation service, and that the telephone services being, or is to be, used as an instrumentality, directly or indirectly, to violate, or assist in violating, the local agency's applicable ordinance. The taxicab operator, or his or her designated representative, shall be allowed to present evidence to answer or refute any allegations presented to the hearing body by the local agency. The hearing body may continue the hearing from time to time. Within 10 calendar days of the close of the hearing, the hearing body shall issue a written decision to uphold or reject, in whole or in part, the allegations contained in the notice. If the hearing body upholds the allegations in whole or in part, the written decision shall state either that the allegations are sufficient to justify seeking termination of the taxicab operator's telephone service, or that the allegations are not sufficient.

(f) (1) If the local agency does not receive a timely protest, or, after a protest hearing held pursuant to subdivision (d), the hearing body has determined that the allegations are sufficient to justify seeking termination of the telephone operator's telephone service, the local agency may seek termination of the taxicab operator's telephone service as provided in this section.

(2) A telephone or telegraph corporation shall refuse telephone service to a new subscriber and shall disconnect telephone service from an existing subscriber only after it is shown that other available enforcement remedies of the local agency have failed to terminate unlawful activities detrimental to the public welfare and safety, and upon receipt from any authorized officer or employee of the local agency of a writing, signed by a magistrate, as defined by Sections 807 and 808 of the Penal Code, finding that probable cause exists to believe that the subscriber is

advertising or holding out to the public to perform taxicab transportation services in violation of the local agency's applicable ordinance, or that the telephone service otherwise is being used or is to be used as an instrumentality, directly or indirectly, to violate or assist in violation of the laws requiring a taxicab operator to have valid operating authority. Included in the writing of the magistrate shall be a finding that there is probable cause to believe that the subject telephone facilities have been, or are to be, used in the commission or facilitation of holding out to the public to perform taxicab transportation services in violation of the local agency's applicable ordinance.

(g) The telephone or telegraph corporation, immediately upon refusal or disconnection of service in accordance with paragraph (2) of subdivision (f), shall notify the subscriber in writing that the refusal or disconnection of telephone service has been made pursuant to a request of a local agency and the writing of a magistrate, and shall include a copy of this section, a copy of the writing of the magistrate, and a statement that the customer of the subscriber may request information from the local agency concerning any provision of this section and the manner in which a complaint may be filed.

(h) The provisions of this section are an implied term of every contract for telephone service and a part of any application for telephone service. Applicants for, and subscribers and customers of, telephone service, have, as a matter of law, consented to the provisions of this section as a consideration for the furnishing of the telephone service.

(i) As used in this section, the terms "person," "customer," and "subscriber" include the subscriber to telephone service, any person using the telephone service of a subscriber, an applicant for telephone service, a corporation, a limited liability company, a partnership, an association, and includes their lessees and assigns.

(j) As used in this section, the following terms have the following meanings:

(1) "Authorized officer or employee of the local agency" includes any employee of the local agency designated by the local agency's governing body.

(2) "Local agency" has the same meaning as specified in subdivision (b) of Section 53075.7.

(3) "Telegraph corporation" has the same meaning as specified in Section 236 of the Public Utilities Code.

(4) "Telephone corporation" has the same meaning as specified in Section 234 of the Public Utilities Code.

Sec. 53075.9. (a) Every taxicab transportation service shall include the number of its certificate, license, or permit in every written or oral advertisement of the services it offers.

(b) For purposes of this subdivision, "advertisement" includes, but is not limited to, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing the placement of any sign or marking on or in any building or structure, or in any media form, including newspaper, magazine, radio wave, satellite signal, or any electronic transmission, or in any directory soliciting taxicab transportation services subject to this chapter.

(c) Whenever the local agency, after a hearing, finds that any person or corporation is operating as a taxicab transportation service without a valid certificate, license, or permit or fails to include in any written or oral advertisement the number required by subdivision (a) of Section 50739, the local agency may impose a fine of not more than five thousand dollars (\$5,000) for each violation. The local agency may assess the person or corporation an amount sufficient to cover the reasonable expense of investigation incurred by the local agency. The local agency may assess interest on any finer assessment imposed, to commence on the day the payment of the fine or assessment becomes delinquent. All fines, assessments, and interest collected shall be deposited at least once each month in a fund established for the purpose of enforcing the provisions of this section.

(d) For purposes of this section, "local agency" has the same meaning as specified in subdivision (b) of Section 53075.7.

THIS PRINT COVERS CALENDAR ITEM NO. :

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Taxis and Accessible Services

BRIEF DESCRIPTION:

Requesting the San Francisco Municipal Transportation Agency Board of Directors to adopt amendments to Transportation Code, Division II, Article 1100 governing Motor Vehicles for Hire.

SUMMARY:

- The SFMTA Board adopted procedural regulations on February 3, 2009 in anticipation of the merger with the Taxi Commission. Any regulation of the former Taxi Commission that is not expressly superceded by SFMTA regulations remains in force.
- Staff has identified several areas where administrative procedures are necessary to override existing Taxi Commission regulations in order to avoid the need to take certain routine administrative decisions to the SFMTA Board. Staff proposes amendments to Transportation Code, Division II, Article 1100 to require the written approval of the Executive Director/CEO or his or her designee for such administrative decisions instead of requiring approval by the SFMTA Board of Directors.
- The Driver training requirement would be amended to require Drivers to meet training requirements to be defined by the SFMTA.
- New Driver applicants would be required to comply with the controlled substance testing program set forth in the regulations following adoption of a Controlled Substance Testing Program by the SFMTA Board of Directors.
- The proposed amendments would prohibit Color Schemes from charging applicants for Driver Permits for letters of employment from Color Schemes.
- The regulations implement the SFMTA’s Statement of Incompatible Activities by requiring the prior written approval of the Executive Director/CEO before a Taxi or Accessible Taxi Medallion may be issued to any employee of the SFMTA.
- Provisions regarding permit applications and conditions applicable to all permits that have been discussed with the industry are included in this amendment.

ENCLOSURES:

1. SFMTAB Resolution
2. Proposed amendment to Transportation Code, Division II, Article 1100.

APPROVALS:

DATE

DIRECTOR OF DIVISION		
PREPARING ITEM _____	_____	_____
FINANCE _____	_____	_____
EXECUTIVE DIRECTOR/CEO _____	_____	_____
SECRETARY _____	_____	_____

ADOPTED RESOLUTION
BE RETURNED TO Chris Hayashi

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

- To create more efficient administrative procedures for requests for Color Scheme changes by Drivers, requests for approval of sale or relocation of a Color Scheme, changes in Dispatch Services, and requests for approval of an alternate location to park a vehicle.
- To allow the SFMTA to define the training requirement for all applicants for Driver Permits.
- To prohibit Color Schemes from charging new Driver applicants for letters of employment that are required to complete an application.
- To prohibit motor vehicle for hire permits from being issued to SFMTA employees except with prior written approval of the Executive Director/CEO.
- To establish an effective date for the controlled substance testing program for Drivers.
- To improve hearing procedures.
- To enact regulations regarding permit applications and conditions applicable to all permits following discussions with the taxi industry.

GOAL

Goal 3: External Affairs/Community Relations:

To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry

Objectives:

- 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups
- 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits
- 3.3 Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life

The following features of the proposed amended regulations will tend to professionalize and improve the taxi industry, increase the quality of life of prospective Drivers, enhance the image of the SFMTA within the industry and inspire confidence in the SFMTA as a regulating agency:

- Preventing SFMTA employees from holding Motor Vehicle for Hire Permits without the prior written approval of the Executive Director/CEO;
- Limiting the ability of Color Schemes to charge Driver Permit applicants for evidence of an employment offer that is required for a Driver Permit application;
- Allowing the SFMTA to define Driver training requirements; and
- Improving hearing procedures.

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

Objectives:

- 4.2 Ensure efficient and effective use of resources

Making administrative decisions at an administrative level, *i.e.* staff level in lieu of bringing matters before the SFMTA Board of Directors, will save considerable staff and Board time and effort.

PAGE 3.

Goal 5: SFMTA Workforce:

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

Objectives:

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

The adoption of provisions governing permit applications and setting forth conditions applicable to all permits will provide policy guidance to and facilitate the processing of Motor Vehicle for Hire Permit applications by SFMTA staff.

DESCRIPTION¹

On February 3, 2009, the SFMTA Board adopted procedural regulations to govern the conduct of administrative matters in anticipation of the merger with the Taxi Commission. Substantive regulations were put on hold until they could be the subject of public meetings and public discussion. According to the February 3, 2009 SFMTA Board Resolution adopting the procedural Motor Vehicle for Hire regulations, any regulation of the former Taxi Commission that is not expressly superceded by SFMTA regulations remains in force.

Staff has identified several areas where administrative procedures are necessary, including requests for Color Scheme changes by Drivers, requests for approval of sale or relocation of a Color Scheme, changes in dispatch services, and requests for approval of an alternate location to park a vehicle. Until the SFMTA adopts regulations to supercede the Taxi Commission regulations, the above-listed matters would be governed by the Taxi Commission regulations, which would require such events to be approved by the SFMTA Board of Directors. The proposed amendments to Transportation Code, Division II, Article 1100 provide simplified procedures for the above-listed matters, and would require the written approval of the Executive Director/CEO, or his or her designee, instead of approval by the SFMTA Board of Directors.

The proposed amendments to the regulations include Section 1103, entitled "Permit Applications and Eligibility." The proposed amendments have been reviewed by the industry and their comments have been considered in this draft. Amendment of this subsection 1103(e)(1)(D) became necessary as a result of the Federal Bureau of Investigations investigation into the Driver application process and was not the subject of advance discussion with the industry. The subsection is amended to provide simply that the applicant must meet training requirements as defined by the SFMTA, instead of specifying the required subject matter and providers of such training in the regulations.

Additionally, Section 1101(d) is added to prohibit issuance of motor vehicle for hire permits to SFMTA employees except with the Executive Director/CEO's prior written approval, in accordance with the SFMTA's Statement of Incompatible Activities, which provides:

Unless (a) otherwise noted in this section or (b) an advance written determination . . . concludes that such activities are not incompatible, no officer or employee may engage in an outside

PAGE 4.

¹ Capitalized terms in this report are defined in Transportation Code Division II, Article 1100.

activity (regardless of whether the activity is compensated) that is subject to the control, inspection, review, audit or enforcement of the Department.

Section 1104(a)(13), which requires that all shift changes from one Driver to another must take place at the Color Scheme's place of business, was discussed with the industry, and staff received the suggestion that the requirement be eliminated. Members of the industry commented that the reason for the rule is Driver safety, and given the location of most of the companies, it would be safer to delete this rule and allow Drivers to change shifts anywhere. However, staff recommends keeping this rule. The Color Schemes have permit conditions regarding the vehicle and the Driver that can only be met by overseeing the shift change on the Color Scheme's property. For example, it is the Color Scheme's responsibility to make sure that the vehicle is properly equipped before it is taken out. A Color Scheme may not allow a Driver who is known to be under the influence to operate a vehicle. It would be impossible for a Color Scheme to maintain any control over the condition of the vehicle or the condition of the Driver if shift changes could occur anywhere. Further, Driver safety is not necessarily served by eliminating the rule. In one past case a Driver was murdered while changing shifts in the city of Richmond.

These proposed regulations provide in Section 1104(b)(4) that no Color Scheme may charge a Driver for a "letter of intent", also called a "statement of affiliation" or "letter of employment," which the Driver is required to provide as a condition of receiving a permit. Apparently charges for such letters have been as high as \$100. The intent of the rule is to make sure that a new Driver has a chance of actually being employed after making a significant investment in Driver training. It was not intended as a source of revenue for Color Schemes. Accordingly, staff recommends adopting this prohibition.

The proposed amendments include some procedural changes to speed up the hearing process and increase access to hearings:

1. Shortening time for scheduling hearings on and the issuance of decisions related to permit applications;
2. Reducing from three to two the number of times that the SFMTA has to attempt to contact a permit applicant before the application may be considered inactive for failure to respond;
3. Requiring notice of the issuance of a Medallion at least 30 days in advance of the hearing;
4. Extending the time that interested parties have to submit any materials for consideration at a hearing for the issuance of a Medallion;
5. Requiring applicants for a Medallion to provide all materials required to process their application within 45 days;
6. Extending the time for issuing a decision in a disciplinary case if additional material is submitted after the hearing; and
7. Allowing applicants whose applications have been deemed inactive by the SFMTA based on misconduct, failure to respond or a determination of ineligibility for the permit to request a hearing on the SFMTA decision.

Finally, the uncodified Section 2 of the attached legislation specifies that the controlled substance and alcohol testing requirement that is contained in these regulations would become effective upon the adoption of a Controlled Substance Testing Program by the SFMTA.

ALTERNATIVES CONSIDERED

If the proposed amendments to the regulations are not adopted, requests for Color Scheme changes by Drivers, requests for approval of sale or relocation of a Color Scheme, changes in dispatch services, and requests for approval of an alternate location to park a vehicle would have to be approved by the Board of Directors, the Division of Taxis and Accessible Services would have limited flexibility in defining Driver training requirements, the amount that a Color Scheme charges to Drivers for letters of employment would be unregulated, SFMTA employees would be eligible to receive permits to conduct a business that is subject to SFMTA regulatory authority, and the implementation date for controlled substance testing requirements would remain unspecified. With limited exceptions, the substantive language in these proposed amendments has been circulated within the industry and industry comments have been considered and incorporated where appropriate.

FUNDING IMPACT

It would represent a savings to the agency in staff time and Board time to process requests for Color Scheme changes by Drivers, requests for approval of sale or relocation of a Color Scheme, changes in Dispatch Services, and requests for approval of an alternate location to park a vehicle through written approval of the Executive Director/CEO or his or her designee instead of bringing each such request to the SFMTA Board of Directors.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

RECOMMENDATION

Staff recommends that the SFMTA Board adopt the proposed amendments to Transportation Code Division II, Article 1100, in order to increase the efficiency of processing requests for approval of certain events (requests for Color Scheme changes by Drivers, requests for approval of sale or relocation of a Color Scheme, changes in dispatch services, time waivers, and requests for approval of an alternate location to park a vehicle), to allow the SFMTA to define the Driver training requirement, to limit the amount that Color Schemes can charge for employment letters issued to Driver applicants, to prohibit SFMTA employees from holding motor vehicle for hire permits without the prior written approval of the Director to improve hearing procedures, and to establish an effective date for controlled substance testing requirements..

The City Attorney's Office has reviewed this item.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On February 3, 2009, the SFMTA Board adopted procedural regulations to govern the conduct of administrative matters and hearings in anticipation of the merger with the Taxi Commission; and,

WHEREAS, The regulations of the former Taxi Commission that are not expressly superceded by SFMTA regulations remain in force, including the requirement that the SFMTA Board approve requests for Color Scheme changes by Drivers, requests for permission to sell or relocate a Color Scheme, requests for changes in Dispatch Services, and requests for approval of an alternate location to park a taxi vehicle; and,

WHEREAS, Approval of Color Scheme changes by Drivers, requests for approval of sale or relocation of a Color Scheme, changes in Dispatch Services, and requests for approval of an alternate location to park a taxi vehicle are administrative in nature and need not be brought to the SFMTA Board for decision; and,

WHEREAS, Driver training requirements should be updated by the SFMTA; and

WHEREAS, There is a need to limit excessive charges to prospective Drivers by some Color Schemes for providing a statement of affiliation as required for a Driver Permit application; and

WHEREAS, There is a need to establish an implementation date for controlled substance and alcohol testing requirements set forth in regulations that have already adopted; and

WHEREAS, The SFMTA's Statement of Incompatible Activities prohibits SFMTA employees from holding permits that are regulated by the SFMTA; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors adopts the attached amendments to Article 1100, Division II of the San Francisco Transportation Code.

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: Off-Street Parking

BRIEF DESCRIPTION:

Approving a Request for Proposals (RFP) for the management of 14 parking facilities and authorizing the SFMTA Executive Director/CEO to advertise the RFP.

SUMMARY:

- Staff has developed a Request for Proposals (RFP), to solicit proposals from qualified parking facility management firms, to provide daily operation and management services for 14 parking facilities managed by SFMTA.
- In 2007, under a professional services contract with the Parking Authority, CHANCE Management Advisors thoroughly evaluated business practices of the Parking Authority. As recommended in their final report titled "Assessment of Parking Authority Business Practices," this RFP proposes consolidation of multiple facilities into three agreements for improved efficiencies and better oversight.
- To provide open and competitive opportunities to management firms of varying sizes and experience, these 14 parking facilities are divided into three groups: Group A (six facilities totaling 3,316 spaces), Group B (four facilities totaling 2,944 spaces) and Group C (four facilities totaling 387 spaces).
- The RFP identifies specific qualifications and experience requirements, and specific evaluation criteria, to ensure that the contracts are awarded to the most qualified firms.
- Proposers may submit a proposal to manage each group (i.e., up to three separate proposals). SFMTA intends to award contracts to the three highest ranked firms. The term of each agreement will be six years, with a maximum of two extensions not to exceed 18 months each.
- Staff has provided a number of opportunities for the private operator/vendor community to review and comment on the preliminary draft RFP. Appropriate revisions have been incorporated into this final RFP.
- Staff has also developed regulations for Parking Facility Operation and Management in order to provide consistent operating and management requirements for parking garages and lots managed by SFMTA.

ENCLOSURES:

1. SFMTA Board Resolution
2. RFP
3. Parking Facility Operation and Management Regulations

APPROVALS:

DATE

DEPUTY OF DIVISION

PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION

BE RETURNED TO:

Amit Kothari

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

The purpose of this report is to review and approve the Request for Proposals (RFP) process, and to request an authorization to advertise the RFP for management of 14 parking facilities located throughout San Francisco.

GOAL

This action is consistent with SFMTA 2008-2012 Strategic Plan.

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

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

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

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

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

SFMTA's Off-Street Parking Division manages 40 parking facilities, generating over \$85 Million in gross revenue annually. The mission of the Off-Street Parking Division is to provide clean, safe and convenient parking to the visitors, employees and businesses in the downtown core, as well as to the commercial and residential districts. Through effective management of over 15,000 spaces at these facilities located throughout the City, the Division supports economic vitality in the City's downtown and neighborhood commercial districts. Various parking policies and programs administered by the Division, support the City's *Transit First* policy, help reduce traffic congestion on City streets and promote alternate modes of transportation. The Division monitors current and anticipated parking demands, and evaluates need for the expansion and development of new parking facilities.

For visitors, these parking facilities offer the first impression of the City of San Francisco. It is very important that the parking facilities are managed and operated in a manner that reflects the City's commitment to customer service, careful stewardship of the public's capital investments, adequate safeguards on the City's revenues, and professional management of the City's services.

To provide open and competitive bidding opportunities to professional parking operators, the staff has prepared an RFP soliciting proposals from qualified firms to operate and manage 14 parking facilities. The parking management services required for various facilities vary, due to the diversity in location, operating characteristics and primary customer base for each facility. Not included in the RFP are six garages managed by non-profit corporations and 20 metered lots.

Scope of Work and Term

Through three multi-year agreements, the operators will provide day-to-day operation and management services for the assigned parking facilities. These services will include access and revenue control management, janitorial services, security, facility maintenance and rehabilitation, etc. A form Agreement included in the RFP and the attached Parking Facility Operation and Management Regulations contain detailed descriptions of the responsibilities of the operators, as well as other applicable terms and conditions.

To achieve the highest operational efficiencies and oversight, these facilities are divided into three groups. A Proposer may submit a separate proposal to manage all facilities within any of the following three groups:

- Group A (6 facilities - 3,316 spaces)

Civic Center Garage	Golden Gateway Garage
North Beach Garage	Performing Arts Garage
St. Mary’s Garage	Vallejo Street Garage

- Group B (4 facilities – 2,944 spaces)

Lombard Street Garage	Mission Bartlett Garage
Moscone Center Garage	S.F. General Hospital Garage

- Group C (4 facilities - 387 spaces)

Polk Bush Garage	16 th & Hoff Garage
1660 Mission Street Garage	7 th & Harrison Lot

Although a Proposer may submit a proposal for each group (i.e., three separate proposals), the SFMTA intends to award contracts for management of each Group to one of the three highest ranked operators. No more than one contract will be awarded to one operator. The initial term of each agreement will be for six years, with a maximum of two extensions not to exceed 18 months each.

Compensation

Each Manager’s compensation shall consist of a fixed, monthly Management Fee plus reimbursement of all approved operating expenses. After considering various factors, including number of garages and their size within a group, the complexity of operations and annual revenues, input from private operators and benchmarking with other cities/garages, SFMTA staff has set the following monthly management fees:

Group	Monthly Management Fee
A	\$5,000
B	\$4,500
C	\$2,000

A five percent increase to reflect future costs is proposed for year 4 and for year 7, if the contract is extended.

In addition to the Management Fee, the Managers may earn an annual Incentive Fee by exceeding established net parking income targets. Furthermore, Managers may earn a quarterly Incentive Fee for meeting or exceeding established customer service standards. Overall, the proposed compensation structure provides the best combination of a fixed management fee plus performance based incentives.

Qualifications and Experience

It is critical that the SFMTA retain the most qualified operators of public parking facilities to manage these facilities. The RFP clearly identifies the minimum qualifications and experience requirements that assure the following:

- each proposer has proven expertise and experience in effectively managing public parking facilities;
- the proposer has financial capacity to operate these facilities without any negative impact on the facility operations, maintenance or customer satisfaction; and
- the requirements are such that they encourage participation from small and local operators.

Qualified proposers must have several years of continuous, first-hand experience in all aspects of the operations of parking facilities, similar in complexity and size to the group of parking facilities for which they are submitting a proposal. Groups A and B, with larger facilities and higher gross revenues, require more experience than Group C, which has smaller facilities with lower revenues. For example, a proposer for Group A and B must currently be managing at least three parking facilities, with a minimum of 300 spaces at each location, one of which must be a multi-level structure with at least 200 spaces, and which has been under their management for a continuous period of three years prior to the date of this RFP. A proposer for Group C is required to have only two parking facilities, with a minimum of 50 spaces at each location, under their management for a continuous period of three years within the last five years.

To encourage increased participation by smaller firms, Local Business Enterprise (LBE) participation goals of 25 percent for groups A and B and 15 percent for Group C have been established.

Proposal Submittals and Evaluation

Each proposal must clearly describe the firm’s qualifications and experience in managing the daily operation of public parking facilities. The proposal must include an Operation and Management Plan, a Marketing Plan, a Maintenance Plan, a Security and Safety Plan, and necessary financial statements.

Each “responsive” proposal will be thoroughly evaluated and scored as follows:

CRITERION	MAXIMUM POINTS
1. Written Proposal	150
a. Qualifications and Experience	30
b. Management Approach: Staffing/Operational Plan/Budget	50
c. Maintenance Plan	20
d. Marketing Plan	15
e. Security and Safety Plan	15
f. Overall organization and clarity of proposal	20
2. Oral Interview/Presentation	50
TOTAL	200

PAGE 5.

Proposals will be evaluated by a diverse panel comprised of representatives of the SFMTA and other City Departments and may include external members with significant parking industry experience. The SFMTA will award contracts to the three highest ranked proposals (one for each Group). Although an operator may propose and compete for all three groups, no more than one contract will be awarded to one operator.

Schedule

The anticipated schedule for the RFP process is shown in the following table:

TASK/MILESTONE	DATE
Review and Approval of RFP by SFMTA Board	March 3, 2009
RFP Advertised	March 6, 2009
Mandatory Pre-Proposal Conference	March 20, 2009
Experience, Financial & Taxpayer Responsibility Questionnaire Due	March 27, 2009
Proposals and Bid Security Due	May 8, 2009
Selection Committee Review and Interviews	June-August 2009
Civil Services Commission Approval	July 2009
Negotiations with highest ranking firm/Draft Agreements	September 2009
SFMTA Board Approval	October 2009
Commencement of Contracts	November 1, 2009

The SFMTA Board approval and commencement of the new contracts may be delayed depending upon any unanticipated changes in the prior due dates or extended evaluation process.

The City Attorney's Office has reviewed this item and the attached regulations.

Public Outreach

To allow an opportunity for the business community to review and provide input in the RFP process, a preliminary draft RFP was sent, in November 2008, to more than 25 public parking operators. As a result, significant input was received from prospective bidders. Additionally, an operator outreach meeting was held on December 3, 2008, attended by over 50 participants. Follow-up meetings with individual firms were also held to discuss specific questions and concerns. The feedback included valuable comments related to the RFP schedule, management fees, incentive fees, LBE participation goals, consolidation of facilities, minimum requirements, opportunities for small firms, evaluation criteria, cost of preparing proposals, etc. The attached RFP incorporates all appropriate revisions as a result of this extensive operator/vendor outreach and feedback, including significantly reduced minimum qualifications and experience requirements, as requested by several small businesses.

Regulations for Facilities Operation and Management

In the past, when entering into management agreements with parking facility operators, SFMTA has prepared agreements that combine the operator's basic contractual obligations, including such matters as payment terms, insurance, requirements and indemnification, as well as the City's contract boilerplate, with the specific facility management requirements, such as maintenance, issuing tickets and deposit of revenues. This approach has resulted in as many or more than a dozen contracts with differing terms and conditions. In addition, when facility management requirements need to be revised (for example, to accommodate new technologies), it has been impossible for SFMTA to make across-the-board changes to such practices and procedures.

PAGE 6.

Staff proposes to address these concerns, going forward with the attached proposed Parking Facility Operation and Management Regulations. The Regulations would provide a uniform set of requirements that would be applicable to all City-owned garages covered under all future agreements. When necessary, the facility management requirements could be amended by SFMTA administratively, not requiring amendment of multiple individual management agreements. The management agreements entered into with the individual operators would continue to contain the basic contractual obligations between the parties described above.

ALTERNATIVES CONSIDERED

Staff considered the benefits and drawbacks of several alternatives to hire an operator through a competitive RFP process. The alternatives ranged from a single master agreement covering all 14 facilities to 14 individual agreements with 14 different operators. The recommended alternative of three agreements for three groups of facilities provides the most effective parking facility management approach, such as improved efficiency, better oversight by SFMTA and reduced management expenses. This approach will also ensure open and competitive bidding opportunities to firms of all sizes and varying experience.

A June 2007 report titled “Assessment of Parking Authority Business Practices” by CHANCE Management Advisors provided an in-depth analysis of the Parking Authority’s administration of its parking assets and recommended extensive changes to the then current practices. The report recommended bundling of garages into fewer agreements to achieve economy of scale for operational costs, improved interest by professionally managed companies and greater oversight by the Parking Authority. This RFP is consistent with the consultant recommendations and proposes the bundling of 14 properties into three groups.

The City Attorney’s Office has reviewed this item.

FUNDING IMPACT

This RFP process will replace several existing agreements with three new agreements during FY 2009-10. Adequate funds to conduct the RFP process are included in the approved FY 2008-2009 Operating Budget.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

An approval of the Professional Services Contract by the Civil Services Commission is anticipated in July. No other approvals are required at this time. Upon completion of the RFP process, the three highest ranking proposals will be presented to the SFMTA Board for consideration and award.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve the Request for Proposals and authorize the SFMTA Executive Director/CEO, or his designee, to advertise the RFP.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
RESOLUTION No. _____

WHEREAS, The mission of the Off-Street Parking Division is to provide clean, safe and convenient parking to the visitors, employees and businesses in the downtown core, as well as to the commercial and residential districts; and

WHEREAS, Through effective management of over 15,000 spaces at 40 parking facilities throughout the City, the Division supports economic vitality in the City's downtown and neighborhood commercial districts, and various parking policies and programs, administered by the Division, support the City's *Transit First* policy, help reduce traffic congestion on City streets and promote alternate modes of transportation; and

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) intends to award long-term contracts for operation and management of 14 parking facilities through a competitive Request for Proposals (RFP) process; and

WHEREAS, In 2007, a comprehensive evaluation and a report titled "Assessment of Parking Authority Practices," prepared for the Parking Authority by CHANCE Management Advisors, recommended consolidating multiple facilities into fewer management contracts; and

WHEREAS, SFMTA proposes consolidation of 14 parking facilities into three groups as the most effective management approach that would result in economies of scale for operational costs, improved efficiencies, and increased oversight by the SFMTA; and

WHEREAS, SFMTA has prepared a Request for Proposals (RFP) to hire the most qualified operators for the operation and management of 14 parking facilities for an initial term of not less than six years, with two extension options not to exceed 18 months each; and

WHEREAS, The qualifications and experience requirements, and the Local Business Enterprise (LBE) goals as outlined in the RFP will ensure open and competitive bidding opportunities to firms of all sizes and varying experience; and

WHEREAS, The outcome of this RFP supports goals of the 2008-2012 Strategic Plan adopted by the SFMTA Board of Directors; and

WHEREAS, SFMTA has developed regulations for Parking Facility Operation and Management in order to have consistent application throughout all parking garages and lots managed by SFMTA; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO, or his designee, to advertise a Request for Proposals for the Operation and Management of Parking Facilities comprised of 14 facilities located throughout San Francisco on substantially the same terms as presented to this Board of Directors.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**Request for Proposals for
Operation and Management of Parking Facilities**

RFP No. SFMTA2008/09-30

Date Issued:	March 6, 2009, Friday
Mandatory Pre-Proposal Conference:	March 20, 2009, Friday, 2:00 p.m. (PDT)
Qualification Questionnaire Due:	March 27, 2009, Friday, no later than 4:00 p.m. (PDT)
Proposal Due:	May 8, 2009, Friday, no later than 4:00 p.m. (PDT)

**Request for Proposals for
Operation and Management of Parking Facilities**

SECTIONS

I.	INTRODUCTION	4
II.	SCOPE OF WORK AND TERM	5
III.	COMPENSATION	6
IV.	PRE-SUBMISSION REQUIREMENTS AND SCHEDULE FOR PROPOSALS	10
V.	MINIMUM QUALIFICATIONS AND EXPERIENCE	12
VI.	SUBMISSION REQUIREMENTS AND EVALUATION CRITERIA	14
VII.	CONTRACT AWARD	21
VIII.	TERMS AND CONDITIONS FOR RECEIPT OF PROPOSALS	22
IX.	CITY CONTRACT REQUIREMENTS	29
X.	PROTEST PROCEDURES	32

ATTACHMENTS TO RFP

- A. QUALIFICATION QUESTIONNAIRE
- B. AUTHORIZATION FOR RELEASE OF CREDIT INFORMATION
- C. FACILITY MANAGEMENT BID FORM
- D. ATTESTATION OF COMPLIANCE
- E. CERTIFICATION REGARDING LOBBYING
- F. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS
- G. HRC Chapter 12B Declaration – Nondiscrimination in Contracts and Benefits
(See HRC Website **HRC 12B-101 Form**: Submit only if the Prime Consultant is not already in compliance with Equal Benefits Requirements. This form is available on the HRC website at www.sfgov.org/sfhumanrights.)
- H. HRC Attachment 2
Requirements for Architecture, Engineering and Professional Services Contracts, for contracts \$29,000 and over (NOTE: New HRC Attachment 2 for projects advertised after December 26, 2008)
 - HRC Pre-Award Forms
 - Form 2A HRC Contract Participation Form
 - Form 2B HRC “Good Faith Outreach” Requirements Form
 - Form 3 HRC Non-discrimination Affidavit
 - Form 4 HRC Joint Venture Form (may be required, depending on the circumstance)
 - Form 5 HRC Employment Form
 - HRC Post-Award Forms
 - Form 7 HRC Progress Payment Form
 - Form 8 HRC Exit Report and Affidavit
 - Form 9 HRC Payment Affidavit
 - Form 10 HRC Contract Modification Form
- I. STANDARD FORMS: Listing and Internet Addresses of Forms related to Taxpayer Identification Number and Certification, to Business Tax Declaration, and to Chapters 12B and 12C, and 14B of the SF Administrative Code
- J. CHECKLIST OF REQUIRED DOCUMENTS
- K. MODEL AGREEMENT

EXHIBITS TO MODEL AGREEMENT

- A. Description of Facility Property
- B. Facility Parking Rates
- C. Sec. 21.25-2. Prevailing Rate Of Wages And Displaced Work Protection Required For Workers in Public Off-Street Parking Lots, Garages, Or Storage Facilities For Automobiles
- D. Maintenance Standards

APPENDICES TO MODEL AGREEMENT

- A. Parking Rate Schedule
- B. Form of Maintenance Schedule
- C. Form of Annual Budget
- D. Monthly Report Form
- E. Performance Bond
- F. Parking-related Businesses in which Operator Has Interest
- G. Parking Tax Collection Bond

Request for Proposals for Operation and Management of Parking Facilities

I. INTRODUCTION

The San Francisco Municipal Transportation Agency (SFMTA) is a multi-modal transportation organization responsible for operating buses, rail, world-famous cable cars and a historic fleet of streetcars, as well as developing and implementing innovative transportation solutions to benefit auto drivers, transit riders, bicyclists and pedestrians. SFMTA programs and services promote safe, efficient and convenient mobility alternatives for San Francisco residents, commuters, businesses and visitors.

SFMTA's Off-Street Parking Division manages 40 parking facilities generating nearly Eighty Five Million Dollars (\$85M) in gross revenue annually. The mission of the Off-Street Parking Division is to provide clean, safe and convenient parking to the visitors, employees and businesses in the downtown core as well as commercial and residential districts. Through effective management of over 15,000 spaces at 40 parking facilities throughout the City, the Division supports economic vitality in the City's downtown and neighborhood commercial districts. Various parking policies and programs, administered by the Division, support City's *Transit First* policy, help reduce traffic congestion on City streets and promote alternate modes of transportation. The Division monitors current and anticipated parking demands, and evaluates need for the expansion and development of new parking facilities.

For visitors, these parking facilities offer the first impression of the City of San Francisco. It is very important to the City that the parking facilities are managed and operated in a manner that reflects the City's commitment to customer service, careful stewardship of the public's capital investments, adequate safeguards on the City's revenues, and professional management of the City's services.

The parking management services required shall vary, due to the diversity of each parking facility, their operating characteristics, and their primary customers. Exhibit A provides a description of the parking facilities with information on each facility's location, capacity and type of operation.

SFMTA intends to enter into agreements with three qualified Operators to provide parking operational and management services for the 14 City-owned parking facilities listed below, located throughout San Francisco:

Group A – Six Facilities (3316 Spaces)

1. Civic Center Garage located at 355 McAllister Street
2. Golden Gateway Garage located at 250 Clay Street
3. North Beach, Garage located at 755 Vallejo Street
4. Performing Arts Garage located at 260 Grove Street
5. St. Mary's Square Garage located at 433 Kearny Street and surface lots
6. Vallejo Street Garage located at 766 Vallejo Street

Group B – Four Facilities (2944 Spaces)

1. Lombard Street Garage located at 2055 Lombard Street
2. Mission Bartlett Garage located at 3255 21st Street
3. Moscone Center Garage located at 255 Third Street
4. SF General Hospital Garage and surface lots located at 2500 24th Street

Group C – Four Facilities (387 Spaces)

1. Polk Bush Garage located 1399 Polk Street
2. 7th & Harrison Lot located at 415 7th Street
3. 16th & Hoff located at 20 Hoff Street
4. 1660 Mission Street Garage

Proposers may submit proposals, per the requirements set forth in this Request for Proposal (RFP), to manage one of the three groups.

Although a Proposer may submit a proposal for each group (i.e., three separate proposals), the SFMTA intends to award contracts for management of Group A, Group B and Group C to the highest ranked vendors for each group. **No one vendor may be awarded more than one contract.**

II. SCOPE OF WORK AND TERM

The successful Proposers shall provide all parking management services necessary to manage, operate, and maintain the City-owned parking facilities on a twenty-four/seven (24/7) basis, so as to maximize revenues and minimize costs, while providing the highest standard of professional, courteous, and efficient services using industry best practices. The form of the Agreement and the Parking Facility Operation and Management Regulations contain a detailed description of the responsibilities of the Operators and other applicable terms and conditions.

The selected Operator will be required to assume employment of all current operating employees of the parking facilities and all obligations pursuant to San Francisco Administrative Code Section 21.25-2. Upon the effective date of the Agreement, all employees of the current Operator will become permanent employees of the new Operator pursuant to Administrative Code Section 21.25-2.

A. Adding Parking Facilities

The SFMTA shall have the right, during the term of the Agreements resulting from this RFP, to request that the Operator add up to three additional parking facilities to those under management by the Operator. Any such additional parking facility shall be managed in the manner described in this RFP and the Management Agreement. In the event that the SFMTA desires to add a new parking facility, it shall send a written notice of intent to the Operator. The Management Fee will be adjusted by determining the total number of parking spaces being added as a percentage of the total number of parking spaces already under management under the Agreement, and increasing the Management Fee otherwise due by an equivalent percentage. In the event that the Manager elects not to manage the additional facility(ies), the SFMTA shall have the right to select another Operator to manage the facility(ies).

B. Deleting Parking Facilities

The SFMTA shall have the right during the term of the Operating Agreements resulting from this RFP to either temporarily or permanently remove a maximum of two Facilities from an Operator's inventory in the event that those facilities are removed from service and not being used for public parking (if, for example a Facility is closed for renovation) or due to a major operational change, such as use of automated pay stations. In the event that SFMTA decides to remove a facility from the Operator's inventory, the Management Fee may be adjusted by determining the total number of parking spaces being removed as a percentage of the total number of parking spaces already under management under the Agreement, and reducing the Management Fee otherwise due by an equivalent percentage. In the event that the facility is returned to service during the term of the Agreement, the Management Fee shall be reinstated.

C. Parking Rate Information

Pursuant to the San Francisco Charter, the SFMTA has the sole authority to set and to change parking rates for the parking facilities. Upon approval of any new parking rates, the Operator will be responsible for changing all rate signage, making software updates and charging each patron the appropriate parking fees. Replacement signage and software upgrades will be reimbursable expenses. From time to time, the SFMTA may request the Operator to conduct a parking rate survey and to make recommendations to the SFMTA on the proposed rate adjustments.

TERM OF AGREEMENT

The term of each Agreement will be six (6) years commencing November 1, 2009, with a maximum of two (2) extensions not to exceed eighteen (18) months for each extension at the sole discretion of the SFMTA.

Proposers should carefully review all of the terms of the Agreement before preparing their proposals.

III. COMPENSATION

Each Operator's compensation shall consist of the following items:

A. Management Fee

The Management Fee is intended to cover the Proposer's profit and unreimbursed costs for management of the Group of facilities that the Proposer seeks to manage. A fixed Management Fee is established for each Group.

Group A: Five Thousand Dollars (\$5,000) per month.

Group B: Four Thousand Five Hundred Dollars (\$4,500) per month.

Group C: Two Thousand Dollars (\$2,000) per month.

Beginning the first month of contract years 4 and 7, the monthly management fee will be increased by five percent (5%) for each Group of Facilities.

B. Reimbursable Expenses

Each month, the SFMTA shall reimburse the Operators for operating expenses set forth herein. These expenses shall be reimbursable only to the extent that the Operator submits sufficient documentation to the SFMTA, indicating that the expenses were directly incurred in providing the required parking services to the parking facilities. Moreover, the Operator shall not be reimbursed for any otherwise reimbursable operating expense, incurred during a particular month, to the extent the amount exceeds the Operating Budget, unless such expenditure were pre-approved in writing by the SFMTA.

Reimbursable Operating Expenses are defined more specifically in the Model Agreement, but generally include the following categories of Operator's approved costs that are directly associated with an Operator's performance of its obligations under the Agreement:

1. Personnel/Payroll
 - a. Parking operations salaries
 - b. Payroll Taxes
 - c. SF Business Tax
 - d. Employee Benefits
 - e. Worker's Compensation
2. Utilities
 - a. Electricity
 - b. Water
 - c. Telephone
 - d. Garbage Pick Up
3. Supplies
 - a. On-site Office
 - b. Garage
 - c. Parking
 - d. Repair/Maintenance
4. Professional Services
 - a. Annual Audit
 - b. Security
 - c. Janitorial
 - d. Elevator Maintenance
 - e. Bank Charges (other than penalties or late fees)
 - f. Armored Courier
 - g. Uniform Cleaning
 - h. Personnel Training
 - i. Other Contractual Maintenance
5. Other
 - a. Insurance (except for deductibles or other costs resulting from theft, employee negligence, dishonesty or other acts of malfeasance)
 - b. Garage Claims
 - c. Marketing of Garages

Non-Reimbursable Expenses shall include, but are not limited to:

1. Employee recruitment
2. Internal accounting services; payroll administration/processing, invoicing monthly statements
3. In-house audit
4. Interoffice correspondence
5. Off-site supervision
6. The cost of Emergency Actions caused by the negligence or willful misconduct of any employee of the Operator
7. The cost of repairing revenue control equipment repair or other damage to the Garages resulting from Operator's or Operator's employees' willful, intentional or grossly negligent acts
8. Purchase, maintenance and fueling of vehicles required for the operation and management of the parking facilities
9. Meals, mileage, gratuities or gifts
10. Penalties or fees resulting from Operator's late payments of fees, taxes or bills
11. Overhead costs not directly attributable to operation of the Garages
12. Attorney's Fees or costs incurred in connection with any dispute with the City
13. Other expenses not directly related to the day-to-day operations, as may be determined by the Director in his or her sole discretion

C. Incentive Fee

In addition to the monthly management fee, the selected Operator may earn an incentive fee as a result of exceeding established net parking income targets and/or meeting established customer service standards.

1. Net Income Incentive:

SFMTA recognizes the efforts required to operate the parking facilities in the most effective manner to achieve the highest customer satisfaction and increased revenues. An incentive fee will be offered to reward the Operator's success in achieving certain revenue targets. This incentive is to compensate the Operator for effective management of parking resources while maintaining the most cost effective methods of operation and customer satisfaction. Costs shall not exceed previous year's actual expenses, unless pre-approved in writing by the SFMTA.

For the purpose of the Incentive Fee, Net Income is defined as Gross Revenues less parking taxes, key card deposits, and total reimbursable operating expenses. The total Operating Expense does not include Capital Expenditures or Incentive Fee payments. All revenue generated by the SFMTA Advertising Contract shall be excluded for the purpose of calculating incentive fees. The selected Operator may earn an incentive fee based on the income exceeding the net income targets set by the SFMTA.

These targets may be subject to revision, in the Director's absolute and sole discretion, to account for future parking rate changes and other impacts.

2. Process for Establishing Target Net Income:

For each contract year, the target is based on Actual Net Income from the previous contract year. In the event that a target is not met for a contract year, the Target Net Income will carry over for the next contract year. For example, in the table below, Contract Year 3's Actual Net Income fell \$150,000 short of the target at \$1.3M, and the Incentive Fee was not earned. Therefore the Target Net Income for Contract Year 4 was not adjusted downward, but remained the same as Contract Year 3 (\$1.3M). The target for Contract Year 5 is based on Actual Net Income from Contract Year 4.

The table below shows the Annual Incentive Fees earned based upon the Net Income exceeding the targets, beginning with a \$1.0M target for the first Contract Year. All numbers in this table are for illustration purposes only, except that the column labeled "% Earned" (i.e., 10%, 12%, 15% for each corresponding contract year) indicates the ACTUAL percentages proposed by the SFMTA.

Contract Year	Net Income	Target	Over Target	% Earned	Incentive Earned
1	\$1.2M	\$1.0M	\$200K	10%	\$20,000
2	\$1.3M	\$1.2M	\$100K	12%	\$12,000
3	\$1.15M	\$1.3M	(\$150K)	15%	-0-
4	\$1.5M	\$1.3M	\$200K	15%	\$30,000
5	\$1.7M	\$1.5M	\$200K	15%	\$30,000
6	\$1.7M	\$1.7M	-0-	15%	-0-

3. Customer Satisfaction Surveys:

As directed by the SFMTA, the Operator shall conduct a quarterly survey of patrons for each parking facility as part of its outreach strategy. The survey will include performance measures in several categories, including customer satisfaction, cleanliness, and safety/security of facility. Rating will be on a 5-point scale with 5 = Outstanding; 4 = Very Good; 3 = Acceptable; 2 = Improvement Needed; and 1 = Unacceptable. For Group A and Group B, the Operator may earn an incentive fee of \$1,000 per quarter per facility upon meeting the criteria; for Group C, the Operator may earn an incentive fee of \$500 per quarter per facility upon meeting the criteria.

ALL of the following three (3) conditions must be met in order to earn the quarterly incentive for a specific facility:

- a. A quarterly survey shall be conducted as directed by the SFMTA. The minimum of survey responses will be based on the number of spaces in each facility. For example, Group A and Group B must collect a minimum of 250 responses per facility per quarter; Group C must collect a minimum of 100 responses per facility per quarter.
- b. A combined average score of 3.75 for all categories must be achieved.
- c. A minimum average score of 3.0 must be achieved in each category.

IV. PRE-SUBMISSION REQUIREMENTS AND SCHEDULE FOR PROPOSALS

NOTE: Where the word “shall” or “must” or “required” appears, Proposers may not take an exception.

A. Mandatory Pre-Proposal Conference

A **mandatory** pre-proposal conference has been scheduled for:

**Friday, March 20, 2009 at 2:00 p.m. (PDT)
San Francisco Municipal Transportation Agency
One South Van Ness, 7th Floor, Union Square Conference Room #7080
San Francisco, CA 94103-5417**

Any questions may be addressed at this conference and any available new information may be provided at that time. Representatives from SFMTA’s Contract Compliance Office will be available to answer questions regarding the City’s Local Business Enterprise (LBE)/Nondiscrimination in Contracting Ordinance. Due to the limited availability of seating, Proposers must RSVP by e-mail to Winnie Xie at Winnie.Xie@sfmta.com; please provide the names, titles and contact information of each representative who plans to attend the pre-proposal conference, not later than **4:00 p.m. (PDT), Monday, March 16, 2009**. Please note, attendance by teleconference is also an option. In order to set up a teleconference, please provide names, titles, and contact information to Winnie.Xie@sfmta.com not later than the same deadline of **4:00 p.m. (PDT), Monday, March 16, 2009**.

Any requests for information concerning this RFP submitted before or after the pre-proposal conference must be in writing, and any substantive replies will be issued as written addenda to all Proposers, who attended the mandatory Pre-Proposal Conference, either in person or by teleconference. Questions raised at the mandatory pre-proposal conference may be answered orally. If any substantive, new information is provided in response to questions raised at the mandatory pre-proposal conference, it will also be memorialized in a written addendum to this RFP and will be distributed to all parties who attended or participated via teleconference in the mandatory pre-proposal conference, and posted on line. **Any questions related to this RFP, after the mandatory Pre-Proposal conference, must be submitted in writing by 4:00 p.m. (PDT), Friday, March 27, 2009.** The SFMTA will provide responses to questions by **Monday, April 6, 2009**.

B. Deadline for the Qualification Questionnaire

Each Proposer must hand-deliver completed Qualification Questionnaire forms to Winnie Xie, SFMTA, One South Van Ness Ave., 7th Floor, **by 4:00 p.m. (PDT), Friday, March 27, 2009**. The Qualification Questionnaire, also known as Experience, Financial and Taxpayer Responsibility of Proposer Questionnaire (Attachment A), together with a statement from a financial institution verifying the Proposer’s ability to provide or obtain One Million Five Hundred Thousand Dollars (\$1,500,000) for Group A; Seven Hundred

Fifty Thousand Dollars (\$750,000) for B; Two Hundred Fifty Thousand Dollars (\$250,000) for Group C either in liquid assets, an irrevocable letter of credit, a line of credit or a qualified loan commitment, or demonstrate a working capital ratio to cover operating expenses for a 3-month period. The working capital ratio will be adjusted based on actual operating expenses. This financial requirement assures the SFMTA that the Proposer, if selected, will have sufficient funds to pay operating costs, prior to requests for reimbursement, and is otherwise credit-worthy.

The Proposer must also provide reviewed financial statements for the previous three (3) years, prepared by a certified public accountant in accordance to generally accepted auditing standards, beginning with the most recent year, or three (3) years of notarized Federal Tax Statements. These documents may be marked as Proprietary or Confidential. Proposers should be aware, however, that under the City's Sunshine Ordinance, financial materials submitted by a successful proposer are subject to disclosure in response to a public records request. Should the SFMTA receive such a request, the Agency will notify the successful proposer upon receipt of the request.

The intent of the questionnaire is to evaluate whether the Proposer meets all of the minimum qualifications set forth in the RFP. Upon receipt of the questionnaire, the SFMTA may require confirmation from financial institutions and the San Francisco Tax Collector. Such information will be used to determine whether Proposers are eligible for further consideration. If additional information is required, Proposers will be expected to assist in securing the information on a timely basis.

The Qualification Questionnaire and other required documents set forth herein must be received by **4:00 p.m. (PDT), Friday, March 27, 2009**, delivered in person or mailed to:

**Winnie Xie
San Francisco Municipal Transportation Agency
One South Van Ness, 7th Floor
San Francisco, California 94103-5417**

C. Format and Deadline for Submission of Proposals

Format:

Each Proposer must submit eight (8) copies of the technical proposal, clearly marked **RFP for Operation and Management of Parking Facilities, No. SFMTA2008/09-30 and a Group No. (e.g, Group A, or Group B, or Group C)**. Each proposal must submit two (2) copies, separately bound, of required HRC Pre-Award Forms, contained in Attachment H, in a sealed envelope clearly marked: **HRC Forms for RFP#SFMTA2008/09-30, Attn: Contract Compliance Office.**

1. all proposal documents shall be placed in a 3-ring binder; tabs or other separators may be used within the binder;
2. all pages shall be sequentially numbered and a table of contents shall be provided; and
3. the font size on each page shall be 12-point, using a Times New Roman font; and
4. the pages must be on recycled paper, printed on double-sided pages, and single-spaced.

Please do not bind your proposal with a spiral binding, glued binding, or anything similar.

One (1) electronic copy of the proposal, excluding HRC Forms, shall be submitted on a compact disk in a format compatible with Microsoft Word, with one-inch margins (excluding headers, footers and footnotes), Times Roman font and unjustified text.

Deadline:

Proposal packages, together with the bid security described below, must be received by 4:00 p.m., Friday, (PDT), May 8, 2009, delivered in person or mailed to:

**Winnie Xie
San Francisco Municipal Transportation Agency
One South Van Ness, 7th Floor
San Francisco, California 94103-5417**

Proposals submitted by fax or e-mail will **not** be accepted. Late submissions will not be considered. Proposals must be received by the due date and time. Postmarks will not be considered to determine whether a proposal was submitted in a timely manner.

D. Schedule

The anticipated schedule for selecting Operators under this RFP is shown below:

Schedule	Date
Mandatory Pre-Proposal Conference	March 20, 2009
Qualification Questionnaire Due	March 27, 2009
Deadline for Submission of Written Questions or Requests for Clarification	March 27, 2009
Response to Questions from Prospective Proposers	April 6, 2009
Proposals, Required Documents, and Bid Security Due	May 8, 2009
Selection Committee Review and Approval	July/August 2009
Negotiations/Draft Agreements	August/September 2009
SFMTA Board Approval	October 2009
Commencement of Contracts	November 1, 2009

V. MINIMUM QUALIFICATIONS AND EXPERIENCE

To be considered for award, a corporation or other legal entity or its managing members, including any Joint Venture Partner or Subcontractor who will provide parking management services, (a "Proposer") must meet or exceed each of the following minimum qualifications (the "Minimum Qualifications"). A Proposer that does not meet the Minimum Qualifications will not be considered. The SFMTA may, however, waive any inconsistencies or deficiencies which the SFMTA deems, in its sole discretion, to be minor or technical.

A. Qualifications and Experience

There are different requirements for qualifications and experience, depending upon which group of facilities a Proposer is seeking to manage.

Group A and B Facilities

1. The Proposer must currently be managing at least three parking facilities, with a minimum of 300 spaces at each location, one of which must be a multi-level structure with at least 200 spaces, and which has been under the Proposer's management for a continuous period of three years prior to the date of this RFP;

and

2. The Proposer must have a minimum of three years of continuous, first-hand experience in the operation and management of parking facilities with an:
 - a. Annual Net Revenues (Gross revenue minus parking tax, if any) of a least \$5,000,000 from all facilities under its management; and
 - b. Annual Operating Budget of at least \$2,500,000;

and

3. During said three-year period, the Proposer must have had:
 - a. experience in the use of automated pay station, automated parking access, and revenue control equipment and software, including such functions as sophisticated spreadsheet and information retrieval and report writing, etc.;
 - b. experience with additional software including, but not limited to, Microsoft's Excel and PowerPoint, and other financial reporting software;
 - c. experience in managing at least ten full-time operation employees at parking facilities that were staffed and open to the public at a minimum of twelve (12) hours per day, preferably on a twenty-four (24) hour basis; and
 - d. experience in daily valet parking operations and shuttle services.

Group C Facilities

1. The Proposer must currently be managing at least two parking facilities, with a minimum of 50 spaces at each location, and which has been under the Proposer's management for a continuous period of three years prior within the past 5 years prior to the date of this RFP;

and

2. The Proposer must have a minimum of three years of continuous, first-hand experience in which at all times during such three-year period, the operation and management of parking facilities with an:
 - a. Annual Net Revenues (Gross revenue minus parking tax, if any) of a least \$650,000 from all facilities under its management; and
 - b. Annual Operating Budget of at least \$200,000.

B. General

1. The SFMTA will **not** accept a proposal if any of the following occurs:
 - a. any necessary proposal document is incomplete, misleading or missing;
 - b. any RFP forms are left blank, incomplete, or changed in any substantive way;
 - c. the Proposer does not meet the minimum qualifications set forth in this section and/or failed to submit the information required by Section IV.C;
 - d. the Proposer does not provide additional/clarification information as requested by the SFMTA by the specified date; or
 - e. the Proposer is not current in payment of applicable fees and taxes.
2. The Proposer must prepare the proposal and submit its contents in accordance with the provisions set forth in this RFP.
3. Any attempt, directly or indirectly, of any Proposer to influence any member of the SFMTA Board members, selection committee members, or any officer or employee of the SFMTA, the City and County of San Francisco, HRC, or the Off-Street Parking Division, as to the selection of a vendor to provide the services described herein ***outside of the formal selection process***, will disqualify the Proposer without further consideration.

C. Financial Requirements

The Proposer must have satisfied the financial requirements set forth above in connection with pre-proposal questionnaire.

D. San Francisco Business Tax Certificate

The Proposer must have a current San Francisco Business Tax Certificate prior to the Proposal and Bid Security due date.

VI. SUBMISSION REQUIREMENTS AND EVALUATION CRITERIA

A Proposer, in response to this RFP, must submit the following information, in the order specified below for each proposal responding to each group of the RFP:

A. Letter of Introduction and Executive Summary – 2 page maximum (Required, but not scored)

Proposals must include a Letter of Introduction describing the Proposer, how long it has been in business, its ownership structure, including the name(s) of owner(s), and its ability to provide the services in the RFP. The summary must be signed by and contain the name, address and phone number of the persons authorized by the Proposer to obligate the Proposer to perform the commitments contained in the proposal, and to communicate with the SFMTA in connection with this RFP. Submission of the letter will constitute a representation by the Proposer that the Proposer is willing, able and authorized to perform the commitments contained in its proposal.

B. Evaluation of Responsive Proposals

An appointed Selection Panel will review and score all Responsive Proposals, based on two categories:

1. Written Proposal; and
2. Oral Interview/Presentation.

CRITERION	MAXIMUM POINTS
1. Written Proposal	150
a. Qualifications and Experience	30
b. Management Approach: Staffing/Operational Plan/Budget	50
c. Maintenance Plan	20
d. Marketing Plan	15
e. Security and Safety Plan	15
f. Overall organization and clarity of proposal	20
2. Oral Interview/Presentation	50
TOTAL	200

1. Written Proposal (Up to 150 Points)

a. Qualifications and Experience – 10 page maximum (Up to 30 Points)

- 1) The description of the Proposer's qualifications and experience must include the Proposer's experience in the off-street parking industry and operation of parking facilities comparable to the City-owned facilities, described in Exhibit A, within the past three years, including any public agency contracts and use of central pay-on-foot equipment. The description should include staffing requirements, annual gross revenues, annual budget, successful programs that the Proposer implemented, new business that the Proposer attracted to the parking facilities it manages, and a summary of the scope of responsibilities. This section should also refer to any objective evidence of the quality of the Proposer's performance with respect to the facilities, such as payment of incentive fees, exercise of renewal options, etc. The Proposer will be scored on experience in the parking operation and management field, and specifically in operations with similar financing, ownership and operational requirements.
- 2) A Proposer must describe its experience with the use of automated pay station, automated parking access, and revenue control equipment and software, including sophisticated spreadsheet, revenue and data reporting, and information retrieval and organization software including, but not limited to, Microsoft's Excel and PowerPoint, and other financial reporting software, and

any experience with internet reservations, cell phone reservations, parking guidance systems, variable pricing options for including Special Event Pricing, Peak Demand Pricing and Market Based Pricing to maintain target occupancy levels.

- 3) This section should also include the qualifications of each management staff person outside the direct parking facilities staff, including any subcontractors. Brief resumes may be included for each key person and the role each will play in the operations of the parking facilities. Proposers may include a description of how each key person can enhance services or revenues at the parking facilities and how each key person will support and complement the current parking facilities staff.
 - 4) The Proposer must be able to provide verifiable references, preferably other public agencies.
 - 5) The Proposer must provide details of any notice of default or breach of contract, pursuant to any garage management agreement received by the Proposer, its joint venture partner or subcontractor, even if such a default was cured at a later date.
 - 6) The Proposer must specify whether the Proposer (or any predecessor in interest) has been involved in any litigation involving any contract for the operation and management of parking facilities. Describe the nature of the litigation, the parties involved, and how the matter was resolved.
 - 7) Specify whether any contract with the Proposer (or any predecessor in interest) for the operation and management of parking facilities has ever been terminated due to breach or default.
 - 8) Specify experience in providing daily valet parking operations and shuttle services during special events.
- b. Management Approach/Operational Plan/Budget – 20 page maximum (Up to 50 Points)

Proposals must contain a narrative description of the services and activities to be provided to the SFMTA, including, but not limited to, cash handling procedures, daily ticket auditing procedures, customer service assurance, employee training, and company policies. Proposals must include an implementation plan for said services and activities designed to optimize the overall performance, service and revenues at the parking facilities. The selected Operator will be subject to employee retention requirements pursuant to law. Each Proposer must state how it would staff the parking facilities given those restrictions, and include written assurance that parking facilities personnel will not be transferred to other locations without the SFMTA's prior approval. (For information on Employee Retention requirements, see San Francisco Administrative Code Section 21.25-2, attached as

Exhibit C to the Model Agreement). A Proposer shall also explain how the Proposer will provide adequate coverage despite absenteeism, vacations, leaves or turnover of employees, as well as additional staff needed for special circumstances and the holiday shopping season. The Proposer must describe how it will support its on-site manager and assure the successful management of the parking facilities and implementation of its proposal. The Proposer must describe the authority the on-site manager will have as to vendor selection, shift scheduling, employee disciplinary actions, marketing, budgets, labor agreement issues, operational changes, compiling and safe keeping of records. The proposal must also list any subcontractors and explain their roles. The proposal may include a proposed valet-assisted operation at the parking facilities and an explanation of how that operation will best serve transient and monthly users. The Proposer must attach a sample of its standard operating practices, including hiring and training policies and procedures.

BUDGET (Points awarded as part of the Management Approach/Staffing and Operational Plan; failure to include will result in rejection of Proposal)

The proposal must also provide a pro-forma annual budget for the parking facilities that include all projected costs and expenses in the format attached to the Model Agreement as Appendix C.¹ The Management Fee shall not be included in the pro-forma budget. The proposed budget must provide a projected twelve-month profit and loss statement with detailed assumptions in all revenue and expense categories and with annual increases indicated and justified. Include a statement describing how the Proposer would manage expenses without a negative impact on customer service and facility condition.

NOTE: After the award of contract, the Operator will be required to prepare a separate annual budget for each parking facility.

The Proposer must describe two cost cutting programs that it implemented at other parking facilities that did not negatively impact services and facility condition, and the Proposer must describe the resulting cost savings. The Proposer must also describe two of the largest capital improvement projects managed and completed at other parking facilities, the timeline, the budget and the process used to complete the project.

The SFMTA will evaluate Proposers based on the pro-forma operating and capital budgets and cost containment measures included in the proposal. The SFMTA desires to keep costs to a minimum, but merely speculative statements of lower costs will be disregarded if the basis for the lower cost is not clearly indicated and

¹ Budgets submitted in response to the above question are intended only to demonstrate the Proposer's knowledge and ability to present and formulate a working operational budget for the group of facilities, and will not necessarily be accepted by the SFMTA as the actual budget if the Proposer is selected as the Operator.

justified. The proposal should evidence an understanding of potential costs and revenues of the parking facilities and the impact on services and facility conditions. Emphasis will be placed on the Proposer's suggested means of cutting costs and completing capital projects, and past successful examples of cost-cutting programs and methods.

c. Maintenance Plan – 10 page maximum (Up to 20 Points)

The Proposer must provide a general Maintenance Plan that describes how the Proposer will monitor, inspect, maintain and clean the parking facilities, paying careful attention to Appendix B of the Agreement and any additional requirements as provided by the SFMTA, pursuant to the Agreement. Maintenance equipment recommendations and requirements should also be provided. In addition to its other maintenance duties, the Operator will be responsible for scheduling special cleaning when necessary and for overseeing and giving appropriate instruction to any janitorial service companies. Plans to minimize maintenance and major capital expenses, while balancing customer service and facility condition, should also be included in the proposal.

The Proposer's Maintenance Plan will be evaluated based upon its overall strength, coherence, and probable success in maintaining first-class, clean, well-maintained and fully operational parking facilities at the lowest possible cost. The Maintenance Plan should also demonstrate knowledge of and conformance to the SFMTA's maintenance expectations, as set forth in the Agreement. Finally, the Maintenance Plan will be evaluated based upon how well it satisfies the needs of the parking facilities.

NOTE: Janitorial services at some parking facilities are currently contracted out to a professional janitorial vendor. This should not be considered as the only method of maintenance means available. Alternative and unique solutions are welcome, provided that they are thoroughly explained and their implementation meets the needs set forth by the SFMTA.

d. Marketing Plan – 10 page maximum (Up to 15 Points)

Each proposal must include a general marketing plan for the parking facilities, describing how the Proposer would enhance the facilities' revenues, public image, advertising, outreach, and area merchant coordination. The target markets for the parking facilities must be addressed in the marketing plan, as well as plans for increasing parking facilities' patronage. The Proposer should also describe similar marketing strategies by marketing segments which have been successfully employed by the Proposer at comparable facilities. The SFMTA wishes to explore all marketing ideas, including courtesies or amenities for its monthly and daily customers. Accordingly, the marketing plan should demonstrate an understanding of the marketing segments, including varied businesses and residential communities' needs in the areas surrounding the parking facilities. The Proposer's

awareness of the communities that the parking facilities serve the needs of businesses and residents, and plans to successfully market to them and meet their needs should also be included in the Proposer's marketing plan.

The Marketing Plan will be evaluated based on how well it will promote the parking facilities, increase revenues, and respond to the users needs in a cost-effective manner. Creativity and innovation will be considered favorably, as will past examples of the Proposer's marketing successes.

e. Security and Safety Plan – 10 page maximum (Up to 15 Points)

The proposal must include a general Security and Safety Plan for maintaining both the security and safety of the customers, employees, vehicles, the parking facility, equipment, and the assets, including the integrity of cash handling and ticket auditing procedures. The proposal must address equipment and other technical recommendations or requirements, staffing and scheduling needs, emergency and crisis handling procedures, surveillance methods and surveillance equipment, as well as a disaster planning procedure that includes a reporting protocol and communications plan. A Proposer must describe in its Safety and Security Plan how management and supervisory staff will monitor and inspect the parking facilities to assure the security and safety of parking facility property and revenues and customer and employee safety. The proposal should describe how security can be improved, with an emphasis on customer safety, employee safety and reducing break-ins of vehicles. The proposal must include contingency plans and staff for security matters, including civil disobedience, riots, and response to the effects of acts of terrorism. The Proposer must submit a recommended Emergency Plan and a Disaster Recovery Plan and should also describe the specific training the proposed security company gives its employees regarding response to civil disobedience, riots, and the effects of acts of terrorism.

The Security Plan will be evaluated in terms of the safety of customers, employees, vehicles, facility equipment and the integrity of cash handling procedures. Scoring will include considerations of the Proposer's ingenuity and originality in developing methods that will increase overall security and safety, at the lowest possible cost without compromising best practices. The Security and Safety Plan should also demonstrate an acute understanding of the needs of customers and the parking facilities, as well as flexibility in responding to new and unexpected situations, if and when they arise.

f. Overall Organization and Clarity of Proposal (Up to 20 Points)

Responsive proposals will be evaluated on the Proposer's understanding of the scope of work and tasks to be performed, as well as the completeness of the proposal, and the creativity of ideas included in the proposal.

2. Oral Interview/Presentation (Up to 50 Points)

The top three Proposers in each Group will be invited to participate in an oral interview and presentation. However, a fourth Proposer from each Group may be invited to participate in an oral interview and presentation, IF they are within 20 points of the top Proposer. The top three (or four, if applicable) Proposers in each Group and their subcontractors shall be required to appear (in no particular order) before the selection committee for an oral interview and presentation of the Proposal and detailed discussion of the various elements of their Proposal. SFMTA strongly encourages that the key personnel, to be assigned to the parking facilities, play a significant role in the presentations and discussions at the oral interview. Questions from the selection committee may be directed to a specific member of the Proposer's team. The Proposer's Operations Team will be required to participate in the presentation and oral interview.

C. Bid Security (No points awarded, but failure to include will result in rejection of Proposal)

Each Proposer must include with their proposal a bid security of Ten Thousand Dollars (\$10,000), in the form of a certified or cashier's check payable to the SFMTA, or a bid bond naming the SFMTA as beneficiary. Promptly after the rejection of any proposal, the SFMTA will refund to the Proposer the bid security, without interest. The bid security of the selected Proposer will be retained by the SFMTA until the Agreement has been approved by all necessary parties and executed by the Proposer. Upon satisfaction of those requirements, the bid security will be held as part of the security deposit in accordance with the Parking Garage Operation and Management Regulations. Furthermore, immediately upon commencement of the Agreement, the Manager must provide an additional Ninety Thousand Dollars (\$90,000) security deposit, in the form of a certified or cashier's check payable to the SFMTA, in accordance with the Parking Garage Operation and Management Regulations.

If the selected Proposer fails to execute the Agreement within 15 days after receipt of notice from the SFMTA, the proposal and its acceptance may be declared null and void by the SFMTA and the bid security may be retained as liquidated damages to compensate the SFMTA for its time and effort. By submitting a proposal, each Proposer acknowledges and agrees that the SFMTA's damages would be difficult to determine, and this liquidated damages amount is not a penalty, but is reasonable compensation based upon the facts and circumstances known to the Proposer at the time of its submittal.

D. Financial Stability (No points awarded, but failure to include will result in rejection of Proposal)

Each Proposer must provide proof of financial responsibility as described in Section IV (B) of this RFP.

The Proposer must also submit a signed letter from an insurance agent and/or broker stating that such broker has reviewed the insurance and bond requirements contained in the Agreement, and that the Proposer will be able to obtain and maintain the insurance and bonding required under the Agreement.

The SFMTA will submit the above-described information to its outside auditor, who will provide a recommendation based on such information as to whether the Proposer meets the requisite financial stability required to be awarded the Agreement.

E. Non-Discrimination Statement (No points awarded, but failure to include will result in rejection of Proposal)

Each Proposer must include a statement in its proposal that, should it be awarded the operating agreement for the operation and management of parking facilities, the Proposer will not discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of Operator, any SFMTA or City employee working with the Operator, or applicant for employment with Operator, in any of the Operator's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Operator.

The selected Proposer will be required to comply fully with and be bound by all of the provisions that apply to the Agreement under Chapters 12B and 12C of the Administrative Code, including, but not limited to, the remedies provided in such Chapters, except that said remedies will inure to the SFMTA and the City. A penalty of \$50 for each person for each calendar day during which the Operator discriminated against any person in violation of the provisions of this Agreement, may be assessed against Operator and/or deducted from any payments due Operator.

F. Attestation Statements and Certifications

The **Proposer, Joint Venture Partner and all subcontractors named in a proposal** must individually sign the Attestation of Compliance and Certifications attached as Attachments **D, E and F**. Any proposal that does not include the executed Attestation of Compliance and Certifications as required by the RFP **will be deemed non-responsive and will not be scored**. Any Proposer who violates representations made in the Attestation of Compliance and Certifications, directly or through an agent, lobbyist or subcontractor will be disqualified from the selection process for this contract.

G. Disclosure of Business Interests

Each Proposer, including the Joint Venture Partner or Subcontractor providing parking management services, must include a statement in its proposal that discloses all parking-related businesses, including but not limited to parking garages, parking lots and valet parking services, located or operated in the City in which the Proposer either has an interest or proposes to have an interest. This statement shall also explain the nature and extent of any such interest listed in Appendix F to the Agreement. For purposes of this requirement, a reportable interest shall be any ownership interest of five percent or greater.

VII. CONTRACT AWARD

The SFMTA intends to award the contracts for the management of Groups A, B and C to the Proposers that it believes will provide the best, most professional overall parking management services at a competitive cost. SFMTA intends to award contracts for management of Group A, Group B and Group C to the highest ranked vendors for each group. **No one vendor may be awarded more than one contract.**

The SFMTA reserves the right to accept other than the lowest priced offers and to reject any proposals that are not deemed responsive and/or responsible. The SFMTA reserves the right to refuse and reject any and all proposals.

This RFP is a solicitation for proposals; it is not an offer of a contract. Proposals and other responses to this RFP are offers, which are not binding until unconditionally accepted by the SFMTA, and said proposal and acceptance are reduced to and memorialized in a fully and properly executed written instrument, substantially similar in form and content to the attached Model Agreement.

SFMTA staff will commence contract negotiations with the highest ranked Proposers for each Group of facilities. The selection of any proposal shall not imply acceptance by the City of all terms of the proposal, which may be subject to further negotiations and approvals. If a satisfactory contract cannot be negotiated in a reasonable time, the SFMTA, in its sole discretion, may terminate negotiations with the highest-ranked Proposer and begin contract negotiations with the next highest-ranked Proposer.

The contract will not be awarded until such time as (a) the Executive Director/CEO of the SFMTA recommends the Agreement for award, (b) the SFMTA Board of Directors and Parking Authority Commission each adopt a resolution awarding the Agreement, and (c), if required, the contract is approved by the San Francisco Board of Supervisors.

Form of Contract

The successful Proposer will be required to enter into a contract on terms substantially similar to Attachment K. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsements, surety bonds, letter of credit or other materials required in the contract, shall be deemed an abandonment of a contract offer. If the highest-ranked Proposer fails to comply with these requirements, the SFMTA, in its sole discretion, may select another firm and may proceed against the original firm selected for damages.

VIII. TERMS AND CONDITIONS FOR RECEIPT OF PROPOSALS

A. Errors and Omissions in RFP

Proposers are responsible for reviewing all portions of this RFP, the Agreement and all attachments and exhibits of each. Proposers must promptly notify the SFMTA in writing if the Proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP.

Any such notification should be directed to the SFMTA promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals. The SFMTA will issue modifications and clarifications by addenda as provided below.

B. Inquiries Regarding RFP

Inquiries regarding the RFP other than inquiries at the mandatory pre-proposal conference must be directed to:

Winnie Xie
San Francisco Municipal Transportation Agency
One South Van Ness, 7th Floor
San Francisco, California 94103
Fax: (415) 701-4583
Email: winnie.xie@sfmta.com

Any inquiry or clarification will be shared with other prospective Proposers who attended the mandatory pre-proposal conference in written form by facsimile and/or mail.

C. Objections to RFP Terms

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

D. Addenda to RFP

The SFMTA may modify this RFP and /or the Model Agreement, prior to the proposal due date, by issuing written addenda. Addenda will be sent via regular, first class U.S. mail or by facsimile to the last known business address or facsimile number of each firm, listed with the SFMTA as having received a copy of the RFP. The SFMTA will make reasonable efforts to notify Proposers in a timely manner of modifications to the RFP.

Notwithstanding this provision, the Proposer shall be responsible for ensuring that its proposal reflects any and all addenda issued by the SFMTA prior to the proposal due date, regardless of when the proposal is submitted. Therefore, the SFMTA recommends that each Proposer contact the designated contact person to check for updates, including (shortly before the proposal due date) to determine if the Proposer has all addenda.

E. Validity of Proposal

Submission of a proposal signifies that the Proposer's offer remains open for 270 calendar days from the proposal due date and that the offer is genuine and not the result of collusion or any other anti-competitive activity.

F. Revision of Proposal

A Proposer may revise a proposal at the Proposer's own discretion at any time before the deadline for submission of proposals. The Proposer must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date. In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any Proposer.

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

G. Errors and Omissions in Proposal

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

H. Financial Responsibility

The SFMTA accepts no financial responsibility for any costs or other liability incurred by a firm in responding to this RFP. Submissions of proposals in response to this RFP will become the property of the SFMTA, and may be used by the SFMTA in any way deemed appropriate.

I. Reservations of Rights by the SFMTA

The issuance of this RFP does not constitute a promise or agreement by the SFMTA that the agency will enter into a contract. The SFMTA expressly reserves the right at any time to:

1. waive any defect or informality in any response, proposal, or proposal procedure;
2. reject any or all proposals;
3. reissue a RFP;
4. procure any service by any other means;
5. extend deadlines for accepting responses, or accept amendments to responses after expiration of deadlines;
6. declare impasse with a selected Proposer and offer the contract to the next highest ranked Proposer; or
7. determine that no project will be pursued.
8. all submitted proposals become the property of City and County of San Francisco

J. Sunshine Ordinance

In accordance with San Francisco Administrative Code Section 67.24(e), that contractors' bids, responses to the RFP and all other records of communications between the SFMTA and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private

person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided, which is covered by this paragraph, will be made available to the public upon request.

K. Public Access to Meetings and Records

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

L. Proposer's Obligations under the Campaign Reform Ordinance

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

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

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

1. The officer's re-election campaign.
2. A candidate for that officer's office.
3. A committee controlled by the officer or candidate.

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

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

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

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

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

M. No Waiver

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

N. Local Business Enterprise (LBE) Goals and Outreach

The requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance, set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”), shall apply to this RFP.

1. LBE Subcontractor Participation Goals

The LBE subconsulting goal for this project is twenty-five percent (25%) for Group A of the total value of the goods and/or services to be procured. The LBE subconsulting goal for Group B is twenty-five percent (25%) of the total value of the goods and/or services to be procured. The LBE subconsulting goal for Group C is fifteen percent (15%) of the total value of the goods and/or services to be procured.

Each firm responding to this solicitation shall demonstrate, in its response, that it has used good-faith outreach to select LBE subcontractors as set forth in S.F. Administrative Code Chapter 14B Section 14B.8 and 14B.9

<http://www.municode.com/Resources/gateway.asp?pid=14131&sid=5>

and shall identify the particular LBE subcontractors solicited and selected to be used in

performing the contract. For each LBE identified as a subcontractor, the response must specify the value of the participation as a percentage of the total value of the goods and/or services to be procured, the type of work to be performed, and such information as may reasonably be required to determine the responsiveness of the proposal. LBEs identified as subcontractors must be certified with the San Francisco Human Rights Commission at the time the proposal is submitted, and must be contacted by the Proposer (prime contractor), prior to listing them as subcontractors in the proposal. **Any proposal that does not meet the requirements of this paragraph will be deemed non-responsive.**

In addition to demonstrating that it will achieve the level of subconsulting participation required by the contract, a Proposer shall also undertake and document in its submittal the good-faith efforts required by Section 14B.8 (C) & (D) and HRC Attachment 2, Requirements for Architecture, Engineering and Professional Services Contracts. (NOTE: HRC Attachment 2 for projects advertised after December 26, 2008.).

Proposals which fail to comply with the material requirements of S.F. Administrative Code Section 14B.8 and 14B.9, HRC Attachment 2 and this RFP will be deemed non-responsive and will be rejected. During the term of the contract, any failure to comply with the level of LBE subcontractor participation specified in the contract shall be deemed a material breach of contract. Subconsulting goals can only be met with HRC-certified LBEs located in San Francisco.

2. LBE Participation

The SFMTA strongly encourages proposals from qualified LBEs. Pursuant to Chapter 14B, the following rating discount will be in effect for the award of this project for any Proposers who are certified by the City's Human Rights Commission (HRC) as a LBE, or joint ventures where the joint venture partners are in the same discipline and have the specific levels of participation, as identified below. Certification applications may be obtained by calling HRC at (415) 252-2500. The rating discount applies at each phase of the selection process. The application of the rating discount is as follows:

- a. a 10% discount to an LBE; or a joint venture between or among LBEs; or
- b. a 5% discount to a joint venture with LBE participation that equals or exceeds 35%, but is under 40%; or
- c. a 7.5% discount to a joint venture with LBE participation that equals or exceeds 40%; or
- d. a 10% discount to a certified non-profit entity.

If applying for a rating discount as a joint venture: The LBE must be an active partner in the joint venture and perform work, manage the job and take financial risks in proportion to the required level of participation stated in the proposal, and must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the LBE joint venture's work shall be set forth in detail, separately from the work to be performed by the non-LBE joint venture partner. **The LBE joint venture's portion of the contract must be assigned a commercially useful function.**

The joint venture partners must be of the same or similar discipline in order to be eligible for a rating bonus. The joint venture partners will be jointly responsible for the overall project management, control, and compliance with Chapter 14B requirements.

3. HRC Forms to be submitted with Proposal

- a. Each proposal submitted must include, separately bond, 2 copies of the following Human Rights Commission (HRC) Pre-Award Forms contained in the HRC Attachment 2: (1) HRC Contract Participation Form 2A, (2) HRC “Good Faith” Outreach Requirements Form 2B, (3) HRC Non-discrimination Affidavit Form 3 (4) Joint Venture Participation Schedule (if applicable) Form 4, and (5) HRC Employment Form 5. If these forms are not returned with the proposal, the proposal will be determined to be non-responsive and will be rejected. Proposers are required to document and submit Form 2B and supporting documentation, EVEN IF the LBE subconsultant goal has been met.
- b. Please submit only two copies of the above forms with your proposal. The forms should be placed in a separate, sealed envelope labeled: HRC Forms for RFP#SFMTA2008/09-30, Attn: Contract Compliance Office.

If you have any questions concerning the HRC Forms, you may contact Lome Aseron at the SFMTA Contract Compliance Office, One South Van Ness Avenue., 3rd Floor, San Francisco, CA 94103; phone: 415-701-4443, fax: 415-701-4347, e-mail: lome.aseron@sfmta.com

O. Budget Year/Fiscal Year – Special Dates of First Budget to be Prepared

The selected Operator will prepare, and submit for approval, budgets for the parking facilities that are the same as the SFMTA’s fiscal year (July 1 to June 30); however, if the starting date of the contract is not the same as the budget year, the Operator, in its first year of operation of the parking facilities, will prepare its initial budget with a budget start date that is the contract start date, and with a budget ending date of June 30, 2010, or assume the budget that was previously approved by the SFMTA Board of Directors and the City’s Controller. Subsequent budgets will be based on the SFMTA’s July 1 to June 30 fiscal years.

P. Communications Prior To Contract Award

It is the policy of the SFMTA that only employees identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from Proposers or potential Proposers seeking to influence the contractor selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the contractor selection is finally approved by the SFMTA Board of Directors and, if required, by the San Francisco Board of Supervisors.

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

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

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

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

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

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

Q. Resource Conservation

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

IX. CITY CONTRACT REQUIREMENTS

A. Standard Contract Provisions

Proposers are urged to pay special attention to the requirements of Administrative Code Chapters 12B and 12C, Nondiscrimination (§18.12 in the Model Agreement included as Attachment K); the Minimum Compensation Ordinance (§7.8 in the Model Agreement included as Attachment K); the Health Care Accountability Ordinance (§7.9 in the Model Agreement Attachment K); the First Source Hiring Program (§7.10 in the Model Agreement Attachment K); and applicable conflict of interest laws (§18.10 and §18.16) in the Model Agreement included as Attachment K), as set forth in paragraphs B, C, D, E and F below.

B. Nondiscrimination in Contracts and Benefits

The successful Proposer will be required to agree to comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the HRC's website at www.sfhrc.org.

C. Minimum Compensation Ordinance (MCO)

The successful Proposer will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements. For the contractual requirements of the MCO, see § 7.8 in the Model Agreement included as Attachment K.

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

Additional information regarding the MCO is available on the web at www.sfgov.org/olse/mco.

D. Health Care Accountability Ordinance (HCAO)

The successful Proposer will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q. Contractors should consult the San Francisco

Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at www.sfgov.org/site/olse_index.asp?id=27461.

E. First Source Hiring Program (FSHP)

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

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at <http://www.sfgov.org/site/frame.asp?u=http://www.sfhsa.org/> and from the First Source Hiring Administrator, (415) 401-4960.

F. Conflicts of Interest

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

Individuals who will perform work for the City on behalf of the successful Proposer might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful Proposer that the City has selected the Proposer.

X. PROTEST PROCEDURES

A. Protest of Non-responsiveness Determination

Within 5 working days of the SFMTA's issuance of a notice of non-responsiveness, any firm that has submitted a proposal, and believes that the SFMTA has incorrectly determined that its proposal is non-responsive, may submit a written notice of protest. Such notice of protest must be received by the SFMTA on or before the fifth working day following the SFMTA's issuance of the notice of non-responsiveness.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual

authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the SFMTA to determine the validity of the protest.

The SFMTA reserves the right to proceed with the proposal review and selection process during the five-day protest period. The SFMTA will cease the proposal review and selection process only when it receives a notification of decision that is in favor of the protestor.

B. Protest of Contract Award

Within 5 working days of the SFMTA's issuance of a notice of intent to award the contract, any responsible firm that has submitted a responsive proposal, and believes that the SFMTA has incorrectly selected another Proposer for award, may submit a written notice of protest. Such notice of protest must be received by the SFMTA on or before the fifth working day after the SFMTA's issuance of the notice of intent to award.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the SFMTA to determine the validity of the protest.

The SFMTA reserves the right to proceed with contract negotiation with the highest scored proposer during the five-day protest period. The SFMTA will cease the contract negotiation only when it receives a notification of decision that is in favor of the protestor.

C. Delivery of Protests

All protests must be received by the due date. If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the SFMTA received the protest. Protests or notice of protests made orally (e.g., by telephone) will not be considered.

Protests must be delivered via e-mail to winnie.xie@sfmta.com or via postal mail to :

**Winnie Xie
San Francisco Municipal Transportation Agency
One South Van Ness, 7th Floor
San Francisco, CA 94103**

ATTACHMENT A

QUALIFICATION QUESTIONNAIRE

**QUESTIONNAIRE CONCERNING EXPERIENCE, FINANCIAL AND TAXPAYER
RESPONSIBILITY OF PROPOSER FOR THE PARKING FACILITIES OPERATION AND
MANAGEMENT AGREEMENT**

**PROPOSERS MUST SUBMIT THE COMPLETED PREQUALIFICATION QUESTIONNAIRE
(PAGES 1-5) TO THE SFMTA NO LATER THAN 4:00 P.M. (PDT) ON MARCH 27, 2009.**

The following statements as to experience, financial and taxpayer responsibility qualifications of the Proposer are submitted with the proposal along with a waiver authorizing the City Tax Collector to confirm the status of the Proposer with respect to payment of local business taxes and fees ("Taxpayer Responsibility"), as a part thereof; and any material misstatement of the information submitted herein must be grounds to prohibit the Proposer from submitting a bid.

1. **NAME:** _____
Tel. No.: () _____ Fax No.: () _____
(Print name of corporation, individual or firm name and type of entity under which business is to be conducted, as it is to appear on the Agreement.)

2. **MAILING ADDRESS:** _____
St. Address/P.O. Box City State Zip Code

3. **PROPOSER INTENDS TO DO BUSINESS AS A** (Set forth with corporation, co-partnership, joint venture, or individual).

4. **PROPOSER'S SAN FRANCISCO BUSINESS TAX REGISTRATION CERTIFICATE NO.** _____
A copy of the current year's certificate must be submitted with the questionnaire. If a joint venture proposal is to be submitted, provide certificate numbers and submit copies of certificates for each joint venture partner.

5. **FULL NAME, TITLE AND ADDRESS** of all of the principal personnel of Proposer: If an individual, the name of the party bidding; if a co-partnership or joint venture, the members of the co-partnership or joint venture; if a corporation, the State of Incorporation, the president, vice-president and secretary.

PERSONNEL OF PROPOSER: (Full name - Do not use initials)

A. _____
First Name Middle Name Last Name

Title or Position (Co-Partner, joint venturer, officer of a corporation, or individual)

Business Address

City

State

Zip Code

ATTACHMENT A (cont.)

B. _____
 First Name Middle Name Last Name

 Title or Position (Co-Partner, joint venturer, officer of a corporation, or individual)

 Business Address City State Zip Code

C. _____
 First Name Middle Name Last Name

 Title or Position (Co-Partner, joint venturer, officer of a corporation, or individual)

 Business Address City State Zip Code

(Use separate sheet for additional personnel)

6. PARKING GARAGE OR LOT MANAGEMENT EXPERIENCE (Last Five Years):
Note: All parking experience stated below must be within the United States and Canada

A. General

Annual average number of Garages or lots managed: _____

Annual average gross parking related revenue: \$ _____

Total annual no. of parking related employees: Full Time: _____ Part Time: _____

Type of Garage operation: (Provide number of each)

Self-Park: _____

Attendant Park: _____

Combination: _____

B. Specific

1. Parking Facility: _____

Type of facility: (Check one) Parking Garage: _____ Surface Lot _____

Address: _____

Name of operator (if different than Proposer): _____

Name of owner or agent: _____

Phone: _____

No. of spaces: _____ Dates of operation: _____

Cite specific duties performed: _____

Yearly vehicle volume: _____

Average number of days operated per year: _____

Yearly gross parking related revenues: \$ _____

ATTACHMENT A (cont.)

Total annual no. of parking related employees: Full Time:____Part Time:____
Type of Garage operation: (Provide number of each) Self-Park: _____
Attendant Park: _____Combination: _____

2. Parking Facility: _____
Type of facility: (Check one) Parking Garage: _____ Surface Lot _____
Address: _____
Name of Operator (if different than Proposer): _____
Name of owner or agent: _____
Phone: _____
No. of spaces:_____ Dates of operation: _____
Cite specific duties performed: _____

Yearly vehicle volume: _____
Average number of days operated per year: _____
Yearly gross parking related revenues: \$ _____
Total annual no. of parking related employees: Full Time:____Part Time:____
Type of Garage operation: (Provide number of each) Self-Park: _____
Attendant Park: _____Combination: _____

3. Parking Facility: _____
Type of facility: (Check one) Parking Garage: _____ Surface Lot _____
Address: _____
Name of Operator (if different than Proposer): _____
Name of owner or agent: _____
Phone: _____
No. of spaces:_____ Dates of operation: _____
Cite specific duties performed: _____

Yearly vehicle volume: _____
Average number of days operated per year: _____
Yearly gross parking related revenues: \$ _____
Total annual no. of parking related employees: Full Time:____Part Time:____
Type of Garage operation: (Provide number of each) Self-Park: _____
Attendant Park: _____Combination: _____

7. Provide a brief history of Proposer's (including the Joint Venture Partner or Subcontractor providing parking management services) parking experience and describe Proposer's experience with the use of automated pay station and automated parking access and revenue control equipment and software, including sophisticated spreadsheet and information retrieval and organization software, including but not limited to Microsoft Excel and other financial reporting software, Power Point, and any experience with internet reservations, cell phone reservations, parking guidance systems, variable pricing for including Special Event Pricing, Peak Demand Pricing and Market Based Pricing to maintain target occupancy levels.

8. List on a separate page any businesses or business interests located or doing business in San

ATTACHMENT A (cont.)

Francisco in which the Proposer, including the Joint Venture Partner or Subcontractor providing parking management services, or individuals who control the Proposer have an interest. For each such interest, list the entity or individual, nature of the business, and term of the agreement, if applicable. If the Proposer wishes to have the response to this question treated as proprietary business information, the page containing this information should be clearly designated as such.

9. Has the Proposer or any of its management staff, including the Joint Venture Partner or Subcontractor providing parking management services under a parking management contract ever received a notice of default or breach of contract, even if such a default was cured at a later date?
10. Has the Proposer or any of its management staff including the Joint Venture Partner or Subcontractor providing parking management services ever requested release from a parking management contract?
11. Has the Proposer or any of its management staff including the Joint Venture Partner or Subcontractor providing parking management services ever managed a parking operation in which the parking contract was cancelled or terminated by the owner?
12. Has the Proposer or any of its management staff including the Joint Venture Partner or Subcontractor providing parking management services ever been a party to any legal action or proceeding relating to a parking contract? Does the Proposer have any outstanding claims against any parking facility owners or their staff?
13. Has the Proposer, any of its management staff including the Joint Venture Partner or Subcontractor providing parking management services, or any firms controlled by any management staff previously been employed by or associated with a firm that has filed for bankruptcy in the last ten years?
14. Is the Proposer or any of its management staff including the Joint Venture Partner or Subcontractor providing parking management services now in arrears on taxes or fees due on any parking business or operation?
15. Has the Proposer or any of its management staff including the Joint Venture Partner or Subcontractor providing parking management services ever been the subject of an enforcement action taken by any governmental body for the non-payment of taxes or violations of any city, county, state or federal regulation, ordinance or statute?

NOTE: If the answer to any of the items 9-15 is "Yes", please explain below. Place the corresponding question number before each response. Attach separate sheet if necessary.

ATTACHMENT B

AUTHORIZATION FOR RELEASE OF CREDIT INFORMATION

The undersigned hereby authorizes the companies and/or individuals listed below to release to the SFMTA all pertinent and confidential information concerning the credit standing or account status of:

_____ Name of Proposer

_____ Date: _____
Authorized Signature

_____ Print Name & Title

(1) Name of Bank: _____
Address: _____
City, State: _____
Contact Person: _____ Tel. No.: () _____
Account No. _____
Type of Account: _____
Account No. _____
Type of Account: _____

(2) Name of Bank: _____
Address: _____
City, State: _____
Contact Person: _____ Tel. No.: () _____
Account No. _____
Type of Account: _____
Account No. _____
Type of Account: _____

(3) Name of Surety Company: _____
Address: _____
City, State: _____
Contact Person: _____ Tel. No.: () _____
Policy No. _____
Type of Bond: _____
Policy No. _____
Type of Bond: _____

WAIVER

The undersigned taxpayer (the "Taxpayer") hereby requests and authorizes the Tax Collector of the City and County of San Francisco (the "Tax Collector") to disclose confidential information about the Taxpayer and any other entities owned or controlled by the Taxpayer, whether directly or indirectly, to the SFMTA. The Taxpayer and each of the entities owned or controlled by the Taxpayer waive all their rights, including those under section 6.22-1 of Article 6 of the San Francisco Business and Tax Regulations Code, to have information about them in the Tax Collector's possession kept confidential. The Taxpayer and each of the entities owned or controlled by the Taxpayer acknowledge that the information disclosed to SFMTA may adversely affect SFMTA's evaluation of the Taxpayer's suitability to enter into an operating agreement with the SFMTA pertaining to management of the parking facilities described in this RFP.

The Taxpayer agrees to hold the Tax Collector, City and County of San Francisco and the SFMTA harmless from any liability, claims, losses and damages caused by the Tax Collector's disclosure of confidential information about the Taxpayer and/or the entities owned or controlled by the Taxpayer.

This request and authorization is limited to the following specific items of information:

1. Outstanding parking taxes.
2. Outstanding business/payroll taxes.
3. Payment history of parking, business and payroll taxes.
4. Audit history, if any, including audits in progress
5. Filing history of parking, payroll and business tax returns.
6. Payment of miscellaneous license or permit fees.
7. Payment of possessory interest taxes.

<u>THE TAXPAYER:</u>	<u>OTHER ENTITIES:</u>
By: _____ (Signature)	1. Name: _____
Name: _____ (Print Name)	By: _____ (Signature)
Title: _____	Title: _____
Date: _____	EIN: _____
EIN: _____	If other entities exist, please list them on a separate sheet of paper and attach them.

ATTACHMENT C

FACILITY MANAGEMENT BID FORM

Name of Proposer: _____

1. The undersigned is a Proposer for the operation and management of the parking facilities in accordance with the Request for Proposals ("RFP") issued by the SFMTA on **March 6, 2009**. All undefined terms used herein have the meaning given to such terms in the RFP.
2. If Proposer is selected to enter into the Agreement, the monthly Management Fee shall be as stated by the SFMTA. In addition, if Proposer is selected to enter into the Agreement, the SFMTA will negotiate a performance based fee with the Operator based on three performance criteria: customer service; facility maintenance and condition; and net revenues.
3. The undersigned has thoroughly reviewed the RFP and the Agreement. Proposer fully understands every provision therein and is ready, willing, and able to comply with all requirements and is willing and able to perform all obligations as set forth in this proposal and the Management Agreement.
4. All of Proposer's statements, representations and warranties in the proposal submitted with this certificate are true and correct as of the date hereof.
5. Proposer understands and agrees that the SFMTA makes no representations or warranties with respect to the parking facilities, and that everything relevant to Proposer's bid has been based on Proposer's own knowledge and the information contained in the written RFP materials.
6. Proposer has not agreed to pay now or in the future, and has not in fact paid, directly or indirectly, any fee, commission, or other thing of value to any SFMTA or City and County of San Francisco employee, agent, representative, commissioner, or contractor in an effort to influence the selection of the successful proposal.
7. The terms of this certification shall survive the date hereof, and are a material part of the SFMTA's willingness to consider Proposer's submittal. The SFMTA would not be willing to consider Proposer's submittal without this certification.
8. The undersigned represents that it has no conflict of interest that could interfere with its operation and management of the parking facilities.
9. Proposer states that it is familiar with the provisions of Section 15.103 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Proposer further certifies that it has made a complete disclosure to the City of all facts bearing on any possible interests, direct or indirect, which Proposer believes any officer or fellow employee of the City or the City presently has or will have in the agreements contemplated by this proposal or in the performance thereof or in any portion of the profits thereof.
10. The undersigned are authorized representatives of the Proposer.

	Title: _____
	Title: _____

ATTACHMENT D

ATTESTATION OF COMPLIANCE

To be completed by all Proposing Firms and All Individual Subcontractors

(Please check each box, sign this form and submit it with your response.)

Name of Individual Completing this Form: _____

The Form is Submitted on Behalf of Firm: _____

Name of RFP: SFMTA REQUEST FOR PROPOSALS FOR OPERATION AND MANAGEMENT OF PARKING FACILITIES (RFP#SFMTA2008/09-30)

1. I attest that I and all members of the firm listed above will and have complied to date with Section VII.Q. of the above RFP.

Yes _____

2. I understand that if my firm or any members of the firm listed above are found to be in violation of the Section VII.Q. of the above RFP, this will disqualify my firm and any Proposal in which my firm is named from further consideration.

Yes _____

I have entered required responses to the above questions to the best of my knowledge and belief.

Signature: _____

Date _____

ATTACHMENT E

CERTIFICATION REGARDING LOBBYING

(Proposer or Proposed Subcontractor Business Name)

certifies that it will not and has not paid any person or organization for influencing or attempting to influence a member of the San Francisco Board of Supervisors, the San Francisco Municipal Transportation Agency Board of Directors, SFMTA Board of Directors, or an officer or employee of the City and County of San Francisco in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in this Request for Proposals. The Proposer or proposed subcontractor submitting this certification shall also disclose the name of any lobbyist registered under Article II of the San Francisco Campaign and Governmental Conduct Code who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals.

This certification is a material representation of fact upon which reliance was placed for the purposes of the SFMTA's evaluation of Proposals and award of a contract pursuant to the Request for Proposals. Submission of this certification is a prerequisite for submitting a Proposal responsive to the Request for Proposals.

Following submission of Proposals with this signed certification, any firm who 1) pays any person or organization for influencing or attempting to influence a member of the San Francisco Board of Supervisors, the San Francisco Municipal Transportation Agency Board of Directors, or an officer or employee of the City and County of San Francisco in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in the RFP, 2) fails to disclose the name of any lobbyist registered under Article II of the San Francisco Campaign and Governmental Conduct Code who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals, or 3) pays or agrees to pay to any City employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the SFMTA any fee or commission, or any other thing of value contingent on the award of a contract, will disqualify any Proposal in which that firm is named as a prime contractor, joint venture partner or subcontractor from the selection process.

By signing and submitting its proposal, the Proposer or proposed subcontractor also certifies to the SFMTA that the Proposer or proposed subcontractor has not paid, nor agreed to pay, and will not pay or agree to pay, any fee or commission, or any other thing of value contingent on the award of a contract to any City employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the SFMTA.

As the authorized certifying official, I hereby certify that the above-specified certifications are true.

Business Name: _____

_____ Authorized Representative Name (print)	_____ Authorized Representative Title (print)
---	--

_____	_____
Authorized Representative Name (print)	Date

ATTACHMENT F

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND
OTHER RESPONSIBILITY MATTERS**

By signing and submitting its Proposal, the Proposer or proposed subcontractor certifies as follows:

(1) _____
(Proposer or Proposed Subcontractor Business Name)

certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from contracting with any federal, state or local governmental department or agency;
- b. Have not within a three-year period preceding the date of this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) b. of this certification; and
- d. Have not within a three-year period preceding the date of this Proposal had one or more public contracts (federal, state, or local) terminated for cause or default.

(2) Where the firm executing this RFP Appendix C is unable to certify to any of the statements in this certification, such firm shall attach a detailed explanation of facts that prevent such certification.

(3) The certification in this clause is a material representation on fact relied upon by the San Francisco Municipal Transportation Agency (SFMTA).

As the authorized certifying official, I hereby certify that the above-specified certifications are true.

Business Name: _____

_____ Authorized Representative Name (print)	_____ Authorized Representative Title (print)
_____ Authorized Representative Signature	_____ Date

ATTACHMENT G

HRC CHAPTER 12B DECLARATION

http://www.sfgov.org/site/uploadedfiles/sfhumanrights/Transgender_HIV_Division/12B%20101.pdf

ATTACHMENT H

**City & County of San Francisco
HUMAN RIGHTS COMMISSION**



HRC ATTACHMENT 2

(For accessible HRC forms, please visit: www.sfgov.org/sfhumanrights)

Requirements for Architecture, Engineering, & Professional Services Contracts
For Contracts \$29,000 and over

PART I. GENERAL

1.01 SAN FRANCISCO ADMINISTRATIVE CODE CHAPTERS 12B AND 14B

- A. To be eligible for this contract award, prime proposers must agree to comply with the Local Business Enterprise (“LBE”) requirements sanctioned by San Francisco Administrative Code Chapter 12B, Section 12B.4 and Chapter 14B, and its implementing Rules and Regulations. Chapters 12B and 14B are administered and monitored by the San Francisco Human Rights Commission (“HRC”).
- B. Chapters 12B and 14B and their implementing Rules and Regulations are incorporated by reference herein as though fully set forth and provide that the failure of any proposer or consultant to comply in good faith with these requirements shall be deemed a material breach of contract. Copies of both Chapters 12B and 14B and their implementing Rules and Regulations are available on the HRC website at www.sfgov.org/sfhumanrights.
- C. Chapter 14B allows for a ten percent (10%) rating discount for firms and non-profit organizations certified by HRC on Architecture, Engineering, and Professional services contracts. The term “rating discount” hereafter shall be known as “rating bonus” in HRC Attachment 2.

D. Certification Application

LBE Certification Application

- a. Prime proposers must be certified as LBEs on the proposal due date to qualify for a rating bonus.
- b. Any proposer who is in the process of appealing the Director’s denial of certification or revocation of certification for other contracts shall not be considered an LBE.
- c. The Certification Application is available on the HRC website at www.sfgov.org/sfhumanrights.



ATTACHMENT J (Form 2A cont.)

For assistance with HRC Attachment 2, please contact the following number(s):

HRC Main Office (415) 252-2500 or LBE Certification Unit (415) 252-2537 or (415) 252-2530

For compliance and assistance with the Equal Benefits Program, please contact the HRC Main Office.



ATTACHMENT H (cont.)

1.02 SUBMISSION OF HRC FORMS

- A. Unless otherwise authorized by HRC, the prime proposer must submit the following HRC forms in a separate sealed envelope marked “HRC Forms” with the proposal. Failure to complete or submit any of the HRC Forms may cause the proposer to be deemed non-responsive and ineligible for contract award.

Review the specific instructions and requirements on each HRC form.

1. **Form 2A: HRC Contract Participation Form:** Identify LBE subconsultants, vendors, and lower tier subconsultants listed on this form for LBE subconsultant credit. Check the appropriate box under Ratings Bonus.
2. **Form 2B: HRC “Good Faith Outreach” Requirements Form:** Document solicitation of LBE participation. This form must be submitted EVEN IF the LBE subconsultant goal has been met. Attach supporting documentation.
3. **Form 3: HRC Non-Discrimination Affidavit:** Must be signed by Proposer under penalty of perjury.
4. **Form 4: HRC Joint Venture Form:** Submit ONLY if the Proposer is requesting a rating bonus based on LBE participation in a joint venture partnership.
5. **Form 5: HRC Employment Form:** List the key personnel and responsibilities of the Proposer, Joint Venture partners, and Subconsultants.
6. **HRC 12B-101 Form:** Submit only if the Prime Consultant is not already in compliance with Equal Benefits Requirements. This form is available on the HRC website at www.sfgov.org/sfhumanrights.

- B. Note the following information:

1. HRC Attachment 2 forms are available on the HRC website at www.sfgov.org/sfhumanrights.
2. Except where the contract awarding authority has obtained a waiver from HRC, any proposal submitted without a completed Form 2A and Form 2B may be deemed non-responsive and rejected.
3. The LBE subconsultanting goal can only be met with HRC certified LBEs identified on the HRC LBE directory website at www.sfgov.org/sfhumanrights.

C. HRC Contract Performance Forms

The following HRC forms are submitted with progress and final payment requests.

Review instructions and specific information requested on each form:

1. **Form 7: HRC Progress Payment Form:** Submit to Contract Awarding Authority and to HRC for each payment request. *Note:* Page 2; column “A” of the form, ALL firms must be continuously listed including lower tier subconsultants for each payment request.
2. **Form 9: HRC Payment Affidavit:** Submit within ten (10) working days to Contract Awarding Authority and HRC following receipt of each progress payment from the Contract Awarding Authority. This form must be submitted EVEN if there is no sub



ATTACHMENT H (cont.)

payment for this reporting period.

3. **Form 8: HRC Exit Report and Affidavit: Submit with final Form 7. A separate Form 8 must be** completed for each LBE subconsultant and vendor (including lower tier subconsultants & vendors).
4. **Form 10: HRC Contract Modification Form:** This form shall be completed by the Consultant when any (all) amendments, modifications, or supplemental change orders that cumulatively increase the original contract amount by more than 20%, and then for all subsequent modifications.

Failure to submit any HRC contract performance forms may result in sanctions under Section 14B.11.C including but not limited to withholding or delaying progress and final payments.

1.03 "GOOD FAITH OUTREACH" REQUIREMENTS

All proposers shall achieve the LBE goal and undertake adequate good faith outreach as set forth in Section 14B.8(C) of the ordinance to select subconsultants to meet the LBE goal. Under 14B.8(A) of the ordinance, proposals that do not meet the LBE goal set will be rejected as non-responsive unless the HRC Director finds that the proposer diligently undertook adequate good faith efforts required by the Ordinance and that the failure to meet the goal resulted from an excusable error. A proposer shall have contracted an LBE before listing that LBE as a subconsultant in the proposal. A proposal that fails to comply with this requirement will be rejected as non-responsive. Proposers are required to submit Form 2B and supporting documentation EVEN IF the LBE subconsultanting goal has been met.

1.04 NON COMPLIANCE AND SANCTIONS

A. Non-Compliance with Chapter 14B

1. A complaint of discrimination or non-compliance concerning LBE participation initiated by any party after contract award will be processed in accordance with Chapter 14B and its implementing rules and regulations.
 - a. If the HRC Director determines that there is cause to believe that a consultant has failed to comply with any of the requirements of the Chapter 14B, HRC Rules and Regulations, or contract provisions pertaining to LBE participation, the HRC Director shall notify the contract awarding authority and attempt to resolve the non-compliance through conference and conciliation.
 - b. If the non-compliance is not resolved through conference and conciliation, the HRC Director shall conduct an investigation and, where the Director so finds, issue a written Finding of Non-Compliance.
 - c. The Director's finding shall indicate whether the consultant acted in good faith or whether noncompliance was based on willful or bad faith noncompliance with the requirements of Chapter 14B, HRC Rules and Regulations, or contract provisions pertaining to LBE participation.
2. Where the Director finds that the consultant acted in good faith, after affording the consultant notice and an opportunity to be heard, the Director shall recommend that the



ATTACHMENT H (cont.)

contract awarding authority take appropriate action. Where the Director finds willful or bad faith noncompliance, the Director shall impose sanctions for each violation of the ordinance, HRC rules and regulations, or contract provisions pertaining to LBE participation, which may include:

- i) reject all proposals;
- ii) declare a proposal non-responsive;
- iii) suspend a contract;
- iv) withhold funds;
- v) assess penalties;
- vi) debarment;
- vii) deny HRC certification;
- viii) revoke HRC certification; or
- ix) pursuant to 14B.7(H)(2), assess liquidated damages in an amount equal to the consultant's net profit on the contract, 10% of the total amount of the contract or \$1,000, whichever is greatest as determined by HRC.

3. The Director's determination of non-compliance is subject to appeal pursuant to HRC Rules and Regulations.
4. An appeal by a consultant to the Commission shall not stay the Director's findings.
5. The HRC Director may require such reports, information and documentation from consultants, subconsultants, contract awarding authorities, and heads of departments, divisions, and offices of the City and County as are reasonably necessary to determine compliance with the requirements of Chapter 14B.

B. Procedure for the collection of penalties is as follows:

1. The HRC Director shall send a written notice to the Controller, the Mayor and to all contract awarding authorities or City and County department officials overseeing any contract with the proposer or consultant that a determination of bad faith non-compliance has been made and that all payments due the proposer or consultant shall be withheld.
2. The HRC Director shall transmit a report to the Controller and other applicable City departments to ensure that the liquidated damages are paid to the City.

PART II. RATING BONUS

2.01 APPLICATION

- A. **Eligibility for the LBE Rating bonus:** Certified local business enterprises (LBEs) and non-profit organizations are eligible for an LBE rating bonus on Architecture, Engineering, or Professional Service contracts that have an estimated cost that exceeds \$10,000.
- B. **Application of the Rating bonus:** The following rating bonus will apply to all proposals for Architecture, Engineering, or Professional contracts estimated to cost over \$10,000. The rating bonus shall apply at each stage of the selection process, i.e., qualifications, proposals, and interviews. After Proposers have been scored at each of the stages, the rating bonus will be applied to the scores as follows:



ATTACHMENT H (cont.)

1. 10% for HRC certified LBEs.
 2. 10% for each joint venture, which is composed of only LBEs.
 3. 5% for each joint venture which includes at least 35% (but less than 40%) prime participation by certified LBEs.
 4. A maximum of 7.5% for each joint venture that includes 40% or more in prime participation by certified local LBEs.
 5. The rating bonus will be applied by adding 5%, 7.5%, or 10% (as applicable) to the score of each firm eligible for a bonus for purposes of determining the highest ranked firm.
- C. The Rating Bonus does not apply for contracts estimated by the Contract Awarding Authority to be \$10 million and over.

2.02 JOINT VENTURE/PRIME ASSOCIATION

- A. The LBE joint venture partner must be responsible for a clearly defined portion of the work to be performed. The ratings bonus is applied only when the LBE partner has sufficient skill, experience, and financial capacity to perform the portion of the work identified for the LBE. This portion must be set forth in detail separately from the work to be performed by the non-LBE JV partner. The joint venture partners must be of the same or similar discipline in order to be eligible for a rating bonus. The joint venture partners will be jointly responsible for the overall project management, control, and compliance with 14B requirements.
1. The LBE JV partner's work must be assigned a commercially significant dollar value of the prime work and use its own employees and equipment.
 2. Each member of the joint venture partner must perform a "commercially useful function" as that term is defined by Section 14B.2 of the Ordinance. An LBE that relies on the resources and personnel of a non-LBE firm will not be deemed to perform a "commercially useful function."
 3. Unless permission is granted by the HRC Director for good cause shown, the following actions are prohibited: i) the non-LBE partner performing work for the LBE partner; ii) leasing of equipment or property by the LBE partner from the non-LBE partner; and iii) the hiring of the non-LBE partner's employees by the LBE partner.
 4. The LBE JV partner must share in the ownership, control, management and administrative responsibilities, risks, and profit of the JV in direct proportion to its stated level of JV participation.
 5. The LBE JV partner must perform work that is commensurate with its experience.
 6. A JV must submit an executed JV agreement and management plan detailing each JV partner's responsibilities and tasks.
 7. A joint venture must obtain a Federal ID number for that entity.



ATTACHMENT H (cont.)

- 8. A tax registration certificate must be obtained from the City Tax Collectors Office for that entity.
- B. A prime association or partnership is considered the same as a joint venture and will need to comply with all the requirements stated above.
- C. The proposal items to be performed by LBE joint venture partners must be identified separately and all work must be accounted for, including subconsulting work.
- D. The cost of the work to be performed by the LBE JV partners is to be calculated as a percentage of the work to be performed by the joint venture partners. The joint venture should deduct the amount of work to be performed by subconsultants from its total contract amount. This percentage is used to determine whether or not the joint venture is eligible for a rating bonus.

EXAMPLE:

Step 1. Calculate total JV partner work:

Total Contract Work	=	100%
Percentage of Total Contract Work Performed by Subconsultants	-	40%
Percentage of Total Contract Work Performed by JV partners	=	60%



ATTACHMENT H (cont.)

Step 2. Calculate LBE JV partner work:

	A	B	C
Description of JV Partners' Scopes of Work	JV Partners' Work as a % of the total contract	% of Task by Non-LBE JV Partner	% of Task by LBE JV Partner
TASK 1	5%	3%	2%
TASK 2	20%	11%	9%
TASK 3	25%	12.5%	12.5%
TASK 4	10%	6%	4%
TOTAL JV Partner %	60%	32.5%	27.5%

Step 3. Calculate LBE JV partner work as a percentage of the total JV partner work for the rating bonus.

Total LBE JV %	27.5%	÷	Total JV %	60%	=	45.8%
----------------	-------	---	------------	-----	---	-------

The LBE JV partner's participation is 45.8%. The JV is therefore eligible for a 7.5% rating bonus.

PART III SUBCONSULTANT PARTICIPATION

3.01 SUBCONSULTING GOAL

- A. All proposers shall achieve the LBE subconsulting goal and undertake adequate good faith outreach as set forth in Section 14B.8(C) of the Ordinance to select subconsultants to meet the LBE goal. Where there are LBEs available for doing portions of the work normally performed by the proposer with its own staff, the proposer will be expected to make good faith efforts to make portions of such work available for LBEs.

Proposals that do not meet the LBE participation goal set under 14B.8(A) of the Ordinance will be rejected as non-responsive unless the HRC Director finds that the proposer diligently undertook adequate good faith efforts required by this Ordinance and that the failure to meet the goal resulted from an excusable error.

- B. Proposers must identify on Form 2A the particular LBE subconsultants and lower tier subconsultants to be utilized in performing the contract, specifying for each the percentage of participation, the type of work to be performed and such information as the HRC reasonably shall require to determine the responsiveness of the proposal.

The proposer must contact LBE subconsultants prior to listing them. LBEs must be certified with HRC by the proposal due date to receive LBE subconsulting credit. Failure to comply with this requirement will render a proposal non-responsive.



ATTACHMENT H (cont.)

Additionally, subconsultants should not enter into any agreement that limits their ability to be listed or utilized by more than one proposer.

For a directory of certified LBEs, please go to www.sfgov.org/sfhumanrights.

- C. Any subconsultant who is in the process of appealing the Director's denial of certification or revocation of certification shall not be considered an LBE.
- D. The awarding proposer shall submit performance reports on LBE participation at 30%, 50%, 70%, and 90% completion to the Contracting Awarding Authority and HRC.
- E. Determination and calculation of LBE subconsultant participation:
 - 1. The LBE subconsultant shall be listed to perform a specific task, which is described in the RFP or RFQ.

- 2. If the LBE subconsultant forms a joint venture with a non-LBE subconsultant, the LBE subconsultant joint venture partner will be credited only for its portion of the work, as follows:

EXAMPLE:

If the total subcontract amount = \$ 1,000,000 of which \$510,000 is the LBE subcontract amount and \$490,000 is the non-LBE subcontract amount, then \$510,000 is credited toward the LBE goal.

- 3. All work done by lower-tier LBE subconsultants will be credited toward meeting the goal.

EXAMPLE:

If the total subcontract amount = \$1,000,000, of which \$200,000 is the lower-tier LBE subconsultant's portion, then \$200,000 is credited toward the LBE goal.

- 4. The work provided by the LBE subconsultant must be the same or similar type of work performed by the LBE in the normal course of its business.
 - 5. If a Proposer owns or controls more than one business that is HRC certified as an LBE, the proposer will not receive credit if it lists its other firms to meet the LBE subconsulting goal when submitting as a prime. In determining ownership of a business, a business owned by proposer's spouse or domestic partner shall be deemed to be owned by the proposer.
 - 6. It is the responsibility of the proposer to verify the subconsultant's LBE certification status.
 - 7. A certified LBE can only be utilized in the discipline(s) for which it is certified by HRC.
 - 8. The LBE subconsultant must be utilized on the contract to perform a commercially useful function. No credit will be given for a LBE that serves as a pass-through or conduit.



ATTACHMENT H (cont.)

9. An LBE Prime proposer (whether submitting a proposal on its own or as part of a joint venture) cannot count its participation towards meeting the LBE subconsultant goal.

F. Substitution, removal, or contract modification of LBE:

No LBE subconsultant listed on Form 2A shall be substituted, removed from the contract or have its contract, purchase order or other form of agreement modified in any way without prior HRC approval. Additionally, no new subconsultants shall be added without prior HRC approval.



ATTACHMENT H (cont.)

**PART IV EMPLOYMENT NON-DISCRIMINATION AND ECONOMICALLY
DISADVANTAGED WORKFORCE HIRING PROVISIONS**

4.01 GENERAL

As a condition of contract award, Consultants and subconsultants shall comply with the nondiscrimination in employment provisions required by Chapter 12B of the Administrative Code and the hiring of economically disadvantaged persons as required by the City's First Source Hiring Program, Chapter 83 of the Administrative Code.

4.02 NONDISCRIMINATION PROVISIONS

- A. Prior to the award of the contract, the consultant must agree that it does and will not, during the time of the contract or any contract amendment, discriminate in the provision of benefits between its employees with spouses and employees with domestic partners.
- B. The consultant and subconsultants on this contract will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status, weight, height, or association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Discrimination on the basis of sex includes sexual harassment as defined in Section 16.9-25(b) of this Code. The Consultant, Contractor or Subconsultant/Subcontractor will take action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to the fact or perception of their race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or AIDS/HIV status. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.
- C. **Non-Compliance with Chapter 12B Prior to Contract Award**

The consultant and any subconsultants must be in compliance with the nondiscrimination provisions of Chapter 12B, on all existing City contracts prior to award of this contract.

Prior to the award of any City contract, the HRC has the authority to review the consultant's and subconsultant's prior performance to ensure compliance with the nondiscrimination provisions of Chapter 12B.

If the HRC determines that there is cause to believe that a consultant or subconsultant is not in compliance with the nondiscrimination provisions of Chapter 12B, the HRC shall notify the contract awarding authority and attempt to resolve the non-compliance through conciliation.

- 1. If the non-compliance cannot be resolved, the HRC shall submit to the consultant or subconsultant and the contract awarding authority a written Finding of Non-compliance.
- 2. The HRC shall give the consultant or subconsultant an opportunity to appeal the Finding.
- 3. The HRC may stay the award of any contract to a consultant where the consultant or any subconsultant is the subject of an investigation by written notice to the contract-awarding



ATTACHMENT H (cont.)

agency.

D. Complaints of Discrimination after Contract Award

1. A complaint of discrimination in employment initiated by any party after contract award shall be processed in accordance with the HRC Rules of Procedure, adopted pursuant to Chapter 12B of the San Francisco Administrative Code.
2. A finding of discrimination may result in imposition of appropriate sanctions, including:
 - a. There may be deducted from the amount payable to the consultant or subconsultant under this contract a penalty of \$50 for each person for each calendar day the person was discriminated against in violation of the provisions of the contract.
 - b. The contract may be canceled, terminated or suspended in part by the contract awarding authority.
 - c. The consultant, subconsultant or vendor may be determined ineligible to perform work or supply products on any City contract for a period not to exceed two years.

4.03 TRAINEES – FIRST SOURCE HIRING PROGRAM

- A. Trainee Requirements:** Consultants are required to comply with the City's First Source Program, Administrative Code Section 83, which fosters employment opportunities for economically disadvantaged individuals. Consultants are required to notify the First Source Program 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. These hires count toward the First Source Hiring requirements. Trainees may be obtained through the City's One Stop Employment Center, which works with various employment and job training agencies/organizations or other employment referral source.

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)

2. The trainee must be hired by the prime consultant or by any subconsultant on the project team.
3. No trainee may be counted towards meeting more than one contract goal.



ATTACHMENT H (cont.)

4. A trainee must meet qualifications for enrollment established under the City's First Source Hiring Program as follows:
 - (i) "Qualified" with reference to an economically disadvantaged individual shall mean an individual who meets the minimum bona fide occupational qualifications provided by the prospective employer to the San Francisco Workforce Development System in the job availability notices required by the Program, and
 - (ii) "Economically disadvantaged individual" shall mean an individual who is either: (1) eligible for services under the Workforce Investment Act of 1988 (WIA) (29 U.S.C.A 2801 et seq.), as determined by the San Francisco Private Industry Council; or (2) designated "economically disadvantaged" for the First Source Hiring Administration, as an individual who is at risk of relying upon, or returning to, public assistance.
5. On-the-job Training (to be provided by the consultant): The consultant shall hire the trainee on a full-time basis for at least 12 months or on a part-time basis for 24 months, with prior approval offering him/her on-the-job training which allows the trainee to progress on a career path.
6. A summary of a job description and training for the trainee with the rate of pay should be submitted for approval.
7. The trainee's commitment does not require that he/she is used only on this project, but also on other projects under contract to the Architect, Engineering, or Professional firm, which is appropriate for the trainee's skill development.



ATTACHMENT H (cont.)

FORM 2A: HRC CONTRACT PARTICIPATION FORM

Section 1: This form must be submitted with the proposal or the proposal may be deemed non-responsive and rejected. Prime Proposer, each Joint Venture Partner, Subconsultants, Vendors, and lower sub tiers must be listed on this form. Only HRC certified LBEs can be used to meet the LBE subconsultant goal. An LBE Prime proposer (whether submitting a proposal on its own or as part of a joint venture) cannot count its participation towards meeting the LBE subconsultant goal.

Be sure to check box for Rating Bonus. If more space is needed, attach additional copies of this form. This form is also completed and submitted for all contract modifications which exceed the original contract amount by more than 20%.

Contract:	RATING BONUS	
	<input type="checkbox"/> LBE 10%	<input type="checkbox"/> Joint Venture 7.5%
Firm:	<input type="checkbox"/> Joint Venture 5%	<input type="checkbox"/> Joint Venture 10% (LBEs ONLY)
Contact Person:	<input type="checkbox"/> No Rating Bonus Requested	
Address:	LBE Goal %	
City/ZIP		
Phone		

*Type: Identify if prime (P), JV partner (J), Subconsultant (S), or Vendor (V)

TYPE *	Firm	PORTION OF WORK (describe scope(s) of work)	% OF WORK	INDICATE LBE YES/NO	If an LBE, Identify MBE, WBE, or OBE **	% OF LBE SUBWORK
			%			%
			%			%
			%			%
			%			%
Total % of Work: 100%				Total LBE Subconsulting%		%



ATTACHMENT H (cont.)

I declare, under penalty of perjury under the laws of the State of California, that I am utilizing the above Consultants for the portions of work and amounts as reflected in the Proposal for this Contract

Owner/Authorized Representative
(Signature): _____

Date: _____

Print Name and Title: _____

** MBE = Minority Business Enterprise, WBE = Women Business Enterprise, OBE = Other Business Enterprise. See HRC website (http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS_1.htm) for each firm's status.



ATTACHMENT H (Form 2A cont.)

Section 2. Prime Proposer, Joint Venture Partners, Subconsultant, and Vendor Information

Provide information for each firm listed in Section 1 of this form. Firms which have previously worked on City contracts may already have a vendor number. Vendor numbers of LBE firms are located in the HRC LBE website at www.sfgov.org/sfhumanrights. Use additional sheets if necessary.

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID	_____
CITY, ST,	_____	PHONE	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID	_____
CITY, ST,	_____	PHONE	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID	_____
CITY, ST,	_____	PHONE	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID	_____
CITY, ST,	_____	PHONE	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID	_____
CITY, ST,	_____	PHONE	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID	_____
CITY, ST,	_____	PHONE	_____
SERVICE:	_____	FAX:	_____



ATTACHMENT H (cont.)



ATTACHMENT H (cont.)

FORM 2B: "GOOD FAITH OUTREACH" REQUIREMENTS FORM

This "Good Faith Outreach" form, along with the required supporting documentation must be completed and submitted per the instructions in this form EVEN IF the LBE subconsulting goal has been met (*Section 14B.8 of the San Francisco Administrative Code*). Proposers may obtain a list of certified LBEs from the HRC website:

http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS_1.htm

A proposer must achieve at least 80 points, as determined by HRC, to be deemed compliant with the "good faith outreach" requirements. A proposer who fails to achieve at least 80 points will be declared non-responsive, and the proposal will be rejected. Please check yes or no for each item listed below.

<p>1. Did your firm attend the pre-proposal meeting scheduled by the City to inform all proposers of the LBE program requirements for this project? If the City does not hold a pre-proposal meeting, all proposers will receive 15 points.</p>	<input type="checkbox"/> Yes (15 Points)	<input type="checkbox"/> No (0 Points)
<p>2. Did your firm advertise, not less than 10 calendar days before the due date of the proposal, in one or more daily or weekly newspapers, trade association publications, LBE trade oriented publications, trade journals, or other media, such as: Small Business Exchange, or the Bid and Contracts Section of the Office of Contract Administration's website (www.sfgov.org/oca)? If so, <u>please enclose a copy of the advertisement</u>. <i>The advertisement must provide LBEs with adequate information about the project.</i> If the City gave public notice of the project less than 15 calendar days prior to the proposal due date, no advertisement is required, and all proposers will receive 10 points.</p>	<input type="checkbox"/> Yes (10 points)	<input type="checkbox"/> No (0 Points)
<p>3. Did your firm identify and select work types (as categorized in HRC's LBE Directory) to meet the LBE subcontracting goal? If so, please identify the work types below:</p> <p>_____</p> <p>_____</p> <p>_____</p>	<input type="checkbox"/> Yes (10 points)	<input type="checkbox"/> No (0 Points)
<p>4. Did your firm contact LBE firms (LBE firms include MBEs, WBEs and OBEs) for the identified work types (see #3 above), not less than 10 calendar days prior to the due date of the proposal? If so, <u>please include documentation (i.e. phone logs, emails, faxes, etc.) to verify that contacts were made</u>. The purpose of contacting LBE firms is to provide</p>	<input type="checkbox"/> Yes (Up to 45 points)	<input type="checkbox"/> No (0 Points)



ATTACHMENT H (cont.)

notice of interest in proposing for this project.

A proposer who contacts those LBE firms certified in the identified work types, not less than 10 calendar days prior to due date of the proposal, will receive up to 45 points. If a proposer does not comply with paragraphs a. & b. below, one point will be deducted for each LBE firm within each identified work type that is not contacted.

a. If there are less than 25 firms within an identified work type, a proposer should contact all of them.

b. If there are 25 or more firms within an identified work type, a proposer should notify at least 25 firms within such identified work type.

If a proposer does not contact any LBE firms, the proposer will receive no points.

When contacting LBEs, you should provide adequate information about the project.

If the City gave public notice of the project less than 15 calendar days prior to the proposal due date, the allocation of points above still applies, except that the proposer may contact those LBE firms certified in the identified work types less than 10 calendar days prior to the due date of the proposal.



ATTACHMENT H (Form 2B cont.)

<p>5. Did your firm follow-up and negotiate in good faith with interested LBEs? If so, <u>please include documentation (i.e. phone logs, emails, faxes, etc.) to verify that follow-up contacts were made.</u> If applicable, your follow-up contact with interested LBEs should provide information on the City's bonding and financial assistance programs.</p> <p>For each interested LBE firm that the proposer does not follow-up with, a point will be deducted.</p> <p>A proposer who does not perform any follow-up contact with interested LBEs will receive no points.</p> <p>*"Interested LBE" shall mean an LBE firm that expresses interest in being a subconsultant to the proposer.</p>	<p><input type="checkbox"/> Yes (Up to 20 points)</p>	<p><input type="checkbox"/> No (0 Points)</p>
--	---	---

6. A proposer shall submit the following documentation with this form:

- (1) Copies of all written proposals submitted, including those from non-LBEs;
- (2) If oral proposals were received, a list of all such proposals, including those from non-LBEs. The work type and dollar amounts for each such proposal must be specified; and
- (3) A full and complete statement of the reasons for selection of the subconsultants for each work type. If the reason is based on relative qualifications, the statement must address the particular qualification at issue.

Contract Name: _____

Contract No.: _____

Signature of Owner/Authorized Representative: _____
Owner/Authorized Representative (Print): _____

Name of Firm (Print): _____

Title and Position: _____

Address, City, ZIP: _____

E-mail: _____

Date: _____



ATTACHMENT H (cont.)

FORM 3: HRC NON-DISCRIMINATION AFFIDAVIT

1. I will ensure that my firm complies fully with the provisions of Chapter 14B of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
2. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the Human Rights Commission shall be payable to the City and County of San Francisco upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.
3. I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

Signature of Owner/Authorized
Representative

Owner/Authorized Representative (Print)

Name of Firm (Print)

Title and Position

Address, City, ZIP

Federal Employer Identification Number

(FEIN)

Date:



ATTACHMENT H (cont.)

FORM 4: HRC JOINT VENTURE FORM

This form must be submitted ONLY if the proposer is requesting a Joint Venture partnership with an LBE firm for the rating bonus. The Joint Venture partners must submit a joint venture agreement and management plan with the proposal. All work must be accounted for including subconsulting work.

SECTION 1: GENERAL INFORMATION

1. Name of Contract or Project:: _____

2. Name of all JV partners: (Check LBE if applicable)

	LB	<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>

Attach a copy of Joint Venture Agreement and Management plans.

4. The management plan must include the following information:

- a. Describe in detail how decisions will be made for work distribution and compliance of LBE Joint Venture participation.
- b. Provide each Joint Venture partner's specific duties and responsibilities (include organizational chart)
- c. Identify the Location of Joint Venture Office.
- d. Provide in detail how decision will be made for work distribution to LBE subconsultants and/or vendors.
- e. Submit copies of bank signature cards with authorized names, titles, and address/city of the bank (required after award of contract.)



ATTACHMENT H (cont.)

5. Calculation of the Rating Bonus. See §2.02D of HRC Attachment 2 for an example.

If the joint venture partners are dividing the work according to a different formula than that described below, please contact HRC staff and describe the arrangement in detail prior to submittal of proposal.

Joint venture partners are encouraged to meet with HRC regarding their joint venture prior to submitting their proposal.

The rating bonus is awarded based on the LBE JV partner tasks calculated as a percentage of the total JV partner tasks.

Step 1. Calculate total JV partner tasks.

Total Contract Tasks	=	100%
Percentage of Total Work to be Performed by Subconsultants	-	0%
Percentage of JV partner tasks	=	0%



ATTACHMENT H (Form 4 cont.)

Step 2. Calculate LBE JV partner tasks:

	A	B	C
Description of JV partner Scopes of Work (Specific details of work)	JV Partners' Work as a % of the total	% of Task by Non-LBE JV Partner	% of Task by LBE JV Partner
	%	%	%
	%	%	%
	%	%	%
	%	%	%
	%	%	%
TOTAL JV %	%	%	%

Step 3. Calculate LBE JV partner work as a percentage of the total JV partner work for the rating bonus.

Total LBE JV Partner %		÷	Total JV %		=	%
------------------------	--	---	------------	--	---	---

JOINT VENTURE PARTNERS MUST SIGN THIS FORM

_____ Owner/Authorized Representative		_____ Owner/Authorized Representative	
_____ Name and Title (Print)		_____ Name and Title (Print)	
_____ Firm Name		_____ Firm Name	
_____ Telephone	_____ Date	_____ Telephone	_____ Date



ATTACHMENT H (cont.)

FORM 5: HRC EMPLOYMENT FORM

This form is to be submitted with the proposal.

1. Indicate key personnel designated to work on this project for the entire project team (prime proposer, joint venture partners, subconsultants, and vendors).

The employees listed should include all those listed in other sections of the proposal.

NAME OF FIRM	NAME OF EMPLOYEE	PROJECT ROLE	RACE	SEX

Indicate the Number of disadvantaged individuals that will be hired as on -the-job-trainees by the entire project team. See §4.03 of HRC Attachment 2.

a. Estimated Project Fee: \$ _____

b. HRC on-the-job training goal: _____

c. Number of on-the-job-trainees that will be hired by the project team _____

d. If less than HRC goal, explain: _____

e. Length of training: _____ If less than 12 months, explain _____

Sign below including each joint venture partner.



ATTACHMENT H (cont.)

FORM 7: HRC PROGRESS PAYMENT FORM

To be completed by Consultant and submitted to the Contract Awarding Authority and HRC with its monthly progress payment application (transmit to the following):

TRANSMITTAL

TO: Project Manager/Designee COPY TO: HRC Contract Compliance Officer
Firm: _____ Date: _____

SECTION 1. Fill in all the blanks

Contract Reporting Period From: _____ To: _____ Contract Name: _____ Progress Payment No. _____

The information submitted on Sections 1 and 2 of this form must be cumulative for the entire contract as opposed to individual task orders. Additionally, the information submitted on Sections 1 and 2 of this form must be accurate for the progress payment period immediately preceding that of the current payment application attached herewith.

1. Amount of Contract to Date:	\$ _____
2. Amount of Amendments and Modifications to Date:	\$ _____
3. Total Contract to Date including Amendments and Modifications (Line 1 + Line 2):	\$ _____
4. Sub-total Amount Invoiced this submittal period: Professional Fees	\$ _____
5. Sub-total Amount Invoiced this submittal period: Reimbursable	\$ _____
6. Gross Amount Invoiced this submittal period (Line 4 + Line 5):	\$ _____
7. All Previous Gross Amounts Paid to Date:	\$ _____
8. Total Gross Amounts of Progress Payments Requested to Date:	\$ _____
9. Percent Completed (Line 8 ÷ Line 3):	_____ %

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

Owner/Authorized Representative

Owner/Authorized Representative



ATTACHMENT H (cont.)

_____		_____	
Name (Print)		Name (Print)	
_____		_____	
Title (Print)		Title (Print)	
_____		_____	
Firm Name		Firm Name	
_____		_____	
Telephone	Fax	Telephone	Fax
_____		_____	
Date		Date	

Reimbursable							%
CONTRACT TOTALS							%



ATTACHMENT H (cont.)

FORM 8: HRC EXIT REPORT AND AFFIVADIT

Prime Consultant must complete and sign this form (Sections 1 and 3) for each LBE subconsultant (incl. each lower tier LBE subconsultant). LBE Subconsultants must complete and sign Section 2 of this form. These forms should be submitted to the Contract Awarding Authority with the final progress payment request.

TRANSMITTAL

FROM _____

Date _____

SECTION 1. Please check this box if there are no LBE subconsultants for this contract:

_____ Contract Name: _____

Name of _____ Portion of Work _____

Original LBE Contract Amount: \$ _____

Change Orders, Amendments, Modifications \$ _____

Final LBE Contract Amount: \$ _____

Amount of Progress Payments Paid to Date: \$ _____

Amount further subbed out to non LBE firms: \$ _____

Amount Owing including all Change Orders, Amendments and Modifications \$ _____

Explanation by Consultant if the final contract amount for this LBE is less than the original

SECTION 2.

To be signed by the LBE Subconsultant or vendor:

I agree I disagree

Explanation by LBE if it is in disagreement with the above explanation, or with the information on this form. LBE must complete this section within 5 business days after it has received it from the Prime. It is the LBE's responsibility to address any discrepancies within 5 business days concerning the final amount owed. If the LBE fails to submit the form within 5 business days, the Prime will note this on the form and submit the form as is with the final progress



ATTACHMENT H (cont.)

payment:

--

Owner/Authorized Representative

Name and Title (Print)

Firm Name

Telephone

Date



ATTACHMENT H (Form 8 cont.)

SECTION 3.

If this form is submitted without the subconsultant's signature, the Prime must enclose verification of delivery of this form to the subconsultant.

I declare, under penalty of perjury under the laws of the State of California, that the information contained in Section 1 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 three (3) days after receipt of the City's final payment under the Contract.

Owner/Authorized Representative

Name and Title (Print)

Firm Name

Telephone

Date



ATTACHMENT H (cont.)

FORM 9: HRC PAYMENT AFFIDAVIT

Consultant or Joint Venture partners must submit this form to the Contract Awarding Authority and HRC within ten (10) working days following receipt of each progress payment from the Contract Awarding Authority. This form must be submitted EVEN if there is no sub payment of this reporting period and until completion of the contract.

TO: Project Manager/Designee COPY TO: HRC Contract Compliance Officer
Firm: _____ Date: _____

List the following information for each progress payment received from the Contract Awarding Authority. Use additional sheets to include complete payment information for all subconsultants and vendors (including lower tiers utilized on this Contract. Failure to submit all required information may lead to partial withholding of progress payment.

Contract Number: _____ Contract _____
Contract Awarding _____
Progress Payment _____ Period _____
Amount Received: \$ _____ Date: _____ Warrant/Check _____

Check box and sign below if there is no sub payment for this reporting period.

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, that the tabulated amounts paid to date are accurate and correct.

Prime consultant, including each joint venture partner, must sign this form (use additional sheets if necessary)

Owner/Authorized Representative Owner/Authorized Representative

Name (Print) Title Name (Print) Title



ATTACHMENT H (cont.)

Firm Name		Firm Name	
Telephone	Date	Telephone	Date



ATTACHMENT H (cont.)

FORM 10: HRC CONTRACT MODIFICATION FORM

Consultant must submit this form with the required supporting documentation when processing amendments, modifications or change orders that cumulatively increase the original contract amount by more than 20%, and then for all subsequent amendments, modifications or change orders. This form must be completed prior to the approval of such amendments, modifications or change orders. (This provision applies only to contracts originally valued at \$50,000 or more).

Name of Project/Contract Title: _____

Original Contract Amount: _____

Contract Amount as Modified to Date: _____

Amount of Current Modification Request: _____

REQUIRED ATTACHMENTS:

1. Revised Form 2A reflecting the new overall contract amounts for the prime consultant, joint venture partners, subconsultants, and vendors.
2. A list of all prior contract amendments, modifications, supplements and/or change orders leading up to this modification, including those leading up to the amendment which increased the original contract amount by more than 20%.
3. A spreadsheet showing each firm's participation for the overall contract, including each firm's participation to date and proposed participation under the modification.
4. A brief description of the work to be performed under this amendment, modification, or change order.

Owner/Authorized Representative

Owner/Authorized Representative



ATTACHMENT H (cont.)

Name (Print)

Title

Name (Print)

Title

Firm Name

Firm Name

Telephone

Date

Telephone

Date

ATTACHMENT I

STANDARD FORMS

Listing and Internet Addresses of Forms related to Taxpayer Identification Number and Certification, to Business Tax Declaration, and to Chapters 12B and 12C, and 14B of the SF Administrative Code.

Required Vendor Forms: http://www.sfgov.org/site/oca_page.asp?id=26550

12B & 12C: http://www.sfgov.org/site/sfhumanrights_index.asp?id=4584

14B: http://www.sfgov.org/site/sfhumanrights_page.asp?id=45141

ATTACHMENT J

CHECKLIST OF REQUIRED DOCUMENTS

X	Required Document
	Qualification Questionnaire
	Authorization for Release of Credit Information
	Garage Management Bid Form
	Certification Regarding Lobbying
	Attestation of Compliance
	Certification Regarding Debarment, Suspension, and Other Responsibility Matters
	HRC Chapter 12B Declaration
	Form 2A HRC Contract Participation
	Form 2B HRC "Good Faith Outreach" Requirements
	Form 3 HRC Non-discrimination Affidavit
	Form 4 HRC Joint Venture Form
	Form 5 HRC Employment
	Form 7 HRC Progress Payment Form
	Form 8 HRC Exit Report and Affidavit
	Form 9 HRC Payment Affidavit
	Form 10 HRC Contract Modification Form
	Standard Forms: Listing and Internet Address of Forms related to Taxpayer Identification Number and Certification, to Business Tax Declaration, and to Chapters 12B and 12C, and 14B of the SF Administrative Code
	Management Fee Proposal Form
	Form of Annual Budget
	Performance Bond
	Parking-related Businesses in which Operator Has Interest
	Parking Tax Collection Bond

ATTACHMENT K
MODEL AGREEMENT

AGREEMENT

BETWEEN

**THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, A
DEPARTMENT OF THE CITY AND COUNTY OF SAN FRANCISCO**

AND

[insert name of manager]

FOR OPERATION AND MANAGEMENT OF OFF-STREET PARKING FACILITIES

**GROUP ["A" "B" OR "C"]
[LIST FACILITIES INCLUDED]**

Contract No. [list contract no.]

Dated: November 1, 2009

TABLE OF CONTENTS

	<u>Page</u>
RECITALS	91
SUMMARY OF TERMS	91
DEFINITIONS.....	93
Commencement Date.....	93
Contract Year	93
Expiration Date	93
Manager	93
MANAGEMENT SERVICES.....	93
Independent Contractor.....	93
Independent Contractor.....	93
Payment of Taxes and Other Expenses.....	93
General Authority to Manage	94
Control Retained by the SFMTA.....	94
Access to Facilities	94
Management of Additional Facilities.....	94
TERM OF MANAGEMENT AGREEMENT.....	95
Term 95	
Extension.....	95
COMPENSATION	95
Management Fee and Reimbursement of Operating Expenses	95
Labor Costs.....	95
Payment Does Not Imply Acceptance of Work.....	95
Late Charges	96
Fees During Suspended Operations.....	96
Limitations on Payment of Fees	96
Guaranteed Maximum Costs.....	96
Approval Required For Additional Funding.....	96

Payments Must Be Authorized97

Payment of Incentive Fees97

 Net Revenue Incentive Fee97

 Customer Satisfaction Incentive Fee98

STAFFING, EMPLOYEES AND CONTRACTING.....98

 Parking Personnel98

 Operations Manager.....99

 Maintenance Personnel and Contracting99

 Security Personnel and Contracting.....99

 Payroll and Taxation99

 Subcontracting and Other Parking Business Operations100

 Subcontracting Must be Authorized100

 Notification of Other Parking Business Operations.....100

 Employee Retention and Prevailing Wages.....100

 Minimum Compensation for Employees100

 Requiring Health Benefits for Covered Employees.....101

 First Source Hiring Program.....103

 Incorporation of Administrative Code Provisions by Reference103

 First Source Hiring Agreement.....103

 Hiring Decisions104

 Exceptions.....104

 Liquidated Damages104

 Subcontracts105

 EIC Forms.....106

FISCAL DUTIES AND MATTERS106

 Taxes, Assessments, Licenses, Permit Fees and Liens.....106

 Audit and Inspection of Books and Records.....107

HAZARDOUS MATERIAL COVENANTS108

 No Hazardous Materials108

 Manager's Environmental Indemnity108

INSURANCE AND SURETY BONDS108

 Required Insurance108

 Additional Requirements110

 Compliance with Insurance Requirements111

 Required Bonds.....111

 Miscellaneous Insurance and Bond Matters111

INDEMNIFICATION AND HOLD HARMLESS112

DAMAGE OR DESTRUCTION.....113

 Partial Destruction or Damage.....113

 Management Agreement During Reconstruction113

 Total Destruction113

 Damage Near End of Term.....113

 Adjustment of Management Fee.....113

MANAGER'S REPRESENTATIONS AND WARRANTIES113

 Experience.....113

 Formation.....113

 Authority.....113

 Conflicts and Consents114

 No Conflict with Orders, Judgments or Decree.....114

 Litigation.....114

 No False Statements.....114

 No Other Agreements114

 No Suspension or Debarment114

EVENTS OF DEFAULT; REMEDIES.....114

 Events of Default114

 Material Provisions114

 Deposit of Revenues and Taxes.....115

 Monthly Statement.....115

 Operating Expenses and Capital Improvement Expenses115

 Monthly Reports115

Failure to Open Facilities.....115

Failure to Cure Breach115

Representations and Warranties.....115

Other Agreement and Obligations115

Remedies.....116

Incidental and Consequential Damages116

Liability of the City.....116

Litigation Expenses.....116

Responsibility for Equipment116

Liquidated Damages116

RIGHT OF TERMINATION117

Termination for Convenience117

Termination for Cause118

DUTIES UPON TERMINATION AND EXPIRATION118

Duties Upon Termination and Expiration.....118

Provisions Surviving Termination and Expiration118

Delivery of Work119

NOTICE REQUIREMENTS119

GENERAL PROVISIONS119

Assignment119

Americans with Disabilities Act120

Authority120

Consent to Notice of Nonpayment of Parking Tax.....120

Drug-Free Workplace Policy120

False Claims.....120

MacBride Principles--Northern Ireland121

Local Business Enterprise Utilization; Liquidated Damages121

 The LBE Ordinance121

 Compliance and Enforcement.....121

 Enforcement.....121

Subcontracting Goals122

Subcontract Language Requirements122

Payment of Subcontractors122

Conflict of Interest123

No Tobacco Advertising123

Nondiscrimination; Penalties123

 Manager Shall Not Discriminate123

 Subcontracts123

 Nondiscrimination in Benefits123

 Condition to Agreement.....124

 Incorporation of Administrative Code Provisions by Reference124

Limitations on Contributions124

Pesticide Prohibition124

Preservative Treated Wood Containing Arsenic.....125

Prohibition on Political Activity with City Funds125

Sunshine Ordinance and Public Disclosure125

Public Transit Information125

Waiver.....125

Modification of Agreement.....126

Administrative Remedy for Agreement Interpretation126

Agreement made in California; Venue126

Compliance with Laws126

Services Provided by Attorneys.....126

Resource Conservation126

Entire Agreement126

Construction of Agreement.....126

Severability127

Successors and Assigns.....127

Time of Essence127

Tropical Hardwood Virgin Redwood Ban127

ATTACHMENT K (cont.)

MODEL AGREEMENT

Proprietary or Confidential Information of City127
Ownership of Results127
Works for Hire127
Public Access to Meetings128
Protection of Private Information128
Graffiti Removal128
Food Service Waste Reduction Requirements.....129

**AGREEMENT FOR MANAGEMENT OF OFF-STREET PARKING FACILITIES
GROUP ["A" "B" OR "C"]**

This Agreement for the management of the off-street parking facilities described in Exhibit A ("Agreement"), dated for convenience as November 1, 2009, is entered into by and between the City and County of San Francisco ("City"), a municipal corporation, acting by and through its Municipal Transportation Agency, hereinafter referred to as "SFMTA" or "City" and **[INSERT MANAGER]**, hereinafter referred to as "Manager," or "Contractor," a **[INSERT CORPORATE STATUS]**, doing business in the City and County of San Francisco, State of California, for the services and under the terms described herein.

1. RECITALS

WHEREAS, Manager is engaged in the business of providing skilled management and supervision of parking facilities; and
WHEREAS, the City owns the land and improvements described in Exhibit A attached hereto as sites for public off-street parking facilities (the "Facilities"); and
WHEREAS, the SFMTA desires to hire a Manager to provide management and supervisory services at the Facilities under the terms and conditions of this Agreement; and
WHEREAS, the SFMTA published an invitation for bids and conducted a competitive selection process to identify a qualified parking management company to manage this group of Facilities; and
WHEREAS, Manager selected was the highest-ranked proposer for this group of Facilities; and;
WHEREAS, by Resolution No. _____, dated _____, 2009, the Civil Service Commission has approved contracting for these services;
Now, THEREFORE, the parties agree as follows:

2. SUMMARY OF TERMS

The following is a summary of the basic terms of this Agreement. Each item below shall be deemed to incorporate all the terms set forth in this Agreement pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Agreement, the more specific provision shall control.

Reference Date:	November 1, 2009
Manager:	<i>[INSERT NAME]</i>
Facility Names and Locations:	The names and locations of the facilities covered by this Agreement are attached as Exhibit A.
Term: (Section 5.1)	For a period of six years, commencing: November 1, 2009, and expiring October 31, 2015, unless extended.

ATTACHMENT K (cont.)

MODEL AGREEMENT

Extension of Term: (Section 5.2)	Upon approval from the SFMTA Board of Directors, the Executive Director/CEO shall have the right to extend this Agreement by providing Manager thirty (30) days' advance written notice prior to the expiration of the initial term. Such extension shall be on the same terms and conditions of this Agreement. No single extension can exceed 18 months. Total extensions cannot exceed three years.
Management Fee: (Section 6.1)	<i>\$XXXXX per month</i>
Bid Security: (Section 11.4)	<i>XXXX Thousand Dollars (\$XXXX)</i>
Security Deposit: (Section 11.4)	<i>XXXXX Thousand Dollars (\$XXXX)</i>
Subcontracting Goals:	The LBE subcontracting participation goal is XX%.
Notices to be sent to: (Section 20)	San Francisco Municipal Transportation Agency One South Van Ness Avenue, 3 rd Floor San Francisco, California 94103 Attention: Director of Off-Street Parking
Key Contact for SFMTA:	[INSERT NAME/TITLE] San Francisco Municipal Transportation Agency One South Van Ness Avenue San Francisco, CA 94102 (415) 701-XXXX
Notice Address of Manager: (Section 20)	<i>[INSERT NAME AND ADDRESS]</i>
Key Contact for Manager:	<i>[INSERT NAME AND ADDRESS]</i>

3. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall have the meaning ascribed to them in the Parking Facility Operation and Management Regulations ("Facility Regulations") appended as **Appendix X**, except that for the purposes of this Agreement, the terms listed below shall have the following meanings:

3.1 "Commencement Date" means November 1, 2009, the first day this Agreement is in effect.

3.2 "Contract Year" means the 365-day year or 366-day Leap year, commencing on the Commencement Date, and on each anniversary of the Commencement Date thereafter.

3.3 "Director" means the Director of the SFMTA Off-Street Parking Division or his or her designee.

3.4 "Executive Director" means the Executive Director/CEO of SFMTA or his or her designee.

3.5 "Expiration Date" means September 30, 2015, the last date this Agreement is in effect, unless sooner terminated or extended.

3.6 "Manager" means [INSERT NAME OF MANAGER].

3.7

4. MANAGEMENT SERVICES

4.1 Independent Contractor

(a) **Independent Contractor.** Manager is an independent contractor providing the services described in this Agreement for hire. Manager shall provide the management, operations, and supervisory services described herein, subject to the terms and conditions of this Agreement. The services to be rendered by Manager pursuant to this Agreement are as an independent contractor only. Manager or any agent or employee of Manager 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 SFMTA under this Agreement. Manager or any agent or employee of Manager shall not have employee status with the SFMTA or City, nor be entitled to participate in any plans, arrangements, or distributions by the SFMTA or City pertaining to or in connection with any retirement, health or other benefits that the SFMTA or City may offer its employees. Manager or any agent or employee of Manager is liable for the acts and omissions of itself, its employees and its agents. Manager 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 Manager's performing services and work, or any agent or employee of Manager providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the SFMTA or City and Manager or any agent or employee of Manager.

Any terms in this Agreement referring to direction from the SFMTA or City shall be construed as providing for direction as to policy and the result of Manager's work only, and not as to the means by which such a result is obtained. Neither the SFMTA nor City retain the right to control the means or the method by which Manager performs work under this Agreement.

(b) **Payment of Taxes and Other Expenses.** If a local, state or federal taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Manager 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 Manager which can be applied against this liability). The SFMTA or City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Manager for the SFMTA or City, upon notification of such fact by the SFMTA or City, Manager shall promptly remit such amount due or arrange with the SFMTA or City to have the amount due withheld from future payments to Manager under this Agreement (again, offsetting any amounts already paid by Manager 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, Manager shall not be considered an employee of the SFMTA or City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Manager is an employee for any other purpose, then Manager agrees to a reduction in the SFMTA's financial liability so that the SFMTA's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Manager was not an employee.

4.2 General Authority to Manage. Subject to Section 4.3 and 4.4 below, Manager is hereby given general authority to manage and supervise the day-to-day operation of the Facilities and to perform the specific duties hereinafter set forth, subject to, governed by, conditioned upon, and in accordance with the terms and provisions of this Agreement.

4.3 Control Retained by the SFMTA. The SFMTA shall at all times retain the authority to exercise control over the Facilities, and Manager shall perform the duties required to be performed by it under this Agreement in accordance with policies and directives of the SFMTA. Any terms in this Agreement referring to direction from the SFMTA shall be construed as providing for direction as to policy and the result of Manager's work only, and not as to the means by which such a result is obtained. The SFMTA does not retain the right to control the means or the method by which Manager performs work under this Agreement.

4.4 Access to Facilities. The SFMTA and its duly authorized agents shall have access to the Facilities at all times for the purpose of (i) inspection, (ii) to make any repairs, additions or renovations as the SFMTA shall deem advisable, and (iii) for use by the SFMTA in case of emergency, as determined by the SFMTA in its sole discretion.

4.5 Management of Additional Facilities. The SFMTA shall have the right during the term of this Agreement to request that the Manager add Facilities to the Manager's inventory. Any additional Facility shall be managed in the manner described in this Agreement and the Facility Regulations. In the event that the SFMTA desires to add a new Facility, it shall send a written notice of intent to the Manager. The Management Fee due to Manager may be adjusted by determining the total number of parking spaces being added as a percentage of the total number of parking spaces already under management under this Agreement, and increasing the Management Fee otherwise due by an equivalent percentage. . In the event that the Manager elects not to manage the additional Facility, the SFMTA shall have the right to select another Manager to manage the additional Facility.

5. TERM OF MANAGEMENT AGREEMENT

5.1 Term. The term of this Agreement shall be for a period of six years, commencing at 12:00 a.m. on the Commencement Date and expiring at 11:59 p.m. on the Expiration Date, unless sooner terminated or extended as provided herein.

5.2 Extension. The Executive Director shall have the right, in his or her sole discretion, to extend this Agreement by providing Manager thirty (30) days' advance written notice prior to the expiration of the Term set forth in Section 5.1 above. Such extension shall be on the same terms and conditions of this Agreement, and the Management Fee paid to Manager shall be at the rate specified in this agreement. No single extension shall be for more than 18 months, and total extensions cannot exceed three years. During any such extension, the SFMTA shall have the right to terminate this Agreement upon thirty (30) days notice to Manager and Manager shall have the right to terminate this Agreement upon one hundred eighty (180) days notice to the SFMTA.

6. COMPENSATION

6.1 Management Fee and Reimbursement of Operating Expenses.

(a) Manager shall be paid a monthly Management Fee of [INSERT AMOUNT IN WRITING] (\$xxxxx) for services performed by it under this Agreement. The Management Fee shall be subject to a 5% increase beginning the first month of contract years 4 and 7. In addition, Manager shall be paid additional incentive fees as set forth in Section 6.7, below, for meeting specified revenue goals and customer satisfaction goals. Provided Manager is not in default under this Agreement, or an event has not occurred that, with the giving or notice or the passage of time, would constitute a default, the Management Fee shall be due and payable under the requisition procedure required by Section 6.8 of the Facility Regulations, provided the SFMTA receives the Monthly Report required by Section 6.7 of the Facility Regulations. Should the Commencement Date or the Expiration Date occur on any day other than the first day of a calendar month, the Management Fee for that particular month shall be prorated based on a 30-day month.

(b) Manager shall be entitled to reimbursement from SFMTA for all Operating Expenses properly incurred and paid by Manager in the performance of Manager's duties hereunder and as specified in the approved Budget in accordance with the Facility Regulations. Such reimbursement shall be subject to Manager's compliance with the submittal procedures set forth in the Facility Regulations and shall be subject to all City approvals required under this Agreement. SFMTA's obligation to reimburse Manager for wages, salaries or benefits is limited to reimbursement for time that employees of Manager are actually working at the Facilities for the benefit of SFMTA. Manager shall not be reimbursed for overhead expenses that have not been specifically set out as reimbursable expenses. All costs not identified as reimbursable expenses shall be borne by Manager.

(c) City shall make all payments to Manager at the address specified in Section 17 (Notice Requirements).

6.2 Labor Costs. SFMTA shall not be required to reimburse Manager for wages beyond the amounts required under the collective bargaining agreement. Employees not covered by such agreements shall only receive a salary increase upon submission of a written request by Manager and written approval by SFMTA.

6.3 Payment Does Not Imply Acceptance of Work. The granting of any payment by the SFMTA, or the receipt thereof by Manager, shall not imply acceptance by the SFMTA or City of any report required by this Agreement, nor shall such payment lessen the liability of Manager 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 the SFMTA and in such case must be replaced by Manager without delay. For purposes of this Agreement, payment includes reimbursement of Operating Expenses, the Management Fee and any Incentive Fees.

6.4 Late Charges. Any revenues or monies, if not deposited or transferred as specified in the Facility Regulations, shall bear interest from the due date until deposited at the rate of the prime rate of the financial institution holding the accounts plus three percent (3%) per year or, if a higher rate is legally permissible, at the highest rate permitted under law. However, interest shall not be payable on late charges incurred by Manager nor on any amounts on which late charges are paid by Manager to the extent this interest would cause the total interest to be in excess of that which is permitted by law. Payment of interest shall not excuse or cure any default by Manager. The late payment charge has been agreed upon by the SFMTA and Manager, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that SFMTA will incur as a result of any such failure by Manager, the actual costs thereof being extremely difficult, if not impossible, to determine. The late payment charge constitutes liquidated damages to compensate the SFMTA for its damages resulting from such failure to pay and shall be paid to the SFMTA together with such unpaid amount.

6.5 Fees During Suspended Operations. If for any reason whatsoever any condition prevents the operation of one or more of the Facilities or any portion thereof at any time for more than thirty (30) consecutive days, the Management Fee shall be adjusted on a pro rata basis by determining the total number of parking spaces affected by the termination or suspension as a percentage of the total number of parking spaces under management under this Agreement, and reducing the Management Fee otherwise due by an equivalent percentage, commencing from the expiration of such 30-day period and continuing until the earlier of (i) date the condition affecting the Facility or Facilities has been abated and normal operations of the Facilities have resumed or (ii) the termination of this Agreement.

6.6 Limitations on Payment of Fees. The City's obligation for payment of Management Fees and reimbursement of Operating Expenses claimed by Manager in the performance of this Agreement shall not exceed the amount listed in the line item in the Approved Budget for each such fee or expense identified by Manager as the source for reimbursement under the Approved Budget. The City's obligation for payment of Management Fees and reimbursement for Operating Expenses in the aggregate shall not exceed the total Approved Budget for these items, unless preapproved by SFMTA in writing.

6.7 Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the SFMTA or City and their employees and officers are not authorized to request Manager to perform services or to provide materials, equipment and supplies that would result in Manager performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in this Agreement (unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies). The SFMTA is not required to reimburse Manager for services, materials, equipment or supplies that are provided by Manager that are beyond the scope of the services, materials, equipment and supplies agreed upon in this Agreement and which were not approved by a written amendment to this Agreement lawfully executed by the SFMTA.

(a) Approval Required For Additional Funding. The SFMTA, City and their employees and officers are not authorized to offer or promise to Manager additional

funding for this Agreement that would exceed the maximum amount of funding provided for herein for Manager's performance hereunder. Additional funding for this Agreement in excess of the maximum provided in this Agreement shall require lawful approval by the SFMTA and certification by the Controller. The City is not required to honor any offered or promised additional funding that exceeds the maximum that has been certified by the Controller and approved by the SFMTA.

(b) Payments Must Be Authorized. The Controller and Director are not authorized to make payments on any contract for which funds have not been certified as available in the budget or by a supplemental appropriation.

6.8 Payment of Incentive Fees. Manager may earn annual incentive fees for (1) exceeding established net parking revenue targets ("Net Revenue Incentive Fee"); and/or (2) achieving specified levels of customer service, as measured through quarterly surveys of Facility patrons ("Customer Satisfaction Incentive Fee").

(a) Net Income Incentive Fee. SFMTA will pay Manager a Net Income Incentive Fee in accordance with the requirements of this subsection. For purposes of Net Income Incentive Fee, net revenues are defined as Gross Revenues minus parking taxes, Access Card deposits, Advertising Revenues, reimbursements to the garage (booked as miscellaneous income) and approved operating expenses and capital improvements. SFMTA will pay the Manager an incentive fee at the end of each contract year for exceeding the Net Parking Income Target as set forth below provided the Manager (i) does not compromise the level of customer service, safety and maintenance of the Facilities as set forth in this Agreement and the Facility Regulations as determined by the Director in his or her sole and absolute discretion; and (ii), has not defaulted on any of its obligations under this Agreement during the Contract Year:

Contract Year	Net Income	Target	Over Target	% Earned	Incentive Earned
1	\$1.2M	\$1.0M	\$200K	10%	\$20,000
2	\$1.3M	\$1.2M	\$100K	12%	\$12,000
3	\$1.15M	\$1.3M	(\$150K)	15%	-0-
4	\$1.5M	\$1.3M	\$200K	15%	\$30,000
5	\$1.7M	\$1.5M	\$200K	15%	\$30,000
6	\$1.7M	\$1.7M	-0-	15%	-0-

For each contract year that the Manager exceeds the Net Parking Income Target, the incentive shall be calculated at a percentage of the amount of net income that exceed the Net Parking Income Target for that contract year, i.e., 10% for year 1, 12% for year 2, 15% beginning year 3 through 6 and extensions. These amounts are based on the Parking Rates in effect on the Commencement Date of this Agreement. In the event that the Parking Rates are increased, the Net Parking Income Target shall automatically increase by a corresponding percentage unless the Director, in his or her discretion, determines that a reduced increase is warranted. The Manager must submit a written request for the incentive within 60 days of the end of the contract year in which the fee was earned. Any incentive fee due under this paragraph shall be paid to Manager within 45 days of receipt of the written request for the incentive fee for the Contract Year in which the fee was earned.

(b) **Customer Satisfaction Incentive Fee.** Manager may earn an additional incentive fee of \$xxx (\$500 for Group A or B; \$250 for Group C) per quarter per Facility for each Facility that receives a successful score based on the customer satisfaction survey program attached at **Exhibit X** to this Agreement. The Manager must submit a written request for the fee within 60 days of the end of the quarter in which the fee was earned. Any Customer Satisfaction Incentive Fee under this paragraph shall be paid to Manager within 45 days of receipt of the written request for the calendar quarter in which the fee was earned.

(c) The Director, in his or her sole discretion, shall determine if all requirements have been met in order to pay the Manager one or both of the Incentive Fees authorized by this Section for any given year.

7. STAFFING, EMPLOYEES AND CONTRACTING

7.1 Parking Personnel.

(a) Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Manager. Manager will comply with SFMTA's reasonable requests regarding assignment of personnel, but Manager must supervise all personnel. Manager shall select, furnish, and employ on its own behalf such competent and qualified operating personnel necessary to operate the Facilities in an efficient and workmanlike manner.

(b) All personnel engaged in operation of the Facilities shall be employees of Manager or employees of vendors hired by Manager, subject to Manager's sole supervision, direction and control, and under no circumstances shall Manager's employees or employees of vendors be considered employees of the SFMTA or City. Manager shall comply with all applicable federal, state and local laws, ordinances and regulations pertaining to its employees

(c) Manager shall staff each Facility with at least one employee during all hours of operation, unless otherwise directed by the Director. The duties of such personnel shall include but not be limited to the issuance of monthly permits, collection of parking fees from all daily users of the Facilities, and notification to monthly users of the status of their parking fee payment and to prospective monthly users of their placement on the waiting list for monthly spaces in one or more of the Facilities.

(d) Except as otherwise provided herein, Manager shall have the exclusive right to hire, assign, supervise, manage, discipline, suspend, terminate, layoff and otherwise discharge its employees. Manager shall control and supervise the conduct, demeanor and appearance of its employees and shall train its employees to render a high degree of courteous and efficient service to the public. Notwithstanding the above, the Director shall have the right, in his or her reasonable discretion, to request that Manager relocate or transfer any employee from the Facility or Facilities whose presence on the site the SFMTA deems detrimental to the operation of the facility, and Manager shall comply with such request within the time specified by the SFMTA.

(e) Manager shall commit adequate resources and personnel to manage and operate the Facilities. Notwithstanding the Manager's right to hire the necessary employees to operate the Facilities, the Director shall have the right to direct the Manager to either hire additional employees or reduce the number of employees staffing the Facilities if the Director reasonably determines that the Manager is failing to operate one or more of the Facilities in an efficient and appropriate manner. The Manager shall pay particular attention to effective and efficient operation of the Facilities so as not to cause patrons unreasonable delays in entering and exiting the Facilities.

(f) All employees shall wear uniforms of a design and color chosen by Manager to present a clean and efficient image and the Director reserves the right to require changes in such uniforms in his or her reasonable discretion.

(g) Upon the SFMTA's request, Manager shall provide evidence satisfactory to the SFMTA that Manager has adequately provided for all legally required employment benefits.

7.2 Operations Manager. Manager shall select, hire and appoint, subject to the continuing approval of the Director, an on-site Operations Manager responsible for each Facility under management, each of whom must be a highly-qualified and experienced manager of automobile parking facilities, charged with responsibility and authority by Manager to manage Facility operations. At all times when the Facilities are open for public parking and the on-site Operations Manager is not present, one on-duty and on-site employee at the Facility shall be designated the Acting Operations Manager and shall be authorized to direct any other employees to respond to emergencies, inquiries and complaints. In addition, the Operations Manager shall be competent in creating reports from the Revenue Control Equipment and other on site parking equipment, including but not limited to, revenue reports and parking utilization reports. The Operations Manager shall have a working knowledge of the figures contained in each Monthly Report and must be able to prepare and produce specific reports requested by the SFMTA, including graphs and tables. The duties of the Operations Manager shall be exclusively and entirely dedicated to the operations of the Facilities.

7.3 Maintenance Personnel and Contracting. Manager shall employ, or contract for, sufficient personnel to perform the routine maintenance and repair work to the Facilities in a prompt and efficient manner so as to keep the premises at all times in a first-class operating condition that is clean, safe and attractive. Manager shall provide evidence acceptable to the Director that any contractor engaged by Manager to perform work on the property maintains insurance in amounts, on policies of coverage and offered by companies satisfactory to the SFMTA, including but not limited to Worker's Compensation Insurance (including Employers' Liability Insurance), general liability insurance covering personal injury and property damage, and insurance covering the use of owned, non-owned or hired vehicles and equipment.

7.4 Security Personnel and Contracting. Manager shall enter into a security agreement in a form and from a contractor or contractors acceptable to the Director to provide security guards to be stationed at the Facilities to protect the Facilities, Facility users, and property in the Facilities against damage, injury, theft or other loss. Manager shall provide security guards at the Facilities as directed by the Director. Guards hired to provide security at the Facilities shall not carry firearms, unless specifically approved in writing by the Director. Should the Director determine at any time that Manager has not employed sufficient security guards at one or more of the Facilities, the Director shall notify Manager in writing of such deficiency. Should Manager fail to remedy the situation within forty-eight (48) hours of such notice, the Director shall have the right to contract for temporary security guards and direct such guards to work at the Facility(s) until such time Manager has provided the Director with satisfactory evidence that the Facilities will be adequately staffed with security personnel. The Director shall have the right to deduct administrative costs associated in providing security from the Management Fee, Security Deposit or any other available source of funds or security.

7.5 Payroll and Taxation. Manager shall make or cause to be made all necessary payroll deductions for disability and unemployment insurance, social security, withholding taxes and other applicable taxes, and prepare, maintain and file or cause to be filed all necessary reports with respect to such taxes or deductions, and all other necessary statements and reports pertaining to labor employed in or about the Facilities. Notwithstanding Manager's direct

employment of Facility employees, all approved compensation (including fringe benefits) paid to such personnel by Manager shall be considered Operating Expenses of the Facilities during the Term of this Management Agreement and any extensions of the Term.

7.6 Subcontracting and Other Parking Business Operations.

(a) **Subcontracting Must be Authorized.** Except as otherwise authorized under this Agreement, to ensure the quality of work performed on the Facilities, Manager is prohibited from subcontracting any of its duties under this Agreement or any part of it unless such subcontracting is first approved by Director 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 by Manager and a subcontractor that is in violation of this provision shall confer no rights on any party and shall be null and void.

(b) **Notification of Other Parking Business Operations.** Manager shall promptly notify the Director in writing of any parking-related business located or operating in the City in which the Manager has an interest, or in which Manager proposes to have an interest. Manager shall list in an Appendix to this Agreement any parking-related business located or operating in the City in which the Manager has an interest, as well as the nature and extent of that interest, as of the date of this Management Agreement. The SFMTA reserves the right to terminate this Management Agreement at no additional cost to the SFMTA if the SFMTA determines that the Manager's interests in other parking business operations are not in the best interests of the City. For purposes of this paragraph, a reportable interest shall be any ownership interest of 5% or greater.

7.7 Employee Retention and Prevailing Wages. Manager hereby acknowledges that it has read and understands San Francisco Administrative Code, Chapter 21, Section 21-25.2 and agrees that the Management Agreement shall be subject to, and Manager shall comply with, all obligations and requirements imposed by that ordinance.

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

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

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

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

7.9 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 they same may be amended. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

(b) Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(d) 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 SFMTA when it enters into such a Subcontract and shall certify to SFMTA that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

(e) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's compliance or anticipated compliance 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. If Contractor fails to do so, it shall be presumed that any employee who has worked on this contract is a Covered Employee.

(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.

7.10 First Source Hiring Program

(a) Incorporation of Administrative Code Provisions by Reference.

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

(b) First Source Hiring Agreement.

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

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.

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.

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.

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 non-duplicative, and facilitate a coordinated flow of information and referrals.

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.

Set the term of the requirements.

Set appropriate enforcement and sanctioning standards consistent with this Chapter.

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.

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

(c) Hiring Decisions.

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

(d) Exceptions.

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

(e) Liquidated Damages.

Contractor agrees:

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

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;

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.

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;

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

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

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

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

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

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

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

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

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

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

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

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

8. FISCAL DUTIES AND MATTERS

8.1 Taxes, Assessments, Licenses, Permit Fees and Liens

(a) Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of the Agreement, or the services delivered pursuant to the Agreement, shall be the obligation of Manager. Manager shall pay any and all real and personal property taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Land or the Facilities or Manager's personal property. Manager shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency.

(b) Manager recognizes and understands that the 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:

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

Manager, 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. Manager 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.

Manager, 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). Manager 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.

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

8.2 Audit and Inspection of Books and Records.

(a) Manager agrees to maintain and make available to the SFMTA, during regular business hours, accurate books and accounting records relating to its work under the Agreement. Manager will permit SFMTA to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by the Agreement, whether funded in whole or in part under the Agreement. Manager shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under the Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of the Agreement shall have the same rights conferred upon SFMTA by this Section.

(b) The Manager shall cooperate in audits of its books and records relating to the Facilities and the Manager's compliance with the Agreement. The audits shall be conducted at the direction of the SFMTA or the City Controller by an auditor selected by the SFMTA or the Controller. The SFMTA or the Controller shall determine the scope of said audit(s), which may include but are not limited to the Manager's compliance with the terms of the Agreement and the Facility Regulations, determining the amount of Gross Revenues and Parking Taxes received by the Manager from the operation of the Facilities; the Gross Revenues and Parking Taxes deposited into the Revenue Account; any differences between the Gross Revenues and Parking Taxes reported and the Revenue Account deposits and audited revenues; and the form and method of the Manager's record keeping. The audits may include review of capital expenditures, compliance with any provisions of the Agreement and the Facility Regulations or any other item related to administration of this Agreement or the financial stability of Manager at the discretion of the SFMTA.

(c) Manager shall establish and maintain at each Facility books, records and systems of account, including all records relating to Revenue Control Equipment at the Facilities in accordance with generally accepted accounting principles, consistently applied reflecting all business operations of Manager transacted under the Agreement. To the extent Manager has not complied with generally accepted accounting principles, the Director may require Manager to restate its books, records and systems of account to conform to such requirements. These books, records and systems of account shall be retained by Manager during the term of the Agreement and for at least three (3) years thereafter, and shall be available at all reasonable times, with or without notice, for inspection and audit by the City, SFMTA, or their agents. Upon expiration or early termination of the Agreement, all such books, records and systems of account shall be delivered to the Director. All used and unused parking tickets, tapes and other records used in the operation of the Facilities are owned by the SFMTA, but shall be retained by Manager at the Facilities unless the Director request otherwise. Such tickets, tapes and records shall be available at all reasonable times, with or without notice, for inspection and audit by either the Director or his/her agents, and shall not be destroyed without prior written consent from the Director.

(d) To the extent that any provisions of this Section 8.2 are in conflict with the Facility Regulations, those Regulations shall control.

9. HAZARDOUS MATERIAL COVENANTS

9.1 No Hazardous Materials. Manager covenants and agrees that neither Manager nor any of its Agents or Invitees shall cause or permit any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Facilities or the Land or transported to or from the Land or the Facilities, provided that Manager may store and use such substances in the Facilities and on the Land in such limited amounts as are customarily used in a parking Facility so long as such storage and use is at all times in full compliance with all applicable Environmental Laws. Manager shall immediately notify the City if and when Manager learns or has reason to believe there has been any Release of Hazardous Material in, on or about the Land or the Facilities. The City may request Manager to provide information required for the City to determine whether any Hazardous Material permitted hereunder is being handled in compliance with all applicable Environmental Laws, and Manager shall promptly provide all such information.

9.2 Manager's Environmental Indemnity. If Manager breaches any of its obligations contained in Section 9.1 above, or, if any act or omission or negligence of Manager or any of its Agents or Invitees results in any Release of Hazardous Material in, on, under or about the Land or the Facilities (including any Improvements thereon) or any other City property, without limiting Manager's general Indemnity contained in Section 14 below, Manager, on behalf of itself and its successors and assigns, shall Indemnify the City and their respective officers, agents and employees, and each of them, from and against all Hazardous Materials Claims arising during or after the termination or expiration of this Agreement and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the Investigation and Remediation of Hazardous Material and with the restoration of the Facilities and the Land or any other City property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Land or other City property. Without limiting the foregoing, if Manager or any of Manager's Agents or Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Land, Facilities or any other City property, Manager shall, immediately, at no expense to the City, take any and all appropriate actions to return the Land, Facilities or other City property affected thereby to the condition existing prior to such Release and otherwise Investigate and Remediate the Release in accordance with all Environmental Laws. Manager shall provide the City with written notice of and afford the City a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material. Manager specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City from any claim which actually or potentially falls within this indemnity provision even if such allegation is groundless, fraudulent or false, and at all times before the determination of the validity of any such claim. The foregoing indemnity is not limited by the amount of insurance required to be maintained by Manager.

10. INSURANCE AND SURETY BONDS

10.1 Required Insurance. Manager will secure and maintain the Required Insurance for Facilities as set forth in this Agreement. All costs under this Section 10 shall be Operating Expenses. If directed by the City, and subject to approval by the City of the insurers and policy forms, Manager shall arrange and maintain throughout the term of this Agreement the following insurance policies and any additional insurance as may be required:

(a) **[NOTE THE INSURANCE NUMBERS/VALUES NEED TO BE REVIEWED]** Property insurance on an all-risk form, excluding earthquake and flood, but including sprinkler leakage, in the amount of one hundred percent (100%) of the replacement value of buildings, equipment and contents which value is estimated at [XXXX] million dollars (\$XX,000,000). Said policy shall also insure against business interruption, including coverage for the City, in an amount not less than one hundred percent (100%) of Gross Revenues for six (6) months. The City's liability to reimburse Manager for payment of any deductible under such policy shall not exceed \$10,000 for each Occurrence. The policy shall contain a standard replacement cost endorsement providing for full replacement and no deduction for depreciation and a stipulated amount endorsement. Upon request by the City, Manager shall obtain earthquake coverage under such property insurance policy, the cost thereof to be an Operating Expense.

(b) Commercial general liability insurance with limits not less than \$5,000,000 each occurrence, combined single limit for bodily injury and property damage, or in such greater amount and limits as the City may reasonably require, including coverage for contractual liability, personal injury, broad form property damage, products and completed operations. Such policy shall include endorsements for (1) false arrest, detention or imprisonment or malicious prosecution; (2) libel, slander or defamation of character; (3) wrongful entry or eviction or invasion of the right of privacy. Any deductible under such insurance shall not to exceed \$10,000 for each Occurrence.

(c) Boiler and machinery insurance, comprehensive form, in an amount of \$1,000,000 with respect to loss of or damage to insured objects, and \$7,500 expediting expense insuring ventilating and electrical equipment and any other equipment or machinery typically insured under such a policy. The City's liability to reimburse Manager for payment of any deductible under such insurance shall not to exceed \$10,000 for each Occurrence

(d) Business automobile liability insurance with limits not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles, as applicable. The City's liability to reimburse Manager for payment of any deductible under such policy shall not exceed \$10,000 for each occurrence.

(e) Facility-keeper's legal liability insurance with limits not less than \$1,000,000 for each occurrence combined single limit for loss and damage to vehicles in Manager's care, custody or control caused by fire, explosion, theft, riot, civil commotion, malicious mischief, vandalism or collision. Any deductible under any such policy shall not to exceed \$1,000 for each occurrence. Any insurance deductible for non-automobile (personal) property customarily left in the custody of the Facilities shall not exceed \$5,000.

(f) Workers' Compensation Insurance, including Employers' Liability, with limits not less than \$1,000,000 for each accident, covering all employees employed in or about the Facilities to provide statutory benefits as required by the laws of the State of California. If Manager carries a policy for employees at the Facilities separate from its other employees, the City's liability to reimburse manager for its workers' compensation insurance premium is limited to average cost of workers compensation insurance per employee for all of Manager's employees. If Manager maintains a single workers' compensation insurance policy for all of its employees, irrespective of work site assignment, then the City's liability to reimburse Manager shall be limited to the actual cost to Manager for the employees assigned to the Facilities. Said amount shall be calculated by dividing the cost of the annual premium by the number of Manager's employees and then multiplying that result by the number of Manager's employees assigned to work at the Facilities.

10.2 Additional Requirements.

(a) Should any of the required insurance be provided under a claims-made form, Manager shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the Management Agreement expiration, to the effect that, should occurrences during the Management Agreement term give rise to claims-made after expiration of the Management Agreement, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general 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.

(c) All liability insurance policies required pursuant to Section 10.1(a) through (e) shall be endorsed to provide the following:

These policies shall list the Manager as the named insured and shall be further endorsed to name as additional insureds the City and County of San Francisco and its officers, agents and employees.

That such policies are primary insurance to any other insurance available to the additional insured, 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. Such policies shall also provide for severability of interests and that an act of omission of one of the named insured which would void or otherwise reduce coverage shall not reduce or void the coverage as to any other insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(d) All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for the City set forth in Section 17 of this Agreement.

(e) Manager shall deliver to the City certificates of insurance in form and from insurers satisfactory to the City, evidencing the coverage required hereunder, on or before the expiration date of current policies, together with copies of the policies promptly upon the City's request, and Manager shall provide the City with certificates or policies thereafter at least 30 days before the expiration dates of expiring policies. In the event Manager fails to procure such insurance, or to deliver such policies or certificates, the City may (without limiting any other rights or remedies hereunder) procure, at its option, such insurance for the account of Manager, and the cost thereof shall be paid to the City within five days after delivery to Manager of invoices as a Manager's Cost.

(f) Upon the City's or Director's request, Manager and the City may periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Manager for risks comparable to those associated with the Premises, then Manager shall, at the City's or Director's request, increase the amounts or coverage carried by Manager to conform to such general commercial practice.

(g) Manager's compliance with the provisions of this Section shall in no way relieve or decrease Manager's liability under Section 9.2 or Section 11 of this Agreement, or any of Manager's other obligations or liabilities under this Agreement.

(h) Notwithstanding anything to the contrary in this Agreement, if any of the required insurance coverage lapses, this Agreement shall terminate upon three days notice to Manager, unless Manager renews the insurance coverage within notice period.

(i) All insurance and surety companies are subject to approval as to coverage forms and financial security by the City. Insurers and sureties rated by A. M. Best Co. shall have a current rating not less than A-VIII.

10.3 Compliance with Insurance Requirements. Manager shall not do anything, or permit anything to be done, in or about the Premises that would be prohibited by or increase the rates under a standard form fire insurance policy or subject the City to potential premises liability. Manager shall faithfully observe, at its expense, any and all requirements of City's Risk Manager with respect to Manager's use and occupancy of the Premises, so long as such requirements do not unreasonably interfere with the Manager's use of said premises or are otherwise connected with standard prudent commercial practices of other landlords.

10.4 Required Bonds. Within 30 days of mutual execution of this Agreement, subject to approval by the City of the surety companies and bond forms, Manager shall deposit with the City and shall maintain throughout the term of this Agreement, and pay the cost thereof as an Operating Expense, the following bonds made payable to the City and naming the City as obligee:

(a) Parking Tax Collection Bond in the form that is attached as Appendix G in the amount of XXXX Thousand Dollars (\$XXX) and meeting the requirements of Section 6.6-1 of Article 6 of the San Francisco Business and Tax Regulations Code.

(b) Blanket fidelity bond covering all officers and employees of Manager employed at the Facilities or who have access to the Facility revenues or funds, no less than XXXX Thousand Dollars (\$XXXX). Alternatively, the Manager may fulfill the fidelity bond obligation by providing a crime policy with coverage no less than XXXX Thousand Dollars (\$XXXX)

(c) Faithful performance surety bond in the amount of XXXX Thousand Dollars (\$XXXXX) in the form that is attached as Appendix E, guaranteeing the faithful performance by Manager during the term of this Agreement of the covenants, terms and conditions of this Agreement.

10.5 Miscellaneous Insurance and Bond Matters.

(a) Upon mutual execution of this Agreement, Manager shall provide City with two copies of the following: fidelity bond, Parking Tax Collection Bond and two copies of the policy endorsement for all insurance required pursuant to this Agreement. Complete copies of any insurance policies obtained pursuant to this Agreement shall be provided to the City if requested at any time.

(b) The City reserves the right to cancel any or all of the insurance required under this Agreement and to replace such canceled insurance with one or more master insurance policies providing similar insurance coverage and covering any or all of the parking Facilities owned or leased by the City. In such event, Manager shall no longer be required to place and maintain the canceled insurance but may, at its expense, obtain any other insurance it may wish to have. In the event such a master insurance policy replaces a policy of insurance or a portion of a policy of insurance required to be carried by Manager pursuant to this Agreement, Manager will make premium payments to the City's insurance carrier as an Operating Expense.

(c) Upon the City's or Director's request, Manager shall provide evidence satisfactory to the City that Manager has adequately provided for Social Security and Unemployment Compensation benefits for Manager's employees employed at the Facilities.

(d) Manager shall comply with the provisions of any insurance covering Manager or the City, with any notices, recommendations or directions issued by any insurer under such insurance policies so as not to adversely affect the insurance coverage.

(e) In the event that the City receives notice that any insurance or bond are to be or have been cancelled or non-renewed, the City shall notify Manager, in writing, of this failure to meet the requirements of this Agreement. If Manager does not provide to the City satisfactory written certification of renewed or replacement insurance or bond within five business days of the receipt (if delivered) or mailing date of the aforementioned written notice to Manager, the City shall have the right to (i) obtain the required insurance or bond on behalf of Manager and to deduct the premiums therefore from payment of the next Management Fee or Security Deposit, together with an administrative fee of One Thousand Dollars (\$1,000) or (ii) solely at the City's option, terminate this Agreement for default.

11. INDEMNIFICATION AND HOLD HARMLESS

11.1 Manager shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all Losses, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Manager or loss of or damage to property, arising directly or indirectly from Manager's performance of this Agreement, including but not limited to Manager's use, occupancy, or condition of the Facilities or of other 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 Manager, 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. The foregoing indemnity is not limited by the amount of insurance required to be maintained by Manager. The provisions of this Section shall survive the termination of this Agreement with respect to any Loss occurring prior to or upon termination.

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

11.3 Manager 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.

11.4 In the event that any action or proceeding is brought against the City by reason of a claim arising out of any Loss suffered on or about the Facilities, and upon written notice from the City, Manager shall, at its sole expense, answer and otherwise defend such action or proceeding using counsel approved in writing by the City. The City shall have the right, exercised in its sole discretion but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the City in connection with the Facilities.

12. DAMAGE OR DESTRUCTION

12.1 Partial Destruction or Damage. If the one or more of the Facilities are partially destroyed or damaged, the City shall determine, in its sole and absolute discretion, whether it wishes to continue to operate the Facility(ies). Should the City elect to continue the operation of the Facility(ies), the City will proceed with the reconstruction of the damaged portion of the Facility(ies). To the extent insurance proceeds are received from the insurance policies required to be maintained by Manager under Section 10.1 hereof, Manager shall transfer such amounts to the City. If the City does not elect to continue the operation of the Facility(ies), this Agreement shall terminate with respect to those Facility(ies) upon written notice thereof from the Director.

12.2 Management Agreement During Reconstruction. In the event that the City elects to reconstruct the damaged portions of the Facility(ies), the City will make a determination as to whether the Facility(ies) will continue to operate during the reconstruction period. If the City determines that the Facility(ies) will operate during such time, this Agreement shall remain in full force and effect; provided, however, the Management Fee may be adjusted in accordance with Subsection 12.5 of this Agreement. If the City determines that the Facility(ies) cannot continue to operate during all or part of the reconstruction period, the City shall suspend this Agreement with respect to the damaged Facilities during such period of inoperability without altering the Expiration Date.

12.3 Total Destruction. If one or more of the Facilities are totally destroyed from any cause, whether or not covered by the insurance required hereunder, this Agreement shall automatically terminate as of the date of such total destruction with respect to those Facilities.

12.4 Damage Near End of Term . If one or more of the Facilities are partially destroyed during the last twelve (12) months of the term of this Agreement from any cause, whether or not covered by the insurance required hereunder, the City may, at its option, terminate this Agreement in its entirety or with respect to the damaged Facility(ies) by giving written notice thereof to Manager.

12.5 Adjustment of Management Fee. Where operation of one or more of the Facilities is terminated or suspended in accordance with subsections 12.1-12.4, the Management Fee due to Manager may be adjusted by determining the total number of parking spaces affected by the termination or suspension as a percentage of the total number of parking spaces under management under this Agreement, and reducing the Management Fee otherwise due by an equivalent percentage. Such fee shall be reinstated to the extent that spaces are returned to service.

13. MANAGER'S REPRESENTATIONS AND WARRANTIES

Manager hereby represents and warrants as follows:

13.1 Experience. Manager is experienced in the operation and management of public parking facilities and hereby agrees to apply its best efforts and most efficient methods in the operations and management of the Facilities.

13.2 Formation. Manager is duly formed or incorporated, is validly existing and in good standing under the laws of the State of California, and qualified to do business in the State of California.

13.3 Authority. Manager has full power and authority (corporate or otherwise) to enter into this Agreement and to consummate the transactions contemplated by it, this Agreement has been duly authorized by all necessary action on the part of Manager, and no other corporate or other action on the part of Manager is necessary to authorize the execution and delivery of this Agreement.

13.4 Conflicts and Consents. The execution and delivery by Manager of this Agreement and the performance by Manager of the transactions contemplated by it will not violate any federal, state or local law, rule or regulation, or conflict with or result in any breach or violation of, or constitute a default under the Articles of Incorporation, Bylaws or partnership agreement of Manager (as applicable) or any indenture, mortgage, lease, agreement or other instrument or obligation to which Manager is a party or by which it may be bound which would materially adversely affect the ability of Manager to perform its obligations under this Agreement. No approval, authorization, consent or other order or action of, or filing or registration with, any person, entity or governmental authority is required for the execution and delivery by Manager of this Agreement.

13.5 No Conflict with Orders, Judgments or Decree. The execution and delivery by Manager of this Agreement will not conflict with any order, judgment or decree of any court, government, government agency or instrumentality, whether entered pursuant to consent or otherwise, by which Manager may be bound or affected.

13.6 Litigation. Manager warrants that it is not involved in any actual litigation, action, arbitration, grievance, administrative proceeding, suit or claim or investigation by a governmental agency and it is not aware of any imminent or pending litigation, action, arbitration, grievance, administrative proceeding or investigation by a governmental agency against Manager or its affiliates that, if adversely decided, could have a material adverse impact on Manager's ability to perform its obligations under this Agreement.

13.7 No False Statements. No document furnished or to be furnished by Manager to the City in connection with this Agreement, any funding request or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

13.8 No Other Agreements. Except as may be permitted hereunder and approved by City, Manager has not entered into any agreement, arrangement or understanding with any other person or entity pursuant to which such person or entity will implement or assist in implementing all or any portion of the work and services Manager is to provide City under this Agreement.

13.9 No Suspension or Debarment. Neither Manager nor any of its members or officers have been suspended, debarred or prohibited from contracting with any federal, state or local governmental agency. In the event of any such suspension, debarment or prohibition, Manager shall immediately notify the City and Director of same and the reasons therefore together with any relevant facts or information requested by the City and Director. Any such suspension, debarment, or prohibition may result in the termination of this Agreement.

14. EVENTS OF DEFAULT; REMEDIES

14.1 Events of Default. Each of the following events shall constitute an "Event of Default" by Manager upon which the City may terminate the Agreement:

(a) **Material Provisions.** In the sole discretion of SFMTA, Manager fails or refuses to perform or observe any term, covenant or condition contained in the Facility Regulations, or Manager fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 4.4 (Access to Facilities), 7.6 (Subcontracting), 7.7 (Prevailing Wages), 7.8 (Minimum Compensation), 7.9 (Health Care Accountability), 8.1 (Taxes), 8.2 (Audit and Inspection of Books and Records), 9.1 (No Hazardous Materials), 10 (Insurance) (in its entirety), 11 (Indemnification) (in its entirety), 13 (Representations and Warranties) (in its entirety), 18.1 (Assignment), 18.5 (Drug Free Workplace), 18.6 (False Claims), 18.22 (Compliance with Laws), 18.31 (Confidential Information), 18.35 (Protection of Private Information), and 18.36 (Graffiti).

(b) **Deposit of Revenues and Taxes.** Manager fails to deposit any and all revenues or taxes into the appropriate account, as required under this Agreement and the Facility Regulations within the times prescribed; and such failure continues for a period of one (1) Banking Day after oral or written notice thereof from the City; provided, Manager shall be entitled to such notice on only two (2) occasions, and thereafter any failure to so deposit revenues or taxes shall be an immediate event of default without the need for notice.

(c) **Monthly Statement.** Manager fails to provide to the City and the San Francisco Tax Collector a full and accurate monthly statement containing all Parking Taxes due and payable; and such failure continues for a period of five (5) days after written notice thereof from the Director; provided, Manager shall be entitled to such notice on only two (2) occasions, and thereafter any failure to so provide the monthly statement shall be an immediate event of default without the need for notice.

(d) **Operating Expenses and Capital Improvement Expenses.** Manager fails to pay any and all Operating Expenses or any Capital Improvement Expenses, on a timely basis; and such failure continues for ten (10) days after written notice thereof from the City; provided, Manager shall be entitled to such notice on only two (2) occasions in any Contract Year, and thereafter any failure to so pay any Operating Expense or Capital Improvement Expense in such Contract Year shall be an immediate event of default without the need for notice.

(e) **Monthly Reports.** Manager fails to submit a full, accurate and certified Monthly Report as required by the Facility Regulations when due; and such failure continues for five (5) days after written notice thereof from the City; provided, Manager shall be entitled to such notice on only two (2) occasions in any Contract Year, and thereafter any failure to so submit a Monthly Report shall be an immediate event of default without the need for notice.

(f) **Failure to Open Facilities.** Manager fails to open and keep Facilities open during the hours prescribed in **Exhibit XX [CONTAINING THE HOURS OF EACH FACILITY]**.

(g) **Failure to Cure Breach.** Manager fails to comply with any other term, covenant or condition of this Agreement or the Facility Regulations; and such failure continues for a period of 10 days after written notice thereof from the City; provided, Manager shall be entitled to such notice on only two (2) occasions in any Contract Year with respect to a particular failure, and thereafter any additional occurrence of the particular failure in such Contract Year shall be an immediate event of default without the need for further notice.

(h) **Representations and Warranties.** Any representation or warranty made by Manager in this Agreement is found to have been untrue, incorrect or materially misleading as of the effective date hereof.

(i) **Other Agreement and Obligations.** Manager fails to pay when due any amount owing from Manager to the City or any of its agencies, commissions or departments, including, without limitation, rents, taxes, fees or other charges, whether or not such amounts are related to the operation of the Facilities, and such failure continues for a period of ten (10) days after written or oral notice from the City; provided, Manager shall be entitled to such notice on only two (2) occasions in any Contract Year, and thereafter any failure to so in such Contract Year shall be an immediate event of default without the need for notice. The failure of the City to insist upon the strict performance of any of the terms, conditions, covenants, or provisions herein contained shall not be deemed a waiver of any subsequent breach or default of the terms, conditions, covenants and provisions in this Agreement.

14.2 Remedies.

(a) On and after any Event of Default by Manager, the City shall have the right to exercise all legal and equitable remedies including, without limitation, the right to terminate this Agreement or seek specific performance of all or parts of this Agreement. If Manager fails after reasonable notice from the City to perform any of its obligations under this Agreement, as determined by the City in its sole discretion, the City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Manager any Event of Default; Manager 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 Manager under this Agreement or any other agreement between City and Manager all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Manager pursuant to the terms of this Agreement or any other agreement.

(b) 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.

14.3 Incidental and Consequential Damages. Manager shall be responsible for incidental and consequential damages resulting in whole or in part from Manager's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that the City may have under applicable Law.

14.4 Liability of the City. The City's payment obligations under this agreement shall be limited to the payment of the compensation provided for in this Agreement. Notwithstanding any other provision in this Agreement, in no event shall the City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, without limitation, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

14.5 Litigation Expenses. If either Party hereto or their respective officers or agents, brings an action or proceeding (including, without limitation, any cross-complaint, counterclaim, or third-party claim) against another Party by reason of a default under this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including, but not limited to, reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment. "Prevailing party" within the meaning of this Section shall include, without limitation, a party who dismisses an action for recovery hereunder in exchange for payment of the sums allegedly due, performance of covenants allegedly breached, or consideration substantially equal to the relief sought in the action. Attorneys' fees under this Section shall include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. For purposes of this Agreement, reasonable fees of the attorneys of the City shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the services were rendered if the City uses its own attorneys. Manager shall not be reimbursed for its litigation expenses as an Operating Expense where such expenses are incurred in a dispute in which the City is a party.

14.6 Responsibility for Equipment. City and SFMTA 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 Manager, or by any of its employees, even though such equipment be furnished, rented or loaned to Manager by City.

14.7 Liquidated Damages. By entering into this Agreement, Manager agrees that in any instance where this Agreement or the Facility Regulations impose a charge upon Manager

for failure to perform any of duties or responsibilities set forth in either this Agreement or the Facility Regulations, SFMTA will suffer actual damages that will be impractical or extremely difficult to determine; further, Manager agrees that the sums set forth as the damages in either this Agreement or the Facility Regulations are not a penalty, but are a reasonable estimate of the loss that SFMTA will incur due to Manager's failure to perform its duties in accordance with this Agreement and the Facility Regulations based on the circumstances existing at the time this contract was awarded. SFMTA may deduct a sum representing the liquidated damages from any payments due to Manager.

15. RIGHT OF TERMINATION

15.1 Termination for Convenience.

(a) The Director, with the authorization of the SFMTA Board of Directors, shall have the right to terminate this Agreement, without cause, by providing at least sixty (60) days prior written notice to the Manager of its election to terminate. Such termination may full, terminating this Agreement with respect to all Facilities, or partial, terminating this Agreement as it applies to one or more Facilities. Termination shall be effective upon the expiration of the 60-day notice period or at such later date as is specified in the notice.

(b) Upon receipt of the notice, Manager shall commence and perform, with diligence, all actions necessary on the part of Manager to effect the full or partial termination of this Agreement on the date specified by SFMTA and to minimize the liability of Manager and SFMTA to third parties as a result of termination. All such actions shall be subject to the prior approval of the SFMTA. For the affected Facilities, such actions shall include, without limitation:

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

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

Terminating all existing orders and subcontracts.

At City's direction, assigning to City any or all of Manager'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.

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

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

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 Manager and in which City has or may acquire an interest.

(c) Within thirty (30) days after the specified termination date, Manager shall submit to City an invoice, which shall set forth the reasonable cost to Manager, without profit, for all services and other work City directed Manager to perform prior to the specified termination date, for which services or work City has not already reimbursed Manager.

(d) In no event shall City be liable for costs incurred by Manager or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination

employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

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

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

15.2 Termination for Cause. The City or the Director, with the authorization of the SFMTA Board of Directors, by written notice to Manager, shall have the right to terminate this Agreement upon the occurrence of any event of default; provided, Manager shall have the notice and cure rights set forth in Section 14.1(g) above or as otherwise stated in this Agreement or as otherwise entitled under applicable Law. Termination under this section shall be effective immediately upon notice being given by the City to Manager and after the expiration of any applicable cure periods. Upon such termination, all rights, powers, privileges and authority granted to Manager under this Agreement shall cease, and Manager shall immediately thereupon vacate the Facility premises. The City's right to terminate this Agreement under this section is not its exclusive remedy but is an addition to all other remedies provided to it by Law or the provisions of this Agreement.

16. DUTIES UPON TERMINATION AND EXPIRATION

16.1 Duties Upon Termination and Expiration. On or before the last day prior to the termination or expiration of this Agreement, the City and Manager shall cause an inspection of the Facilities to occur as required by the Facility Regulations. Upon satisfactory completion of such inspection, the amounts remaining in the Security Deposit, if any, shall be disbursed to Manager as such procedure is prescribed in the Facility Regulations and the Parties shall pay all other amounts due to each other hereunder. Finally, Manager shall deliver to the City the originals of all books, permits, plans, records, licenses, contracts, unused tickets and other documents pertaining to the terminated Facilities and their operation, any insurance policies, bills of sale or other documents evidencing title or rights of the City, and any and all other records or documents pertaining to the terminated Facilities, whether or not enumerated herein, which are requested by the City or necessary or desirable for the ownership and operation of the Facilities, which are in Manager's possession. Manager further agrees to do all other things reasonably necessary to cause an orderly transition of the management and operation of the Facilities without detriment to the rights of the City or to the continued management of the Facilities.

16.2 Provisions Surviving Termination and Expiration. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 2 (Summary of Terms) (in its entirety), 3 (Definitions) (in its entirety), 4.1 (Independent Contractor), 6 (Compensation) (in its entirety), 7.1(b) and (c) (Control of Employees), 8.1 (Taxes), 8.2 (Audit and Inspection of Books and Records), 9 (Hazardous Materials) (in its entirety), 10 (Insurance) (in its entirety) 11 (Indemnification) (in its entirety) 13 (Warranties) (in its entirety), 14.2 (Remedies), 14.3 (Damages), 14.4 (City's Liability), 14.6 (Equipment), 16

(Duties Upon Termination and Expiration) (in its entirety), 17 (Notices) (in its entirety), 18.3 (Authority), 18.4 (Consent to Notice), 18.6 (False Claims), 18.9 (Conflict of Interest), 18.12 (Limitations on Contributions), 18.15 (Political Activity), 18.18 (Waiver), 18.19 (Modification), 18.20 (Administrative Remedy), 18.21 (Law/Venue), 18.25 (Entire Agreement), 18.26 (Construction of Agreement), 18.27 (Severability), 18.28 (Successor/Assigns), 18.31 (Confidential Information), 18.32 (Ownership of Results), 18.33 (Works for Hire).

16.3 Delivery of Work. Subject to the immediately preceding Section 16.2, upon termination or expiration of this Agreement prior to expiration of the term specified in Section 5, Manager 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.

17. NOTICE REQUIREMENTS

All notices required to be given hereunder shall be in writing and either served personally or sent by certified mail to the appropriate address listed below, or at such other address as shall be provided by written notice. Notice shall be deemed communicated within forty-eight (48) hours from the time of mailing if mailed as provided in this Section 17. Any notice of default must be sent by registered mail.

MANAGER:

CITY:

San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 3rd Floor
San Francisco, California 94103
Attention: Director, Off-Street Parking Operations

18. GENERAL PROVISIONS

18.1 Assignment. The SFMTA has selected Manager to manage the Facilities in reliance upon Manager's stated unique expertise, skill and experience in managing parking facilities. Manager shall not assign, transfer or encumber its interest in this Agreement or any other right, privilege or license conferred by this Agreement, either in whole or in part, without obtaining the prior written consent of the Director and the SFMTA, which the SFMTA may give or withhold in its sole and absolute discretion. Any assignment or encumbrance without the SFMTA's consent shall be voidable and, at the SFMTA's election, shall constitute a material default under this Agreement. A sale or transfer of the stock, assets or other equitable interests of Manager that has the effect of a material change in Manager's ownership, as determined by the SFMTA in its sole discretion, shall constitute a transfer of this Agreement requiring prior written approval and authorization by the SFMTA Board of Directors. The SFMTA shall have

the right to withhold its consent to any assignment, transfer or encumbrance in its sole and absolute discretion.

18.2 Americans with Disabilities Act. Manager 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. Manager 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. Manager agrees not to discriminate against disabled persons in the provision of employment, services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Manager, its employees, agents or assigns will constitute a material breach of this Agreement

18.3 Authority. Unless otherwise limited by law or policy of the SFMTA Board and except as set out in this Agreement, all rights, powers and privileges of the City under this Agreement may be exercised, on behalf of the City, by the Director, or such other person designated by the Director.

18.4 Consent to Notice of Nonpayment of Parking Tax.

(a) Manager hereby agrees that the City's Tax Collector and Controller may notify Manager of any nonpayment by Manager of any Parking Taxes owing from Manager to the City, regardless of whether such unpaid Parking Taxes are related to the Facilities.

(b) To the extent Section 615(f) of Article 9 of the San Francisco Business and Tax Regulations Code (Tax on Occupancy of Parking Space in Parking Stations), or any other applicable provision of federal, state or local law, is interpreted as prohibiting such notification of the nonpayment by Manager of any such Parking Taxes, Manager hereby expressly waives the benefits of any such section and consents to the giving of such notice to the City.

(c) Manager hereby agrees to provide the City with copies of each of Manager's Parking Tax returns (for all Facilities owned or operated by Manager) within thirty (30) days of their submission to the City's Tax Collector.

18.5 Drug-Free Workplace Policy. Manager 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 premises of the City. Manager agrees that any violation of this prohibition by Manager, its employees, agents or assigns shall be deemed a material breach of this Agreement.

18.6 False Claims. 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 cost, including attorney's 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 any 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; (e) is 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 then false claim.

18.7 MacBride Principles--Northern Ireland.

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

18.8 Local Business Enterprise Utilization; Liquidated Damages.

(a) The LBE Ordinance

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

**(b) Compliance and Enforcement
Enforcement**

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

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor

further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City
Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

Subcontracting Goals

The LBE subcontracting participation goal for this contract is **XX percent**. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor.

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

Subcontract Language Requirements

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

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

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

Payment of Subcontractors

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

Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all

subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to the enforcement procedure under Administrative Code §14B.17.

18.9 Conflict of Interest. Through its execution of this Agreement, Manager acknowledges that it is familiar with the provisions of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement. Manager further certifies that it has made a complete disclosure to the SFMTA of all facts bearing on any possible interests, direct or indirect, which Manager believes any officer or employee of the City presently has or will have in this Agreement or in the performance thereof or in any portion of the profits thereof. Willful failure by Manager to make such disclosure, if any, shall constitute grounds for the City's termination of this Agreement.

18.10 No Tobacco Advertising. Manager acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the SFMTA, including the Facilities. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

18.11 Nondiscrimination; Penalties.

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

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

(c) **Nondiscrimination in Benefits.** Manager 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, in accordance with the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to Agreement.** As a condition to this Agreement, Manager 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 by reference and made a part of this Agreement as though fully set forth herein. Manager 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, Manager understands that pursuant to Sections 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 Manager and/or deducted from any payments due Manager.

18.12 Limitations on Contributions. Through execution of this Agreement, Manager 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.

18.13 Pesticide Prohibition. Manager shall comply with the provisions of Chapter 3 of the San Francisco Environment Code ("Pesticide Ordinance") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage, and (iii) require Manager to submit an integrated pest management (“IPM”) plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Manager may need to apply to the Facilities, (b) describes

the steps Manager will take to meet the City's IPM Policy described in section 300 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as the Manager's primary IPM contact person with the City.

18.14 Preservative Treated Wood Containing Arsenic. Manager 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" means 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. Manager 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 Manager from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

18.15 Prohibition on Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, Manager 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. Manager 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 provision of Chapter 12.G are incorporated herein by this reference. In the event Manager 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 Manager from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Manager's use of profit as a violation of this section.

18.16 Sunshine Ordinance and Public Disclosure. 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.

18.17 Public Transit Information. Manager shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Manager employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Facilities and encouraging use of such facilities, all at Manager's sole expense.

18.18 Waiver. 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. No waiver of any of the provisions of this Agreement shall be effective unless in writing and signed by an authorized representative of the City, and only to the extent expressly provided in such written waiver. No waiver shall be deemed a subsequent or continuing waiver of the same, or any other, provision of this Agreement.

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

18.20 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 SFMTA, which shall decide the true meaning and intent of the Agreement.

18.21 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.

18.22 Compliance with Laws. Manager 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.

18.23 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, except in cases in which said attorney is representing Manager in litigation or negotiation with the City, which services shall not be an Operating Expense. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Manager, will be paid unless the provider received advance written approval from the City Attorney.

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

18.25 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 18.19.

18.26 Construction of Agreement.

(a) The section headings contained herein are for convenience in reference and are not to be used to construe the intent of this Agreement or any part thereof, nor to modify, amplify, or aid in the interpretation or construction of any of the provisions thereof.

(b) This Agreement is the result of negotiations between the parties, both of which are represented by counsel. The parties agree to waive any and all rights to apply, in the interpretations of any and all terms, provisions or conditions of this Agreement, the rule of

construction that ambiguities are to be resolved against the drafter of the agreement. The parties agree that ambiguities in this Agreement, if any, are to be resolved in the same manner as would have been the case if this instrument had been jointly conceived and drafted.

18.27 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.

18.28 Successors and Assigns. Subject to the restrictions on assignment set forth in Section 18.1 above, each and all of the conditions and covenants of this Agreement shall extend to and bind and inure to the benefit of the City and Manager, and the legal representatives, successors and assigns of either or both of them.

18.29 Time of Essence. Time is of the essence in the performance of each provision of this Agreement.

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

18.31 Proprietary or Confidential Information of City. Manager understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Manager 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. Manager agrees that all information disclosed by City to Manager shall be held in confidence and used only in performance of the Agreement. Manager shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

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

18.33 Works for Hire. If, in connection with services performed under this Agreement, Manager 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 Manager or its subcontractors under this Agreement are not works for hire under U.S. law, Manager 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, Manager

may retain and use copies of such works for reference and as documentation of its experience and capabilities.

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

18.35 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 Administrative Code Section 12M shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code.

18.36 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.

Manager shall remove all graffiti from the Facilities and any real property owned or leased by Manager in the City and County of San Francisco within forty eight (48) hours of the earlier of Manager '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 Manager 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 Manager to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

18.37 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.

IN WITNESS WHEREOF, the parties hereto have executed, in triplicate, this Agreement as of the date first written above.

<p>CITY AND COUNTY OF SAN FRANCISCO</p> <p>APPROVED:</p> <p>By: _____ Nathaniel P. Ford, Sr. Executive Director/CEO San Francisco Municipal Transportation Agency</p> <p>Approved as to Form: Dennis H. Herrera, City Attorney</p> <p>_____ David A. Greenburg Deputy City Attorney</p> <p>San Francisco Municipal Transportation Agency Board of Directors</p> <p>Resolution No. _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary, SFMTA Board</p>	<p>MANAGER</p> <p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>I have read and understood paragraph 18.7, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <p>APPROVED:</p> <p>By: _____ [NAME AND TITLE NAME OF ENTITY]</p> <p>City Vendor No.: [list vendor no.]</p>
---	---

EXHIBIT A

DESCRIPTION OF FACILITY PROPERTY

To be provided.

EXHIBIT B

FACILITY PARKING RATES
[NEEDS TO INCLUDE ALL FACILITIES]

Transient Parking	Rate (as of April 1, 2007)
0 – 1 Hour	\$2.00
1 – 2 Hours	\$4.00
2 – 3 Hours	\$6.00
3 – 4 Hours	\$8.00
4 – 5 Hours	\$10.00
5 – 24 Hours	\$12.00
Lost Ticket	\$12.00
Juror Parking Flat Rate	\$5.00
Motorcycle Flat Rate	\$3.00
Weekend & Holiday Flat Rate	\$5.00
Early Bird (Enter by 10:00 AM, Exit before 7:00 PM)	\$8.00

Monthly Parking	Rate (as of April 1, 2007)
Regular	\$125.00
Carpool	\$100.00
Car Sharing	\$100.00
Assigned	\$200.00
Motorcycle	\$50.00

Miscellaneous Charges	Rate (as of April 1, 2007)
Late Monthly Payments	\$25.00
Lost Access Card	\$25.00
Damaged Access Card	\$25.00
Access Card Deposit	\$50.00
No Key Charge – at Valet Parking	\$25.00

EXHIBIT C

SEC. 21.25-2. PREVAILING RATE OF WAGES AND DISPLACED WORK PROTECTION REQUIRED FOR WORKERS IN PUBLIC OFF-STREET PARKING LOTS, GARAGES, OR STORAGE FACILITIES FOR AUTOMOBILES.

Every Lease, Management Agreement, or Other Contractual Arrangement for the operation of a public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco must require that any Employee working in such public off street parking lot, garage, or storage facility for automobiles be paid not less than the Prevailing Rate of Wages, including fringe benefits or the matching equivalents thereof, paid in private employment for similar work in the area in which the Lease, Management Agreement, or Other Contractual Arrangement is being performed, as determined by the Civil Service Commission.

(a) Definitions. For purposes of this Section, the following definitions shall apply to the terms used herein:

(1) "Contracting Officer" shall mean any officer or employee of the City and County of San Francisco authorized to enter into a Lease, Management Agreement, or Other Contractual Arrangement for the operation of a public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco.

(2) "Contractor" shall mean any Person who submits a bid and/or enters into a Lease, Management Agreement, or Other Contractual Arrangement with the City and County of San Francisco for the operation of a public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco as set forth in this Section.

(3) "Employee" shall mean any individual performing work in one of the following classifications: Washing; Polishing; Lubrication; Rent-Car Service; Parking Vehicles; Cashiers; Attendants; Checking Coin Boxes; Non-Attendant Parking Lot Checking; Daily Ticket Audit; Traffic Directors; Shuttle Drivers; and all other incidental duties, whose primary place of employment is in public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco for the Contractor. "Employee" does not include a person who is (a) a managerial, supervisory, or confidential employee, including those employees who would be so defined under the Fair Labor Standards Act; or (b) does not possess or has not maintained a required occupational license.

(4) "Lease, Management Agreement, or Other Contractual Arrangement" shall mean an agreement with the City and County of San Francisco for the operation of a public off-street parking lot, garage, or storage facility for automobiles on property owned or leased by the City and County of San Francisco.

(5) "Person" shall mean an individual, proprietorship, partnership, joint venture, corporation, limited liability company, trust, association, or other entity that may employ individuals or enter into contracts, or any combination thereof.

(6) "Prevailing Rate of Wages" shall mean that rate of compensation, including fringe benefits or the matching equivalents thereof, being paid to a majority of workers engaged in the area in which the Lease, Management Agreement, or Other Contractual Arrangement is being

EXHIBIT C (cont.)

performed, if a majority of such workers are paid at a single rate; if there is no single rate being paid to a majority, then the prevailing rate shall be that single rate being paid to the greatest number of workers.

(7) "Public Off-Street Parking Lot, Garage, or Automobile Storage Facility" shall mean any off-street parking lot, garage, or automobile storage facility that is operated on property owned or leased by the City and County of San Francisco.

(8) "Subcontract" shall mean and include any agreement under or subordinate to a prime Lease, Management Agreement, or Other Contractual Arrangement.

(b) Determination of Prevailing Rate of Wage. It shall be the duty of the Board of Supervisors, from time to time and at least once during each calendar year, to fix and determine the Prevailing Rate of Wages paid in private employment in the City and County of San Francisco for individuals working in off-street parking lots, garages, or automobile storage facility, including such rate of wages paid for overtime and holiday work, which said Prevailing Rate of Wages shall be fixed and determined as follows:

The Civil Service Commission shall furnish to the Board of Supervisors, within 60 days after the effective date of this Section, and on or before the first Monday in November of each subsequent year, data as to the Prevailing Rate of Wages for individuals working in off-street parking lots, garages, or automobile storage facilities as paid in private employment in the City and County of San Francisco, including wages or overtime and holiday work, and the Board Supervisors shall, upon receipt of such data, fix and determine the Prevailing Rate of Wages for individuals working in off-street parking lots, garages, or automobile storage facilities as paid for similar work in the City and County of San Francisco in private employment. Such Prevailing Rate of Wages as so fixed and determined by the Board of Supervisors shall remain in force and shall be deemed to be the Prevailing Rate of Wages Maid in private employment for similar work, until the same is changed by the Board of Supervisors.

In determining the Prevailing Rate of Wages, as provided for in this Section, the Board of Supervisors shall not be limited to the consideration of data furnished by the Civil Service Commission, but may consider such other evidence upon the subject as the Board of Supervisors shall deem proper and thereupon base its determination upon any or all of the data or evidence considered.

(c) Transition Employment Period. All Leases, Management Agreements, or Other Contractual Arrangements covered by this Section shall impose the following obligations on the Contractor for Employees who work at least 15 hours per week

(1) Where the Contracting Officer has given notice that a Lease, Management Agreement, or Other Contractual Arrangement has been terminated or ended, or where a Contractor has given notice of such termination, upon giving or receiving such notice, as the case may be, the terminated or ending Contractor shall, within ten days thereafter, provide to the successor Contractor, the name, date of hire, and employment occupation classification of each Employee who work at least 15 hours per week employed at the site or sites covered by the prospective Contractor at the time of the Lease, Management Agreement, or Other Contractual Arrangement termination. This provision shall also apply to the subcontractors of the terminated Contractor.

If the terminated Contractor has not learned the identity of the successor Contractor, if any, by the time that notice was given of the Lease, Management Agreement, or Other Contractual

EXHIBIT C (cont.)

Arrangement termination, the terminated Contractor shall obtain such information from the Contracting Officer. If a successor Contractor has not been awarded by the end of the 10 day period, the employment information referred to earlier in this subsection shall be provided to the Contracting officer at such time. Where a subcontractor has been terminated prior to the termination of the Contract, the terminated Subcontractor shall for the purposes of this Section be deemed a terminated Contractor.

(2) A successor Contractor shall retain, for a 90 day transition employment period, Employees who have worked at least 15 hours per week and have been employed by the terminated Contractor or its subcontractors, if any, for the preceding twelve months or longer at the site or sites covered by the Lease, Management Agreement, or Other Contractual Arrangement, providing that just cause does not exist to terminate such Employee. The predecessor contractor's Employees who worked at least 15 hours per week shall be employed in order of their seniority with the predecessor. This requirement shall be stated by the City in all initial bid packages involving Leases, Management Agreements, or Other Contractual Arrangements governed by this section.

(3) If at any time a successor Contractor determines that fewer Employees are required to perform the new Contract than were required by the terminated Contractor (and subcontractors, if any), the successor Contractor shall retain Employees by seniority within job classification.

(4) During such 90 day period the successor Contractor (or subcontractor, where applicable) shall maintain a preferential hiring list of eligible covered Employees not retained by the successor Contractor (or subcontractor) from which the successor Contractor (or subcontractor) shall hire additional Employees.

(5) Except as provided in Subsection (3) of above, during such 90 day period, the successor Contractor (or subcontractor, where applicable) shall not discharge without cause an Employee retained pursuant to this Section. "Cause," for this purpose, shall include, but not be limited to, the Employee's conduct while in the employ of the terminated Contractor or subcontractor that contributed to any decision to terminate the Contract or subcontract for fraud or poor performance, excluding permissible union-related activity.

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

(7) All contracts subject to this Section include a provision in which the contractor agrees to require subcontractor to comply with the obligation imposed by this Section.

(d) Enforcement.

(1) An Employee who has not been hired or has been discharged in violation of this Section by a successor Contractor or its subcontractor may bring an action in the Superior Court of the State of California, as appropriate, against the successor Contractor and, where applicable, its subcontractor, and shall be awarded back pay, including the value of benefits for each day during which the violation continues, which shall be calculated at a rate of compensation not less than the higher of:

EXHIBIT C (cont.)

(i) The average regular rate of pay received by the Employee during the last three years of the Employee's employment in the same occupation classification; or

(ii) The final regular rate received by the Employee.

(2) If the Employee is the prevailing party in any such legal action, the Court shall award reasonable attorney's fees and costs as part of the costs recoverable.

(3) This Section is not intended to create a private right of action against the City and County of San Francisco.

(4) Successor's Prior Employees. Notwithstanding the provisions of Subsection (c) above, a successor Contractor or subcontractor may replace an Employee otherwise entitled to be retained pursuant to this Section with a person employed by the Contractor or subcontractor continuously for twelve months prior to the commencement of the successor Contract or subcontract in a capacity similar to that proposed under the successor Contract or subcontract. This Section shall apply only where the existing Employee of the successor Contractor or subcontractor would otherwise be laid off work as a result of the award of the successor contract.

(e) Noncompliance with Wage Provisions; Termination; Penalty. Where the Contracting Officer determines that a Contractor for the operation of a public off-street parking lot, garage, or automobile storage facility may have violated the prevailing wage requirements of this Section, the Contracting Officer shall send written notice to the Contractor of the possible violation (a "violation notice"). In addition to and without prejudice to any other remedy available, the Contracting Officer may terminate the Lease, Management Agreement, or Other Contractual Arrangement, in which case the Contractor shall not be entitled to any additional payment thereon unless within 30 days of receipt of the violation notice the Contractor has either (i) cured the violation or (ii) has established by documentary evidence, including but not limited to payroll records, the truth and accuracy of which is attested to by affidavit, proof of compliance with the provisions of this Section. For purposes of this Section, where a Contractor fails to pay at least the Prevailing Rate of Wages to Employees working in public off-street parking lots or garages, the Contractor shall have "cured the violation" once the Contractor reimburses such Employees by paying each individual the balance of what he or she should have earned in accordance with the requirements of this Section. In addition to, or instead of terminating the Lease, Management Agreement, or Other Contractual Arrangement, where the Contracting Officer finds that the Contractor has willfully violated the requirements of this Section, the Contracting Officer shall assess a penalty (a "willful violation penalty") in the sum of \$50 per day for each Employee for each day the Contractor or Subcontractor fails to pay the Prevailing Rate of Wages, such sums to be deposited in the fund out of which the Lease, Management Agreement, or Other Contractual Arrangement is awarded. The Contracting Officer shall impose such willful violation penalty regardless of whether the Contractor has cured the violation.

(f) Collective Bargaining Agreements. Notwithstanding anything to the contrary in this Section, if a Lease, Management Agreement, or Other Contractual Arrangement conflicts with an existing collective bargaining agreement to which a Contractor is a party, the collective bargaining agreement shall prevail. However, the Contractor will be obligated to make good faith efforts to comply with the requirements of its Lease, Management Agreement, or Other Contractual Arrangement that do not conflict with the collective bargaining agreement.

(g) Preemption. Nothing in this Section shall be interpreted or applied so as to create any

EXHIBIT C (cont.)

power or duty in conflict with any federal or state law.

(h) **Effective Date and Application.** This Section shall become effective 30 days after it is enacted, is intended to have, prospective effect only, and shall not be interpreted to impair the obligations of any pre-existing Lease, Management Agreement, or Other Contractual Arrangement to which the City and County of San Francisco is a party, unless such pre-existing Lease, Management Agreement, or Other Contractual Arrangement has been amended after the effective date of this Section.

(i) **Public Entities with Coterminous Boundaries with the City and County of San Francisco.** It is the policy of the City and County of San Francisco that all public entities with coterminous boundaries with the City and County of San Francisco, including but not limited to the Parking Authority of the City and County of San Francisco, adopt this prevailing wage and employee transition period policy. The Board of Supervisors of the City and County of San Francisco urges all public entities with coterminous boundaries with the City and County of San Francisco, including but not limited to the Parking Authority of the City and County of San Francisco, to adopt this prevailing wage and employee transition period policy.

(j) **Severability.** If any part or provision of this Section, or the application thereof to any Person or circumstance, is held invalid, the remainder of this Section, including the application of such part or provisions to other Persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Section are severable. (Added by Ord. 3-03, File No. 021504, App. 1/24/2003)

EXHIBIT D

MAINTENANCE STANDARDS

The goal of the SFMTA is to provide the public, at all times, a safe, clean, sanitary, well lighted, and efficient Facilities. The following maintenance standards are designed to achieve this goal.

- 1. Lighting** All lights must be in working order and bright enough to convey a sense of safety, especially in and around stairways and restrooms. Burned out bulbs or lamps must be replaced within 24 hours. Non-working fixtures must be repaired or replaced, with energy efficient fixtures within 72 hours. Bulbs or lamps must be secured and must be the same color. Emergency lights must be inspected at least once each month and non-operating battery packs must be changed within one week.
- 2. Walls & Fences** All walls must be kept clean and free of stains, dirt and graffiti. Special attention shall be given to restrooms and their surrounding areas. Graffiti must be removed or painted over within 24 hours. Black marks from bumpers must be painted over as needed but, in no event, not less than once a month.
- 3. Odors** Foul odors must be removed within 24 hours. Special attention shall be given to walkways, restrooms and their surrounding areas. Stairwells and sidewalks must be steam cleaned as needed but, in no event, not less than once a month.
- 4. Cleaning** The entire facility must be cleaned daily, including interior and exterior walkways, restrooms, parking areas, and sidewalks. Parking areas and Facility floors must be swept, grease and oil must be removed, foul odors must be deodorized, pigeon droppings must be removed, and all litter must be removed.
- 5. Steam Cleaning** Steam cleaning of each Facility in its entirety shall be performed on a semi-annual basis. At the discretion of the Director, steam cleaning may be required to be performed less frequently if the Facilities, including interior walkways, are maintained in a clean and orderly state.
- 6. Ventilation Equipment (if applicable)** Thorough cleaning of all ventilation system supply and exhaust vents shall be performed on a semi-annual basis.
- 7. Windows (where applicable)** All windows, mirrors and glass cases must be cleaned as needed, but in no event not less than once a month.
- 8. Signs** Signs must be easily understood and professionally made, not hand printed or copy machine reproduced. Manager will be allowed to post nonprofessional signs only in case of an emergency, but the emergency signs must be replaced within one week. Signs must also be repaired or replaced promptly when damaged.
- 9. Plants** Any vegetation must be pruned and watered regularly, consistent with water restrictions of the San Francisco Water Department. Weeds must be pulled as needed, but in no event not less than once a month and trees must be pruned once a year.
- 10. Safety Equipment** Equipment including fire alarm call boxes, fire extinguishers, and fire hose units must be maintained in good working order and inspected at least once a month. Closed circuit cameras and the intercom system must be inspected at least once a week.

EXHIBIT D (cont.)

- 11. Structural Inspections** Structural inspections including water leaks, exposed rebar, concrete cracks and metal rust must be performed not less than once a year.
- 12. Sidewalk Inspections** Inspections of the sidewalks abutting the Facilities for the presence of any sidewalk tripping hazards, including tree planting areas not at sidewalk grade, must be performed once a month. In the event any hazards are observed, such hazards shall be reported immediately to the Director.
- 13. Other Work** All other ordinary maintenance and repair work of the premises and equipment shall be done as needed.
- 14. Instructions** The SFMTA reserves the right to instruct the Manager to clean or repair any item which falls under the category of routine maintenance and repair.

If the maintenance standards are not followed, the SFMTA may give written notice and the work must be completed within 72 hours thereafter. Nonperformance may result in the SFMTA causing such work to be done at the expense of the Manager. Repeated instances of nonperformance will result in the Manager being deemed ineligible to bid on future SFMTA Management Agreements.

APPENDIX A
PARKING RATE SCHEDULE

http://www.sfmta.com/cms/pgar/documents/GarageRatesasofNovember1_2008.pdf

APPENDIX B

FORM OF MAINTENANCE SCHEDULE
(Parking Facility Name)

	Daily	Weekly	Monthly	Quarterly	Semi-Annually	Annually
Lights						
Inspect lights	X					
Replace burnt-out bulbs	X					
Inspect broken fixtures	X					
Replace discolored covers	X					
Cleaning						
Elevator areas	X					
Stairwell areas	X					
Bathroom & lobbies	X					
Parking areas	X					
Pick-up litter	X					
Cashier booths/stations	X					
Windows	X					
Steam-clean stairwells			X			
Ventilation Vents				X		
Steam-clean Garage					X	
Painting						
Paint over graffiti	X					
Paint over foreign marks		X				
Touch-up				X		
Inspect striping				X		
Elevators (if applicable)						
Inspect elevator operations	X					
Professional Periodic Maintenance					X	
Professional inspection						X
Landscaping						
Inspect Irrigation System				X		
Remove Weeds		X				
Prune trees and plants					X	
Signs						
Inspect signs	X					
Repair/replace damaged signs		X				
Mechanical						
Doors open and lock properly	X					
Inspect parking equipment	X					
Inspect HVAC operations				X		
Safety						
Inspect emergency lights	X					
Inspect exit lights	X					
Inspect sidewalks	X					
Inspect fire alarm/equipment	X					
Inspect/Service closed circuit cameras system				X		
Structural						
Inspect for water leaks		X				
Inspect floors for exposed				X		
Inspect concrete for cracks				X		
Inspect metal for rust				X		

APPENDIX C

FORM OF ANNUAL BUDGET

REVENUES

Revenue	Proposed Amount
Parking Revenues	
1b Monthly Parking	
1c Business Validation	
1d Misc. Parking Revenue	
1e Validation	
1f Other (tax-exempt)	
1g Government Parking (tax exempt)	
Gross parking Revenue	
Adjustment to Parking Revenues	
2a Parking Tax	
Net Parking Revenue	
Other Operating Income	
3a Commercial Rent	
3b Sale/Service/Advertising Space	
3c Miscellaneous	
Total Net Revenue	

EXPENSES

Expenses	Proposed Amount
Personnel Expenses	
A1 Administrative Salaries	
A2 Parking Operations Salaries	
A3 Janitorial (non-contract)	
Payroll Expenses	
B1 Payroll Taxes	

Expenses	Proposed Amount
B2 SF Business Taxes	
B3 Employee Benefits	
B4 Worker's Compensation	
Utilities	
C1 Electricity	
C2 Water	
C3 Telephone	
C4 Garbage Pick Up	
Services & Supplies	
D1 Insurance	
D2 Repairs / Maintenance	
D3 On-site Office	
D4 Garage	
D5 Parking	
Management	
E1 Management Fee	
E3 Incentive Fee	
Professional / Personal Services	
F1 Accounting / Bookkeeping	
F2 Annual Audit	
F3 Garage Legal	
F4 Security (Contractual)	
F5 Janitorial (Contractual)	
F6 Personnel Training	
F7 Bank Charges (other than penalties or late fees)	
F8 Uniform Cleaning	
F9 Payroll Processing	
F10 Administrative Services	
F11 Other Contractual Maintenance	
Other Costs	

Expenses	Proposed Amount
G1 Taxes & Licenses	
G2 Marketing of Garages	
G3 Garage Claims	
G4 Capital Expenditures	
G5 Miscellaneous	
Total Parking Facility Expense	
Operating Income/(Loss)	

Note: All applicable proposed budget line items must have a detailed description of the income or expense. Line items may be added or deleted as appropriate.

APPENDIX D
MONTHLY REPORT FORM

To be provided.

APPENDIX E

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, the City and County of San Francisco, State of California, has awarded to:

_____ hereinafter designated as the "Principal", a contract, dated, _____, for the City and County of San Francisco's Office of Contract Administration Contract No. _____ (the "Contract").

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract (the "Bond");

NOW, THEREFORE, we the Principal and _____, as Surety, are firmly bound unto the City and County of San Francisco ("City") in the penal sum of _____ Dollars (\$ _____)

lawful money of the United States for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents for a performance bond. The conditions of this obligation is such that if the said Principal does well and faithfully performs all the conditions and covenants of said Contract, according to the true intent and meaning thereof, upon its part to be kept and performed, then the above obligation is to be null and void, otherwise to remain in full force and effect.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bounden Principal, its heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions and agreements in the said Contract, including the provisions for liquidated damages in the said Contract, any changes, additions or alterations thereof made as therein provided, on its part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless the City and County of San Francisco, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same and no inadvertent overpayment of progress payments shall in any way affect its obligations on this Bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work or to the specifications or of any inadvertent overpayment of progress payments.

APPENDIX E (cont.)

IN WITNESS WHEREOF, the above-bounden parties have executed this instrument under their seal this _____ day of _____, 20_____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

<p>PRINCIPAL</p> <p>By: _____</p> <p>Its: _____</p> <p>Date: _____</p>	
<p>SURETY</p> <p>By: _____</p> <p>Its: _____</p> <p>Date: _____</p>	<p>_____</p> <p>NOTE: Signature of Sureties must be acknowledged by a Notary Public</p>
<p>CITY</p> <p>By: _____</p> <p>Benjamin Rosenfield, Controller</p> <p>Date: _____</p> <p>Approved as to form: Dennis J. Herrera City Attorney</p> <p>By: _____</p> <p>Deputy City Attorney</p>	

APPENDIX F

PARKING-RELATED BUSINESS IN WHICH OPERATOR HAS INTEREST

In accordance with Section 8.7 b. of the Agreement, please provide information requested below for each parking related business.

1. Business name
2. Type of ownership (e.g. full ownership, active partner, silent partner, lease/agreement, etc)
3. Percent of ownership or interest
4. Term of ownership or interest
5. Address of business and phone number
6. Proximity to contract location
7. Type of business
8. Is there any parking related activities associated with this business?
9. If so, type of parking (e.g. attended, valet, unattended, etc.)? Number of marked stalls?
10. Do you anticipate any benefits to the contract garage operations from this business? If so, please describe.
11. Do you anticipate any relationship between contract garage operations and this business? If so, please describe

APPENDIX G

FOR USE BY A SURETY COMPANY

Rev10-3-06

Parking Tax Collection Bond

BOND NO.: _____

PREMIUM: _____

KNOW ALL MEN BY THESE PRESENTS:

_____, parking station located at _____,
as principal, and _____, a corporation organized
and existing under the laws of the State of _____, with its principal office located
at _____, and licensed to transact a surety
business in the State of California, as surety, are indebted to the City and County of San
Francisco (the City), in the penal sum of _____ Dollars (\$_____), for which
payment principal and surety bind ourselves and our legal representatives and successors, jointly
and severally.

The condition of this obligation is that principal operates a parking facility, for which it collects parking fees and charges, a portion of which are to be paid to the City as required by Article 9 of the San Francisco Business and Tax Regulations Code. Such payments must also conform to the requirements of Article 6 of the San Francisco Business and Tax Regulations Code.

Article 9 of the San Francisco Business and Tax Regulations Code (Tax on Occupancy of Parking Space in Parking Stations) imposes an effective tax of 25 percent on the rent of every occupancy of parking space in a parking station in the City and County of San Francisco.

Article 6 of the San Francisco Business and Tax Regulations Code requires that all amounts of taxes and fees imposed by the parking space occupancy tax are due and payable to the Tax Collector on or before the last day of the month following each respective calendar quarter.

If principal and all of principal's agents and employees faithfully conform to and abide by the provisions of such ordinances, together with all amendatory and supplementary acts, now and hereafter enacted, and if principal honestly and faithfully applies all funds received, and faithfully and honestly performs all obligations and undertakings made pursuant to the provisions of such ordinances in the conduct of operating a parking facility by principal and by principal's agents and employees, then this obligation shall be null and void; otherwise it shall be in full force and effect. This bond shall be deemed continuous in form and shall remain in full force

APPENDIX G (cont.)

and effect while principal operates parking facilities, beginning on _____ and ending_____.

The surety may cancel this bond at any time by filing with the Obligee thirty (30) days written notice of its desire to be relieved of liability. The Surety shall not be discharged from any liability already accrued under this bond, or which shall accrue hereunder before the expiration of the thirty (30) day period.

In witness whereof, each party to this bond has caused it to be executed in the City and County of San Francisco on this _____ day of _____, 20_____.

APPENDIX G (cont.)

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

<p>_____ Signature (as to the Principal)</p>	<p>_____ Print Principal's Name and Title</p> <p>By: _____ (Required) Surety</p> <p>By: _____ Signature Attorney-In-Fact</p>
<p>APPROVED AS TO FORM: DENNIS J. HERRERA CITY ATTORNEY</p> <p>By: _____ Deputy City Attorney</p>	<p>APPROVED AS TO SURETY: OFFICE OF THE CONTROLLER</p> <p>By: _____ Controller or Assistant Controller</p>

APPROVED THIS _____ DAY OF _____, 20 _____.

By: _____
**Tax Administrator or Deputy Tax Administration
Office of the Treasurer & Tax Collector
City and County of San Francisco**

Parking Tax Collection Bond No. _____

Date Executed _____ *Ending On* _____

INSTRUCTIONS

All items must be completed in order for the Parking Tax Bond to be processed

***General Checklist FOR PARKING TAX COLLECTION BONDS**

1. Type of Bond: Parking Tax Collection Bond
2. Bond Number
3. Premium Amount
4. Name of Parking Operator
5. Parking Station Address
6. Surety's permission to operate in (name of State)_____..
7. Physical address of Surety Company (No P.O. Box)
8. Dollar amount of Bond (in the whole number of \$5,000 or \$25,000)
9. Condition of the obligation as per Articles 6 & 9 of the S.F. B/T Code.
10. Term of Bond
11. Cancellation clause
12. Date of execution
13. Place of execution (City, County, & State)
14. Power of Attorney (as authorized by Surety)
15. Signature page for Principal, Surety, and C.C.S.F. Officers
16. Signature of Principal
17. Print name of principal and title
18. Name of Surety
19. Signature of Attorney-in-Fact
20. Acknowledgement of Attorney's-in-Fact signature by a Notary Public

*Additional information may be requested by an approving department of the City and County of San Francisco.

NOTE TO SURETY COMPANIES ONLY: *Please direct any questions regarding "SAMPLE BOND LANGUAGE" to the City and County of San Francisco RISK MANAGEMENT OFFICE at (415)-554-2305 or (415)554-2303*

PARKING FACILITY OPERATION AND MANAGEMENT REGULATIONS

1. DEFINITIONS

For purposes of these Regulations and any Facility Management Agreements between a Manager and the San Francisco Municipal Transportation Agency ("SFMTA") subject to these Regulations, initially capitalized terms shall have the meaning ascribed to them in this Section unless otherwise specified.

1.1 "Access Card Deposit" means the deposit for each access card (electronic key card used to access a Facility) issued to monthly users, as set forth in these Regulations.

1.2 "Advertising Revenue" means all revenue generated by the SFMTA Advertising Contract that shall be excluded from Gross Revenues for the purpose of calculating incentive fees.

1.3 "After Hours Opening Fee" means the fee charged by a Manager to a vehicle owner to retrieve a vehicle from a Facility after the Facility has closed.

1.4 "Agents" means the officers, directors, employees, agents, contractors, licensees and subtenants of a referenced Party, and their respective heirs, legal representatives, successors and assigns.

1.5 "Agreement" or "Management Agreement" means an agreement under which a contractor agrees to operate and manage any Facility under the jurisdiction of the San Francisco Municipal Transportation Agency or the San Francisco Parking Authority.

1.6 "Banking Day" means any day which is not a Saturday or Sunday or a day on which banking institutions are authorized or required by law or by the Federal Reserve System to be closed in San Francisco, California for commercial banking purposes.

1.7 "Budget" (also "Approved Budget") means the itemized annual projection of individual Facility gross revenues, authorized capital expenditures and authorized operating expenses prepared by Manager and requiring approval by the SFMTA Board of Directors and the Controller as set forth in these Parking Facility Regulations.

1.8 "City" means the City and County of San Francisco, and its departments and agencies, and officers and employees.

1.9 "Controller" means the Controller of the City.

1.10 "Director" means the Executive Director/CEO of the San Francisco Municipal Transportation Agency or his or her designee.

1.11 "Environmental Laws" means any present or future federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Facilities, the Land or any other property, including, without limitation, soil, air and groundwater conditions.

1.12 "Facility" means the land and all improvements of the City-owned off-street parking garages and lots described in a Management Agreement.

1.13 "Facility Regulations" means these Parking Facility Operation and Management Regulations promulgated by the SFMTA, as amended from time to time.

1.14 "Fiscal Year" means the period beginning July 1st and ending June 30th.

1.15 "Gross Revenues" means: all revenues, from whatever source, but excluding Advertising Revenues generated by the SFMTA Advertising Contract, received by a Manager or any subcontractor or vendor, from the operation of any Facility

and from any income-generating activity carried on therein, including, but not limited to, the following: (1) revenues received from the operation of the Facility for daily and monthly parking of vehicles therein; (2) revenue paid to a Manager in connection with any ancillary services provided at or in connection with any Facility as may be approved by the SFMTA under Section 3.1 of these Facility Regulations; (3) the selling price of all merchandise or services sold or otherwise provided for exchange in, on, or about the Facility in the ordinary course of business by Manager except any returned merchandise; (4) all charges or claims of credit of any character made by Manager or a vendor under contract to Manager or otherwise under Manager's control for the rendering of any service or work of any kind conducted in, on, about or from the Facilities; (5) the gross amount of all deposits forfeited by Facility customers and retained or received by Manager in connection with the operation of the Facilities, including all Access Card Deposits collected, all after-hour Facility opening fees, all valet no-key charges, and all refundable deposits subsequently returned to the depositor; (6) all interest or investment earnings received from the Gross Revenues deposited in the Revenue Account; (7) commercial rents and fees collected for display and storage rental, and/or other commercial uses approved in accordance with Section 3.1 of these Facility Regulations; (8) the value of any in-kind services received by the Manager in exchange for a benefit derived from the use of the Facilities; and (9) the amount of all Parking Taxes payable from the operation of the Facilities

1.16 “Hazardous Material” means any material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health, welfare or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” or “pollutant” or “contaminant” pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA,” also commonly known as the “Superfund” law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to the Carpenter-Presley-Tanner Hazardous Substance Account Act, as amended, (Cal. Health & Safety Code Section 25300 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any “hazardous waste” listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Land, any improvements to be constructed on the Land by or on behalf of Manager or the City, or are naturally occurring substances on, in or about the Land; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids.

1.17 “Hazardous Material Claims” means any and all enforcement, Investigation, Remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws, together with any and all Losses made or threatened by any third party against the City, its Agents, or the Land, the Facilities or any Improvements, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law. Hazardous Materials Claims include, without limitation, Investigation and Remediation costs, fines, natural resource damages, damages for decrease in value of the Land, the Facilities or any Improvements, the loss or restriction of the use or any amenity of the Land, the Facilities or any Improvements, and attorneys' fees and consultants' fees and experts' fees and costs.

1.18 “Holiday” means those days on which the following holidays are celebrated in California: New Year’s Day, Martin Luther King, Jr. Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

1.19 “Investigation” when used with reference to Hazardous Material means any activity undertaken to determine the nature and extent of Hazardous Material that may be located in, on, under, or about the Land, the Facilities and any other improvements or any portion thereof or which have been, are being, or threaten to be released into the environment. Investigation shall include, without limitation, preparation

of site history reports and sampling and analysis of environmental conditions in, on, under or about the Land, the Facilities or any other improvements.

1.20 “Invitees” means the clients, customers, and invitees to the Facilities.

1.21 “Land” means the land on which the Facilities are located.

1.22 “Law” means any law, statute, ordinance, resolution, regulation (including these Facility Regulations), proclamation, order or decree of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Facilities, the Land, Manager’s operations or employees or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties.

1.23 “Losses” means any and all claims, demands, losses, damages, liens, liabilities, penalties, fines, lawsuits and other proceedings, judgments and awards rendered therein, and costs and expenses including but not limited to reasonable attorneys' fees and costs arising from any injury to or death of any person (including employees of Manager) or damage to or destruction of any property (including the Facilities) occurring in, on or about the Facility premises, or any part thereof, from any cause whatsoever.

1.24 “Management Fee” means the amount set forth in a Management Agreement as compensation for operation and management of Facilities.

1.25 “Manager” for purposes of these Regulations means any entity that is party to an Agreement with the SFMTA for the management of one or more Facilities. When used in an Agreement, “Manager” shall mean the entity that is a party to that particular Agreement.

1.26 “Monthly Report” shall have the meaning given such term in Section 6.7 of these Regulations.

1.27 “Occurrence” means an accident, theft, damage or other event of loss giving rise to a claim against the insurance policies described in an Agreement.

1.28 “Operating Expenses” means actual costs to Manager without mark-up that are directly associated with performance of Manager's obligations under an Agreement for: (1) salaries, payroll taxes and other payroll expenses; (2) utility services; (3) repair and maintenance of equipment and furnishings; (4) routine maintenance and repair and for cleaning of the Premises, including, without limitation, expenses related to vandalism or other damage to gates, equipment, supplies or the Premises; (5) parking tickets, supplies and equipment; (6) license and permit fees not related to an alteration of the physical plant of the Facilities; (7) all insurance required by a Management Agreement; (8) the cost of any bonds required by a Management Agreement, but only to the extent that such bonds protect only the City's interests; (9) deductible amounts paid in accordance with any insurance policy required by an Agreement except as excluded in (b) below; (10) sales taxes and all other taxes resulting from operation of the Premises, except Parking Taxes, (11) real property taxes and possessory interest taxes; (12) courier deposit services, (13) settlements for claims against a Manager that are not paid by insurance carriers and do not result from Manager’s negligence or willful misconduct, and (14) all other costs and expenses of Manager that are approved by the SFMTA. Operating Expenses shall not include: (a) penalties or fees resulting from Manager's late payment of taxes, bills, or other charges; (b) insurance deductibles or other payments or costs resulting from theft, employee negligence, dishonesty, or other acts of malfeasance; (c) Manager’s overhead costs that are not directly attributable to its operation of the Facilities; (d) attorneys fees or costs incurred in connection with any dispute with the City; or (e) costs to repair damage to the Facilities resulting from Manager's and/or Manager's employees' willful, intentional or grossly negligent acts.

1.29 “Parking Rates” means the fees, including any variable rates imposed to regulate occupancy levels, set by the SFMTA to be charged by a Manager and collected from Facility patrons parking vehicles in the Facilities. The Parking Rates are set in accordance with Section 3.2 of these Regulations.

1.30 “Parking Taxes” means the Tax on Occupancy of Parking Space in Parking Stations, as imposed by Article 9 of the San Francisco Business and Tax Regulations Code, beginning with Section 601 thereof, and any successor ordinances or amendments thereto, or any other federal, state or local tax or fee imposed on the occupancy of parking spaces.

1.31 “Parking Ticket” means the record provided by the Manager to the vehicle operator setting forth the time and date that the operator's vehicle entered the Facility that is used by the Manager to determine the Parking Rate due from the vehicle operator.

1.32 “Party” means the SFMTA or a Manager; “Parties” means both the SFMTA and the Manager.

1.33 “Premises” means the lands on which the Facilities are located and improvements upon those lands.

1.34 “Release” when used with respect to Hazardous Material means any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Facilities or any other improvements constructed hereunder by or on behalf of Manager or the City, or in, on, under or about the Land or the Facilities or any portion thereof.

1.35 “Remediation” when used with reference to Hazardous Material means any activities undertaken to clean up, remove, contain, treat, stabilize, monitor or otherwise control Hazardous Materials located in, on, under or about the Facilities, the Land or which have been, are being, or threaten to be Released into the environment. Remediation includes, without limitation, those actions included within the definition of “remedy” or “remedial action” in California Health and Safety Code Section 25322 and “remove” or “removal” in California Health and Safety Code Section 25323.

1.36 “Revenue Account” means the account into which a Manager is required to deposit Gross Revenues in accordance with Section 6.5 of these Regulations.

1.37 “San Francisco Municipal Transportation Agency” or “SFMTA” means 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.

1.38 “Security Deposit” shall mean the special account established and maintained by the City, and designated as the Security Deposit Account.

1.39 “SFMTA Property” means supplies, equipment and furnishings required for performance of the management and supervision services in the operation of the Facilities, including but not limited to, maintenance and cleaning equipment, tools, office and accounting equipment and office furnishings.

1.40 “Tax Collector” means the Tax Collector of the City.

1.41 “Term” means the period in which a Management Agreement is in effect, commencing on the Commencement Date and terminating in five years, unless extended or earlier terminated.

1.42 “Treasurer” means the Treasurer of the City.

1.43 “Unaccounted Parking Ticket” or “UPT” means any Parking Ticket described in **Section 3.1(a)(i) through (iv) of these Regulations.**

1.44 “Valet Parking” means parking of customer vehicles by a Manager.

1.45 “Valet Assisted Parking” means parking of customer vehicles by customers as directed by a Manager.

1.46 “Validator Deposit” means the deposit charged by a Manager to a merchant when a Manager issues a parking ticket validator or other equipment to the merchant, as set forth in **Section 3.1 (c)** of these Regulations. For other equipment, the SFMTA may, in writing at the time of issuance, increase the dollar value of the Validator Deposit.

2. SCOPE AND APPLICATION

2.1 These Facility Regulations shall apply to the management and operation of any off-street parking garages or lots ("collectively, "Facilities") owned by the City and County of San Francisco, SFMTA or the Parking Authority of the City and County of San Francisco and subject to a Management Agreement between SFMTA and a Manager entered into on or after March 2, 2009 would impair an existing contractual.

2.2 In the event of a conflict between the terms of these Facility Regulations and the terms of any Management Agreement subject to these Regulations, the terms of these Regulations shall control.

2.3 These Facility Regulations may be amended by the SFMTA Board of Directors following notice and an opportunity to comment.

3. DUTIES OF MANAGER

3.1 General Operational Duties. A Manager shall (i) supervise the proper and efficient parking of all vehicles utilizing each Facility, (ii) maximize the accessibility and safe use of the space available in each Facility, (iii) use best efforts to maximize the revenues generated by each Facility and (iv) manage the parking of vehicles in each Facility using best practices and in a professional manner. In addition to the foregoing general duties, a Manager shall be responsible for the following specific duties:

(a) Daily Parking. A Manager shall charge, collect and deposit (in accordance with Section 6.5 below) the daily Parking Rate from all daily users of each Facility and shall collect and account for all issued tickets. A Manager shall provide each customer with a machine-generated receipt as mandated by Article 22 of the San Francisco Business and Tax Regulations Code. A Manager shall establish and maintain a Parking Ticket system for daily users of each Facility in a form prescribed and approved by the City and in accordance with all Laws. A Manager shall order and purchase all Parking Tickets to be issued at the Facilities. A Manager shall issue a Parking Ticket from the ticket dispenser to the operator of each vehicle entering each Facility unless the vehicle operator enters using a valid monthly parking pass, prepaid debit card, or other authorized means of prepayment. This requirement shall include the Manager, employees of the Manager and all vendors performing work at the Facility. Each parking ticket that is issued shall be date and time stamped to indicate arrival and departure of the vehicle and shall also be stamped upon payment with the charged amount as mandated by Article 22 of the San Francisco Business and Tax Regulations Code. A Manager shall maintain a ticket inventory system identifying sequential numbering and reconciling tickets issued with revenues or use. The operator of each vehicle for which a Parking Ticket is issued shall pay the current posted Parking Rate, as amended from time to time by the SFMTA Board of Directors.

(i) Altered Parking Tickets. Any alteration to the dates or times of occupancy or charge different from the applicable posted rate must be approved by a Facility manager who must state in writing on the Parking Ticket the reason for the change. Any changes made without such approval and written explanation shall be disregarded, and the Parking Ticket shall be deemed to have been collected in accordance with the date and time of entry and exit stamped on the Parking Ticket and the current Parking Rate approved by the SFMTA Board of Directors, and such amount shall be included in the Gross Revenues due to the SFMTA in accordance with the requirements of Section 6.7(a) of these Facility Regulations, whether or not such amount is actually received by the Manager from the customer.

(ii) Mutilated or Destroyed Parking Tickets. If a Parking Ticket is mutilated or destroyed, a Manager shall prepare a report, which shall be included with the Monthly Report required by Section 6.7(a) of these Facility Regulations, showing the identification or serial number of the destroyed or mutilated Parking Ticket, explaining how it was destroyed or mutilated, attaching thereto any remnants of such Parking Ticket, and explaining how the Parking Rates approved by the SFMTA Board of Directors were applied. An appropriate amount for each

mutilated or destroyed Parking Ticket based on the current Parking Rate approved by the SFMTA Board of Directors shall be included in the Gross Revenues due to the SFMTA in accordance with the requirements of Section 6.7(a) of these Facility Regulations, whether or not such amount is actually received by the Manager from the customer.

(iii) Lost Parking Tickets. If a Parking Ticket is lost by the operator of a vehicle parked in the Facility, a Manager shall prepare a charge slip showing (A) the amount charged for parking, (B) the license plate or vehicle identification number, and (C) the name, telephone number and driver's license number of the operator of the vehicle. The completed charge slip must be signed by the vehicle operator. For each lost Parking Ticket, the Manager shall include the amount for lost Parking Tickets specified in the current Parking Rate approved by the SFMTA Board of Directors in the Gross Revenues due to the SFMTA in accordance with the requirements of Section 6.7(a) of these Facility Regulations, whether or not such amount is actually received by the Manager from the customer.

(iv) Other Irregular Parking Tickets. Any other Parking Tickets for which payment is not received and remitted in accordance with the applicable posted rate and the date and time of entry and exit (including a Parking Ticket that is issued, but for which there is no record of payment) shall be treated as a lost Parking Ticket and the Manager shall be deemed to have collected the amount for a lost Parking Ticket specified in the current Parking Rates approved by the SFMTA Board of Directors, and such amount shall be included in the Gross Revenues due to the SFMTA in accordance with the requirements of Section 6.7(a) of these Facility Regulations, whether or not such amount is actually received by the Manager from the customer.

(b) Monthly Parking (applicable only to Facilities providing monthly parking).

(i) A Manager shall require all monthly users to execute a month-to-month agreement and release of the SFMTA, the form of which must be pre-approved by the Director. The Manager shall collect all monthly parking fees no later than the fifth calendar day of each month. The Manager shall assess a late charge (as set forth in the Schedule of Parking Rates approved by the SFMTA Board of Directors) to monthly users who are delinquent in payment of their monthly parking fee. If a monthly user has not paid his or her monthly parking fee by the fifth calendar day of each month, the Manager shall invalidate the security access cards of such delinquent monthly users before the sixth day of the month for which the monthly parking fee is unpaid. Delinquent monthly users may reactivate security access cards by paying a Twenty-five Dollar (\$25.00) late charge (or such other amount as may be set by the SFMTA Board of Directors in the Parking Rates), in addition to the delinquent monthly fee, to the Manager. A Manager may waive such late charges only for public entities and only in instances of written mutual consent between Manager and SFMTA. The Manager shall maintain a written record of all late charges it waives. The Manager shall supervise and control the billing and collection of the approved monthly Parking Rate and shall establish a security access system for monthly users. Should the security access system require the use of a security access card, the Manager shall collect an access card deposit of Fifty Dollars (\$50.00) (or such other amount as may be set by the SFMTA Board of Directors in the Parking Rates) for each card issued (the "Access Card Deposit"). For any lost or destroyed cards, the Manager shall reissue a new card and shall collect a charge for the lost or destroyed card in accordance with the current approved rate structure. Upon termination of any monthly agreement and return of the access card, the Manager shall immediately refund to the monthly user his or her deposit, without interest. Once refunded, the Manager may seek reimbursement from the SFMTA for the refunded amount as an Operating Expense; provided that the Manager provides satisfactory evidence that such refund has been paid to the monthly customer.

(ii) From time to time, the Director may determine the maximum number of monthly parking agreements that shall be permitted in one or more of the Facilities. A

Manager shall deposit any amounts collected from monthly parkers, including amounts for Access Card Deposits, late charges or charges for reissuance of a new access card into the Revenue Account no later than the next Banking Day after such amounts are collected. A Manager shall keep a written record containing the names of all monthly users along with their access card number, parking commencement date, amount of access card deposit and date each payment is received and transferred to the Revenue Account, parking termination date and amount of deposit refund.

(c) **Validation Parking.** When and as directed by the Director with the approval of the MTA Board of Directors, a Manager shall enter into agreements with local merchants for validation parking. The Director shall establish guidelines for validation parking. All validation agreements must be pre-approved by the Director. The Manager shall inform merchants and its authorized employees as to the correct procedures for validating a parking ticket. The Manager shall collect a Validator Deposit established by the Director for each hand or electronic validator issued. Upon request of the Director, a Manager shall request the return of any validator, and upon its return shall immediately return to the merchant the deposit in full, without interest. For lost or destroyed validators, the Manager shall issue a new validator and shall collect an additional Validator Deposit

(d) **Valet and Valet Assist Parking.** When and as directed by the Director, a Manager shall provide for Valet Parking and/or Valet Assisted Parking in the Facilities.

(e) **Other Services.** A Manager shall perform such other acts and duties as are required under the terms of the Agreement, and shall perform such other management and supervisory functions related to the operation of the Facilities as the SFMTA may require.

(f) **Facility Names.** Each Facility shall be operated under the name specified in the Management Agreement as the name of the Facility. The SFMTA may in its sole and absolute discretion rename the Facilities.

(g) **Signs and Advertising.** Except for signs stating the Parking Rates and other pertinent information, and any signs required by applicable law, a Manager shall not erect any signs, billboard, advertising, displays or political endorsements at the Facilities or permit the circulation of any commercial announcements, pamphlets or circulars without the SFMTA's or Director's prior consent. The SFMTA shall have the right to lease or use, any or all portions of the Facilities for advertising. Such arrangements may be under separate agreements between the SFMTA and any third party. Although a Manager may not be obligated to manage these arrangements, Managers shall cooperate in good faith with the SFMTA and such parties.

(h) **Storage Rental.** A Manager shall not allow any storage rental unless pre-approved in writing by the SFMTA. If such storage rental is approved, the Manager shall require all monthly users to execute a rental agreement and release form, which form must be pre-approved by the SFMTA. All collected fees shall be deposited into the Revenue Account on the day such amount is collected or the next Banking Day.

(i) **Commercial Use.** Except for parking, a Manager shall not permit the use of any portion of the Facilities for commercial purposes without the SFMTA's prior consent. The SFMTA shall have the right to lease any or all parts of the Facilities for other commercial uses, including, without limitation, vending machines, telephone services and storage rentals. Such arrangements may be under separate agreements between the SFMTA and any third party. Although a Manager may not be obligated to manage these leasing arrangements, Managers shall cooperate in good faith with the SFMTA and such parties.

(j) **Vending Machines, ATMs and Telephones.** The installation of any vending machines, ATMs or telephones in the Facilities must be pre-approved in writing by the SFMTA. Once approved, a Manager will be charged with the responsibility of entering into any necessary agreements with such parties and administering such

contractual relationship. Such agreements shall not exceed the term of the Management Agreement unless pre-approved by the SFMTA, and may in any event be subject and subordinate to the Agreement. Such agreements shall also be assignable to the succeeding Manager or SFMTA without additional payment or cost.

(k) Public Use of Facilities. Managers acknowledge that the public is entitled to use the Facilities, subject to the rates, charges, hours, space availability and rules of operation as set forth herein and adopted pursuant to the terms of the Agreement.

(l) Compliance with Laws. A Manager and any subcontractors of the Manager shall comply and conform with all applicable Laws, including these Facility Regulations and all other governmental regulations, rules and orders, existing and as may be enacted during the Term of the Management Agreement relating to, controlling, or limiting the use and operation of the Facilities. A Manager shall secure all permits and licenses specifically required for the operation of the Facilities (copies of which shall be promptly provided to the Director), and shall not use or occupy any Facility in an unlawful, noisy, improper or offensive manner. A Manager shall use its best efforts to prevent any occupancy of the Facilities or use made thereof which is unlawful, noisy, improper or offensive or contrary to any law or ordinance applicable to the Facilities. A Manager shall not cause or maintain any nuisance in or about the Facilities, and shall use its best efforts to prevent any person from doing so. Nor shall a Manager cause or allow any rubbish, dirt or refuse to be placed in the streets, sidewalks or alleys adjoining the Facilities or to accumulate in the Facilities. Further, a Manager shall use its best efforts to ensure that all patrons of the Facilities comply with these Facility Regulations and any other rules, regulations, or restrictions that the SFMTA or the Director may adopt during the Term of the Management Agreement.

(m) Revenue Control and Parking Receipts.

(i) A Manager shall comply with applicable provisions of the San Francisco Business and Tax Regulations Code Section 6.6-1 and Article 22 or any successor provisions to those laws, which require parking stations to have revenue control equipment, to provide receipts to all occupants with the exception of occupants in possession of a monthly access card, and to have certain signage, all as more fully set forth therein. Any violation of these requirements shall be deemed a breach of these Facility Regulations and the Management Agreement, and SFMTA and the City shall have all rights and remedies set forth in the above Codes as well as the rights and remedies set forth in the Management Agreement, including but not limited to, the right to terminate the Management Agreement. With the exception of the provisions of these Facility Regulations as to Unaccounted Ticket Ratio, to the extent that any provision of these Facility Regulations or the Agreement conflicts with any provision of the San Francisco Business and Tax Regulations Code or other City ordinance, that Code or the ordinance shall govern.

(ii) A Manager shall no less than weekly duplicate or back-up the electronic data created or maintained by the RCE, including but not limited to the Log File, as that term is defined in Article 22 of the San Francisco Business and Tax Regulations Code. A Manager shall safeguard with the highest degree of care the duplicate or back-up RCE electronic data, including the Log File, in a location that is separate from the Facilities under management and which is accessible during regular business hours.

(n) Revenue Protection

(i) A Manager shall take all necessary measures, applying the highest standard of care, to ensure that all parking charges, rents, fees, and other Gross Revenues are properly collected, and accounted and remitted to the SFMTA. SFMTA strongly recommends that Managers use armored vehicles and armed security guards when transporting Gross Revenues in the form of cash.

(ii) A Manager shall take all necessary measures, applying the highest standard of care, to ensure that Parking Tickets, including but not limited to

replacement, motorcycle, early bird, flat fee, carpool, and merchant or commercial tenant validation parking tickets, are not used to defraud the SFMTA of Gross Revenues or otherwise convert, conceal, misappropriate, or misaccount Gross Revenues.

3.2 Facility Parking Rates. For all vehicles parked in each Facility, a Manager is authorized and directed to charge and collect parking fees according to the Parking Rates Schedules approved by the SFMTA Board of Directors for that Facility. Upon a change in the Parking Rates Schedules, the Director will give written notice to the Manager as to the new Parking Rates and their effective date(s). Upon receiving such notice, the Manager shall take such measures necessary to implement the new Parking Rates on the effective date. A Manager shall not adjust the authorized Parking Rates or collect any other rates or charges at the Facilities or provide free (no charge) parking to any person except as specifically authorized by the SFMTA. A Manager shall not be entitled to any further compensation or consideration because of a change in the Parking Rates.

3.3 Emergency and Disaster Response Plan. A Manager shall maintain a current Emergency and Disaster Response Plan at each Facility in a format acceptable to the Director with a current copy to the SFMTA. This plan shall consist of Emergency Procedures, Company and SFMTA contact information. This plan must outline procedures for employees to follow in the event of an emergency and describe a plan of action for each Alert Level defined for a specific threat or disaster.

3.4 Operating Manual. A Manager shall maintain at each Facility a current Company Operating Manual for the Facility containing Standard Operating Procedures (SOPs) that include, but are not limited to, safety standards and procedures, cash handling procedures, customer service standards, employee training, and Facility maintenance standards. The Manager shall provide SFMTA with this manual on the execution date of the Agreement, and shall promptly provide SFMTA with any updates. The Manager will make necessary changes to the SOP manual at SFMTA's request in order to ensure that best practices are followed.

4. EQUIPMENT AND CAPITAL IMPROVEMENTS

4.1 Ordering and Purchasing of Supplies, Equipment and Furnishings. A Manager shall provide such supplies, equipment and furnishings required for performance of the management and supervision services in the operation of the Facilities, including, but not limited to, maintenance and cleaning equipment, tools, office and accounting equipment and office furnishings. The cost of purchasing all such supplies, equipment and furnishings shall be considered Operating Expenses. All equipment, supplies and other tangible personal property paid for as an Operating Expenses shall be and remain the property of the Facilities. A Manager shall be responsible for the care and safekeeping of all SFMTA Property and shall use such property only in connection with the operation of the Facilities. Except for supplies and other property that are routinely used and consumed in the operation of a parking Facility, a Manager shall not dispose of any SFMTA Property without the written consent of Director.

4.2 Construction of Improvements. A Manager shall not make any alterations or improvements to or upon the Facilities without the prior written approval of the SFMTA. The Director may require a Manager to implement specific capital improvements during the term of the Management Agreement. With the exception of emergency repairs, which shall require the written approval of the Director, any such capital improvements shall require the approval of the SFMTA Board of Directors and shall performed (i) in strict accordance with any plans and/or specifications approved in advance by the Director in writing, (ii) by duly licensed and bonded contractors or mechanics approved by the Director after the Manager obtains at least three quotes for the capital improvement work (provided, in no event shall a Manager solicit less than three (3) quotes for any capital improvement over \$500.00), (iii) in a good and workmanlike manner, (iv) in strict compliance with all laws and subject to all other conditions that the Director may impose. Prior to the commencement of any work, a

Manager shall procure all required permits and approvals and shall promptly deliver copies of such approvals and permits to the Director upon receipt. No material change from the plans and specifications approved by Director may be made without the Director's prior consent. The Director shall have the right to inspect the progress of the capital improvement work at all times. If required by the Director, upon completion of the capital improvements, a Manager shall furnish Director with a complete set of final as-built plans and specifications. Notwithstanding anything in the Management Agreement or these Facility Regulations to the contrary, the actual costs and expenses incurred by a Manager in the performance by it of the obligations set forth in this Section shall be an Operating Expense. Upon completion of the improvement, the SFMTA shall own all capital improvements completed pursuant to this Section.

5. MAINTENANCE AND REPAIRS

5.1 Routine Maintenance and Repairs. A Manager shall maintain the Facilities in a clean, safe, sanitary and attractive condition commensurate with the standards of maintenance, repair and operation set forth in the Agreement. For purposes of the Management Agreement, "routine maintenance and repair work" means all ordinary maintenance and repair of the premises and equipment and replacement of supplies that are normally performed on a daily or routine basis in order to keep the Facilities in an efficient, clean and safe condition. Such routine maintenance and repair work shall include without limitation:

(a) Repairing lamps and lighting fixtures and replacing bulbs, fluorescent tubes and ballasts; replacing Parking Tickets in Parking Ticket issuing machines; maintaining and replacing, if required, arms on traffic entry and exit gates; maintaining, repairing and replacing sliding or overhead doors and gates, and roll up doors; maintaining revenue control equipment; repairing, replacing and cleaning signs; maintaining heating, ventilating and other mechanical equipment; maintaining fire alarm call boxes, extinguishers and hose boxes in good working order; maintaining plumbing in good and sanitary working order; and performing emergency maintenance and repairs as required to maintain the premises in good and safe condition.

(b) Regular cleaning of all parking areas, Facility offices, drainage systems and other portions of the Facility premises; regular washing of all windows; prompt removal of dirt, debris, oil, grease and other liquids from the parking areas, floors and stairways; regular cleaning of floors, walls and ceilings of the pedestrian areas; regular removal of accumulated trash and other rubbish; regular cleaning of the sidewalks on all sides of the Facilities; regular cleaning and maintenance of the common areas and bathrooms (including trash removal); and such other cleaning as shall be required to keep the premises in a clean, safe and attractive condition.

(c) Striping of the floors and surfaces of the Facilities as needed.

(d) Otherwise cleaning, repairing and painting the floors and walls and fences of the Facilities and the sidewalks, curbs and driveways thereof as needed (particularly when such surfaces have been marred by graffiti or other forms of vandalism).

(e) Contracting for full-service elevator maintenance, if applicable, with a subcontractor acceptable to SFMTA.

(f) Contracting for electricity, telephone, vermin extermination, trash collection, water, sewer and any other similar utilities or services necessary to the operation of the Facilities. Manager shall pay all billings for the above services when due.

(g) Steam cleaning of all sidewalks and any interior stairwells shall be performed on a quarterly basis and of each entire Facility on a semi-annual basis. At the discretion of the Director, steam cleaning may be required to be performed less frequently if the Facilities, including sidewalks and stairwells, are maintained in a clean and orderly state.

(h) Prompt removal of pigeon droppings from floors and all accessible surfaces.

- (i) Thorough cleaning of all ventilation system supply and exhaust vents shall be performed on a semi-annual basis as applicable.
- (j) Any other maintenance or repair required by the Director.
- (k) Removal of graffiti in accordance with the requirements of the Agreement.

A Manager shall perform all the foregoing maintenance duties in accordance with the Maintenance Schedule provided by Director. The Director shall have the right to require the Manager to perform certain duties specified in such schedule more frequently than provided therein. A Manager shall be responsible for completing the Maintenance Checklist provided by Director and maintaining such checklist at the Facilities at all times. Upon demand of the Director, or his or her designee, a Manager shall present such Maintenance Checklist.

5.2 Failure to Perform. The Director may direct a Manager to perform routine maintenance and repair work that is necessary to keep the Facility in good and clean condition and in a proper state of repair. If the Manager does not commence performance of such routine maintenance and repair work within seventy-two (72) hours after the notice is given and thereafter diligently prosecute it to completion, the Director may cause such routine maintenance and repair work to be performed and the cost thereof to be either (i) disbursed from the Security Deposit, or (ii) deducted from the Management Fee(s). In the event the SFMTA contracts to have such routine maintenance and repair work performed, the Manager shall reimburse the SFMTA for work and administrative time expended in having the routine maintenance and repair work performed. If the Security Deposit is used to pay these costs, the SFMTA will deduct the amounts paid from the Management Fee costs, and deposit the cost of services back into the Security Deposit Account until replenished. Any work performed as described herein shall not be considered an Operating Expense, and the costs of such work shall not be reimbursed by SFMTA

5.3 Security Deposit Account upon Termination. Upon termination or expiration of the Agreement, the SFMTA will inspect the Facilities and report in writing to the Manager all routine maintenance and repair work necessary to put the premises in good and clean condition and in a proper state of repair. Upon issuance of such report, the SFMTA may cause such routine maintenance and repair work to be performed with the cost thereof to be disbursed from the Security Deposit. If the balance of the Security Deposit is insufficient to cover the cost of such work, the Manager shall pay upon demand any deficiency to the SFMTA. The SFMTA shall also have the right to use any funds in the Security Deposit to satisfy any unpaid financial obligation or liability that a Manager may have under the Management Agreement. After satisfaction of such unpaid amounts, the remaining balance shall be returned to the Manager, with any interest having accrued thereon.

5.4 Long-Term Maintenance and Repairs. As used in these Facility Regulations, the term “long-term maintenance and repairs” means all such maintenance and repair work that the SFMTA reasonably determines is extraordinary and beyond the normal routine maintenance and repair work to be performed by a Manager. The SFMTA may request a Manager to seek bids for the specific project. After submission of such bids, the SFMTA may elect to (i) award the bid to the most qualified bidder or (ii) reject all bids. If the SFMTA elects to proceed with the proposed project, the Manager shall cause the work to be done, pay for the work when it has been completed and include such reimbursement requests in the next Monthly Report. A Manager shall inform the Director of long-term maintenance or repair projects that are necessary to maintain the Facilities in their current or better condition.

6. FISCAL DUTIES AND MATTERS

6.1 Annual Budget. A Manager shall, at Director’s request, prepare an annual operating and capital budget (“Budget”) for each Facility under management for any given period for review by Director. The Budget shall be in the form provided by

Director. After review, Director may return the Budget to the Manager if budget contains proprietary information regarding the Manager.

6.2 Marketing Plan. A Manager shall, at Director's request, prepare a marketing plan for each Facility under management, outlining the Manager's plans to market the Facilities and expand business at the Facilities. The Director may review the marketing plan and recommend changes.

6.3 Revenue Account. A Manager, with consent from the Office of the Treasurer/Tax Collector, shall establish and maintain a special account designated as the Revenue Account for each Facility. A Manager shall be authorized and required to make daily deposits into the Revenue Account for each Facility.

6.4 Security Deposit. The City will establish and maintain a special account designated as the Security Deposit Account in the amount established in the Agreement. This account will be established from the Manager's Bid Security received during the Bid process, with the balance due and payable not later than the date of execution of the Management Agreement. Any Bid Bond submitted as a Bid Security during the Bid process may not be used as a Security Deposit and Manager must submit a check in the amount equivalent to the Bid Security upon commencement of the Management Agreement. This Security Deposit shall be returned to the Manager, with interest, in accordance with the terms of the Agreement.

6.5 Gross Revenues and Other Monies; Deposits and Transfers of Monies. All Gross Revenues generated by the Facilities shall be the sole and exclusive property of the SFMTA and shall be held in trust for the SFMTA. Notwithstanding a Manager's receipt of Gross Revenues on behalf of the SFMTA, a Manager shall have no right, title, interest, lien or set-off rights on or against any portion of the Gross Revenues generated by the Facilities. A Manager shall safeguard all Gross Revenues with the highest degree of care. All revenues, monies and deposits collected or received by a Manager arising out of operations of the Facilities shall be deposited in the Revenue Account no later than the next Banking Day after such amounts are collected. A Manager shall not commingle any of the above accounts or sources of revenue. If a Manager fails to deposit Gross Revenues including Parking Taxes as specified in this Section, the Manager shall pay the SFMTA interest on the amount that was not timely deposited in accordance with the late payment provisions in the Agreement until such time the amount is deposited in the manner prescribed in these Facility Regulations, and such payment shall be an Operating Expense. A Manager's failure to deposit Gross Revenues including Parking Taxes on a timely basis shall constitute a material breach of the Agreement, and a Manager's obligation to pay interest on funds not deposited shall not limit any other rights or remedies the SFMTA may have under the Agreement with respect to such default. A Manager shall be responsible for, and liable for any damages arising from, the secure transport and delivery of Gross Revenues in accordance with these Facility Regulations and the Management Agreement. Until monies charged and collected by the Manager on behalf of the SFMTA are deposited in accordance with these Facility Regulations, the Manager shall assume all risk of loss of such monies, including, but not limited to, loss by damage, destruction, disappearance, theft, fraud, counterfeit bills/coins, or dishonesty.

6.6 Daily Accounting. Every day of operation, a Manager shall prepare a daily report ("Daily Report") for each Facility in a form approved by the Director. If requested by the Director, the Manager shall submit the Daily Reports to the SFMTA on a daily basis in electronic form. All Daily Reports must be certified true and correct by the Manager. A Manager may modify the format of the Daily Report with the Director's prior written approval.

6.7 Monthly Report. On the fifteen (15) of each month, a Manager shall deliver to the Director a monthly report ("Monthly Report") for each Facility in a form approved by the Director. The Monthly Report shall be provided in both electronic and hard copy format and include an accounting of all Gross Revenues and a description of Operating Expenses as set forth in Section **6.8**.

(a) The Monthly Report shall provide an accounting for all Unaccounted Parking Tickets as set forth in Section 3.1(a)(i)-(iv) of these Facility Regulations. The

Monthly Report shall include the original of any UPT that has been altered or mutilated, and shall also include any remnants of any Parking Ticket claimed as destroyed, as well as the information set forth in Section 3.1(a)(iii) for any Parking Ticket claimed as lost, and the information required by Section 3.1(a)(iv) for any other irregular Parking Ticket. The Director may review the UPT information submitted by a Manager, and may reject any such claim that he or she determines is not adequately supported by evidence. Where the total number of insufficiently documented UPTs at each Facility is equal to or less than one-quarter of one percent (0.25%) of the total number of Parking Tickets issued in the Facility in a calendar month as indicated by the revenue control equipment for the Facility, notwithstanding the provisions of Section 3.1(a)(i)-(iv), the Manager shall not be charged for the UPTs. Where the number of such Parking Tickets exceeds one quarter of one percent (0.25%) of the total number of Parking Tickets issued in the Facility in a calendar month, the Manager shall be liable for the full amount due in accordance with Section 3.1(a)(i)-(iv) of these Facility Regulations for all insufficiently documented UPTs issued in the Facility, which amount shall be deducted by SFMTA from the next payment of Operating Expenses due to the Manager under the Agreement.

(b) Each Monthly Report shall include the printer's manifest or other Parking Ticket inventory system, showing and certifying as correct the beginning and ending serial numbers by the printer for all Parking Tickets received by a Manager during the month for use at the Facilities.

(c) For each day submittal of the Monthly Report is late, a Manager shall incur a late charge of One Hundred Dollars (\$100) per Facility as liquidated damages payable to the SFMTA to cover administrative costs for revenue report and projection revisions, and such late charges shall not be an Operating Expense. All submitted Monthly Reports must be certified as true, correct, and complete by the Manager. Should the SFMTA detect any inaccuracies in the Monthly Reports which were not previously communicated by the Manager, the SFMTA may, in its discretion and without limiting the SFMTA's other rights and remedies hereunder, impose a charge of Two Hundred Dollars (\$200) for each Monthly Report misreported to cover administrative costs to correct revenue reports and projections. Such charges shall be deducted by the SFMTA from the next payment of the Management Fee under the Agreement or from the Security Deposit. The aforementioned charges shall not be considered a penalty, but are the reasonable cost to the SFMTA incurred by the Manager's delay. The Controller or the Director may modify the form of the Monthly Report and change the due date of the Monthly Report

(d) The Monthly Report shall include all usage data by customer type, marketing initiatives conducted during the month, any capital expenditures incurred during the month and any extraordinary operational or management efforts.

6.8 Operating Expenses. (a) For all Operating Expenses for which a Manager seeks reimbursement, the Manager shall, for each Facility, submit twice per month or as needed complete documentation, an invoice and statement listing all operating expenses for the month together with all original invoices, receipts or other evidence, including all operating expenses incurred since the previous invoice and statement, including all salaries, wages, payroll taxes, and benefits described in the Management Agreement, and the Manager's management fee. Each invoice, in a form approved by the Director and Controller, shall be accompanied by such supporting documentation evidencing such operating costs, salaries, wages, payroll taxes and benefits as the SFMTA shall require. The monthly invoice shall include as a credit to the SFMTA any amounts due for UPTs in accordance with Sections 3.1(a) and 6.7. All invoices for which a Manager is seeking payment of shall: (1) be prepared by the Manager and signed by the authorized representative of the Manager; (2) identify the line item of the Approved Budget under which reimbursement is requested; (3) include documentation of the quotes or bids obtained when required pursuant to paragraph (b) below; (4) for unbudgeted expenses, include written approval of the Director, and (5) be submitted to the Director for approval. To qualify as an Operating Expense, the following conditions must also be satisfied: (1) the Manager must have submitted the required documentation requested above, (2) the expenditure must have been authorized

in the Approved Budget, and (3) the expenditure must have been approved by the Director and the Controller. SFMTA will reimburse the Manager by wire or by disbursing a check at the address specified for notice in the Agreement. SFMTA shall not reimburse a Manager for any interest charges or late penalties imposed on the Manager due to late payment of its bills, taxes or fees. Notwithstanding the foregoing, those Operating Costs related to a Manager's labor expenses described in the Agreement shall be reimbursed, subject to the documentation and approval requirements described above, on a monthly basis. The Director shall have ultimate approval of all Operating Expenses.

(b) In no event shall a Manager contract for or purchase any one item, other than payroll, which exceeds One Thousand Dollars (\$1,000.00) in cost or any item which costs in excess of the amount set out on the approved Budget without the prior written approval of the Director. Any rebate or discount obtained by a Manager in connection with the Management Agreement shall be the property of SFMTA. All expenses in excess of One Thousand Dollars (\$1,000.00), including reoccurring expenses such as Parking Tickets unless service is from a sole source supplier, shall be documented with three written quotes submitted for written approval before the purchase is made.

6.9 Parking Taxes. A Manager shall comply with the requirements imposed by Sections 6.6-1 and 6.7-1 of Article 6, and Section 604 of Article 9 of the San Francisco Business and Tax Regulations Code to collect all Parking Taxes, sales taxes and other taxes due, which shall be deposited into the Revenue Account and accounted for separately. A Manager shall submit to SFMTA with each Monthly Report a full accounting of all taxes due and payable to any third party, including any taxes due to the City. A Manager shall provide SFMTA with the monthly prepayment statement ten (10) days prior to the date due. A Manager is liable for any interest or penalties incurred due to late payment of taxes, which shall not be considered an Operating Expense or otherwise reimbursed by SFMTA. A Certificate of Authority to collect Parking Tax shall be posted in each Facility in a prominent location at all times during the Term of the Management Agreement.

6.10 Parking Tax Collection Bond. A Manager shall comply with the requirements imposed by Section 6.6-1 of Article 6 of the San Francisco Business and Tax Regulations Code, requiring Manager to post a Parking Tax Collection Bond on behalf of the City in the appropriate amount required.

6.11 SFMTA's Right to Audit and Inspect Records. A Manager agrees to maintain and make available to the SFMTA, during regular business hours, accurate books and accounting records relating to its work under the Agreement. A Manager will permit SFMTA to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by the Agreement, whether funded in whole or in part under the Agreement. A Manager shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under the Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of the Agreement shall have the same rights conferred upon SFMTA by this Section.

6.12 Audit. A Manager shall cooperate in audits of its books and records relating to the Facilities and the Manager's compliance with the Management Agreement. The audits shall be conducted at the direction of the SFMTA or the City Controller by an auditor selected by the SFMTA or the Controller. The SFMTA or the Controller shall determine the scope of said audit(s), which may include but are not limited to the Manager's compliance with the terms of the Agreement and these Facility Regulations, determining the amount of Gross Revenues and Parking Taxes received by the Manager from the operation of the Facilities; the Gross Revenues and Parking Taxes deposited into the Revenue Account; any differences between the Gross Revenues and Parking Taxes reported and the Revenue Account deposits and audited revenues; and the form and method of the Manager's record keeping. The audits may include review of capital expenditures, compliance with any provisions of the Agreement and these Facility

Regulations or any other item related to administration of the Agreement or the financial stability of the Manager at the discretion of the SFMTA.

6.13 Books and Records. A Manager shall establish and maintain at each Facility books, records and systems of account, including all records relating to Revenue Control Equipment at the Facilities in accordance with generally accepted accounting principles, consistently applied reflecting all business operations of Manager transacted under the Agreement. To the extent a Manager has not complied with generally accepted accounting principles, the Director may require Manager to restate its books, records and systems of account to conform to such requirements. These books, records and systems of account shall be retained by a Manager during the term of the Agreement and for at least three (3) years thereafter, and shall be available at all reasonable times, with or without notice, for inspection and audit by the City, SFMTA, or their agents. Upon expiration or early termination of the Agreement, all such books, records and systems of account shall be delivered to the Director. All used and unused parking tickets, tapes and other records used in the operation of the Facilities are owned by the SFMTA, but shall be retained by a Manager at the Facilities unless the Director request otherwise. Such tickets, tapes and records shall be available at all reasonable times, with or without notice, for inspection and audit by either the Director or his/her agents, and shall not be destroyed without prior written consent from the Director.

THIS PRINT COVERS CALENDAR ITEM NO.: 17

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Requesting authorization to advertise a Request for Proposals for Contract CS-155, Professional Architectural and Engineering Services for the Final Design and Construction Phases of Central Subway Project, to evaluate proposals and select a Consultant, and to negotiate a contract with the selected Consultant.

SUMMARY:

- The selected Consultant will provide necessary professional architectural and engineering services during the design and construction of the Central Subway Project and feasibility studies and engineering services for a new central control facility.
- Funding for consultant services under this Contract will be furnished from federal, state and local sources.
- The Contract Compliance Office has established a Small Business Enterprises (SBE) participation goal of 30% for this Contract.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget & Financial Plan
3. Request for Proposal

APPROVALS:

DATE:

DEPUTY OF DIVISION PREPARING
CALENDAR ITEM:

FINANCE (IF APPLICABLE):

DIRECTOR:

SECRETARY:

ADDOPTED RESOLUTION TO BE
RETURNED TO:

Contracting Section
Attn: Gigi Pabros

ASSIGNED SFMTAB CALENDAR DATE _____

PAGE 2

PURPOSE

SFMTA staff requests the SFMTA Board of Directors to authorize the Executive Director to advertise the Request for Proposal (RFP) for Contract No. CS-155, Professional Architectural and Engineering Services for the Final Design and Construction Phases of the Central Subway Project, to evaluate proposals and select a consultant, and to negotiate a contract with the selected consultant.

GOAL

The Central Subway Project is consistent with the SFMTA Strategic Plan in the following goals and objectives:

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

Objective 1.3 Reduce emissions as required by SFMTA Clean Air Plan

Objective 1.4 Improve accessibility across transit service

Objective 1.5 Increase percentage of trip using more sustainable modes

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

Objective 2.2 Ensure efficient transit connectivity and span of service

Objective 2.4 Reduce congestion through major corridors

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

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

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

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

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

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

Objective 4.2 Ensure efficient and effective use of resources

DESCRIPTION

Background:

The San Francisco Municipal Transportation Agency's Third Street Light Rail Transit (LRT) Project is the most significant capital investment in generations for the seventh largest transit system in the nation. Phase 1 of the 6.9-mile two-phase project began revenue service in April 2007, restoring light rail service to the heavily transit-dependent Third Street corridor in eastern San Francisco for the first time in 50 years.

PAGE 3

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

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

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

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

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

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

PAGE 4

Supervisors adopted Resolution No. 03-58 on January 27, 2003, which authorized the Director of Transportation to execute the PB/Wong Agreement. The PB/Wong Agreement included services to prepare a SEIS/SEIR for the Project.

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

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

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

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

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

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

PAGE 5

On August 19, 2008, the SFMTA Board of Directors, adopted Resolution No. 08-150, adopting Central Subway Project Alternative 3B, Fourth/Stockton Alignment, the CEQA Findings and Statement of Overriding Considerations for the SEIS/SEIR, and the Mitigation Monitoring and Reporting Plan.

Environmental appeals were filed and heard by the Board of Supervisors on September 16, 2008. The Board of Supervisors voted unanimously to uphold the Environmental findings. No legal challenges under CEQA were filed, and the time to file such challenges has expired.

The notice for the Final SEIR appeared in the Federal Register on October 3, 2008 and the 30-day waiting period has elapsed. The FTA issued the Record of Decision announcing the completion of the Central Subway environmental process on November 26, 2008.

On December 2, 2008, the SFMTA Board of Directors adopted Resolution No. 08-201, which authorizes the Executive Director/CEO to execute Contract CS-149, retaining Professional Program Management and Construction Management (PM/CM) services for the Central Subway, with Central Subway Partnership, for an amount not to exceed \$147,375,171, and for a term not to exceed five years with an option to extend the term for an additional five years.

Current Status:

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

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

PAGE 6

The Project is currently completing the preliminary engineering work. As part of the intensive federal New Starts evaluation and review process, the FTA has just completed a nine-month "Schedule, Cost and Risk Review Analysis" of the program. As a result of this review, FTA has recommended that sufficient cost and schedule contingency be added to ensure the project's success. Specifically, this federal review has established a revised project budget of \$1.57 billion vs. \$1.3 billion and a revenue operation date of December 2018 vs 2016.

As a result of the higher project budget, FTA has indicated that the agency will support an increased federal share for the project and higher annual funding allocation levels to minimize borrowing costs. Specifically, FTA has agreed to a funding plan that will include 1) up to \$942 million in federal funding, an increase of \$180 million over previous funding plans, and 2) annual federal cash flow allocations of up to \$150 million per year, previously limited to \$100 million per year. This increased federal support is a strong endorsement for this program and lays the groundwork for FTA Final Design approval anticipated in 4th Quarter 2009.

Purpose and Scope of Request for Proposals:

The anticipated complexity of the Central Subway, including tunneling and/or cut-and-cover construction, in proximity to sensitive urban structures and facilities, poses significant coordination, management, design and construction challenges to the City. The City does not have the specialized expertise or staff resources to perform all services necessary for a project of this size and intricacy. Given the substantial capital investment in the Central Subway and the target project completion schedule of 2018, it is in the best interests of the Agency to engage a qualified design consultant with specific experience and expertise in transit, tunneling, architectural, engineering, and other professional services for the execution of the Central Subway phase of the Third Street LRT Project. To ensure integration of design and function, reduce costs and potential delays to the Project, the selected consultant will also perform feasibility studies and engineering services for a new central control facility.

The purpose of this RFP is to secure architectural, engineering and other services during the design and construction phases. Services include, but are not limited to, the following:

- overall design management
- prepare and implement an overall Final Design strategic execution plan
- verify/ validate existing preliminary engineering design
- identify remaining outstanding technical/design issues from the preliminary engineering phase
- verify cost and schedule for each construction contract
- complete the final design for the tunnels, underground stations, surface station, trackwork and systems work
- prepare construction contract documents for
 - utility relocation contracts
 - tunneling contract

PAGE 7

- Moscone Station contract
- Union Square/ Market Street Station contract
- Chinatown Station contract
- surface, trackwork and systems contract
- furnish professional engineering services as necessary to complete final design
- assist in interagency coordination for approvals
- develop safety and security certification specification conformance checklists for each construction contract
- provide as-needed hazard analyses
- perform design simulations and/or studies
- develop renderings and models
- assist in conducting outreach to the communities along the alignment
- provide architectural and engineering support during construction
- provide as-needed geotechnical engineering support during construction
- review and respond to technical submittal from contractors
- review and respond to proposed changes
- perform field visits and observations to verify design compliance and/or assist in resolving issues
- witness and approve factory testing of manufactured equipment and materials
- update design drawings as a result of responses to request for information, submittals and changes.
- assemble operations and maintenance manuals
- prepare conformed plans and specifications upon contract completion
- establish and implement a quality control program with procedures and oversight in performing the services to complete the final design
- perform feasibility studies and engineering services for the construction of a new central control facility

The RFP proposes a contract with an estimated term not to exceed ten years for architectural and engineering services, which will advance the current preliminary engineering design, complete the final design and support the activities during the construction phase. The estimated cost for all services requested in the RFP except for the central control facility design elements is \$38,400,000.

Conflict of Interest Protections:

To prevent a potential organizational conflict of interest, the selected prime consultant and consultant's key personnel and the architectural/engineering subconsultants are precluded from participating in other Central Subway contracts. An organizational conflict of interest would occur when, because of work on other contracts, a contractor would be unable, or potentially unable, to render impartial assistance or advice when the objectivity of the contractor might be otherwise impaired; or when a contractor has an unfair competitive advantage. For example, an engineer who prepared the specifications or scope of work for a

PAGE 8

project would not be allowed to bid on the contract for that project. For this RFP, the selected prime consultant, the consultant's key personnel and all architectural/engineering subconsultants will be precluded from participating in any existing or subsequent RFPs for program management/ construction management, project controls, construction and procurement services for the Central Subway Project.

Regarding communications by firms submitting proposals to the SFMTA, RFP Section 1.11 states:

It is the policy of the SFMTA that only employees identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from Proposers or potential Proposers seeking to influence the contractor selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the SFMTA Board of Directors finally approves the contractor selection and, if required, by the San Francisco Board of Supervisors.

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

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

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

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

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

PAGE 9

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

ALTERNATIVES CONSIDERED

The City does not have the specialized expertise or staff resources to perform all services necessary for a project of this size and complexity. Given the substantial capital investment in the Central Subway and the target project completion schedule of 2017, it is in the best interest of the SFMTA to engage a qualified consultant with specific experience and expertise in transit tunnel design management and other professional services for the execution of the Central Subway phase of the Third Street Project.

FUNDING IMPACT

The \$1.57 billion FTA New Starts Project, including this contract, is to be funded by a combination of federal, state and local money. The Project Budget & Financial Plan is set forth in Enclosure 2.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Contract Compliance Office has established a 30 percent SBE goal for this contract and has approved this calendar item. This contract is subject to approval by the Civil Service Commission and the Board of Supervisors.

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

RECOMMENDATION

It is recommended that the SFMTA Board of Directors authorize the Executive Director to advertise the RFP for Contract No. CS-155, Professional Architectural and Engineering Services for the Final Design and Construction Phases of the Central Subway Project, to evaluate proposals and select a consultant, and to negotiate a contract with the selected consultant..

Upon successful negotiations with the selected Consultant, the Executive Director will present the negotiated contract to the SFMTA for approval and request authorization to execute the contract.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

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

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

WHEREAS, Design and construction of the 1.7-mile Central Subway ("Central Subway Project") is Phase 2 of the Third Street Light Rail Transit Project; and,

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted Resolution No 02-144 on November 19, 2002, which authorized the Director of Transportation to execute Contract No. CS-138 with Parsons Brinkerhoff Quade and Douglas and PGH Wong (PB/Wong) for Professional Engineering and other support services for the Central Subway; and,

WHEREAS, The SFMTA Board of Directors adopted Resolution No 05-087 on June 7, 2005, which selected the Fourth Street alignment as the Locally Preferred Alternative (LPA) for the Central Subway Project, which alternative will be carried through the Supplemental Environmental Impact Statement/Environmental Impact Report (SEIS/SEIR) and the federal New Starts Process; and,

WHEREAS, Alternative 3B, Fourth/Stockton Alignment, was developed as a modified LPA in response to comments received through the public scoping process for the SEIS/SEIR initiated in June 2005 and also as a result of preliminary cost estimates identifying the need for Project cost savings; and,

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

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

WHEREAS, On August 19, 2008, the SFMTA Board of Directors, approved Resolution No. 08-150, adopting Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street and a construction variant to extend the tunnel another 2,000 feet north of Jackson Street, the CEQA Findings

and Statement of Overriding Considerations for the SEIS/SEIR, and the Mitigation Monitoring and Reporting Plan; and,

WHEREAS, On September 16, 2008, the San Francisco Board of Supervisors conducted a hearing and rejected all appeals to the Final SEIS/SEIR; and,

WHEREAS, On November 16, 2008, the Federal Transit Administration issued a Record of Decision for the Central Subway Project; and,

WHEREAS, On December 2, 2008, the SFMTA Board of Directors adopted Resolution No. 08-201, which authorized the Executive Director/CEO to execute Contract CS-149 with Central Subway Partnership for Professional Program Management and Construction Management (PM/CM) services; and,

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

WHEREAS, To maximize efficiency and integration of design, and to avoid delay to the Central Subway Project, the SFMTA desires that the selected final design consultant also perform feasibility studies and engineering services for a new central control facility; and,

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

WHEREAS, The SFMTA desires to issue a Request for Proposals for a Consultant to provide Professional Architectural and Engineering Service for the Final Design and Construction Phase of the Central Subway Project and to perform feasibility studies and engineering services for a new central control facility; and,

WHEREAS, The funding for consultant services under this Contract is to be furnished from federal, state and local sources; and,

WHEREAS, The Contract Compliance Office has established a 30% SBE goal for this contract; and,

WHEREAS, SFMTA staff will seek the approval of this Board prior to the execution of this Contract; and,

WHEREAS, Execution of the contract is contingent upon an approval by the Civil Service Commission and the Board of Supervisors; and,

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

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to advertise a Request for Proposals for Contract No. CS-155, Professional Architectural and Engineering Service for the Final Design and Construction Phases of Central Subway, Third Street Light Rail Project Phase 2 (which shall also include feasibility and engineering services for a new central control facility), to evaluate proposals and select a Consultant, and to negotiate a contract with the selected Consultant .

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

Secretary, Municipal Transportation Agency Board

ENCLOSURE 2
 THIRD STREET LIGHT RAIL PROJECT
 CENTRAL SUBWAY

San Francisco Municipal Railway Contract CS-155

Cost	(\$Millions in Year of Expenditure)
Conceptual and Preliminary Engineering	43.35
Final Design	42.00
Program Management & Construction Management	158.59
Contract Administration and Related Services (Legal, Testing)	64.55
Construction Contracts	1,014,693.00
Real Estate	34.14
Vehicles	29.08
Start Up	18.39
Unallocated Contingency	165,472
Total Central Subway Cost¹	\$ 1,570.30

Funding	(\$Millions)
Federal 5309 New Starts ²	942.20
State RTIP Grant/Backup	88.20
CMAQ	4.00
State TCRP Grant	14.00
Proposition 1B-2006 MTC Share	100.00
Proposition 1B-SFMTA Share	100.00
Proposition 1B- Additional SFMTA Share	40.00
Proposition K Sales Tax Funds	124.00
Other Local and Regional Sources	158.10
Total Central Subway Funding	\$ 1,570.30

1. Cost are the result of the nine-month FTA risk assessment process completed in March.
2. New Starts funding is finalized when FTA issues approval to enter Final Design.



Municipal Transportation Agency



**REQUEST FOR PROPOSALS TO PROVIDE
ARCHITECTURAL AND ENGINEERING
SERVICES FOR THE
FINAL DESIGN AND CONSTRUCTION
OF THE
CENTRAL SUBWAY PROJECT
(THIRD STREET LIGHT RAIL TRANSIT PROJECT PHASE 2)**

RFP No. CS-155
(CCO 08-1017)

Deadline for Submission: May 22, 2009 at 5:00 p.m.

Official Advertisement

The San Francisco Municipal Transportation Agency (SFMTA) seeks to obtain Architectural and Engineering Services for the Final Design and Construction of the SFMTA's Central Subway Project, Phase 2 of the Third Street Light Rail Transit Project. The contract ("Contract") for these services will be established for a period not to exceed ten years.

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

Proposers must deliver 20 hard copies and 20 CD copies of their Proposals, together with completed forms as called for in Section III, "Submission Requirements," by **5:00 p.m. on May 22, 2009** at the following address:

**Contract Management Office
SFMTA Transportation Planning and Development Division
1 South Van Ness Avenue, 3rd Floor
San Francisco, California 94103-1267
Attention: Mr. Mario Gallardo (415) 701-4348**

Prospective proposers may obtain a copy of the RFP and additional information for this RFP No. CS-155, including the forms to be submitted with the Proposal, at the address given above or by calling Mr. Mario Gallardo at (415) 701-4348.

A pre-proposal conference will be held on April 28, **2009 at 10:00 AM** at 1 South Van Ness Avenue, **2nd Floor, Atrium Conference Room**, San Francisco, California, to discuss the RFP and the Small Business Enterprise (SBE)/Non-Discrimination Requirements. Although attendance at the pre-Proposal conference is not mandatory, the SFMTA strongly urges all prospective proposers and subproposers to attend this conference. For questions regarding the Pre-Proposal Conference, contact Mr. Mario Gallardo at (415) 701-4348.

Proposers are encouraged to become familiar with the Project and its current status. Reference documents prepared during the course of conceptual and preliminary engineering, including the environmental documents, are available for viewing. To view any of the documents, please call Mr. Mario Gallardo at (415) 701-4348 to arrange an appointment.

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

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

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

Questions concerning the Scope of Services or SBE/Non-Discrimination Requirements should be submitted as per Section 6.1 of the RFP, Requests for Information or Clarification.

The selected Proposer, its Subprime Consultants, its Key Personal and its architectural and engineering Subprime Consultants and Subconsultants will be precluded from participating in the Program Management/Construction Management Services for Central Subway contract, the Program Control Systems contract, and all construction contracts for Central Subway.

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

The SFMTA's strong preference is to award the final design contract for the CSP to a single Consultant. But if the SFMTA, in its sole and absolute discretion, determines that two responsive Proposals from experienced and responsible Proposers are sufficiently strong, and that the two Proposals have complimentary strengths, the SFMTA may award a final design contract for separate parts of the Project to each of the two Proposers. Proposers are cautioned that the SFMTA will evaluate Proposals on all of the selection criteria listed in this RFP. It is unlikely that the SFMTA would shortlist a Proposal that focuses on only part of the Project requirements.

TABLE OF CONTENTS

SECTION and TITLE

	Glossary of Definitions, Terms, and Abbreviations	v
I.	Introduction	
1.1	Background	1
1.2	Project Goals	2
1.3	Consultant Services	2
1.4	Integrated Design/Construction Support Team	3
1.5	Project Planning/Timeline	3
1.6	Project Description	4
1.7	Operations Control Center Facility	12
1.8	Tentative Construction Contract Packages	12
1.9	Project Financing	15
1.10	Other Consultants	15
1.11	Prerequisites to Proposal Consideration	15
1.12	Notice to Proposers Regarding Conflicts of Interests	16
1.13	Attestation of Compliance	17
II.	Scope of Services	
2.1	Instructions for Responses to Scope of Services of this RFP and Organization of Consultant, Subprime Consultant and Subconsultants	19
2.2	Execution of Scope of Service for Final Design	21
2.3	Proposer's Scope of Services	21
2.4	Project Milestone Schedule	60
2.5	Proposer's Staffing Requirements	60
2.6	Required Technical Expertise	61
III.	Submission Requirements	
3.1	Submittal of Proposals	64
3.2	Submittal Documents – Format	64
3.3	Submittal Documents – Content	65
3.4	Cost Proposal	72
IV.	Evaluation and Selection Criteria	76
V.	Tentative Schedule	80
VI.	Terms and Conditions for Receipt of Proposals	81
VII.	City Contract Requirements	90
VIII.	Protest Procedures	92
IX.	Appendices	93

Appendices:

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

Glossary of Definitions, Terms, and Abbreviations

DEFINITIONS

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

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

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

Additional Fee(s) is the compensation paid to the Program Designer for architectural and engineering services requested by the SFMTA that are not Base Services.

Additional Services are the architectural and engineering services that the Program Designer shall provide to the SFMTA under this RFP to complete the design and Construction Bid Packages for the Project which are not Base Services.

Base Fee is the compensation paid to the Program Designer for Base Services.

Base Services are the architectural and engineering services that the Program Designer shall provide to the SFMTA that are described in this RFP to complete the design and Construction Bid Packages.

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

City means the City and County of San Francisco.

Construction Support are the services that the Program Designer shall provide to the SFMTA to support the construction of the Project.

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

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

Contract Compliance Office (CCO) is the SFMTA office that administers compliance with federal regulations governing the Disadvantaged Business Enterprises/Equal Employment and Non-Discrimination Programs, in addition to the Small Business Enterprise Program, and the City's Human Rights Commission's Local Business Enterprise/Non-Discrimination Program. The Contract Compliance reference number for this RFP is CCO No. 08-1017.

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.

Construction Documents are the end product of Final Design. Construction Documents, also known as "Bid Documents," are plans and specifications that will enable a qualified General Contractor to price and construct all permanent and temporary facilities for the project, including operating systems typically specified by performance specification (e.g. fire sprinkler, signaling and train control systems)..

Days refers to working days of the City and County of San Francisco (unless otherwise indicated), which are generally Monday through Friday, excluding holidays. The use of the term "days," "working days" or "business days" in this Request for Proposals shall be synonymous.

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

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

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

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

Final Design refers to both the process and product by which the Final Design and Construction documents are developed such that the Project can be bid, constructed, tested, and safety and security certified without change to the Construction documents, to allow Project completion within the Project's scope, schedule, and budget.

Key Personnel are those participants on the Project who are assigned tasks and duties to contribute in a substantive, measurable way to the project's development. These personnel may be employed by the Proposer or by the City.

Modified LPA refers to the modified Locally Preferred Alignment, Alternative No. 3, Option B, as adopted by the SFMTA Board on February 19, 2008.

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.

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

Preliminary Engineering refers to the both the process and product by which the design documents are developed to fix the Project scope, schedule, and budget, and allow Entry into Final Design..

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

Program Designer is the Final Design Consultant selected under this RFP.

Project Schedule is described in an available reference document (see Appendix 10) and is the schedule established to perform the Work and construct the Project.

Proposer is a firm or a joint venture of firms that submit a Proposal in response to this RFP. The terms “responder,” “firm,” “Proposer,” or “Prime Proposer,” and “Consultant” as used in this RFP are synonymous with the term Proposer.

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

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

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

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

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

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

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

Subconsultant is a third-tier design subconsultant performing a key Discipline role under a Subprime Consultant as shown on the Organizational Chart in Appendix 9.

Subprime Consultant is a second-tier design subconsultant, under contract to the Consultant, responsible for the design, delivery and construction support of a Construction Contract Package.

Subproposer refers to a consultant listed in a Proposal at the Subprime Consultant or Subconsultant level.

Sustainability refers to meeting the project needs to the greatest extent possible in the present, while preserving biodiversity and natural resources of the future.

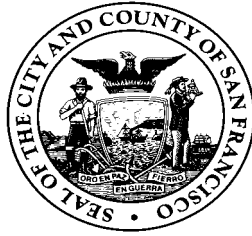
Task Order means a written directive from the SFMTA to the Program Designer to perform specified Work.

Work is the engineering and architectural services to be performed or cause to be performed by the Consultant (Program Designer).

TERMS AND ABBREVIATIONS

AC	Alternating current
ADA	American with Disabilities Act
A&E	Architectural and Engineering
BAAQMD	Bay Area Air Quality Management District
BART	San Francisco Bay Area Rapid Transit District
Board	Municipal Transportation Agency Board of Directors
BSM	Bureau of Street Use-Mapping, SF Dept. of Public Works
Caltrans	California Department of Transportation
CCO	Contract Compliance Office
CCSF	City and County of San Francisco
CER	Conceptual Engineering Report
CFR	Code of Federal Regulations
CPUC	California Public Utilities Commission
DBI	Department of Building Inspection
DC	Direct Current
DOT	U.S. Department of Transportation
DPT	Department of Parking and Traffic
DTIS	Department of Telecommunications and Information Services
EEO	Equal Employment Opportunity
EIS / EIR	Environmental Impact Study / Environmental Impact Review
EPB	Earth Pressure Balance
FFGA	Full Funding Grant Agreement
FM	California State Fire Marshall
FTA	Federal Transit Administration
GO	General Order
HRC	Human Rights Commission
HVAC	Heating, Ventilation, and Air Conditioning
IOS	Initial Operating Segment of the Third Street Light Rail Project
KV	Kilovolt
LPA	Locally Preferred Alternative
LRV	Light Rail Vehicle
LRT	Light Rail Transit
MEP	Mechanical, Electrical, Plumbing
MTC	Metropolitan Transportation Commission
Modified LPA	Locally Preferred Alternative
Muni	San Francisco Municipal Railway
NEC	National Electric Code
NFPA	National Fire Protection Association
NOP	Notice of Preparation
NTP	Notice To Proceed
OCS	Overhead Contact System
O&M	Operations and Maintenance
OSHA	Occupational Safety & Health Administration
QA / QC	Quality Assurance / Quality Control
PA	Public Address
PB/Wong	Parsons Brinckerhoff/PGH Wong
PCS	Program Controls System
PE	Preliminary engineering
PG&E	Pacific Gas & Electric
PM/CM	Program Management/Construction Management

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



REQUEST FOR PROPOSALS TO PROVIDE
ARCHITECTURAL AND ENGINEERING SERVICES
FOR THE FINAL DESIGN AND CONSTRUCTION OF THE
CENTRAL SUBWAY PROJECT (THIRD STREET LIGHT RAIL PROJECT PHASE 2)

NOTICE:

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

I. INTRODUCTION

1.1 Background

San Francisco Municipal Transportation Agency's (SFMTA) Third Street Light Rail Transit (LRT) Project is the most significant capital investment in generations for the seventh largest transit system in the nation. Phase 1 of the 6.9-mile two-phase project began revenue service in April 2007, restoring light rail service to the heavily transit-dependent Third Street corridor of San Francisco for the first time in 50 years.

The Phase 2, Central Subway Project, will provide rail service to the Financial District and Chinatown, the most densely developed areas of San Francisco. The new 1.7 mile light rail line will serve regional destinations, such as Union Square, Moscone Convention Center, Yerba Buena, and AT&T Park, as well as connect directly to BART and Caltrain, the Bay Area's two largest regional-commuter rail services.

The primary purpose of the Third Street LRT Project is to accommodate existing and future transit ridership in the corridor with greater reliability, comfort and speed. By 2030, the San Francisco Planning Department projects a 26% percent increase in overall corridor population and a 61% percent increase in corridor employment. These increases are greater than the increases anticipated for the City as a whole. The Central Subway is able to serve both the mobility needs of existing land uses, as well as future development (with 76,650 riders projected for 2030).

The Third Street LRT Project will significantly improve travel times, reducing a current 46-minute bus trip between the southern terminus in Visitacion Valley and the northern terminus in Chinatown by 15 minutes to a more reasonable 31-minute LRT ride. For riders using only the

Central Subway portion of the project, travel times will be reduced to less than half of current travel times, from a 20-minute bus ride to a 7-minute subway ride between the Caltrain terminal and Chinatown. The Central Subway will allow transit to bypass the congestion faced by traffic and buses on City streets. The estimated cost of the Central Subway Program is \$1.52 billion.

In August 2002, the SFMTA received FTA approval to begin Preliminary Engineering for Phase 2 - Central Subway. In early 2003, the City approved a contract with the joint venture firm of Parsons Brinckerhoff Quade & Douglas and PGH Wong Engineering (PB/Wong) to provide conceptual/preliminary engineering and environmental services for the Central Subway Project. PB/Wong and City staff completed preliminary engineering for the Central Subway Project and bid documents for utility relocations at Moscone and Union Square / Market Street (UMS) Stations and progressing tunneling design.

On November 26, 2008 the FTA issued a Record of Decision (ROD) announcing the completion of the environmental process for the Central Subway project. On January 6, 2009, the City approved a contract with the joint venture firm AECOM/EPC Consultants (Central Subway Partnerships) to provide program management and construction management services for the Central Subway Project.

1.2 Project Goals

Specifically, the SFMTA has seven principal goals for the Project:

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

1.3 Consultant Services

The SFMTA's primary objective under this RFP is to obtain resources and expertise by contracting with a professional services firm with proven experience and expertise in

architectural and engineering services for final design and construction support of large, complex rail transit projects. The selected Proposer must meet and/or accept the conditions specified in this RFP and must be able to commit substantial resources to the Project for its entire duration, understanding that the Project poses unique management, engineering, construction, and community challenges.

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

SFMTA intends to enter into a Contract with the selected Proposer for a term not to exceed ten years. Under the Contract, the Proposer will provide architectural, engineering and related services for Final Design and Construction Support for the Central Subway Project. In addition, the Proposer will provide services for feasibility and conceptual studies, and preliminary engineering; and may provide final design services for a new Operations Control Center facilities and/or services to design and replace the existing Operations Control Center systems.

The services described in this RFP will constitute Base Services under a negotiated Contract for which the SFMTA will pay the selected Proposer a fixed fee and reimburse allowable expenses. The selected Proposer shall also provide related Additional Services as requested by the SFMTA, for which the SFMTA will pay the selected Proposer a separate fixed-fee and reimburse allowable expenses.

The SFMTA reserves the right to allocate funding to the Contract on a task-by-task and/or phase-by-phase basis. The SFMTA also reserves the right to modify or delete any task or subtask or service, identified in this RFP or in the Proposer's Proposal, at any time.

1.4 Integrated Design/Construction Support Team

The selected Consultant will establish, coordinate, and manage the tasks of an Integrated Design and Construction Support Team (Integrated Team) that will include personnel from the Subprime Consultants, Subconsultants, SFMTA, other City departments, and the selected Proposer. The SFMTA will work with the successful Proposer to structure an effective integrated team.

The Integrated Team will present opportunities for staff development. The team will include staff from multiple disciplines with varied experience. Consultant's, Subprime Consultants', Subconsultants' and the City's staff will have the opportunity to learn from each other for the benefit of the Project. The selected Consultant will also provide mentoring and development opportunities for Subprime, Subconsultant and City staff working on the Project. City staff will provide leadership in areas where City staff have greater expertise and in areas where the owner must lead.

The Integrated Team will work side-by-side, co-located, in an office to be provided by the Consultant in San Francisco, preferably along or adjacent to the Project alignment, accessible to existing public transportation facilities.

1.5 Project Planning/Timeline

The Final Environmental Impact Statement/Environment Impact Report (Final EIS/EIR) for the Third Street Light Rail Transit Project was completed and published in November 1998. The City

Planning Commission certified the Final EIS/EIR on December 3, 1998. On January 19, 1999, the Public Transportation Commission adopted the environmental findings for the Project pursuant to CEQA, including mitigation measures as set forth in the Project's Final EIR and Mitigation Monitoring Report. The FTA issued a ROD for the Initial Operating Segment (IOS) of the Project (the Third Street LRT Phase 1 or T-Third) on March 16, 1999, under NEPA. Though no New Starts federal funds were used for the T-Third project phase 1 project, the ROD did permit acquisition of limited right-of-way for the Phase 2 Central Subway that was identified in the 1998 FEIS/FEIR. The ROD deferred approval of Phase 2 until the Central Subway was incorporated into the RTP and Project funding was identified.

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

PB/Wong initiated preparation of a Supplemental EIS/Supplemental EIR (SEIS/SEIR) in 2005 for the Phase 2 Central Subway refined alternatives, and progressed along concurrently with the continued Preliminary Engineering efforts. Also, a panel of construction experts working with the Project design team undertook a cost reduction analysis to identify ways of reducing the cost of the Project without compromising its overall purpose and need. In response to public input during the scoping process and recommendations from the cost reduction effort, a new option for the Fourth/Stockton Alignment design was identified. The original Fourth/Stockton Alignment was designated as Alternative 3A and the modified Fourth/Stockton Alignment was designated as Alternative 3, Option B or Alternative 3B (Modified LPA).

In May 2006, the environmental team under PB/Wong re-initiated work on the SEIS/SEIR incorporating Alternative 3B. The Draft SEIS/SEIR was released for public review on October 17, 2007. On February 19, 2008, the SFMTA Board of Directors approved the Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail on Fourth Street, as the modified Locally Preferred Alternative (the "Modified LPA") for the construction of Central Subway. After receiving public responses, the Final SEIS/SEIR was released to the FTA on April 14, 2008.

The Final SEIS/SEIR for Phase 2 (Central Subway) was adopted by the SFMTA Board on August 19, 2008. The FTA issued the ROD on November 26, 2008.

The Project will prepare and issue seven construction contract packages for bid solicitation. These contract documents will be the results of the final design process and are expected to be completed between December 2009 and July 2012. Each construction contract package will be advertised for competitive bids upon design completion. The construction process will begin in 2010 and be completed in 2017. The Systems, Track and Surface Construction Contract, is expected to be completed with Safety and Security Certification, Startup and Commissioning in July 2018. Pre-Revenue Operations will follow completed construction with Revenue Operations expected in 2018.

1.6 Project Description

The following description is based on the selected Modified Locally Preferred Alternative (LPA) No. 3, Option B or Alternative 3B. The Modified LPA alignment is shown in Figure 1-1. The Proposals to this RFP shall be based on this Modified LPA alignment.

Construction will extend light rail service 1.7 miles north from the T-Third line terminus located at Fourth and King Streets via Fourth and Stockton Streets to the Central Subway terminus in Chinatown. The project shall be designed and constructed to allow for a light rail extension to the Northern Waterfront in a subsequent project. After stopping at the station platform on Fourth at King Streets, light rail vehicles will continue north on Fourth Street at grade, to a double-track underground portal between Bryant and Harrison Streets under I-80. (See Figures 1-1 and 1-2.)

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

In order to accommodate light rail south of the portal, Fourth Street will be converted from one-way southbound to two-way traffic between Bryant/Townsend Street. On Fourth Street, the LRVs will operate in a semi-exclusive right-of-way, as described below. In a semi-exclusive operation, trains are physically separated from adjacent traffic except at intersections and at the 4t and Brannan surface station.

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

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

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

Immediately north of Howard Street, the alignment will descend and continue in a side-by-side configuration to permit a crossing under the Market Street BART tunnels. Work at the crossing will require close coordination with BART, establishing allowable limits of movement of the existing Market Street tunnels, and establishment of a means to adjust the alignment of the existing Market Street tunnels and underground to correct undesirable movement due to tunneling.

There will be a combined Union Square/Market Street Station, located on Stockton between Geary and Market Streets, with a platform centered on O'Farrell Street (see Figure 1-4). It will have a common mezzanine (concourse) and one platform level that would serve both northbound and southbound trains. The south end of the Union Square/Market Street Station will connect to the east end of the Powell Street Station Mezzanine. At the north end of the Station, the main entrance will be located at the southeast corner of Union Square on Geary Street just west of Stockton Street. The entry will include escalators, elevators, and stairs and will require modifications to the Union Square garage and park. An emergency exit is located on O'Farrell Street. The existing Powell Street Station Apple Store entrance will be enlarged to provide emergency egress for the UMS Station. Emergency ventilation shafts will extend west

of Stockton Street under Ellis Street, rising inside the existing vertical shaft of the Ellis/O'Farrell Garage at 123 O'Farrell Street to a height of 26 feet above the garage roof. This ventilation work will require modifications to the garage. The emergency ventilation will be designed in cooperation with BART to avoid impacts to ventilation in the existing Powell Street Station. Existing sub-sidewalk space adjacent to the Powell Street Station and BART Station facilities will be modified as needed to handle the flow of passengers transferring between the Powell Street and UMS stations and maintain the safety and security of the Powell Street station.

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

The Chinatown Station will be located on Stockton Street between Clay and Jackson Streets (see Figure 1-5). It will have a mezzanine, concourse and one platform level for north and southbound trains. The main pedestrian entrance will be constructed on the west side of Stockton Street south of Washington Street (933-949 Stockton Street) to accommodate escalators, stairs, elevators, and emergency ventilation shafts. Emergency stairs will be provided by a sidewalk hatch located in a bulb-out on the west side of Stockton Street between Washington and Jackson Streets.

Summary of Station Locations

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

CENTRAL SUBWAY fourth/stockton alignment option B STATION LOCATIONS

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

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

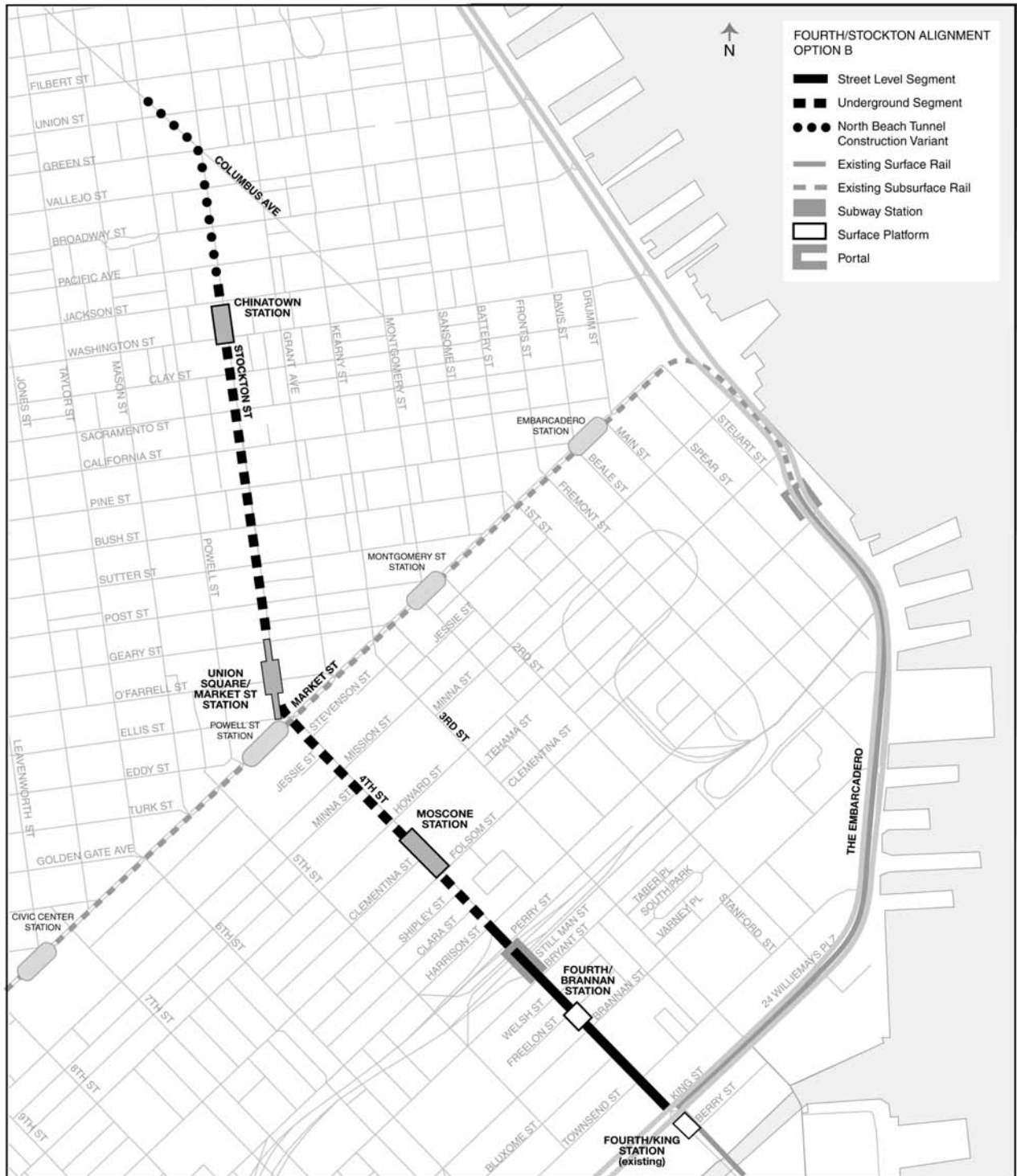


FIGURE 1-2: FOURTH/STOCKTON ALIGNMENT OPTION B PROFILE

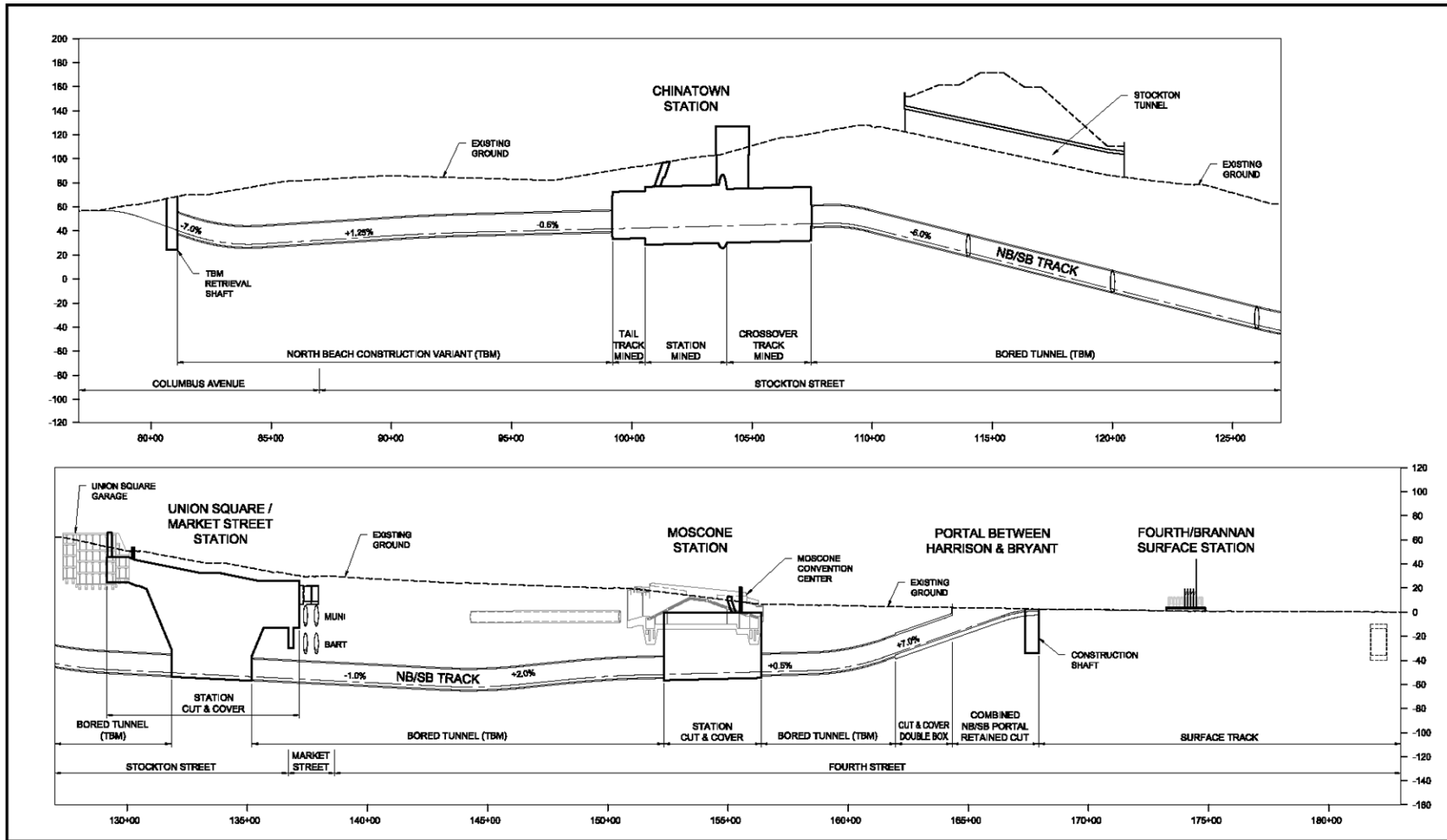


FIGURE 1-3: FOURTH/STOCKTON ALIGNMENT OPTION B - MOSCONE STATION

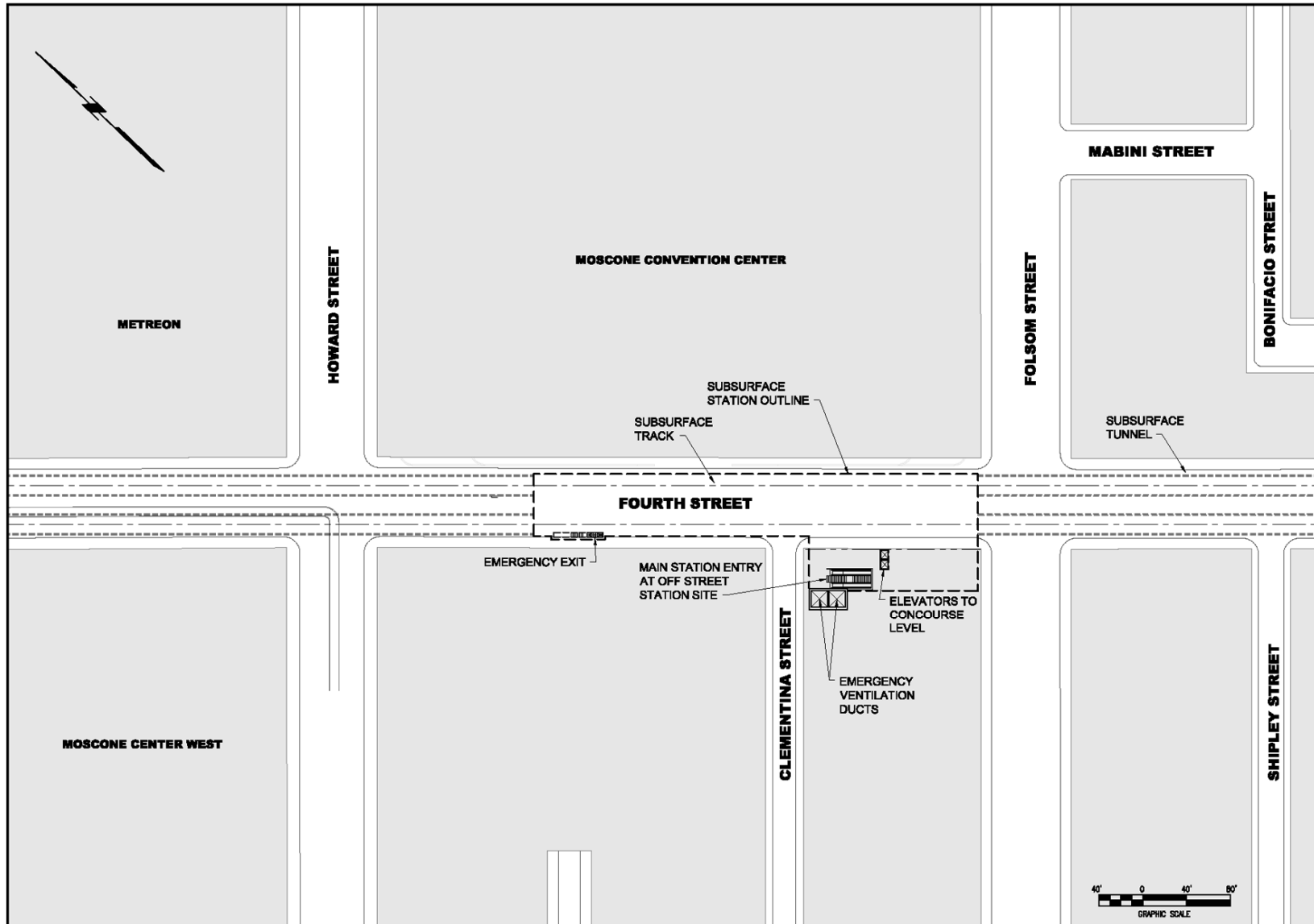


FIGURE 1-4: FOURTH/STOCKTON ALIGNMENT OPTION B - UNION SQUARE/MARKET STREET STATION

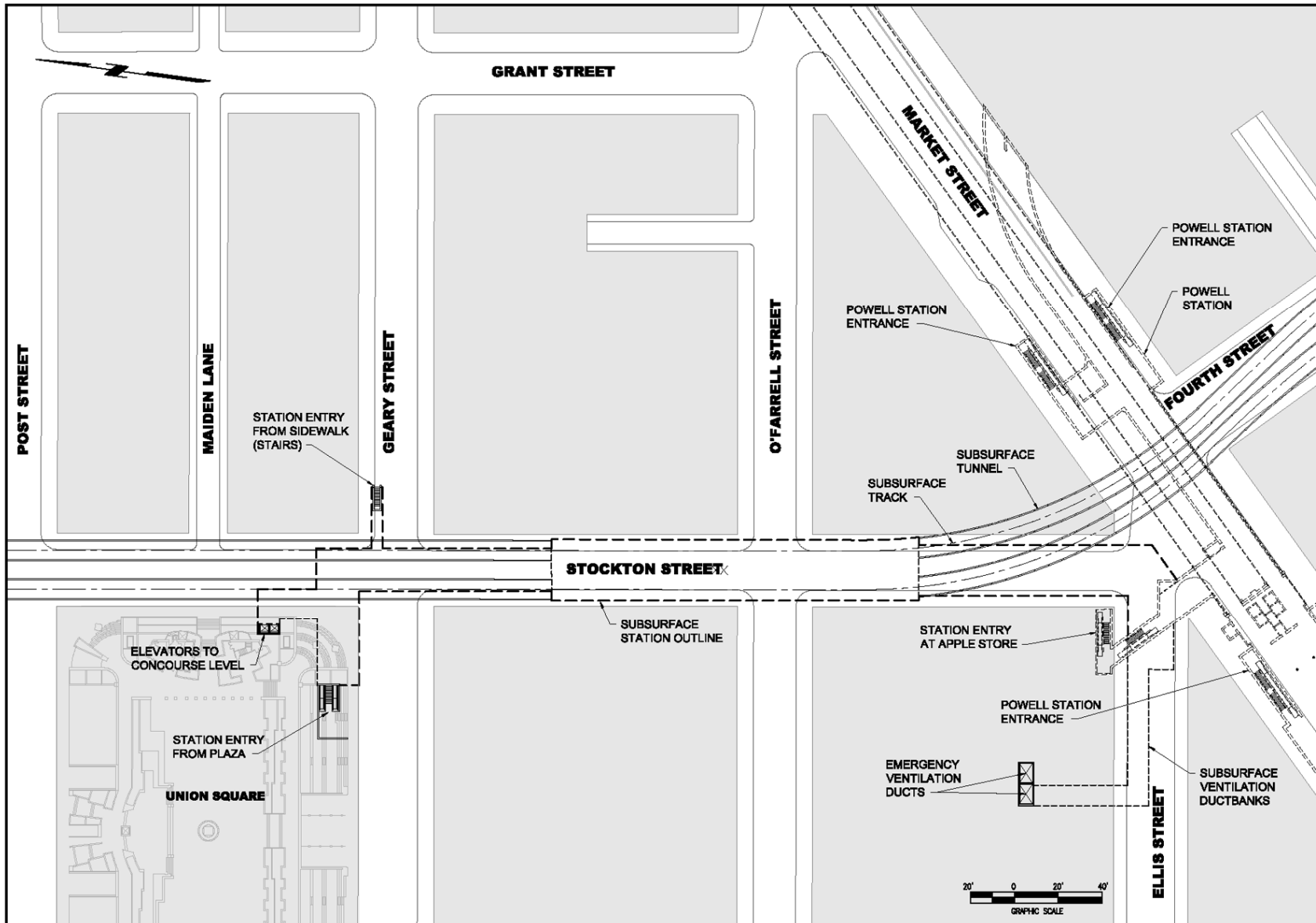
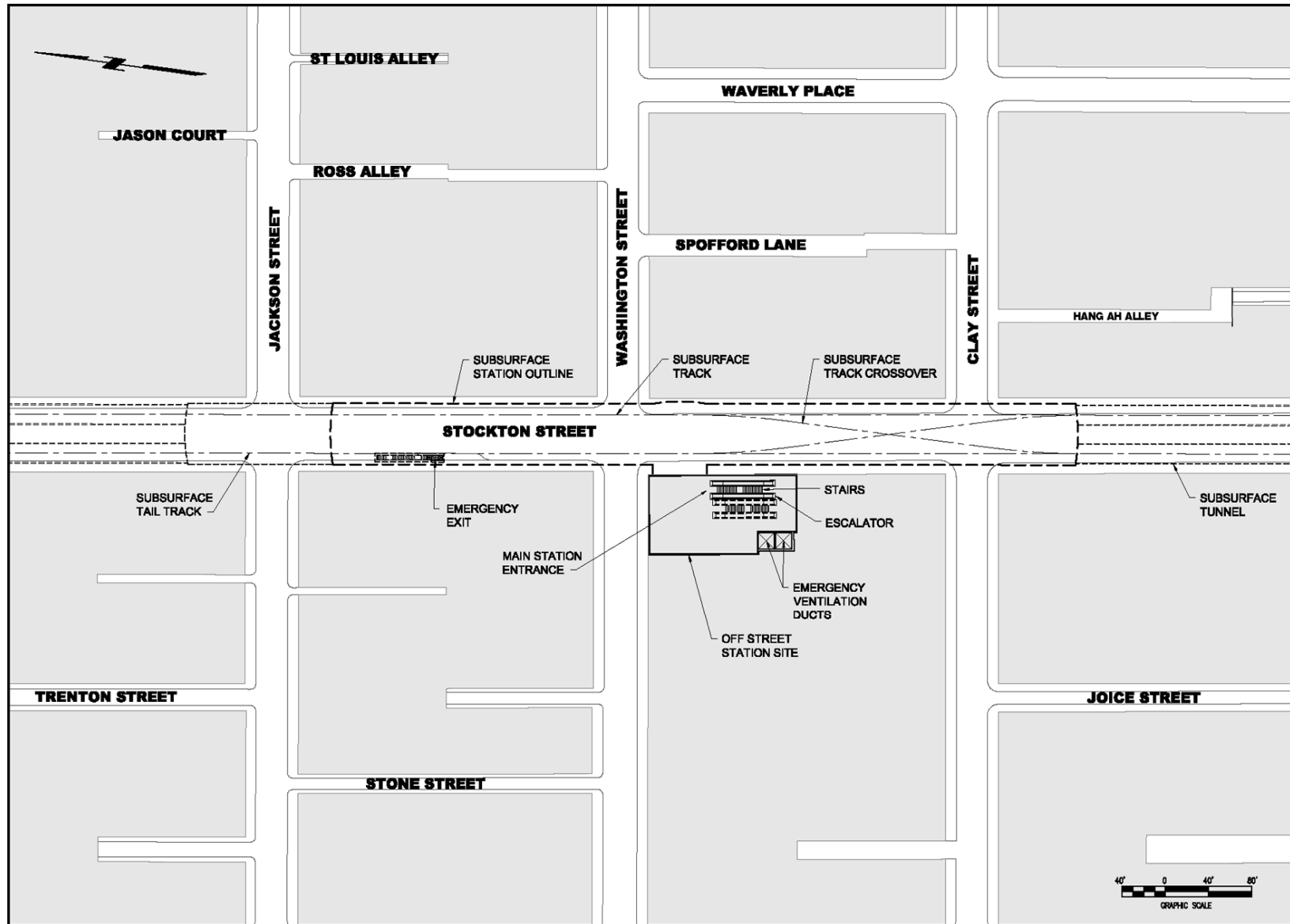


FIGURE 1-5: FOURTH/STOCKTON ALIGNMENT OPTION B - CHINATOWN STATION



1.7 Operations Control Center Facility

The SFMTA intends to build new Operations Control Center (OCC) facilities, to host a suite of integrated systems, with the goals: to facilitate meeting SFMTA's strategic objectives of improving transit reliability and delivery of other real-time transportations functions; and to accommodate command-and-control functions for today's transportation needs and the Central Subway as well as expansion capability for future service expansions. The OCC facilities are planned at two locations: a new primary facility at a to be determined (TBD) location; and a secondary "back-up" facility which will either be a retrofit of the existing MUNI OCC or at a new TBD location. System redundancy measures shall include a separate, secondary OCC, fully functional and equipped to serve as a backup control center for an extended length of time. Space within the existing OCC is very limited and interruption of service during construction is not an option. It is therefore necessary to establish interim arrangements during the transition through a number of system and component cutovers. These interim transitions will require significant planning and field investigation to ensure that each new component or system not only delivers as required to support the system, but also de-energizes, uninstalls, disconnects the old system or components without impacting ongoing operations. In addition, improvements to the existing building(s) and building infrastructure systems may be required as part of the development of a secondary OCC. As part of the Basic Services, the Consultant shall assist the SFMTA in site evaluation and planning, performing feasibility studies and conceptual and preliminary engineering for both the primary and secondary OCC facilities. Additionally, as an option to be exercised by the SFMTA, the Consultant, as directed by the SFMTA, will complete the final design and construction documents for the OCC primary and secondary facilities, provide cutover planning and construction support services to assist in construction/retrofit of the primary and secondary facilities.

1.8 Tentative Construction Contract Packages

For this RFP, Proposers shall assume that the SFMTA will proceed with the following Central Subway construction contracting strategy:

1.8.1 Construction Contract Package No. 1--Utilities Contract 1: Relocation of utilities for Moscone Station (MOS) on 4th St between Howard and Folsom and utilities at the Tunnel Portal on 4th St between Harrison and Bryant.

Construction support for this contract is part of the scope of this RFP, but Final Design is not.

1.8.2 Construction Contract Package No. 2--Utilities Contract 2: Relocation of utilities under sidewalks at Union Square/Market Street Station (UMS), including relocation of existing private sub-sidewalk basement facilities into adjacent building and building closure walls where needed and construction of an overhead contact system for temporary trolley coach reroute on Mason Street.

1.8.3 Construction Contract Package No. 3--Tunneling Contract: Tunneling from I-80 to North Beach, including Tunnel Boring Machine (TBM) procurement, launch box, cross passage, extraction shaft, utility support, portal construction, relocations and traffic control as required, mitigation measures to minimize and remediate the effects of settlement due to tunneling, protection of trees near extraction shaft, and temporary utilities in tunnels.

1.8.4 Construction Contract Package No. 4-- Union Square/Market Street Station

Contract: Includes traffic routing, temporary curb, temporary streetlights, temporary traffic signals, utility support and workaround as needed, mitigation measures to prevent changes to groundwater and minimize and remediate the effects of settlement due to the combination of tunneling and excavation, connection to and capacity improvements to the Powell Street Station, modifications to the Powell Street Station Apple Store entrance, the Ellis Street and Union Square garages, and Union Square Park, finishes, railings, Agent Booths, doors, gates, AC substation, elevators, escalators, lighting, emergency ventilation fans including local controls, HVAC, fire alarm, suppression and protection, interface relays, panels, and wiring to provide status indications and remote control of station systems and interfaces to communication systems and equipment installed under Contract Package No. 7, conduit and protection devices between interface and power panels doors, temporary power, restoration of Stockton Street overhead contact system (OCS) and removal of temporary OCS, streetlights, traffic signals, curbs, station waterproofing and waterproofing over underground spaces including sub-sidewalk basements, sidewalks, pavement restoration and resurfacing, interface and systems testing, manuals, training, station safety and security certification, start-up and commissioning, as-built and record documents, and furnishing of specified spare parts. An existing sub-sidewalk space adjacent to the Powell Street Station and BART station facilities will be modified as needed to handle the flow of passengers transferring between the Powell Street and UMS Stations and maintain the safety and security of the Powell Street Station.

1.8.5 Construction Contract Package No. 5--Chinatown Station Contract: Includes traffic routing, utility support and workaround as needed, mitigation measures to prevent changes to groundwater and minimize and remediate the effects of settlement due to the combination of tunneling and excavation, finishes, railings, Agent Booth, doors, AC and DC Traction Power substations, elevators, escalators, lighting, emergency ventilation fans including local controls, HVAC, fire alarm, suppression and protection, interface relays, panels, wiring to provide status indications and remote control of station systems, interfaces to communications systems and equipment installed under Contract Package No. 7, conduit and protection devices between interface and power panels and crossover cavern, station waterproofing and waterproofing over underground spaces, utility relocation as needed, repair of utilities disturbed during construction, sidewalk and pavement restoration and resurfacing, interface and systems testing, manuals, training, station safety and security certification, start-up and commissioning, as-built and record documents, and furnishing of specified spare parts.

1.8.6 Construction Contract Package No. 6--Moscone Station Contract: Includes traffic routing, utility support and workaround, mitigation measures to minimize and remediate the effects of settlement due to the combination of tunneling and excavation, finishes, railings, Agent Booths, doors, AC and DC Traction Power substations, elevators, escalators, lighting, emergency ventilation fans including local controls, HVAC, fire alarm, suppression and protection, doors, interface relays, panels, and wiring to provide status indications and remote control of station systems and interfaces to communications systems and equipment installed under Contract Package No. 7, conduit and protection devices between interface and power panels, station waterproofing and waterproofing over underground spaces, pavement restoration and resurfacing, interface and systems testing, manuals, training, station safety and security certification, start-up and commissioning, as-built and record documents, and furnishing of specified spare parts.

1.8.7 Construction Contract Package No. 7--Surface, Trackwork and Systems Contract:

This contract package includes removal of temporary tunnel utilities; and completion of all remaining work needed to test, safety and security certify the Project and enable the SFMTA to satisfactorily operate and maintain the project as intended, including but not limited to construction of tunnel invert concrete, track, emergency walkways, railings, lighting, wet standpipes, undercar deluge, remaining conduits in tunnel and stations, Radio base stations and antennae (includes both SFMTA & Emergency Services systems), Overhead Contact System, traction power feeders and detection system, switch machines, PA, CCTV, SCADA, emergency and other communications, Fare Collection, Ticket Vending Machines (TVM), Advanced Train Control Systems (ATCS) compatible with existing LRV onboard equipment, and train destination audible and visual announcement displays and other passenger information systems, system installations at four (to be determined) monitoring/control centers, Station Signage, demobilization and clean-up of tunnel staging areas, surface work south of Harrison Street, including traffic routing, 4th and Brannan Surface Station construction, adjustment or relocation of utilities in conflict with the track, curb, sidewalk, and pavement restoration and resurfacing; project-wide integration testing, manuals, training, safety and security certification, start-up and commissioning, as-built and record documents, and furnishing of specified spare parts. Systems installations include all work required to install and integrate systems at the SFMTA Operations Control Center (OCC). At the SFMTA's discretion, scope will include replacement of legacy systems at the OCC, and full integration with systems in the Central Subway; this work may include replacement of system elements that are physically located in the existing Metro subway, or other remote locations, but are controlled from the OCC, including: passenger information systems, fire alarm, SCADA, and emergency phones. This work also includes work at the OCC facilities necessary to support systems installations. If the SFMTA exercises its option for the Final Design of the OCC work, construction of the OCC Final Design are included in this Construction Contract Package; this could include construction of related facility improvements of the existing OCC at 131 Lenox, as well as improvements at an alternate "interim" site to make all facility modifications necessary to implement an interim primary OCC, to serve until a new primary OCC could be constructed and made operational.

Additionally, at the SFMTA's sole discretion, this work may include construction and/or renovation, outfitting and start-up of a new primary Operations Control Center (OCC) at a TBD location. This work would include all building structural elements, operating theater, equipment rooms, offices, shop areas, storage areas, elevators, escalators, lighting, environmental systems, power, building security, emergency and alarm systems, wiring, communications, parking facilities as required, finishes and furnishings. This work would also include installation of all OCC systems, extended from the interim OCC as required, and integration to implement full redundancy with the secondary OCC. This work would include cutover without impacting revenue service, testing, training, documentation, warranties and spare parts.

The following are the current estimated construction cost for each construction contract:

Construction Contract	Cost
Utility Contract 1	\$ 5,224,000
Utility Contract 2	\$ 3,196,000
Tunnel Contract	\$ 203,257,000
Union Square/Market Street Station Contract	\$ 169,127,000
Chinatown Station Contract	\$ 146,370,000
Moscone Station Contract	\$ 29,823,000
Surface, Trackwork and Systems Contract	\$ 190,659,000
Optional New Primary OCC Construction Contract elements	\$136,000,000

1.9 Project Financing

A total of \$541.56 million in state and local capital funding has been committed to the Central Subway Project. The SFMTA is currently seeking \$762.20 million in federal "New Starts" funding. The SFMTA began receiving federal funds in 2003.

1.10 Other Consultants

The selected Proposer must work closely and cooperatively with the SFMTA's other consultants that will have responsibility for other aspects of Program delivery and implementation. As described above, PB/Wong has provided conceptual/preliminary design services for the Project. The SFMTA has contracted with Central Subway Partners, a joint venture of AECOM and EPC Consulting, to provide Program Management/ Construction Management (PM/PC) services. The SFMTA will within the year also issue an RFP and select a Program Controls System (PCS) consultant.

The PM/CM and PCS consultants will provide the SFMTA with Design Management and Project Controls. However, the selected Proposer will still be relieved of its own responsibility of managing the design team and its own responsibility to maintaining cost controls and schedules to design the Project in accordance with construction budgets and schedules.

All work under this RFP shall be subject to the Master Program Management Plan/Schedule and the overall Project Risk Management Plan, Master Construction Management Program/Plan, all of which will be developed and monitored under the PM/CM and/or the PCS consultant contract(s).

1.11 Prerequisites to Proposal Consideration

For its Proposal to be considered by the SFMTA, a Proposer must meet each and every condition listed below. A Proposer must demonstrate that it has the requisite experience and expertise to complete the Project by possessing the following minimum Prerequisite Experience/Qualification by the time it submits its Proposal.

- 1.11.1 The Proposer must have within the last ten years provided the majority of final architectural and engineering design for at least one new underground transit tunnel and station project with an actual total construction cost of at least \$250 million. In addition,

the Proposer must have either provided or is in the process of providing engineering support services during construction for that same project.

In providing the above Prerequisite Experience/Qualification information, the Proposer must list the project(s) it performed, the tasks and roles for which it was responsible, the tasks and roles that it self-performed and the tasks and roles that it subcontracted, the dates of its services, the value of the professional service contract for the design and for the support of construction, and the project owner's contact information. A Proposer may not claim as prerequisite experience for the Central Subway Project those projects that its staff worked on when they were employed by other firms. If the Proposer is a joint venture or association, then at least one of partners of the joint venture/association must meet the Prerequisite Experience/Qualification requirement.

1.11.2 The Proposer must be able to carry and maintain the required minimum professional liability (error and omission) and general liability insurance coverage throughout the duration of the contract, as specified in the Professional Service Agreement under Appendix 3. The Proposer must furnish a letter from its insurance carrier indicating that the Proposer has the capacity to carry and maintain for the duration of the contract the minimum professional liability insurance coverage specified.

1.11.3 By submitting a proposal, a Proposer agrees to assume the work that has been performed by PB/Wong and City staff up to the date of the Notice to Proceed for the Contract and then advance the Work in strict accordance with the referenced Project Schedule, to enable the on-time bidding of the TBM Tunneling, and advance Station construction documents to 65% completion as required by for FTA for its approval of a Full Funding Grant Agreement (FFGA) for the Project, and provide support for construction, testing, startup, commissioning, and activation of full revenue operations. The SFMTA recognizes that the selected Proposer will need to confirm the existing design calculations, approach and assumptions. Consultant shall be prepared to spend no more than 60 days from NTP to review the existing design work and identify all portions of the design that it believes cannot be constructed, or that do not meet project design requirements or objectives, code, or safety or security requirements.

The Proposer may assume that the AutoCAD and MS Word files related to Preliminary Engineering drawings and outline specifications, as prepared by PB/Wong and City staff, will be available to the Proposer after the Notice to Proceed.

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

1.12 Notice to Proposers Regarding Conflicts of Interest

The Program Designer, its Key Personnel, its Subprime Consultants, elected pursuant to this RFP will be prohibited from pursuing professional service contracts with the City relating to the Central Subway and from being part of any or construction/contractor team engaged in other elements of the Program. This restriction also applies to Subconsultants under the Agreement, but may be waived by the SFMTA in writing its sole discretion for those Subconsultants whose work does not pose an actual, potential or perceived conflict of interest. A request for such waiver will be reviewed by the SFMTA on the case by case basis. The request must be made in advance of the Subconsultant providing services and must be in writing.

Specifically, to eliminate potential for conflicts of interest, perceived or otherwise, the selected Consultant, its affiliated, subsidiary or parent companies, its Subprime Consultants, and Subconsultants (including any entity with a substantial ownership interest in or substantially owned by a Subprime Consultant or Subconsultant), and the Consultant's Key Personnel shall be precluded from participating in the following:

- 1.12.1 Providing services to the Central Subway Program Management/Construction Management contract.
- 1.12.2 Providing services to the Program Controls System RFP or contract (PCS consultants).
- 1.12.3 Bidding on or having any other financial interest or participation in the seven construction contracts for the Central Subway Project, or the construction contract for the new primary OCC.

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

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

Depending on the final scope of the Contract, the employees of the Proposer to which this Contract is awarded, as well as its subproposers' employees, may be required to submit to the City, within 10 calendar days of the City notifying the successful Proposer that the City has selected the Proposer, a Statement of Economic Interest, California Fair Political Practices Commission Form 700, under the requirements of California Government Code Section 7300 et seq. and San Francisco Campaign and Governmental Code Section 3.1-102. A copy of the Form 700 may be found at the following website: <http://www.fppc.ca.gov/index.html?id=36>

1.13 Attestation of Compliance

It is the policy of the SFMTA that only employees identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from Proposers or potential Proposers seeking to influence the Consultant selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the SFMTA Board of Directors finally approves the Consultant selection and, if required, by the San Francisco Board of Supervisors.

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

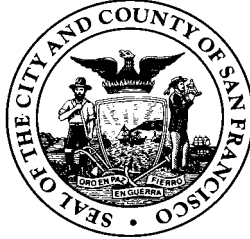
All firms, whether Proposers, proposed Subprime Consultants or Subconsultants responding to this RFP are notified that any written communications sent to one or more members of the SFMTA Board of Directors concerning a pending contract solicitation shall be distributed by the SFMTA to all members of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

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

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

All lobbyists or any agents representing the interests of the Proposer and any Subprime Consultant or Subconsultant shall also be subject to the same prohibitions.

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



REQUEST FOR PROPOSALS TO PROVIDE
ARCHITECTURAL AND ENGINEERING SERVICES
FOR THE FINAL DESIGN AND CONSTRUCTION OF THE
CENTRAL SUBWAY PROJECT (THIRD STREET LIGHT RAIL PROJECT PHASE 2)

II. SCOPE OF SERVICES

2.1 Instructions for Response to Scope of Services of this RFP and Organization of Consultant, Subprime Consultants and Subconsultants

The SFMTA will negotiate with the selected Proposer a final Scope of Services to be incorporated into the Contract based on the scope of services described in this RFP and the Agreement. However, the SFMTA reserves the right to refine which tasks, or parts of the Scope of Services, it will assign to the Proposer.

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

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

For the tasks/services identified in its Proposal, the Proposer must recommend the appropriate number and type of qualified personnel to complete the tasks set out in the Proposal. The Proposer must clearly identify the positions/titles that are to be held by Proposer's staff. The classifications of qualified personnel to be provided by the Proposer under this RFP may include, but are not limited to, the following: design managers, architects, historic preservation architect, archeologist, geotechnical engineers, civil engineers, structural engineers, mechanical engineers, electrical engineers, signal engineers, systems engineers, safety and security, and other specialists.

Consistent with the project goal of supporting economic revitalization and development initiatives along the project alignment, the Proposer should strive to be creative in structuring its team to include as many qualified firms with local expertise (including businesses with experience working in the vicinity of or traditionally providing services in the vicinity of the Project alignment) at the Consultant, Subprime Consultant and Subconsultant Proposer levels. The SFMTA expects that firms with locally based expertise will be assigned responsible roles at all levels of the project as prime, principal or associate member(s). Furthermore, to maximize participation from firms with locally based expertise, different A/E firms with locally based expertise should have a meaningful role at the Subprime and Subconsultant levels in the design and support of construction for each construction contract package.

The Consultant shall be responsible for the overall management, coordination and quality control of all design work, including work performed across design disciplines and designers from City staff. Due to critical elements and/or program-wide requirements, the Consultant shall directly self-perform systems integration; coordination/ integration of designs across contracts and disciplines for consistency and quality; management of project interfaces; and core final design tasks identified as systems tasks, including emergency ventilation, tunnel train control and destination routing and annunciation, and tunnel radio systems; quality, schedule, cost control of design and construction support; and ensure that appropriate sustainability is integrated into the overall design, into each construction contract packages, and into the constructed project.

The Consultant shall self-perform the Subprime role on at least one of the Subprime construction contract package(s). In addition, the Consultant shall self-perform at least one of the disciplines for the construction contract package for which the Consultant is performing in the Subprime role.

A Subprime consultant shall be responsible for the design, delivery and engineering support during construction for at least one construction contract package, including the management and coordination of the work of assigned staff and Subconsultants. A Subprime consultant shall self-perform at least one of the key disciplines for the construction contract package that it is a Subprime.

Subconsultants shall be responsible to a Subprime Consultant. A Subconsultant can participate in more than one subconsultant discipline and construction contract package.

2.1.1 Prohibition of Exclusive Subcontracting Relationships

To maximize potential contracting opportunities and to ensure that the most highly qualified team of consultants is selected, the SFMTA strongly encourages qualified Subprime Consultants and Subconsultants to participate (be listed) in multiple Proposals. Therefore, a Proposer shall not require that a Subconsultant or a Subprime Consultant not participate in or be listed in any other Proposal, except as specifically provided herein. The SFMTA considers such restrictions to constitute collusion in contracting. Evidence that a Proposer or a proposed Subprime Consultant has required an exclusive relationship with a Subprime Consultant or Subconsultant may be grounds for SFMTA's rejection of the Proposal as nonresponsive to the RFP, assessment of liquidated damages, or termination of the Contract. This restriction shall not apply to Subprime Consultants that have actively participated in the formation of a Proposer's bid price and that have had access to confidential or proprietary financial information of a Consultant Proposer, such that the Subprime Consultant's participation in another Proposal would provide an unfair advantage to any Proposer.

2.2 Execution of Scope of Services for Final Design

The SFMTA expects to issue Final Design NTP upon the SFMTA's receipt of FTA approval to enter into Final Design, which the SFMTA anticipates it will receive in October 2009. Prior to receipt of FTA approval, with the initial Notice to Proceed (NTP), the Consultant will advance station and tunnel construction design to the 65 percent level of completion or as otherwise required by the FTA FFGA approval for the Project.

2.3 Proposer's Scope of Services

The Consultant shall be ultimately responsible for the design of the Project. The Consultant shall complete the design for Construction Contract Packages Nos. 2 through 7 described at Section 1.8 of this RFP. The Consultant shall also, at SFMTA's sole discretion, provide the A/E services for the new Operations Control Center facilities described at Section 1.7. The final deliverables shall enable SFMTA to proceed directly into construction under a traditional design/bid/build project delivery method, without further need for any design activities during construction other than construction support, excepting typical design-build items such as fire sprinkler system, metal stairs, or typical performance based design items such as the train control system, radio communications and fare collection.

Outlined in this RFP is SFMTA's minimum expectation of the Proposer's involvement and contribution during Final Design and Construction. It will be up to the Proposer to organize its Proposal to include the following minimum requirements under its detailed description of proposed services and under its proposed number/type of tasks and subtasks as Proposer sees fit. Reiterating the instructions under Section 2.1, the items identified below are not meant to be all inclusive or laid out with depth of details. Should Proposer believe that there are other services that are vital to the success of Final Design and Construction Support; the Proposer may include these other services in its Proposal, along with a justification/rationale.

In addition, unless clarified in an addendum to this RFP, the Proposers shall assume that any scope gaps (items not mentioned in this Section) will be undertaken by the Consultant. The Proposer shall detail such scope gaps in its Proposal as part of its proposed Scope of Services so as to make the Final Design packages whole.

In preparing the construction bid documents, include sustainability in the final design and construction of the Project. The design shall address risk items identified in the Project Risk Register (see Appendix 10) that can be minimized or eliminated. The Final Design and construction of the Project shall comply with the adopted Mitigation Monitoring and Reporting Program (MMRP) and MOA between SHPO, FTA, and SFMTA (see Appendix 10) and may require services of a Historic Preservation Architect, Arborist, Archaeologist, and noise and vibration specialist.

The following tasks are an abbreviated guide for a Proposer to respond in fuller detail in its Proposal of services necessary to produce a set of satisfactory construction bid documents (including general conditions, special conditions, drawings, specifications, testing & training plans, start-up & commissioning, O&M manual checklists) for each of the construction contract packages described in Section 1.8, above. The Proposer should expand on or propose its list of services or elements for each discipline with a scope description. Proposer shall also include discussion under its task/subtask scope descriptions for elements or parts of the design that will

require special attention or that are unique to this Project so that unnecessary RFIs, construction conflicts, and change orders may be avoided.

2.3.1 TASK 1: PROJECT MANAGEMENT AND CONTROL

The Consultant shall provide the following:

- A. *Monthly Progress Reports*** – By the 15th day of each month, the consultant is required to submit a comprehensive, up to date, monthly progress report describing work of the Consultant and all subconsultants in the prior month. The report shall contain the following:
1. ***Written Progress Report*** – A report describing work accomplished the prior month and work planned for the upcoming month on a task basis consistent with the Summary of Hours by Task spreadsheet. This report will also include a narrative of deliverables submitted; accomplishments and work completed; list and outcome of important meetings attended, current issues relating to the work including interfaces, budgets and schedules, proposed resolutions to mitigate the issues, and other project management issues. The report must discuss SBE and EEO activities in the form of, but not limited to, participation, utilization and goal attainment. The report is due electronically on the 15th day of the month with a hard copy accompanying the invoice.
 2. ***Project Control Reports*** – Consultant shall submit Project control reports with the monthly progress report. The Project control report must address the following:
 - a. ***Summary of Hours by Task*** – The Consultant shall prepare and maintain a Task and Drawing Control Log baseline covering significant tasks, specifications, reports and drawings in a WBS format. This spreadsheet shall convert to the Summary of Hours by Task spreadsheet for monthly reporting.

The Task and Drawing Control Log shall be a spreadsheet showing sheet number, drawing or task number, task or drawing title, drawing scale (if appropriate), responsible firm, and budget. The Summary of Hours by Task spreadsheet shall indicate items on the Task and Drawing Control Log baseline, rolled up to Task level and shall report executed change orders, current budget, previous incurred to date, spent for the month reported, cumulative total incurred to date, estimate to complete, estimate at completion, percent complete, hours earned, and budget variance reported in labor hours by task.

The Consultant's Project Manager shall report the percent complete with the concurrence of the SFMTA Project Manager. Hours earned are calculated by multiplying percent complete against the current budget.

Budget variance is calculated by subtracting estimated hours at completion from current budget. Estimate to complete is the key factor in determining whether actual progress matches planned progress. The Summary of Hours by Task spreadsheet shall be resubmitted along with any corrections with the invoice.

- b. **Schedule** – Consultant shall prepare a Critical Path Method (CPM) Baseline Schedule, which the Consultant will update monthly to track and report on the Project schedule progress. The schedule shall be based on the milestones contained in the final design master schedule developed by SFMTA. the Consultant shall develop the Baseline Schedule within 14 calendar days of the Notice to Proceed.

The SFMTA will review and provide comments on the Baseline Schedule to the Consultant. Consultant shall then incorporate the Agency's review comments into the schedule and within seven days resubmit the schedule. Upon agreement, the schedule will become the final Baseline Schedule.

The Baseline Schedule will include the activities based on the tasks and subtasks indicated on the Task and Drawing Control Log, and will break those tasks further broken down into sub-activities and/or supplemental milestones in order to provide a useful tool for monitoring internal and external interfaces and general progress of the work. Deliverables and design reviews are to be shown separately. The schedule will show the activity, description, duration, start, finish and logical relationships between activities, sub-activities and milestones.

Critical path activities shall be distinguishable from other non-critical activities. The schedule shall include activities showing submittals to SFMTA, cost estimates, design review, incorporation of design review comments, interfaces with other designers, and interfaces with third parties.

The Consultant shall update the schedule monthly to indicate progress and shall submit the updated schedule to SFMTA in hard copy and electronically as part of the Monthly Progress Reports. The schedule shall indicate actual start and finish dates, remaining duration and percent complete.

The updated scheduled and the established Schedule Baseline shall be compared to show/indicate current performance against the baseline. The Consultant shall describe in the written progress report any changes in logic. Written explanations regarding schedule delays shall be included in the written progress report with a proposal to mitigate the schedule delay. SFMTA will review the monthly updates.

- B. Invoice** – An Invoice for Payment will be submitted with the monthly progress reports on the 25th day of the month in a format provided by SFMTA and will contain up to date information, including all subconsultants, for the following items:

1. A graph showing planned cash flow projection and actual cash flow vs. time.
2. A graph showing "as-planned hours", "actual hours", and "earned hours" vs. time.

3. A table of budgeted average labor rates and current average labor rates per each firm, cumulative and for the month.
4. A change control log of proposed, pending, and executed changes to the work.
5. Summary of Dollars by Task. Task dollar amounts may be adjusted by transferring budgeted amounts between tasks, with the approval of SFMTA's Project manager, without any adjustment to the Contract Price. Otherwise, task dollar amounts shall not be exceeded during the course of the work. If task amounts are exceeded, the Consultant bears full responsibility and risk for such expenditures. Task dollar amounts may be subject to modification through the change order process, but the change order must be executed prior to billing any amount that exceeds the original task amount.
6. Summary of Dollars by Firm, including a table of the percentage of amounts paid to SBE firms.
7. Employee name and rate for which reimbursement is being requested.
8. Time sheets, certified to be true and accurate reporting of actual time earned by the employee, and employees of any subconsultants, identified and actually paid to the employee, for each employee who worked on tasks for which a payment is requested.
9. Receipts, logs and invoices for other direct costs for which reimbursement is being requested.

C. Other Management Requirements

Compliance Support - The Consultant shall provide contract compliance and contract administration support to ensure compliance with City and County of San Francisco requirements, and FTA procurement and contracting policies and procedures. Contract Compliance and Contract Administration support must satisfy the Small Business Enterprise (SBE) and Employment and Labor provisions in this Request for Proposals, including related Appendices. Consultant Contract Compliance representatives shall meet with SFMTA CCO Staff on a regular and as-needed basis for the purpose of coordinating the work and complying with the contract provisions and agreement between consultant teams; outside agencies and ongoing SFMTA activities related to the SBE and Employment and Labor provisions. The Consultant shall prepare, submit, and receive SFMTA CCO approval of a weekly Action Plan to accomplish the goals of the contractor's SBE and Employment and Labor Program Plan.

Weekly Progress Meetings and Action item Logs – Formal coordination meetings will be held weekly. The primary purpose of the meeting is to interface the work between consultant teams, outside agencies and ongoing SFMTA activities. After each weekly progress meeting, the Consultant shall prepare an Action Item Log that identifies required actions, due dates, and responsible parties. Action items should be tied to a scheduled item where possible.

The Consultant will prepare meeting minutes and the action logs for all meetings with SFMTA, Third Party jurisdictions and other consultants under contract with SFMTA in Final Design. These will be tracked to monitor progress and interfaces. Other, less formal meetings will be held on an as needed basis to coordinate the work or disseminate new information or direction. Weekly brief progress reports are to be submitted by the Consultant via e-mail.

Project Report Formats – Within 14 calendar days of Notice to Proceed SFMTA will establish its required formats for project reports and invoicing to be submitted by the Consultant.

The Consultant shall use Primavera P6 for preparing schedule and Project Control Reports. The Consultant shall not be restricted to any particular software for preparing Project invoicing, provided that the resultant report and invoice formats cover SFMTA requirements noted herein. The Consultant shall provide hard copies of all Project Control Reports and Project invoices.

D. TASK 1 DELIVERABLES:

1. Initial Project Control Reports
 - a. Budget Baseline
 - b. Task & Drawing Control Log Baseline
 - c. Schedule Baseline
2. Monthly Updates
 - a. Written progress Report
 - b. Summary of Hours by Task
 - c. Schedule
 - d. Design Control Log
3. Project Invoicing
 - a. Summary of Hours by Task
 - b. Summary of Dollars by Task
 - c. Summary of Dollars by Firm
 - d. Summary of Average Hourly Labor Rates
 - e. Cash Flow Graph
 - f. Graph of Planned versus Actual Hours
 - g. Change Order Log
4. Brief Weekly Progress Reports (Via E-Mail Acceptable)
5. Weekly Meeting Minutes
6. Action item Logs

2.3.2 TASK 2: DESIGN AND PROJECT INTEGRATION

The Consultant shall manage and perform design and project integration. The Consultant is the lead designer responsible for managing the integration of the work of all design consultants. This Task includes the necessary work, coordination and meetings to deliver complete Construction Contract documents integrating the work to construct and operate a fully functional LRT line by means of construction contracts identified in Section 1.8 and the following agreements:

The Consultant shall provide design and project integration that includes coordination of the project design with local jurisdictions, public utilities, private utilities and the following additional existing or to be procured professional services contracts:

- Artists' contracts for Public Art
- Construction management
- Transit Oriented Development (TOD) (Moscone Station)
- Transit Oriented Development (TOD) (Chinatown Station)

The Consultant shall manage Project interfaces. Integrate the components of the project to ensure that, in combination, the various contract packages, and the Integrated Team avoid conflicts and achieve overall project technical and operational objectives. Validate interface of all subsystems with related subsystems and existing SFMTA systems. Verify all interfaces to ensure there are no conflicts or gaps within and between contract packages. Responsibility, control, and influence for each interface. Integrate the project with existing Muni operations and facilities from a physical, process, and operational perspective.

The Consultant shall assist SFMTA in coordinating with various City departments, external agencies, and Third Parties on various design/technical issues such that mutual understanding, resolutions and approvals are obtained prior to bid/award of construction contracts. The Consultant shall produce detailed meeting minutes for internal and external coordination meetings and maintain action item lists to facilitate resolution of issues.

A. *Third Party Coordination* - The Consultant shall assist SFMTA in obtaining concurrence letters for major design agreements with approving agencies to document design decisions and directions.

B. *Final Design by City* - As part of the Integrated Team, the following design work is currently envisioned to be provided by City staff and coordinated into the Final Design by the Consultant:

1. Architectural design of surface street elements south of the tunnel portal, including the trackway aesthetics, Brannan Street station platform finishes, shelters, and amenities, included in Construction Contract Package No. 7.
2. Roadways, sidewalks, ADA curb ramps for the surface street segment as well as for areas where shafts, underground station accesses, and other construction modifications are required to sidewalks/roadways.
3. Trackwork and track drainage final design.
4. Domestic water supply and drainage systems.

5. Fire suppression that the Consultant is responsible to coordinate/ integrate with the HVAC systems, tunnel emergency ventilation systems, and fire alarm systems.
6. Electrical work for the surface street segment, Traction Power system, electrical system for UMS station, and tunnel electrical systems. The Consultant will coordinate the required power requirements and provide for the connection to these systems.
7. Communications systems that the Consultant will coordinate the required power requirements and provide for the connection to these systems.
8. Traffic control and signals.
9. Construction Contract Package No. 1 that the Consultant will support during construction.

C. *Systems Design Coordination* – System Design work products will either be incorporated into the design or influence the design elements of the project. Specifically, the roles and responsibilities are listed below for these tasks:

1. Systems Design Coordination:

- a. System integration for systems within the project and system integration with other SFMTA systems including new and existing radio control systems, fare collection system, Advanced Train Control System (ATCS), passenger information, CCTV, SCADA, fire alarm, emergency phones, and other existing and new systems. Provide design that integrates with and ties to existing legacy and proprietary systems. Manage requirements to document and relate the configuration of the system architecture at each stage of design development and system migration, and upon completion and acceptance for both full and degraded states.
- b. Traction Power Substations: The Consultant will plan and design the site work and coordinate the necessary ductbank and manhole locations. The Consultant will design concrete pads, curbs, and foundations as necessary.
- c. Overhead Contact System (OCS), OCS supports and ductbank designs with locations are provided by the SFMTA. The Consultant shall incorporate the OCS design into the plans.
- d. Station Closed Circuit Television (CCTV), Emergency Telephones Public Access (PA), and Variable Message Signs (VMS) for both the initial and future installations will be designed by the SFMTA and located by the Consultant and installed by separate contracts. Consultant shall coordinate conduit locations. Consultant drawings will identify conduit and locations.
- e. The Consultant will design the communication rooms (including room sizes) and/or equipment cases. The Consultant is responsible for timely

review and comment regarding system rooms' layout and criteria to the design team. The Consultant will coordinate ductbank locations.

- f. Ticket Vending Machines (TVM) for both the initial and future installations: The Consultant shall coordinate power and conduit requirements. Consultant shall design foundations for TVMs and prepare drawings that will identify conduit and locations.
- g. Train control, signal equipment cases and/or signal rooms design and drawings by the Consultant. The Consultant shall Coordinate ductbank locations between all project discipline drawings.
- h. The Consultant shall provide stray current control and cathodic protection designs and details that are included in the contract drawings.
- i. The Consultant will be responsible for coordination with utility agencies for power (traction and facility) and communications service connections required for the LRT facilities. Coordination for facility power (lighting and electrical) will be required between the SFMTA and the Consultant.
- j. The SFMTA will be responsible for design of traction power, communications and supervisory systems. SFMTA and the Consultant will address in particular security, supervisory, radio, passenger information and other communications systems provisions as required. Consultant drawings will identify conduit and locations of devices.
- k. The SFMTA shall provide quantity take-offs and unit pricing for system materials to be incorporated into the Consultant documents. The Consultant will develop cost estimates from this data and incorporate these estimates into the total cost estimates for the Project.

2. Artist(s):

- a. The Consultant shall include the artist(s) assigned to the Central Subway Project by the San Francisco Arts Commission in design team meetings and provide architectural and engineering advice of feasibility and constructability of artist proposals.
- b. The artist(s) will have primary responsibility for developing proposals for incorporating art into the project. Artwork opportunities to be considered include art integrated into the Consultant design and construction documents, commissioned artwork, and functional elements of the transit system fabricated by artists or others. The artist(s) are responsible for detailed structural design of commissioned artwork and elements fabricated by the artist(s) and for providing anchorage load data and anchorage details necessary for Consultant to design foundations and supports as required for mounting the artwork.
- c. Consultant shall design required subsurface and surface preparation for art. Coordinate and include appropriate utility and structural connections and assure that final plans and specifications for the artist's work (where applicable) are included in Consultant documents.

3. Signage Design:

- a. Signage locations that are coordinated with the SFMTA and sign attachment details are developed in conjunction with the work and are included in the Consultant's design. The Consultant is also responsible for the structural design of the attachments.

4. Transit oriented Development (TOD) Consultant:

- a. Station facilities shall be designed by Consultant to structurally accommodate an above ground commercial/residential structure to the maximum zoning allowed height. Design of the TOD will be by TOD consultant or others.
- b. Where determined desirable/feasible by SFMTA and TOD Consultant, station entrance facilities at surface shall be designed by Consultant to structurally accommodate additional floors to the maximum zoning height.
- c. The Consultant shall coordinate station facility surface features (such as location of vents, exit stairs, service access and entrance relationships to adjacent retail) as feasible to accommodate TOD and station integration.

5. Project Outreach:

- a. The Consultant shall assist the SFMTA in community coordination.
- b. Under the direction of the SFMTA, assist in marketing the construction contract packages.

- C. *Community Design Coordination*** - The Agency views community relations/ public outreach as a critical element for the success of this project and places special importance on this team to support the overall proposed program. The overall community relations/ public outreach task will be performed by the PM/CM Consultant. As the SFMTA may direct, the Consultant shall assist in the PM/CM effort by assembling a coordination team comprised of entities with significant demonstrable working experience with the affected communities along the project corridor. This coordination team shall include a consortium of community based organizations to the extent feasible and be responsible for directing all coordination efforts arising from the design.

Consultant service under this task may include the following:

1. Assist the PM/CM Consultant to develop and implement a master plan/schedule for a community/ public outreach program.
2. Provide a public affairs coordinator to interact with the community participants/ groups and the public in a manner designed to foster good communications and general understanding and support of the design.
3. Assist SFMTA in conducting public meetings; record meeting minutes, provide coordination and follow up on issues raised at public or community meetings.

4. Provide a public affairs coordinator to assist develop and implement mitigation measures for design and construction impacts to residents and businesses.
5. Subject to an approved master community relations/ public outreach plan by the PM/CM Consultant, retain community advocacy organization(s) to address community relations/ public outreach for design related functions.

D. *Other Coordination Activities*

1. Program Management, including financial management, ROW acquisition support, risk management, contract administration assistance, document control, overall community relations/public outreach management, will be performed by the PM/CM consultant and/or City staff.
2. The Consultant shall coordinate closely with the San Francisco Department of Building and Inspection by providing the necessary documents, drawings, information, and support necessary for the development and preparation of key land use and construction permit applications. Critical permit applications with the City and County of San Francisco will also require the Consultant to provide information necessary to secure appropriate regulatory approvals for the Project related to proper discharge of stormwater and contractor generated wastewater via the local conveyance system.
3. The Consultant shall coordinate/integrate Final Design work across contracts, disciplines, among Subprime Consultants, Subconsultants and City personnel, and shall be responsible for the consistency and quality of all work from start of design until the start of construction of the individual construction contracts. The Consultant shall coordinate design and the design documents so that appropriate sustainability can be achieved in the completed Project.
4. The SFMTA performed Value Engineering (VE) for the preliminary engineering. The consultant will incorporate VE recommendations accepted by SFMTA, as identified at preliminary engineering level.
5. The PM/CM consultant will coordinate and provide Peer Review Services. The Consultant shall support the Peer Review.
6. The Consultant shall participate in a constructability review process conducted by SFMTA staff and other consultants under contract to SFMTA. It is anticipated that the constructability review will occur at the time of the 65% and Pre-Final submittal. The focus of the review will be to find creative solutions that result in cost effective, constructible facilities. The Consultant will assemble materials for the constructability review and will participate in the briefing session to provide overview. The Consultant will be available on an on-call basis during the constructability review. The Consultant will include as an on-call basis participation in the field walk-through with the constructability review team and attendance at the wrap up session. The Consultant will assess feasibility of the constructability team's recommendations and will make adjustments to the design documents based on the constructability review as directed by SFMTA.

7. The Consultant shall receive, review, log, address, and respond to review comments on each review.
8. The PM/CM or other City consultants will provide detailed cost estimating and scheduling for the various design elements, Construction Contract Packages and construction changes.
10. The following services are provided by others during Construction. The Consultant shall coordinate as required.
 - a. Topographic survey services
 - b. Environmental/hazardous material (such as soil) monitoring/mitigations
 - c. Construction methodology, Construction Contracting Strategy plans
 - d. Beyond responding to bidders' technical questions and preparing related addenda, the Consultant is not expected to provide other bid/award services
 - e. Constructability reviews
 - f. Beyond the order of magnitude of estimates, the Consultant is not expected to provide detailed cost estimating services.
 - g. Beyond supporting the SEM work, periodic site observations, factory inspections and as specified in this RFP, the Consultant is not expected to provide construction inspectors in the field to perform daily inspections
 - g. The Consultant is not expected to provide review of contractor schedulers or provide schedulers at the construction sites.
 - h. Quality Assurance

E. Schedules

The Consultant shall coordinate activities with other parties utilizing the schedules (described in Task 1) to identify critical production dates, submittal and review milestones, Third Party presentations and receivables/deliverables for consultants identified. SFMTA will provide the Consultant with information needed to coordinate and assemble the milestone submittals.

F. TASK 2 DELIVERABLES

1. Detailed meeting minutes for coordination meetings
2. Documentation of meetings, action items, and decision resolution
3. Concurrence letters and related documentation
4. Participation in constructability review and responses to constructability report at the end of 65% and Pre-Final
5. Participation in peer review and responses to peer review report

2.3.3 TASK 3: GEOTECHNICAL INVESTIGATION

Geotechnical engineering reports have been prepared by other consultants during the preliminary engineering design. The Consultant will prepare final geotechnical site investigation reports and prepare reports to support its detailed civil and structural design. The investigation will supplement information from on-site investigations prepared by other geotechnical consultants, and cover the design of the bored tunnel, the cut-and-cover stations, the mined Sequential Excavation Method (SEM) stations, the

ventilation shaft, other structures within the Project; and of prevention and mitigation of adverse changes to groundwater flows and levels and the effects of settlement.

The scope of work includes the geotechnical site investigations; geotechnical baseline report; laboratory work and engineering studies for the underground workings and the various connections and interfaces in and around each of the station.

All geotechnical tests and analyses shall cover the requirements of the civil and structural designers. Site specific studies for seismic design shall be performed for critical structures as necessary.

Geotechnical investigations in high probability areas for historic and archaeological resources will need to be coordinated with the Archaeological Consultant who will need to review excavated materials.

Hazardous materials investigations and remediation will be performed by other consultants employed by SFMTA.

A. TASK 3 DELIVERABLES

Provide separate draft and final reports for each of the following:

1. Geotechnical Data Report
2. Geotechnical Characterization Report
3. Geotechnical Baseline Report

2.3.4 TASK 4: SURVEYING AND RIGHT-OF-WAY

- A. *Surveying*** – The Consultant shall perform field surveying and aerial survey as required for the Project including, but not limited to, geotechnical boreholes, potholes, and utility paint outs. This task will also include a review of the data obtained to date for preliminary engineering and to determine what additional information is needed. New survey information will be integrated into the existing SFMTA database. Survey controls shall be in accordance and consistent with existing survey work as necessary.

The Consultant shall be responsible for:

1. Updating base maps with new information including utilities
2. Maintaining DTM data
3. Horizontal and vertical control diagrams for construction
4. Staking ROW/Easements on individual properties
5. Perform inspections/surveys of BART facilities to develop plans and specifications addressing BART concerns

- B. *Right-of-Way*** – SFMTA has prepared right-of-way plans, proposed right-of-way lines, proposed easements and a list of property owners along the light rail route. The Consultant will confirm the proposed right-of-way needs, identify required temporary construction easements (TCEs) and coordinate with SFMTA during the

design process. The Consultant will prepare parcel maps based on title reports secured by SFMTA. The Consultant will also prepare exhibits for right-of-way agreements to be executed by the SFMTA. The Consultant will update property ownership included on the right-of-way plans. Additional services will include right-of-way support for condemnation and post 100% design right-of-way lines, right-of-way plans, and other related instruments including parcel maps and legal descriptions. The Consultant shall back-check right-of-way plans in their entirety and provide certification to SFMTA that the right-of-way requirements are ready for acquisition. SFMTA will acquire necessary easements and right-of-way.

The Consultant shall prepare ALTA surveys for full takes and verify all partial takes for survey accuracy.

C. TASK 4 DELIVERABLES

1. Survey base maps
2. Utility maps
3. Right-of-way plans
4. Parcel maps
5. ALTA surveys

2.3.5 TASK 5: TRAFFIC ENGINEERING REPORT

The Consultant shall work in conjunction with the San Francisco Department of Parking and Traffic to provide a traffic engineering report that addresses construction impacts and necessary mitigation actions. The report shall include analysis of staging area and construction site access, truck haul routes and maintenance of traffic. The analysis shall also include a determination of allowable hours of operation and restrictions to construction traffic activities during special events. The report shall identify level of impact and necessary temporary or permanent traffic signal and signing modifications associated with the project.

A. TASK 5 DELIVERABLES

1. Construction Traffic Engineering Report at 65%, Pre-Final and Final Design submittal

2.3.6 TASK 6: UTILITY DESIGN COORDINATION

The Consultant shall perform utility investigations at station locations and other locations where project activity will impact utilities.

Preliminary composite utility plans have been prepared and are part of the preliminary engineering package turned over to the Consultant. It is also anticipated that certain utilities may need to be field located to determine a more definitive horizontal and vertical location. An Other Direct Cost allowance will be provided for utility designation and potholing determined by SFMTA in consultation with the Consultant.

The Consultant shall document utility coordination in the Utility Technical Memorandum (UTM). The UTM shall identify key utilities and general strategy for protection or relocation. It shall present the results of any potholing performed by the Consultant. It shall also document discussions and correspondence with impacted utility owners demonstrating the concerted efforts to accomplish the work. All utility relocations shall be identified and coordinated with the appropriate jurisdiction by the Pre-Final submittal. SFMTA places a high degree of importance on this task and will assign an SFMTA utility coordinator to work in concert with the Consultant.

The Consultant shall provide updated composite utility drawings showing type of utility, size, material, owner and other pertinent information along with preliminary utility relocation plans. Provide additional utility research for any utilities or utility service lines not shown on the composite utility drawings in the preliminary engineering package. All facilities that require long lead time materials or extensive construction periods should be identified as critical path items.

At completion of 65% final design the Consultant shall provide projected settlement curves due to tunnel boring along the alignment, and near shaft and station cut-and cover excavation. Impacts to utilities shall be identified, and in consultation with SFMTA, a utility settlement and impact report shall be prepared by the Consultant for discussion with the utility owners. The results of these discussions shall be included in the Pre-Final design submission.

A. TASK 6 DELIVERABLES

1. Utility Technical Memorandum at Early Work and 65%
2. Settlement impacts on utilities report at 65%

2.3.7 TASK 7: DRAINAGE DESIGN REPORT

The Drainage Report prepared by the Consultant shall include an overall drainage system map(s) or design drawings showing proposed points of detention/discharge. The report shall include appropriate calculations and flow rates, points of discharge, proposed improvements to handle design flows, and other information identifying the basis of design. The report shall be in sufficient detail to obtain final concurrence on the drainage system methodology from the SFMTA.

A. TASK 7 DELIVERABLES

1. Drainage Design Report at 65% and pre-Final submittals

2.3.8 TASK 8: PERMITS

SFMTA will work with the Consultant team and other members of the overall project team to identify and process permits. The Consultant will support SFMTA in obtaining permits and the Consultant will be responsible for providing specific design information on or attached to permit applications and assuring that the design presented are in conformance with permit requirements.

The Consultant shall be responsible for integration of permit conditions and provisions, as developed by others, into the Contract Documents.

Project compliance with applicable codes shall be the responsibility of the Consultant. The Consultant shall prepare a code analysis for each station and above ground facility, identifying applicable codes (such as land use, street use, building, fire energy) and governing jurisdictions. Identify specific applicable provisions of various codes and document how the design complies. The Consultant shall prepare permit drawings and specifications for each of the construction contract packages.

A. TASK 8 DELIVERABLES

1. Relevant Permit application drafts and checklists
2. Completed applications and all documentation and submittals needed to obtain permits or approvals to implement the work designed or prepared in Final Design
3. Code compliance summary at Early Work, 65% Pre-Final and Final

2.3.9 TASK 9: CONTRACT SPECIFICATIONS AND SPECIAL PROVISIONS

- A. *Contract Specifications*** – SFMTA has developed a standard technical specification outline and General Provisions for facilities construction. The Consultant shall become thoroughly familiar with the General Provisions.

The Consultant shall review and prepare contract specific modifications and must have SFMTA concurrence prior to modifying the General Conditions.

The Consultant shall provide a specifications specialist to develop the Contract Specifications for this project. This specialist shall be responsible for developing and preparing the principal content of the Contract Specifications and integrating the work of subconsultant disciplines, including such tasks as word processing, formatting, verification of reference material sources, file management, compiling product data and equipment spec sheets, final document assembly, cross-checking/coordination with the General Provisions, Special Provisions and other Contract Documents, and coordination of SFMTA reviews.

- B. *Special Provisions*** – SFMTA and its construction management consultant will take the lead role in developing the Special Provisions for each construction package. The Consultant will review and provide supporting information to the SFMTA for the development of the Special Provisions regarding design, permitting, coordination, and constructability issues.

C. TASK 9 DELIVERABLES

1. Documentation of review of General Provisions and standard specification outline and recommendation documentation for modifications to standard specifications – FD Phase only
2. Contract-specific Specifications produced by the Consultant at 65%, Pre-Final, and Final deliverables
 - a. Buy America Compliance Statement at 65%, Pre-Final and Final Design
 - b. Product Data Binder including information sheets for products, materials and equipment identified in the Contract Specifications

c. Material samples and color selections
--

2.3.10 TASK 10: COST ESTIMATING AND COST TRENDING

Detailed cost estimating and scheduling services for the various design elements, Construction Contract Packages and construction changes, are provide by the PM/CM or other City consultants.

- A. *Project Configuration*** – Preliminary engineering documents for the Project and associated documentation describing the baseline Project scope is defined as the Project Configuration. The Project Configuration will be subject to configuration changes as the design is advanced in accordance with SFMTA's change control procedures. At any time, the current Project Configuration shall serve as the basis for cost estimate submittals made by the Consultant.
- B. *Project Schedule*** – The Project Schedule defines the schedule for the full range of project activities that are required for Project implementation. The Project Schedule defines the duration and timing of construction activities that shall be integrated with cost estimate assumptions. The Project Schedule is subject to change in accordance with SFMTA's change control procedures. At any time, the current Project Schedule shall serve as the basis and structure for cost estimate submittals made by the Consultant. The current Project Schedule is described in an available reference document (see Appendix 10).
- C. *Construction Contracting Strategy Plan*** – The Construction Contracting Strategy plan defines the scope of the various construction and procurement contracts that are expected to be let to deliver the Project. The Construction Contracting Strategy plan is subject to change as the design is advanced in accordance with SFMTA's change control procedures. At any time, the current, approved Construction Contracting Strategy plan shall serve as the basis and the structure for cost estimate submittals made by the Consultant. The current Construction Contracting Strategy plan is described in the referenced document titled "Construction Contracting Recommendations" (see Appendix 10).
- D. *Design Baseline Estimate*** – Upon issuing NTP, SFMTA will furnish to the Consultant the preliminary engineering (PE) construction cost estimate, schedule, and the Construction Contracting Strategy plan for the Project. The Consultant shall review the PE construction estimate and associated documents and shall provide written observations regarding the cost estimate to SFMTA within 60 days of receipt of the cost estimate. Upon reconciliation of the Consultant's observations and approval by SFMTA, the cost estimate will be adopted as the "Design Baseline Estimate" against which future design changes will be evaluated.
- E. *Cost Trending*** – For purposes of cost trending, "discretionary design changes" are defined as changes to the approved Project Configuration that are not a direct response to engineering and code compliance requirements. During the design process, the Consultant shall develop estimates for (a) proposed discretionary design change; (b) proposed changes to the Project Configuration; and (c) Value Engineering Proposals. Eestimates shall be developed in a timely manner that supports decision making during the design process. The

Consultant shall maintain a Cost Trend Log that records all estimates and indicate the cost trend for Project.

The Consultant shall provide written notification and request approval from SFMTA of any discretionary design change in accordance with the Project Management Plan. In the event that the Consultant incorporates discretionary design changes into the Project design without prior SFMTA approval, SFMTA reserves the right to require the Consultant to revert designs at no cost to SFMTA.

- F. *Construction Cost Estimate Submittals*** – The Consultant shall submit construction cost estimates within two weeks of (a) the Early Work design submittal; (b) the 65% design submittal; (c) the Pre-Final (90%) design submittal; and (d) the Final Contract Document (100%) submittal. In the event that contract documents require refinement or clarification that is deemed to impact the construction cost any time after the Consultant's submittal of construction cost estimate for the Final Contract Document (100%), the Consultant shall prepare and submit to SFMTA a Post 100% cost estimate to reflect such changes prior to the bid opening.

Construction cost estimate submittals shall conform to the approved Project Configuration, Project Schedule, and Construction Contracting Strategy plan at the time of the design submittal. Estimate submittals shall contain a reconciliation of the current estimate to the previous estimate submittal or the Design Baseline Estimate. With the exception of Final Contract Document estimate submittal, the Consultant shall furnish a list of potential cost reduction measures as part of each cost estimate submittal.

As part of each cost estimate submittal, a stand alone Contract Estimate shall be prepared for each construction contract defined in the Construction Contracting Strategy plan. Contract Estimates shall be prepared in year of expenditure costs in accordance with the current Project Schedule. Contract Estimates prepared by the Consultant shall include all scope elements for the construction contracts. Estimate detail for Contract Estimates shall be structured consistently in a manner that permits application and review of estimate contingencies, mark-ups, and inflation. Contract Estimates shall generally be developed using a "crew-based" cost estimating methodology that details the cost of labor, material, equipment, supplies, and sub-contracts for individual scope elements.

The Early Work estimate submittal shall include any modifications made to the preliminary engineering cost estimate.

For the 65% cost estimate submittal and all subsequent cost estimate submittals, the Consultant shall structure the estimate submittal in accordance with the bid tabulation developed for each construction contract. The Consultant shall submit the bid tabulations to SFMTA for approval prior to each estimate submittal. The Consultant shall assemble quantity calculations, unit price quotes, and price buildup calculations, and development of lump sum amounts in a binder with dividers separating bid items. This estimate back-up shall be submitted to SFMTA at the time of the construction cost estimate submittal.

G. TASK 10 DELIVERABLES

1. Documentation of review of conceptual cost estimate
2. List of proposed cost savings elements at Early Work, 65%, and Pre-Final
3. Cost Estimates at Early Work and 65% include:
 - a. Unit pricing information
 - b. Summary of quantities
4. Cost Estimates at Pre-Final and Final design submittals include:
 - a. Quantity back-up
 - b. Summary of quantities
 - c. Unit cost back-up
 - d. Lump sum back-up
 - e. Bid item breakdown
5. Reconciliation to budget at Early Work
6. Reconciliation to budget and previous estimates at 65%, Pre-Final, and Final
7. Cost Trending Log

2.3.11 TASK 11: QUALITY CONTROL

The Consultant shall comply with the Central Subway Project Quality Assurance Program (see Appendix 10) and the Federal Transit Administration's Quality Assurance/Quality Control Guidelines, and develop and submit for SFMTA acceptance a Quality Control Program, within 45 days of receipt of the NTP, covering the Integrated Team for all activities for Final Design and Construction, including, but not limited to: systems integration; intra-discipline and inter-discipline review; final design; construction support; and external review process. The Quality Control Program must describe the controls to be implemented by the Consultant to verify compliance with SFMTA Quality Program and Project requirements. Quality Control staff shall be employees of the Consultant.

The Consultant, as part of the Quality Control Program, shall submit an organization chart, a Quality Control Plan and Quality Control Procedures for control of the following quality elements: Management Responsibility; Documented Quality System; Design Control; Document Control; Process Control; Inspection and Non-Conformance; Corrective Action; Quality Records; Quality Audits; and Training.

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

As a part of the Design Control, the Consultant shall implement reviews of its own efforts and the work of Subprime the Integrated Team. Consultant shall document design

control procedures shall be documented in an appropriate Design Procedures Manual that shall include, but not be limited to, provisions for the following:

- A. Checking and documenting design inputs (e.g., design bases, technical requirements, codes, and standards);
- B. Establishing the design methods for ensuring that design inputs are correctly selected and translated into design document (e.g., drawings, procedures, specifications, and calculations);
- C. Establishing the selection and review for suitability of application of materials, parts, equipment and processes that are essential to the function of the system;
- D. Checking that design inputs, applicable city, county, state and federal codes and standards and other quality and technical requirements are correctly translated into design work products with detail necessary for making decisions, accomplishing design verification measures, and evaluating design changes;
- E. Checking drawings, sketches, specifications, data sheets, and design calculations prior to release for procurement or construction;
- F. Verifying that design interfaces with City departments, third party agencies and utilities, and Subprime between participants in the Integrated Team are identified and controlled;
- G. Approving field design changes.
- H. Checking that design analyses are performed in a planned, controlled, and documented manner. Design analysis documents are legible and in a form suitable for reproduction, filing, and retrieval. Design analysis documents are sufficiently detailed as to purpose, method, assumptions, design input, references, and units such that a person technically qualified in the subject can review and understand the analyses and verify the adequacy of the results without recourse to the originator of the analysis.
- I. Checking that design control measures are applied to verify the adequacy of design, such as by one or more of the following: the performance of design verification reviews, the use of alternate calculations, or the performance of design qualification tests.
- J. Calculations are identifiable by subject (including structure, utility, system, or component to which the calculation applies), originator, reviewer, and date; or by other data such that the calculations are retrievable.
- K. Computer programs used for design calculations are verified to show that the program produces valid solutions for the encoded mathematical model within defined limits for each parameter employed; and the encoded mathematical model has been shown to produce a valid solution to the physical problem associated with the particular application. Evidence of verification shall be maintained.

- L. Computer program changes are documented and approved by authorized personnel when required. Where changes to previously verified computer programs are made, verification is required for the changes, including evaluation of the effects of these changes on above items.
- M. Implement review a procedure that establishes the responsibilities and techniques for administrative, quality assurance, and technical reviews, for each milestone point in the design process, to ensure the accuracy and completeness of design before the submittals are processed to SFMTA for review.
- N. Assist SFMTA and PM/CM staff with planned and periodic QA audits and surveillance's to verify implementation and effectiveness of Project procedures, including work performed by Subprime the Integrated Team.
- O. Quality records shall be maintained and available for a period of quality records. The SFMTA Quality Assurance or PM/CM staff shall have full access to Consultant's QC documentation and records at all times.
- P. The Consultant shall gather and track Quality Assurance audit/surveillance and discrepancy data for use in the analysis of deficiency trends and evaluation of corrective action effectiveness.

The requirements of the Project's QA/QC Program and supporting procedures shall also apply to Subprimes and Subconsultants.

Q. TASK 11 DELIVERABLES

1. Conformed QC plan within 45 days of NTP
2. Updated Design Procedures Manual within 45 days of NTP
3. Perform and document QA audits
4. QA review and documentation of submittals at Early Work, 65%, Pre-Final, and Final Design
5. Interdisciplinary coordination check prints at Pre-Final
6. Verification of design review comment resolution and incorporation into design documents at Early Work, 65%, Pre-Final, and Final Design submittals

2.3.12 TASK 12: DRAWINGS/DOCUMENTS

The Consultant shall coordinate, manage, compile/assemble, integrate, and confirm quality control of all design documents into complete construction contract packages, which shall include all plans, schematics, manuals or reports, including drawings, specifications, testing, training, safety and security certification, start-up and commissioning plans, and composite O&M manual and spare parts lists, all which shall be signed and stamped.

Develop testing and training programs, requirements for O&M manuals and requirements spare parts, including materials, components, system and subsystems testing, training and advanced commissioning requirements for each contract. Define testing requirements in support of integration of components, systems and subsystems.

Prepare commissioning, startup test and system cutover plans and requirements for each contract.

Conduct assessment of hazards associated with the Design and identify appropriate actions to mitigate or control hazards. Hazard analysis shall consider hazardous components, safety related interfaces, environmental constraints, and operating, maintenance and emergency procedures. All identified hazards shall be evaluated for eliminations, control and/or acceptance according to established criteria. Coordinate with fire/life safety design team and Muni O&M to evaluate project specific design safety features that shall be incorporated in the Design Criteria update as appropriate. Review all identified project specific design safety feature with Muni Safety Certification Committee prior to incorporation into the Design Criteria.

The Consultant shall prepare Safety and Security Checklists for all certifiable elements of the Design as needed to fully certify Safety and Security compliance of Design. Verify and document the compliance of Design with safety-related checklists, plans and procedures at the completion of design. Implement Hazard management process for design and resolve all design safety hazards. Prepare Certificates of Compliance for each certifiable element upon satisfactory completion and issue the Safety and Security Verification Certification Report for Design. Review with SFMTA staff to ensure the compliance to agency requirements. Develop safety/ security certification specification conformance checklist(s) for each of the Construction Contract Packages. The Consultant will also be required to prepare checklists to cover items that are part of the design being performed by City staff. The checklists for each construction contract will be used during construction to ensure that certifiable safety/security items are built in accordance with the design.

The Consultant shall perform the work as described below that allows operating a fully functional LRV line in revenue service.

A. *Early Work and Information Assimilation*

The Consultant shall become thoroughly familiar with preliminary engineering design documents. The Consultant shall visit the project site to observe and determine general site conditions, utility locations, existing drainage facilities, existing surface geologic conditions, existing vegetation and landscape elements, and other pertinent information.

Verify/Validate the existing Preliminary Engineering designs, including Design Criteria, design calculations, Code & ADA Analysis (e.g. occupancy/fire separation compliance, ADA accessible path, NFPA compliance, CPUC General Order compliance, and other relevant requirements), regardless of whether a particular design criteria or code/ADA analysis pertains to final design performed by City staff or others.

The Consultant shall identify remaining outstanding technical/design issues with the Preliminary Engineering, Utility Relocation Contracts, and Tunnel Contact work products and shall detail steps and timeline towards resolution, regardless of whether the issue pertains to final design to be performed by the Consultant, by the City, by others City Consultants or by Third Parties.

The Consultant shall prepare an overall Final Design Strategic Execution Plan to cover all Final Design, irrespective of whether the Consultant, the City, or other City consultant performed elements of the design. The Plan shall include the following detailed subplans or subsections: Engineering Work Plan, Design Schedule, Management and Coordination Plan of Consultant and City personnel, Communication Protocols, Design Budget and Schedule Control Plan, Drawing standards, QC Plan, and Progress Report schedule/format.

B. *Work Products and Activities*

1. Civil

R.O.W. drawings: Prepare right-of-way drawings indicating site acquisitions and easements necessary to construct the project (see task 4).

Demolition plans: Define the necessary demolition activities (items to be abandoned, salvaged, recycled or removed) and identify facilities that need to be protected during construction. This work is necessary for work areas associated with building demolition(s), reconstruction of sidewalks, and demolition associated with urban design work. Demolition requirements for the LRT corridor will be incorporated into the appropriate plan sheets.

Staging area and interim use plans: Define staging area requirements, site limits, access, temporary fencing and noise walls, and other interim site improvements necessary for construction activities and to fulfill third party agreement conditions.

Track drawings: Review and coordinate the plan and profile alignment provided in the preliminary engineering documents and make recommendations which can improve the alignment in order to reduce cost, reduce impacts to other fixed facilities and/or to improve operations. Coordinate plans for final trackwork designs and special trackwork requirements for the project.

Roadway drawings: Review and coordinate plans for modifications to roadways, including pavement designs, conforming requirements (to existing streets, face of buildings or neighboring properties) as necessary, sidewalk modifications, and pavement sawcutting and overlay requirements. Field verify existing horizontal and vertical alignments. Roadway cross sections, cross street profiles and curb profiles shall be prepared to accurately define the construction requirements and design intent. Roadway contour grading shall be prepared including intersections where significant warping will be necessary and to accurately delineate conformance to existing pavement.

Drainage and Stormwater management plans: Prepare temporary erosion control, drainage, and stormwater management plans in accordance with applicable codes, ordinances and standards.

Site plans: Prepare plans for non-roadway site areas modified by activities of this project. Include grading, site restoration and other improvements as necessary to fully describe the project. Coordinate with architectural site plans and landscape plans to avoid duplication or conflicts.

Simulations/ Studies and Models: Perform simulations/studies that are critical to the success of Final Design. Develop on-going 3-D computer models, including but not limited to Building Information Modeling—BIM, of each of the underground stations to improve coordination, to aid in resolving design issues and to facilitate presentations to the public, and third parties. Develop 4-D computer simulation model of tunnel system to assist Muni O&M to visualize the completed project. Develop pedestrian simulation models of the passenger transfer between the Powell Street Station, including BART and Muni Metro, to display how proposed station modifications will mitigate significant impacts to passenger flow and safety.

2. Utilities

Utility plans: Prepare composite utility plans and public and private utility relocations plans. Review potholing information performed to date and gather additional potholing data as necessary to ascertain existing utility locations within the project boundaries. Present utility support and protection, or relocation plans coordinated with utility owners to achieve an acceptable final project. Identification and information related to relocations shall be shown on composite utility drawings. Prepare utility cross sections to help define the construction staging of utility relocations and to minimize secondary relocations.

Drainage lines are to be included in the utility plans coordinating with the track drains presented on track plans. The Consultant shall prepare profiles of drainage gravity lines being relocated longitudinally along the corridor.

Utility relocation plans and drainage methodologies and points of discharge need to be coordinated in the early stages of the design in accordance with the requirements of Tasks 6 and 7. These elements shall be fully coordinated with the respective agencies by the Pre-Final submittal. Locations of utilities shall also be coordinated with elements designed by the Consultant including the OCS poles, conduit banks and utility services to buildings.

3. Traffic

Traffic Plans: Traffic work includes the review and coordination of plans, specifications and estimates for permanent and temporary traffic signals, permanent signing and pavement striping, maintenance of traffic, detours, and haul routes.

4. Structural

Structural Plans: Structural work includes the preparation of plans for the bored tunnels, cross passages, cut-and-cover stations, mined stations, access shafts, ventilation shafts, TBM retrieval pit, and instrumentation to monitor ground movements and settlements during construction of underground and retained cut structures. Pole foundations for traffic signals and lights may also be included. Miscellaneous details will also be required for integrating artwork into the elements of the project.

The bored tunnels are expected to be constructed using a Tunnel Boring Machine (TBM) with a one-pass liner consisting of bolted and gasketed precast concrete segments. The final design of the cut-and-over stations is expected to include temporary retaining wall systems which are capable of retaining and protecting adjacent structures and utilities. The systems will be designed in accordance with the geotechnical report recommendations for loads and drainage, and with the requirements and agreements with affected businesses and agencies. The systems will also be designed to allow efficient construction of the permanent concrete structures. A waterproofing membrane will be provided from the ground surface to the track level, providing a fully tanked facility at the stations and shaft.

All structural components shall be designed to withstand seismic design criteria identified, reviewed and adopted during the Final Design process.

Effects of Settlements: The Consultant shall review and adopt an assessment of the effects of construction induced settlements on overlying structures and services (within the expected settlement trough) due to tunnel, shaft and station construction. Establish estimated ground displacements due to tunnel, shaft and station construction. Establish estimated ground displacements due to tunnel, shaft and station construction. The Consultant shall identify public and private structures and services affected by construction induced settlements.

The assessment shall be summarized in a draft and final report and shall include recommendations for preventive measures to be included in the contract plans, specifications and cost estimate for structures and services.

Design any preventive measures to be used by contractors to mitigate the effects of settlements. Establish and monitor the settlement thresholds during construction. The contents of the vulnerability assessment shall be included in the contract documents by a table of properties and their respective risk categories.

The Consultant shall rely on the preliminary engineering design concepts as provided by SFMTA for this project as being fundamentally approved by the SFMTA.

5. Architectural

The SFMTA Board has adopted a policy that the stations should have a balanced approach of reflecting their neighborhoods and also being recognized as a unified system. The following list outlines the initial elements that will be systemwide (Elements of Continuity) and elements that allow uniqueness (Elements of Differentiation). This is not intended to be a complete list. Certain families of materials and products have been developed to meet operations and maintenance needs and include the following.

- Elements of Continuity
 - Station configuration
 - Platform paving

Ticket vending machines	Paint finish color palette
Tactile wayfinding elements	Platform edge detectable warning pavers
System signing	Systemwide station entry marker
Platform edge lighting	Family of lamp and light fixture types
Standardized glazing sizes	Station seating / benches
Bicycle racks	Bicycle lockers
Stainless steel handrails	Trash receptacles and liners
• <u>Elements of Differentiation</u>	
Station shape/aesthetic	Windscreens
Integrated art	Poles and brackets or attachments to OCS
Landscaping	Leaning rails
Fences and railing	Systems equipment screening

The Consultant shall build on the work done in the planning stages of this project by continuing to meet with stakeholders to achieve consensus of the community on the station design and to allow Early Work and Final Design to be completed within schedule.

SFMTA will provide architectural related standard and directive drawings for typical materials, systems integration elements and systemwide wayfinding details. The Consultant shall incorporate this information into their project deliverables.

Design work shall conform to applicable ADA regulations and standards.

The Consultant shall incorporate the principles of Crime Prevention Through Environmental Design (CPTED) into the design. Station configuration, vertical circulation, pedestrian and site circulation, landscaping and lighting shall be designed to accommodate CPTED principals. Meetings with SFMTA Security may be warranted in addition to reviews at Early Work, 65% and Pre-Final.

Architecture for underground stations and above ground elements other than the above ground elements related to the surface street segment shall comply with acoustical reverberation criteria; and for the building to be demolished for the Chinatown Station shall provide Historic American Buildings Survey/Historic American engineering Record documentation and incorporate architecturally significant elements into the design of the station;

The Consultant shall document and visually depict the Central Subway corridor allowing Muni staff and others to view how the project will operate upon completion and acceptance for both full and degraded states

6. Urban Design/Landscape/Screening

Provide urban design, landscaping, and irrigation drawings as necessary to integrate stations into/existing facilities, sidewalks or park to create a homogenous design. The Consultant shall work with stakeholders that include, but not limited to, City Departments and Agencies, businesses and property owners, as necessary.

7. Art

It is anticipated that all or a major portion of the artwork will be integrated in the civil facilities design documents. See Task 2.

8. Signage

The work includes implementation of system-wide LRT signage. Integration includes coordination of the overall extent and information contained on signs and the detailed placement and attachment to facilities or foundations.

Determine signage attachment details to accommodate the system-wide signage and relevant details. Initial signage layout will be coordinated with the SFMTA prior to the 65% submittal. Follow-up submittals will indicate any change to signage layout and require continued coordination with the SFMTA.

9. Elevators and Escalators

Elevators and escalators will follow standards developed during Final Design. The Consultant shall use qualified special consultants to confirm applicability and identify special criteria or considerations due to specific conditions at the UMS Station. Produce additional drawings and details as necessary, including elevator cab finishes, to integrate with the station designs and fully define elevator and escalator requirements to the contractor.

10. Acoustical, Noise and Vibration

Provide acoustical analysis and design for public areas within the stations.

Identify acoustic treatment of ventilation plenums and equipment.

Conduct noise surveys at surface facility locations as necessary. Provide technical specifications, criteria, and analysis, as necessary, to define construction noise restrictions to which the Contractor will be required to adhere and any minimum noise abatement measures such as temporary construction site noise walls.

Assist SFMTA in obtaining necessary variances to the City Noise Ordinances to allow night-time construction at the construction sites and staging areas.

11. Mechanical

Prepare and/or coordinate necessary mechanical designs including, but not limited to, plumbing, fire protection, HVAC and tunnel ventilation for the

project. Mechanical design will require close coordination with SFMTA Operations staff.

Plumbing: Review and coordinate station and tunnel drainage systems including pump stations at stations and tunnel low-points, with necessary sumps, treatment facilities and discharge arrangements. Design water supply systems, restroom and janitorial facilities and other plumbing as required by station programs and design criteria.

Fire safety: Testing and analysis materials used in typical SFMTA LRVs to determine heat content and burn rate. Use results of analysis to model combustion on SFMTA LRV and to determine appropriate design Fire Heat Release and Growth Rates. Revise the Fire Design Scenarios. Configure stations, and emergency ventilation and fire suppression systems to provide the most cost-effective method for each station to maintain required tenable environment for emergency exiting.

Fire Suppression: Review, coordinate and/or design a wet standpipe system including all equipment, such as fire-hose cabinets. Review and coordinate appropriate fire-suppression systems for all rooms and public spaces at stations and elsewhere as required by code and SFMTA Design Criteria.

Ventilation: Design complete ventilation systems. Tunnel and station ventilation systems shall be designed for normal, congested and emergency (systems task) conditions in accordance with applicable national and local code requirements. The design shall include necessary and most current Subway Environmental Simulation (SES) analysis and Computational Fluid Dynamics (CFD) analysis, for emergency conditions.

Documentation shall be developed such as stairwell pressurization diagrams and tunnel airflow diagrams with operating mode tables for operation of fans and dampers for the different possible fire locations. Prepare final station mechanical control design. Contract documents shall be prepared for furnishing, installing and testing tunnel and station ventilation equipment, including fans, sound attenuators, louvers and dampers.

12. Electrical

Review and coordinate necessary designs for the electrical systems. Electrical design will require close coordination with SFMTA staff:

- Station and street lighting; determine location and type of luminaries and develop lighting fixture schedules for the project facilities.
- Design complete AC electrical systems for Moscone and Chinatown Stations.
- Station power for fans, elevators, escalators, pumps and other station equipment.

13. Systems

Design complete fire detection and alarm and security alarm systems.

Design complete Train Control and Destination Routing and Annunciation Systems (systems task), including destination signs and audible announcements to station PA systems.

Design complete tunnel radio systems (systems task).

Review the system drawings and other technical information needed from the Integrated Team in order to interface and produce the civil facilities final designs.

Contractor shall integrate systems by implementing an open architecture at the interfaces, with non-proprietary interfaces and communications protocols. Contractor shall create interface control documentation for physical and electrical interfaces to and between all discrete systems and subsystems being supplied. The intent of this documentation is to provide complete transparency at the interface points so that a) problems at the interface can be well-defined, traceable and diagnosable; and b) system requirements for modifications to a system on either side of the interface can be well-defined. This interface control documentation covers but is not limited to: functional and operational requirements at the interface; descriptions of physical and electrical interconnections including block diagrams of the interfaces; lists of electrical signal names, sources and destinations; system responses; signal levels, constraints and tolerances; power requirements; specifications for wire type or other transport medium; and applicable standards. The Contractor shall utilize, and tailor as appropriate, an interface control documentation template supplied by SFMTA for this purpose; alternatively, Contractor may propose its own interface control documentation methodology to achieve the same objective, for SFMTA approval.

Conduct feasibility studies, conceptual, and preliminary design for the replacement of existing legacy systems to provide a uniform configuration of systems with integrated controls at the OCC for both the existing MUNI underground areas and the Central Subway. This work will include replacement of system elements that are physically located in the existing subway, or other locations remote from OCC, but are controlled from OCC, including (but not limited to) train control, passenger information, fire alarm, SCADA, emergency phones, and associated communications infrastructure.

14. Operations Control Center (OCC) Facilities

Conduct feasibility studies, conceptual, and preliminary design for the construction and/or renovation, outfitting and start-up of the facilities at the existing OCC at 131 Lenox to support the successful implementation of new integrated systems to serve both the Central Subway and the existing Metro Subway. This work shall develop a primary and a secondary (“back-up”) OCC, with integrated systems operable from both locations. In the event a new primary OCC cannot be constructed on a schedule consistent with Central Subway revenue service, an “interim” primary OCC will be developed, which may be at 131 Lenox or a different TBD location. This work shall

include consideration of the building infrastructure, operating theater, shop and equipment rooms, lighting, environmental systems, power, building security, emergency and alarm systems, wiring, communications, finishes and furnishings.

C. *Design and Constructability Reviews/ Presentations*

Consultant's management, architecture, and engineering staff shall attend formal and informal design review meetings with SFMTA and other consultants and agencies as directed by the SFMTA (see Task 2). Consultant's preparation and attendance at such meetings shall be considered an ongoing design function and is part of Basic Service.

The Consultant will receive with formal design review comments on review comment forms within four weeks of each submittal from SFMTA in-house reviewers and within eight weeks of each submittal from outside agencies or third party stakeholders.

Review comments shall be answered on the same forms within two weeks of receipt and reviewed in detail with SFMTA at the next regular scheduled coordination meeting or at a special meeting called for the purpose of reviewing comments and responses. The Consultant shall identify any conflicting comments should they occur. The Consultant is responsible for assuring previous comments have been addressed (as answered and agreed upon) in each subsequent submittal (see also Task 11 quality Assurance).

The following should be considered a minimum listing of required presentations by the Consultant at Early Work, 65% and Pre-Final completion:

- Public Meetings (each station neighborhood) for station designs and surface facilities including, but not limited to, art and tunnel alignment.
- Funding Partners
- Clients

D. *Specific contract document submittals shall be made as follows:*

1. *Early work*

Submittal: This submittal shall be defined as sufficiently complete to illustrate that the major design decisions have been made. The intent is to avoid new, never before seen items of significance appearing for the first time in the Final Design. Decisions shall be made regarding the alignment site circulation, bus interfaces, paratransit locations, bike storage, station configuration, vertical circulation, location of major elements, determination of primary materials, location of landscaping, construction staging areas, temporary facilities, and any other significant design features.

Code issues such as, but not limited to, zoning, setbacks, transparency requirements, building heights, and exiting requirements shall be identified and accommodated. Art concepts and design drawings shall be identified and coordinated whether integrated into the design or stand-alone.

The design drawings shall be specific so that reviewers can comment on the overall scope of the project. Items of significance shall have been checked in accordance with the provisions of the QA Plan, including items on drawings, in specifications and in estimates. Establish and document concurrence with third parties defining the scope for final design. Concurrence shall include deviations to requirements for zoning or other codes as applicable.

The submittal shall include reports, drawings, and construction cost estimate at the 35% complete design level for project design review. The submittal report shall include a discussion of the design, by discipline, to give the reviewer an understanding of why the design progressed in the particular manner, including a summary of the City's and community's involvement processes, and shall document design decisions made in the course of the work.

At Early Work, design drawings shall have incorporated or resolved comments made during the preliminary design review. The submittal shall include status for outstanding issues and/or conflicts that need resolution and recommendations to resolve such issues. The Consultant shall provide responses for comments on standard comment response forms.

- a. Layout of major site elements including landscape and hardscape areas, dimensions and required setbacks (scale to match civil engineering work).
- b. Floor plans identifying major plan elements at entries, headhouses, mezzanines, platforms with required areas identified such as vertical circulation, TVM queuing, necessary surge spaces, required exit paths, etc. Dimension major elements and define circulation spaces. Indicate what primary finish materials will be used and where.
- c. Elevations identifying major vertical elements at entries, headhouses mezzanines, platforms with items distinguished such as vertical circulation, TVM locations, signage locations, windscreens and canopy coverage, bicycle canopies, etc. Dimension major elements and define circulation spaces. Indicate what primary finish materials will be used and where. Show height and massing/volume of structures.
- d. Sections to indicate relationship to other spaces as needed.
- e. Additional sections and details required to explain the station complexities
- f. Provide drawings for other elements as identified in the scope or Third Party commitments defined to the same level of detail as described in items a) to e) above.

- g. Update Station Design Programs to include requirements for stations based on completion of preliminary design and relevant concurrence and agreements.
- h. Documentation of items from VE Report to be included in Final Design
- i. Preliminary Geotechnical Report.
- j. Utility Technical Memorandum, see Task 6.
- k. Code Compliance Summary, see Task 8
- l. Early Work cost estimate report and cost estimates by contract, see Task 10.
- m. Construction Contracting Strategy plan, see Task 13.
- n. Accessibility Design Review Checklist.

2. *Final Design*

65% Submittal: 65% complete shall be defined as being sufficiently complete to illustrate the entire scope of the work under design so that reviewers can comment on the overall scope of the project, by contract package. The intent is to avoid new, never before seen items of significance appearing for the first time in the pre-final submittal. The work also needs to be complete to support the cost estimate. Items of significance shall also have been independently checked at this point, in accordance with the provisions for the QA Plan, including items on drawings, in the specifications or figures in the estimate.

Submittal shall include reports, drawings, special provisions and supplemental technical specifications, and cost estimates at the 65% complete design level by contract package, for project design review. The submittal report shall include a discussion of the design, by discipline, to give the reviewer an understanding of why the design progressed in the particular manner it did. It shall reference documentation of design decisions made in the course of the work. Include outstanding issues and/or conflicts that need resolution and recommendations to resolve such issues. Provide a matrix of review comments received for the Early Work submittal with comment resolution.

- a. Drawings and Specifications
- b. Update Station Design Programs to include requirements for stations based on completion of 65% design and relevant concurrence and agreements.
- c. Draft Geotechnical Reports, see Task 3.
- d. Traffic Engineering Report, see Task 5.

- e. Utility Technical Memorandum, see Task 6.
- f. Settlement Impacts on Utilities Reports, see Task 6.
- g. Drainage Design Report, see Task 7.
- h. Code Compliance Summary, see Task 8.
- i. Product Data Binder, see Task 9.
- j. Material Samples and Color Selections, see Task 9.
- k. Updated cost estimates completed in accordance with Task 10.
- l. Design Criteria Compliance Checklist, see Task 11.
- m. Safety Criteria Conformance Checklist, see Task 11.
- n. Updated Construction Contracting Strategy plan, see Task 13.
- o. Construction Schedules, see Task 13.
- p. Accessibility Design Review Checklist.
- q. Draft Building/Structural Settlement Report.

Pre-Final Submittal: All design work shall be essentially complete with only minor (insignificant) items needing detailing or checking. All calculations shall be completed and checked in accordance with established QC procedures and submitted in bound format. Drawings shall be nearly complete for bidding purposes; approximately 90% complete, and shall have incorporated or resolved comments made during the 65% design review, and other informal reviews. Unresolved comments shall be identified and addressed. Reports and studies shall be submitted as final, unless otherwise agreed. Consultant's final list of proposed contract bid items and quantities shall be submitted.

Submittal shall include final reports, drawings, special provisions and supplemental technical specifications, and updated cost estimates. The submittal report shall include an updated discussion of the design, by discipline, to give the reviewer an understanding of why the design progressed in the particular manner it did. It shall reference documentation of design decisions made in the course of the work. Include outstanding issues and/or conflicts that need resolution, if any remain, and recommendations to resolve such issues. Provide a matrix of review comments received for the 65% submittal with comment resolution.

- a. Drawings and Specifications
- b. Update Station Design Programs to include requirements for stations based on completion of design and relevant concurrence and agreements.

- c. Geotechnical Reports, see Task 3.
- d. Traffic Engineering Report, see Task 5.
- e. Drainage Design Report, see Task 7.
- f. Code Compliance Summary, see Task 8.
- g. Product Data binder, see Task 9.
- h. Material Samples and Color Selections, see Task 9.
- i. Updated cost estimate completed in accordance with Task 10.
- j. Interdisciplinary coordination check prints, see Task 11.
- k. Design Criteria Compliance Checklist, see Task 11.
- l. Safety and Security Criteria Conformance Checklist, see Task 11.
- m. Updated Construction Contracting Strategy plan, see Task 13.
- n. Constructions Schedules, see Task 13.
- o. Accessibility Design Review Checklist.
- p. Final building/Structural Settlement Report.

Final Submittal/Contract Document (100%): Consultant's Final design submittal shall include original and electronic files of the complete drawings, special provisions, supplemental technical specifications, bid item list and final engineer's estimate ready for bidding of the work. Drawings shall be stamped and signed by the Consultant's appropriate architect, engineer or professional licensed by the State of California. Final drawing check prints (performed in accordance with established QC procedures) shall be submitted for review and will be returned to the Consultant for safekeeping. Final sealed original calculations (properly indexed) and cost estimating back up shall be submitted.

Consultant's Final Design submittal shall include final reports providing a discussion of the design changes from the Pre-Final, by discipline, to give the reviewer and understanding of why the design progressed in the particular manner it did. It shall reference documentation of design decisions made in the course of the work. Include outstanding issues and/or conflicts that need resolution, if any remain, and recommendations to resolve such issues. Provide a matrix of review comments received for the Pre-Final submittal with comment resolution.

- a. Drawings and Specifications

- b. Update Station Design Programs to include requirements for stations based on completion of design and relevant concurrence and agreements.
- c. Traffic Engineering Report, see Task 5.
- d. Code Compliance Summary, see Task 8.
- e. Product Data Binder, see Task 9
- f. Material Samples and Color Selections, see Task 9
- g. Updated cost estimate completed in accordance with Task 10.
- h. Design Criteria Compliance Checklist, see Task 11
- i. Safety Criteria Conformance Checklist, see Task 11
- j. Accessibility Design Review Checklist

E. TASK 12 DELIVERABLES

1. Final Design Strategic Execution Plan
2. Verification/Validation report on Preliminary Engineering design, Design Criteria, Code/ADA Analysis, cost estimate, and construction schedule of Construction Contract Packages
3. For each submittal the Consultant shall provide hard copies and electronic PDF copies on CD of the drawings and reports.
4. Resolutions and Progress log(s) regularly status with resolution and resolution dates:
 - a. Design/ technical issues from PE
 - b. Design/ technical issues form Final Design
 - c. Review comments
 - d. Interagency coordination
5. Documentation including minutes of all meetings with City departments or external entities.
6. The Consultant shall prepare design reports that accompany each milestone submittal. The first submittal (Early Work) should include the basis of the design, subsequent reports should include summary of changed conditions from the previous submittal. Design reports should also include comment tracking sheets showing comments and resolutions from previous reviews.
7. Incorporation of directive drawings into submittals
8. Drawing submittals at Early Work, 65%, Pre-Final, and Final Design
9. Design reports at Early Work, 65%, Pre-Final, and Final Design submittals
10. Electronic submittals at Early Work, 65%, Pre-Final, and Final Design

submittals

11. Electronic responses to comments at Early Work, 65%, Pre-Final, and Final Design submittals
12. Review packages for each review for each contract, including drawings, specifications, calculations, testing plans, training plans, O&M manual checklists, spare part lists that will be part of the Final Construction Documents for each review.
13. Final Bid Package for each contract including signed and sealed drawings, specifications, calculations, testing plans, training plans, O&M manual checklists, spare part lists that will be part of the Final Construction Documents for review.
14. Signed check prints for all drawings, specifications, and calculations for each of the bid packages.
15. Historic American Buildings Survey/Historic American engineering Record documentation for the building to be demolished to construct the Chinatown station.
16. Completed Safety and Security Certification documentation for design including Safety and Security Certificates and Construction Conformance Checklist(s) for each certifiable element in each Construction Contract Package.
17. Effects of Settlement Reports
18. Hazard Analyses
19. Simulations/studies, Renderings, and Models
20. Checklist of Safety and Security Certification Design Criteria Compliance at, 65%, Pre-Final, and Final Design submittals
21. Safety Criteria Conformance Checklist at, 65% Pre-Final, and Final Design submittals

2.3.13 TASK 13: CONSTRUCTION PACKAGING AND SCHEDULES

- A. *Construction Contracting Strategy plan*** – At NTP, SFMTA will furnish to the Consultant the preliminary engineering Project Schedule and the Construction Contracting Strategy plan for the Project. During the Early Work phase, the Consultant shall review these documents by considering, but not limited to, the following: analysis of constructability issues, construction sequencing and schedule durations, anticipated construction staging and access requirements, construction costs, and construction market considerations, and insurance and risk management issues. Based on this assessment, the Consultant shall prepare a report detailing its observations and recommendations for potential modifications to the Construction Contracting Strategy plan.

Upon review of the Consultant's report, SFMTA will issue revision to the approved Construction Contracting Strategy plan for the Project that may include refinements and modifications to the Construction Contracting Strategy plan. For the 65% design submittal and all subsequent design submittals, the Consultant

shall structure all design deliverables, including contract drawings and specifications, in accordance with the current Construction Contracting Strategy plan. Separate, stand alone contract documents shall be prepared for each construction and procurement contract defined in the Construction Contracting Strategy plan.

- B. *Construction Schedule Submittals*** – The Consultant shall submit detailed construction schedules in accordance with the Construction Contracting Strategy plan two weeks prior to the 65% design submittal and the Pre-Final (90%) design submittal. The development of these schedules, including underlying construction productivity rates, shall be fully integrated with the development of the construction cost estimates. At these submittal milestones, the Consultant shall also develop a comprehensive, cost-loaded schedule for the Project that integrates the construction schedules developed by the Consultant and schedules developed by others, including Third Parties.

Construction schedules shall be developed in sufficient detail to provide for an adequate constructability review of the 65% submittal packages and to provide backup for any milestones or construction restraints to be included in the final construction documents.

As part of the 65% design submittal and all subsequent design submittals, the Consultant shall develop proposed construction contract milestone and shall provide documentation of schedule interface points and constraints.

C. TASK 13 DELIVERABLES

1. Construction Contracting Strategy plan during the Early Work, updated as necessary
2. Detailed construction schedule by Contract at the 65% and Pre-Final design submittal
3. Cost-loaded overall Project Schedule at the 65% design submittal and the Pre-Final design submittal
4. Description of schedule milestones, interfaces, and constraints by Contract at the 65% design submittal and all subsequent design submittal.

2.3.14 TASK 14: ILLUSTRATIVE GRAPHICS FOR OUTREACH MEETINGS

Services beyond those described in this RFP or agreed to in the scope of services, which may include the preparation of models, photo simulations, exhibits, and other display materials, will be negotiated on an individual work order basis. The SFMTA shall issue work orders for these services from an allowance included under Other Direct Charges (ODCs) in the baseline Budget.

2.3.15 TASK 15: BID SUPPORT SERVICES

The Consultant shall assist the SFMTA during bid/award, including preparation of addenda, responding to bid questions.

The Consultant shall provide engineering support during the bidding phase, which includes modifications to construction documents (drawings and specifications).

The Consultant shall also conform the Bid documents during the post-bid/pre-award period resulting from changes made to the Bid documents by addenda.

A. TASK 15 DELIVERABLES

1. Addenda
2. Conformed Construction Documents (Contract Drawings and Contract Specifications) incorporating all addenda

2.3.16 TASK 16: DESIGN SERVICES DURING CONSTRUCTION

The Consultant must provide construction A&E support for Construction Contract Packages Nos. 1 through 7 described under Section 1.8.

Prepare an overall Construction Support Strategic Execution Plan to cover A&E support that is related to the design performed by the A&E team. The plan should also include the overall management/coordination of support by the Integrated Team. The plan shall have subsections or subplans addressing procedures and processes related to reviewing RFIs, submittals, changes; communication/interface with Project stakeholders.

Provide a qualified Technical Design Team Representative full-time at the job site for each of the Construction Contract Packages for the entire construction duration. The Technical Representative shall provide technical support for the on-site construction management staff in responding to RFIs, submittals and resolving technical issues in the field. The Technical Representative shall participate in construction progress meetings, MEP coordination meetings; start up meetings, and other meeting as required. At a minimum, the Technical Representative shall have participated in the Final Design of the Construction Contract Package and possess all around, in-depth technical knowledge/history of the design development of the Package.

For Sequential Excavation Method (SEM) construction, also known as New Austrian Tunneling Method (NATM), provide on-site technical direction to the Contractor's representative at the beginning of each shift and as-needed observation for each shift to protect the work, existing facilities and improvements. It is expected that SEM work will be performed six days a week in two consecutive 10-hour shifts.

Provide geotechnical support for each Construction Contract Package.

Provide archaeologist support to perform the work required by the MMRP and MOA between SHPO, FTA and SFMTA, to train construction contractors to identify and respond to cultural resources encountered during construction and to provide as-needed support services for each of the Construction Contract Packages.

Provide arborist and noise and vibration specialist to perform the work required by the MMRP.

Review and respond to RFIs from contractors through the PM/CM. Beyond the RFIs that can be answered at the site by the Technical Representative, the Consultant and the Integrated Team are expected to participate in the review and response to the balance of the RFIs.

Review and respond to technical submittals (including submittals on shop drawings, product data, samples, testing plans and procedures, training plans, O&M manuals) from contractors. Beyond the submittals that can be reviewed at the site by the Technical Representative, the Consultant and the Integrated Team are expected to participate in the review and responses to the balance of the technical submittals.

Review and respond to contractor proposed changes, including proposed substitutions and shared cost-saving changes.

Tracking all RFIs, submittals, proposed changes that result in cost savings/increase and/or time savings/increase as determined by the Consultant by performing order of magnitude estimates. Submit logs to the PM/CM on a biweekly basis. The master RFI, submittals, and proposed change logs will be prepared and maintained by the PM/CM team. The submitted above logs are meant to be a subset to be developed by the Consultant identifying specific cost and time impacts. These logs are to be submitted to the PM/CM for the purpose of providing a rough advanced, first hand, cost/schedule trend tracking.

Regularly update the design drawings that the Consultant is responsible for, to incorporate any changes that are a result of responses to RFIs, submittals, substitutions or the result of change orders and modifications.

For each design discipline/area that the Consultant is responsible for, perform periodic field visits and Structural Observations, where applicable, to verify the design and/or assist in the resolution of issues related to that design discipline.

Implement a functional and operational testing program, including participating and approving in factory and integration testing. Witness and approve all functional and operational tests. Update commissioning and startup and system cutover plan and prepare procedures. Support SFMTA in performing systems integration tests to verify functionality of individual systems and subsystems, compatibility of equipment and/or facilities supplied by contractors, adequacy of operating procedures developed for use under normal, abnormal, and emergency conditions, and appropriate training of Muni staff.

Assemble O&M manuals and assemble into an integrated master set with introduction, table of contents, and other materials to make the manuals understandable and useful for the Muni O&M staff.

Advanced commissioning of systems shall including documentation and O&M information to enable Muni staff to maintain the efficiency and performance of systems.

At the end of job, prepare conformed set of drawings and specifications reflecting all changes that were incorporated into the construction.

Assist SFMTA in coordinating with various City departments, external agencies and Third Parties on construction related issues.

Provide analysis and resolution of design hazards and support to the SFMTA on Safety & Security Certification of Construction and Initial Operation.

Provide support on testing, training, start up and commissioning.

Assist the SFMTA in community coordination.

A. TASK 16 DELIVERABLES

The following is a sample list of the minimum list of deliverables during Construction.

1. Construction Support Strategic Execution Plan to cover all A&E support, whether the construction support is to be provided by Consultant or others on the Integrated Team.
2. Minutes of all meetings with City departments and external entities when a member of the PM/CM team is not present.
3. Responses to RFIs, Technical submittals and contractor proposed changes.
4. Tracking logs of all RFIs, submittals, proposed changes.
5. Post site visit reports by design discipline leads on verification of design and/or resolution of issues, including Structural Observation Reports, where applicable.
6. Post inspection reports on:
 - a. visits to manufacturer/supplier plants to witness factory testing,
 - b. compliance and performance of functional, operational, and integrated testing requirements and Muni needs, and
 - c. compliance of training requirements and the needs of Muni staff
7. Conformed set of drawings and specifications for each of the Construction Contract Packages Nos. 1 through 7, reflecting changes incorporated into construction
8. Both hard copies and electronic PDF copies on CDs of revised drawings incorporating RFIs and other changes
9. Integrated set of O&M manuals, including advanced commissioning documentation and information to enable Muni staff to maintain the efficiency and performance of systems.
10. Both hard copy and electronic PDF copies on CDs of O&M manuals and training records

2.3.17 TASK 17: POTENTIAL ADDITIONAL CENTRAL SUBWAY FINAL DESIGN TASKS

Subject to the availability of funding, SFMTA reserves the right to add, at its sole discretion, all or part of the following additional final design or other related engineering work to this contract:

- A. Scope changes due to changing circumstances/ environment, user needs, changing regulations, and others.
- B. Operations Control Center (OCC) Facilities Design: Conduct feasibility studies, conceptual, and preliminary and final design for a new primary OCC at a TBD location. This work would include all building structural elements as well as: operating theater, offices, shop areas, equipment rooms, storage areas, elevators, escalators, lighting, environmental systems, power, building security, emergency and alarm systems, wiring, communications, parking facilities as required, finishes and furnishings. This work would also include installation of all OCC systems, extended from the interim OCC as required, and integration to implement full redundancy with the secondary OCC. This work would include cutover without impacting revenue service, testing, training, documentation, warranties and spare parts.

Work orders may be issued for these services by SFMTA after the award of the Final Design.

2.4 Project Milestone Schedule

The current Central Subway Project Schedule (see Appendix 10) includes the following milestones:

	Start	Finish	65% Design	Final QC	Advertise Start	Construction Complete
Enter into Final Design	Oct 09					
Utility Contract 1					7/28/09	
Utility Contract 2				1/4/10	3/3/10	
Tunnel Contract			2/16/10	5/11/10	7/9/10	10/15/13
Moscone Station Contract			4/27/10	1/13/11	11/10/11	10/3/16
Union Square/Market Street Station Contract			4/27/10	3/11/11	5/24/11	2/23/17
Chinatown Station Contract			4/27/10	1/13/11	8/17/11	6/29/17
Surface, Trackwork and Systems Contract			8/31/10	5/2/12	7/16/12	12/20/17
Safety and Security Certification, Start Up, Commissioning	12/21/17	6/13/18				
All Construction		6/13/18				
Pre-Revenue Service	6/14/18	12/4/18				
Revenue Service	1/2/19					

2.5 Staffing Requirements

The Consultant and each of its Subprimes and Subconsultants must have adequate professional staff or shall fulfill its commitment to increase professional staff where required so as to perform all services outlined in the Scope of Services of this RFP.

Personnel assigned to perform work during design shall work in the Central Subway Office to be provided by the Proposer. In addition, the designer providing support during the construction

and the Technical Design Team Representatives assigned to support construction contract packages shall work in a San Francisco office to be provided by the Proposer or others.

The continuity of Key Personnel, as well as designers/checkers, is of vital importance to the success of this Project and to the SFMTA organization. Consultant and its Subprimes and Subconsultants are to ensure that each of the proposed staff members named in the Proposal will in fact be available from the start of the Work and will be committed to stay through the end of his/her assignments.

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

2.6 Required Technical Expertise

The following technical expertise and capabilities will be required on the Proposer's team. The proposer shall identify each individual proposed to lead or be the key resource for an expertise and document their capabilities. For Civil, Architecture and Systems expertise identify the key resource for each construction contract package. It is expected that key resources will be drawn from a combination of the Prime Consultant, Subprime Consultant, and Subconsultant firms to provide a strong balance between local knowledge and experience with local conditions, and specialized knowledge drawn from work elsewhere. While these areas of expertise are highlighted here, an integrated and comprehensive design team approach is very important.

2.6.1 TUNNELS / STRUCTURES / MECHANICAL DESIGN

- A. Geotechnical expertise, including cutter-soil-mixing, settlement risk assessment and mitigation, pressure and compensation grouting, and experience with and knowledge of local conditions
- B. Tunneling design and construction support experience, including EPB bored, soft-ground tunnels, soft-ground sequential excavation method (SEM), and mining for cross-passages and other structures
- C. Experience with NFPA 130 Fire/Life/Safety, and California Building Code requirements
- D. Experience in the design of Deep structures, and foundations, top-down cut-and-cover subway station construction, crossovers, shafts, retaining walls, and rail systems
- E. Tunnel ventilation and mechanical design and modeling, including fire/life safety issues
- F. Technical support for certain environmental analyses, including but not limited to noise, vibration, utilities, construction and soils

2.6.2 CIVIL FACILITIES DESIGN

- A. Utilities and drainage, including knowledge of local requirements and conditions

- B. Land surveying, mapping, and system-wide vertical and horizontal control methods
- C. Right-of-way engineering and support for SFMTA's real estate department.
- D. Track alignment and track design
- E. Street and pavement design, including knowledge of local standards
- F. Traffic engineering and roadway modifications, including experience with traffic analysis, signal design, and construction traffic mitigation
- G. Permit support and coordination
- H. GIS and CADD capabilities, including management of CADD networks

2.6.3 ARCHITECTURE

- A. Underground subway station design and architecture, including NFPA 130 Fire/Life/Safety and California Building Code experience
- B. Incorporation of Crime Prevention Through Environmental Design (CPTED) principles and practices and Americans with Disabilities Act (ADA) requirements
- C. Acoustic reverberation
- D. Wayfinding and pedestrian flow
- E. Transit-oriented development design expertise to preserve and enhance reasonable Transit Oriented Development (TOD) opportunities at stations and staging areas following construction completion
- F. Urban design, landscape architecture, and streetscape design
- G. Integration of public art into station designs
- H. Support for public meetings, including graphics, visual simulations and design descriptions

2.6.4 SYSTEMS

- A. System integration of Tunnel ventilation design and evacuation requirements
- B. Automated Train Control Systems
- C. Tunnel and station radio, communications and control systems

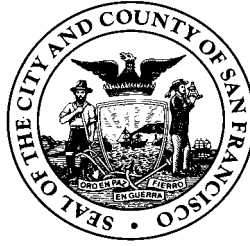
2.6.5 PROJECT AND SYSTEMS INTEGRATION

- A. Effective project and systems integration across all contracts and disciplines, including existing systems, conditions, and facilities

- B. Interface management and quality oversight
- C. Safety and Security hazard analyses, mitigation and certification
- D. Start-up and commissioning of stations and systems
- E. Integration testing

2.6.6 PROJECT MANAGEMENT AND CONTROLS

- A. Effective management of multi-disciplinary Integrated Team
- B. Interface management and quality oversight
- C. Effective work breakdown structure development, progress reporting, and invoicing
- D. Constructability analyses, including cost/benefit analyses
- E. Schedule control
- F. Budget control



REQUEST FOR PROPOSALS TO PROVIDE
ARCHITECTURAL AND ENGINEERING SERVICES
FOR THE FINAL DESIGN AND CONSTRUCTION OF THE
CENTRAL SUBWAY PROJECT (THIRD STREET LIGHT RAIL PROJECT PHASE 2)

III. SUBMISSION REQUIREMENTS

A Proposer must follow and respond to the requirements of this Section. Proposers are invited to submit questions in accordance with Section 6.1.

3.1 Submittal of Proposals

All Proposers must submit twenty (20) hard copies and twenty (20) CD copies of their Proposals by the deadline, delivered to the address stated below. (See Appendix 2 for the number of copies required for SBE related documentations/forms). Partial or total omission of any of the required items under Section 3.3 from a Proposal may disqualify a Proposal from further consideration. The SFMTA will not accept or consider a Proposal submitted after the deadline. The SFMTA will not consider a Proposal that does not conform to the submission requirements of this RFP.

All Proposals must be **received** at SFMTA by: **May 22, 2009 at 5:00 pm.**

Proposals must be delivered to:

**Contract Management Office
SFMTA Transportation Planning and Development Division
1 South Van Ness Avenue, 3rd Floor
San Francisco, California 94103-1267
Attention: Mr. Mario Gallardo (415) 701-4348**

3.2 Submittal Documents - Format

A Proposal must be clear, concise and complete. A Proposal must total no more than 100 pages on double sided recycled paper (50 sheets). Tab dividers will not be included in the page count. All pages must be 8-1/2" x 11", minimum size 12 font, unless otherwise noted in this RFP. Size 10 font and 11"x17" page size are allowed for preparing table/spreadsheet, chart, or schedule. Each 11"x17" page will be counted as two pages towards the 100-page limit.

All documents submitted must be bound in a binder with each section separated by tabbed dividers. Distinct documents enclosed in the appendix must be separated by tabbed dividers as well.

Each copy of the Proposal must include a CD-ROM containing an electronic version of the

Proposal, EXCLUDING the cost Proposal.

3.3 Submittal Documents - Content

The content required under Subsections 3.3.1, 3.3.2, 3.3.3, 3.3.4, 3.3.5, 3.3.6 and 3.3.7 below constitute the written Proposal that is to be submitted in accordance with Sections 3.1 and 3.4 above. Client references and resumes of Proposer's personnel must also be included as part of the written Proposal submission as appendices, but they are not counted toward the 100-page limit. Documents described in Subsections 3.3.8 and Section 3.4 are to be submitted separately, at a later date, as noted below.

3.3.1 Introduction

A. Letter of Introduction

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

B. Executive Summary

A Proposer must furnish an executive summary briefly describing the qualifications and organization of the proposed consulting team (including the Proposer, Subprime Consultants, Subconsultants, and Key Personnel), highlighting the key points of the Proposal, and verifying that the Proposer's consulting team will meet all requirements set out in the RFP.

C. Exceptions to the Form of Agreement

Proposers shall be prepared to accept the terms and conditions of the Form of Agreement, which are set out in Appendix 3 to this RFP. If a Proposer is unable or unwilling to comply with any requirements of the standard contract agreement, the Proposer must identify the requirements to which it objects, clearly explain why the Proposer cannot comply with them and offer alternative language in a the Introductory Section of its Proposal.

3.3.2 Organization and Management

A. For a joint venture or association, provide description of the joint venture and contractual arrangement (i.e., identify the general partner, if any, division of liability and administrative responsibilities) type of arrangement. Indicate any past joint venture relationships between the joint venture partners and projects contracted.

B. Provide the name(s), title(s), address(es), including email address(es), telephone and facsimile numbers of individual(s) who have authority to bind the firm, joint venture, or association.

C. Identify one individual, empowered by the Proposer and representing the Proposer's entire team, as the Proposer Project Manager who for this specific

Project has the authority to make binding decisions and commitments for the Proposer and who is responsible for managing the Proposer's team, regardless of the authority of the other member firms (in case of joint venture or association) or authority of other key personnel, and who has the expertise to manage the work defined herein. The Project Manager must have sole signature authority to execute all agreements and change orders and modifications.

- D. Provide a table listing the following information for all firms included in a Proposal, including the Consultant (or all member firms for joint venture/association) and all Subprimes and Subconsultants:
- a. Official name and address of the firm (full address, including zip codes)
 - b. Date that the firm was formed under its present name
 - c. Name(s) of the owner and/or CEO and/or President
 - d. Number of offices, in US and worldwide
 - e. Number of employees: number of employees in the branch office closest to San Francisco and total number of employees overall
 - f. Indicate whether the firm is an SBE or a non-SBE
 - g. Indicate whether the firm is with locally based expertise
 - h. Indicate whether firm provides A/E services vs. other professional services
- E. Briefly describe the Prime Proposer firm, joint venture, or association and the recognized area(s) of expertise. Describe in detail the functions/ roles/ responsibilities and the services it will undertake under this RFP. If the Prime is a joint venture or association, describe each member firm in detail.
- F. Briefly describe each Subprime and Subconsultant including the recognized area(s) of expertise and their locally based expertise. Describe in detail the functions/roles/responsibilities and the services that each will undertake under this RFP.
- G. Describe in detail how the Proposer's team will be organized and identify the relationships and communication channels among all the Subprimes and Subconsultants and all the Key Personnel.
- H. Describe in detail how the Proposer plans to allocate responsibilities/lead roles and work between Proposer, Subprimes and Subconsultants for the various tasks and how it plans to manage the inter-relationships and coordinate/integrate design across contracts and disciplines for consistency and quality. Indicate/illustrate how the organization and/or relationships will change (if they do change) from Final Design task to Construction Support.

In addition to a written description, which must describe the rationale for the proposed organization, include an organizational chart(s) on 8-1/2x11 or 11x17 inch paper in the body of the Proposal to show the proposed organization and relationships of the Proposer's team.

(In the appendix, provide a copy of the Proposer's current corporate organization chart, including the reporting relationship of those responsible for QA).

- I. Provide on a copy of the Organization Chart from Appendix 9, the names of Prime Proposer, Subprime consultant and Subconsultant firms that are proposed to perform the Subprime and key discipline roles.
- J. Describe in detail the proposed management approach, methods and tools to manage design team staffing and tasks so as to consistently provide quality, cost effective and timely services. Cite examples of the Proposer's successes and lessons learned related to quality, cost and schedule from recent past, large projects.

3.3.3 Services and Staffing

- A. Describe in detail the Proposer and each subproposer's ability and plan to mobilize, manage and provide the services and staffing required to meet Project demands. Illustrate the depth of resources of the Proposer and each subproposer with respect to the services each proposes to provide.
- B. In the written Proposal in a table format, provide a clear identification of Key Personnel and lead designers and checkers by phase, by task, by Proposer and Subproposer; and a clear statement of commitment from Proposer and each Subproposer as to a) their average time commitment to this Project during Final Design and during Construction, b) term of commitment during Final Design and during Construction, and c) work location during Final Design and Construction. In addition, propose a list of back up key personnel who will ensure continued and uninterrupted service to the Project in the event of emergencies or unforeseen circumstances.
- C. Also within the written proposal and in a bar chart format, identify all personnel and percentage of Full Time Equivalent (FTE) by month to complete final design within the duration shown on the project schedule.

3.3.4 Relevant Experience and References

- A. Qualifications and Experience

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

- 1. The firms involved: prime firm and each of the subproposers
- 2. The management personnel directly involved and/or who would play an important role in performing work on the Project.
- 3. All other key personnel and lead designers and checkers proposed for the tasks in the Proposal.

In a separate sub-section in the body of the Proposal, clearly titled "Qualifying Projects and Owner References", describe in detail the project or projects that qualify the Proposer to meet the prerequisite experience/qualification conditions described in Section 1.11, including information on start and completion dates of design of the listed projects, start and completion date of construction of each listed project, total project dollar value of each listed project, the dollar value of the professional service contracts for final design and for construction support, scope of services performed, and the location of the projects. Include owner reference information, including contact names, titles, email addresses, mailing

addresses, and phone numbers. In addition, provide supporting information/documentation for other prerequisites.

B. References

In a spreadsheet format as an appendix to the Proposal, provide client references for all projects within the last ten (10) years for Proposer (and for each member firm if the Proposer is a joint venture or association) and for each subproposer, including name of contact person, his/her title, address, phone number and e-mail address, starting with the most recent projects undertaken by each firm, with description of the projects including details on the roles/responsibilities that the firm/subproposer undertook and approximate dollar value and term of the related professional service contract(s). In addition, indicate those projects that bear relevance to this RFP.

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

The SFMTA prefers that Proposers provide client references for relevant projects performed for public transit agencies, government agencies, or large transportation enterprises for which the firm/subproposer or individual has provided services within the past 10 years.

Reference information and documents do not count towards the Proposal 100-page limit.

C. Specific Relevant Experience

Provide detailed descriptions of the Proposer team's experience with final design and construction support for large projects similar to the Central Subway Project. For example:

1. Describe, with specific examples, the Proposer team's experience and success in completing final design/construction bid documents for cut-and-cover underground structures and mined underground structures, fire/life safety system, train control systems, Operations Control Centers, and integrated systems implementation, related to transit tunnel/underground transit station projects over the last 10 years. Cite the measuring criteria by which Proposer considers the design experience to have been a successful one.
2. Describe, with specific examples, the experience of the Proposer team (including the Consultant, Subprime Consultants and Subconsultants) experience and success in providing A&E construction support through the end of construction for cut-and-cover underground structures and mined underground structures, fire/life safety system, train signal systems, related to transit tunnel/underground transit station projects over the last 10 years. Cite the measuring criteria by which Proposer considers the design experience to have been a successful one.

3. Describe, with specific examples, the Proposer team's experience and success in providing construction support for transit tunnel/underground transit station projects over the last 10 years with respect to testing, start up and commissioning.
4. Describe, with specific examples, the Proposer team's experience and success in managing and coordinating an Integrated Team composed of Proposers and government or transit staff.
5. Describe, with specific examples, the Proposer team's experience and success in managing/coordinating and completing construction documents for large, complex construction projects that are broken down into multiple distinct and yet integrated construction contracts.
6. Describe, with specific examples, the Proposer team's experience and success in coordinating/interfaces with city and other local agency departments, external government agencies, and utility companies. Specify whether any such experience has been in San Francisco.
7. Describe, and provide specific examples of, the Proposer team's experience and success involving Quality Control (QC) programs for similar projects.

Submit, as appendix for reference, a copy of your company's Quality Assurance/ Quality Control manual and Quality Control procedures from a previous project similar to the Project described in this RFP. (Note: The manual and procedures provided will not be included in the Proposal 100-page limit).

D. Specific Relevant Experience and Resumes of Key Personnel

Provide resumes of qualified managerial, lead technical coordinator personnel, lead designers, checkers who would be assigned to manage/lead the various tasks of this Project, clearly indicating their experience on similar recent projects.

A/E Consultant personnel who work as designers and checkers in the following Disciplines, must have successfully designed projects within the last five years using the codes/standards/regulations specified in the Project Design Criteria in Appendix 10 to this RFP: Architectural, Structural, Mechanical, Emergency Ventilation, Electrical, Systems, Train Control and Safety and Security.

Resumes submitted as part of a Proposal must adhere to the format described below:

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

- (type, state registered, and date acquired)
4. Resumes for each Key Personnel shall be limited to a maximum of two pages.

Resumes will not be counted toward the 100-page limit. The PM3 forms will not be counted as substitution for the submitting resumes as required above.

3.3.5 Approach & Schedule

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

At a minimum, a Proposer's description of its proposed scope of services/tasks and its approach must include the following:

1. The Proposer's understanding of the nature and extent of the services required for each task/work activity
2. The Proposer's plan, program, and methods for executing each task (work plan).
3. Special issues, problems, risk and constraints, and the approach towards mitigating and resolving them.
4. Proposed list of deliverables with detailed descriptions for both final design and construction support

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

- B. Describe the firm's proposed approach towards integrating City staff into the Integrated Design and Construction Support Team.
- C. Describe the firm's proposed project-specific approach to include A/E firms with expertise or experience in local conditions and requirements as part of the Integrated Team. List and discuss examples of recent projects in which local firms played substantive and important roles in the design process. Describe how the Proposer has mentored small and/or locally based A/E firms and included them in recent projects. Describe and discuss the meaningful design work in the Proposal that would be best performed by A/E firms with local expertise.
- D. Describe the Proposer's approach and procedures for developing and maintaining quality and cost control for the Project, and for correcting quality and budget deviations. Cite examples of recent successes and lessons learned from recent large projects the Proposer has completed within the last 10 years.
- E. Describe the Proposer's project specific approach towards interagency coordination, and how that approach may differ from past projects or work with different agencies and organizations.
- F. Proposer must include a detailed schedule in narrative, tabular and bar chart

formats, for the execution of the Scope of Services by tasks and by construction contract phases. The Proposer may assume the Project schedule will comport to the schedule provided in Sections 1.5, 1.8, 2.4, and Section V of this RFP. Proposer's schedule shall include its own proposed major intermediate milestone dates. The narrative shall include rationale for the proposed schedule for completing each task and for the proposed intermediate milestones.

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

In addition to the Proposal requirements discussed above, a Proposer must submit the following as appendices to its Proposal:

- A. Consultant/Joint Venture Partner and Subconsultant Participation Report (SFMTA SBE Form 1)
- B. SBE Consultant/Subconsultant Participation – Good Faith Efforts (SFMTA SBE Form 2)
- C. Bidders List (SFMTA SBE Form 2A)
- D. SBE Consultant/Joint Venture Partners/Subconsultant – Gross Revenue Declaration (SFMTA SBE Form No. 2B)
- E. San Francisco Municipal Transportation Agency Questionnaire on Recruitment, Hiring and Training Practices for Consultants (SFMTA SBE Form 3)
- F. SBE Subconsultant Participation Declaration (SFMTA SBE Form 4)
- G. Small Business Enterprise Acknowledgement Declaration (SFMTA SBE Form 5)
- H. A Copy of the firm's Nondiscrimination Program or EEO Policy Statement (if any)

Note: Forms described in this paragraph are not included in the Proposal page limit specified in Paragraph 3.3.

Both Proposer and subproposers will need to submit Items C, D (if applicable), E, F (if applicable), and H.

Items A and B of this Section 3.3.6 apply to the Prime Proposer only. Item G applies to the SBE subproposer only. Information about all firms submitting quotes or proposals to the Prime and Subproposers must be included on Item C (Bidders List). Directions for completing Items A through F can be found in the SBE Program in Appendix 2.

Two copies of the Good Faith Efforts documentation (Item B) are required. The two copies shall be clearly marked as Good Faith Efforts Documentation and shall be bound and submitted separately from the Proposal.

IMPORTANT NOTE:

A PROPOSER MUST DOCUMENT THAT IT WILL MEET THE SMALL BUSINESS ENTERPRISE (SBE) PARTICIPATION GOAL. IF A PROPOSER

DOES NOT MEET THE SBE GOAL, IT MUST HAVE SUBMITTED COMPELLING GOOD FAITH EFFORTS DOCUMENTATION THAT IT TRIED TO MEET THE SBE PARTICIPATION GOAL. A PROPOSER THAT DOES NOT MEET EITHER CRITERION WILL BE DETERMINED NON-RESPONSIVE.

3.3.7 Standard City and County of San Francisco Forms

The following are required to be submitted with the Proposal:

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

Both Proposer and all subproposers must submit forms for Items A, B, D, E described in this paragraph, which are not included in the page limit specified in Paragraph 3.2. Only the Prime Proposer must submit forms for Item C above.

3.3.8 Project Staff Roster

On the day of interview, each shortlisted Proposer must provide to the TET committee members twenty (20) copies of a comprehensive Project Staff Roster on spreadsheets (11"x17" maximum size paper and minimum size 10 font are acceptable) showing the names of all individuals (including all Key Personnel) proposed for each task and each subtask (if the individual is to be hired at a later date, so indicate). In addition, list their current employers, the number of years with current employer, employment arrangement (e.g. currently temporary status or full time employee or to be hired), a highlight/summary of their qualifications, experience and relevant projects worked on in the recent past, their present job assignments including brief descriptions of their titles, projects, construction contract amounts, locations, duties, and assignment start and end dates, and their proposed job assignments under this RFP including brief descriptions of the proposed titles/positions, tasks/subtasks, primary duties and responsibilities, proposed work location for duration of service, proposed start and end date.

3.4 Cost Proposal

On the day of the interview, each shortlisted Proposer must submit three (3) hard copies and three (3) CD copies of its Cost Proposal for the Total Amount to perform the Work. The Cost Proposal shall be in a sealed envelope clearly labeled as "Contract No. CS-155 - Confidential Cost Proposal."

The Cost Proposal shall be submitted to:

**Contract Management Office
SFMTA Transportation Planning and Development Division
1 South Van Ness Avenue, 3rd Floor
San Francisco, California 94103-1267
Attention: Mr. Mario Gallardo (415) 701-4348**

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

- 3.4.1 In preparing and submitting their Cost Proposals, Proposers shall adhere strictly to the requirements described in this Section and shall include a detailed work plan for all tasks and all phases of the construction contracts, including any optional tasks, and any tasks not listed in the Scope of Service that are important for the successful execution of the Project. In the work plan, the Proposer may sort, group, delete, combine, and separate the proposed tasks, subtasks and deliverables. The work plan shall include personnel and schedule to facilitate the determination of the cost of the services.
- 3.4.2 The Proposer must carefully review all requirements of the Agreement in Appendix 3 of this RFP prior to preparation of its Cost Proposal. In the preparation of its Cost Proposal, the Proposer must assume that the SFMTA will not make modifications to the terms of the Form Agreement.
- 3.4.3 The Cost Proposals shall include the following:
- A. Fixed Fee to be paid as compensation for all Work that is Basic Services, but that does not include reimbursable expenses.
 - B. Direct hourly rates by position of all personnel involved or proposed for the Proposer and all subproposers. The rates shall reflect typical adjustment (living cost increase, pay raises.) for the first five years.
 - C. Most recent, audited overhead rates for Proposer and all Subproposers. (A copy of the most recent independent audit of overhead rates for all firms shall be included.) The overhead rates shall assume that City staff and Proposer staff will collocate in one office both during design and construction of the Project. Proposers shall identify in their cost Proposal the cost for City staff to collocate in an office provided by Proposer and the reduced cost if the Proposer's staff collocates in an office provided by others.
 - D. A detailed breakdown of labor hours for each task and each subtask by construction contract phase, by firm, by discipline and by personnel classifications/grades.
 - E. A detailed cost breakdown for each task and each subtask by construction contract package, by firm, by discipline, by personnel classifications/grades.
 - F. Summary of each firm/subproposer's direct cost and indirect costs for each task and each subtask, including a breakdown of other direct reimbursable costs.
 - G. Cost Proposal for tasks or subtasks that the Proposer proposes to complete on a Cost plus Fixed Fee subject to a maximum cost basis.
 - H. Proposed fixed fee profit for each task and subtask included as Basic Services, the total of which shall be the Basic Services Fixed Fee, described in Section 3.5.3.A., above,.
 - I. Vehicle use or mileage rates and any other applicable rates.
 - J. Cost of providing a centralized office for Proposer and City design staff.
 - K. Proposed Other Direct Costs (ODCs).
 - L. Total not-to-exceed budget, broken down by the seven individual design contract packages establishing a fixed budget for each contract package.

Note: The SFMTA will pay the Consultant's direct wages, overheads, other direct costs, subcontractor charges, and Fixed Fee up to the maximum cost for each contract package. Consultant shall be obligated to complete the work related to all such work

packages for compensation not in excess of the sum of the fixed budgets for all such work packages.

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

3.4.5 Professional Liability Insurance Options: The Cost Proposal shall include a separate section listing the costs (price indication) for both (1) a Project Specific Professional Insurance Policy; and, (2) a non-project specific insurance policy covering Proposer's errors and omissions. Both policies shall have a coverage limit of not less than Twenty Million Dollars (\$20,000,000) with a deductible not more than Two Hundred Fifty Thousand Dollars (\$250,000) and shall otherwise meet the requirements of insurance policies set out in the form Agreement. If the Proposer carries a general professional practice policy with a coverage limit greater than \$20,000,000, the Proposer must list that as well. The SFMTA will select which coverage the selected Consultant will provide. The SFMTA retains the right, but not the obligation, to directly purchase this coverage, in whole or part, on behalf of the Project or its consultant(s). The City shall reimburse the selected Consultant's professional liability insurance costs as ODC.

The professional liability insurance cost proposal must include the following for both the Project Specific and non-project specific policies:

- A. Cost (price indication) for the duration required in the form Agreement including description of the policy type, form and applicable deductibles or retention, including special features of nonstandard exclusions; and
- B. Identify the insurance component of the Proposal's overhead rate that reflects all savings with the implementation of each policy.

3.4.6 The Cost Proposal shall separately account for the costs of general liability and workers' compensation insurance, which will be deducted from the Consultant's expenses and overhead if the City implements an Owner Controlled Insurance Program for either or both of those classes of insurance.

3.4.7 The following expenses will not be tracked or reimbursed separately as Other Direct Costs or Out-of-Pocket Costs under this Contract:

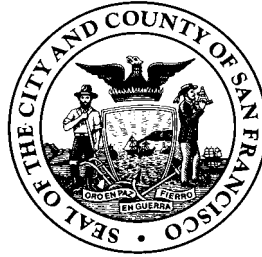
- A. Computer usage; and
- B. Facsimile and telecommunications expenses.

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

- A. Purchases of office and field supplies/equipment, unless the supplies or equipment are not ordinary/typical supplies and equipment AND uniquely required of this Project AND serving only this Project, in which case the costs shall be separately identified in the Cost Proposal. These items will then need to be turned over to SFMTA at the end of the contract.
- B. Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis.
- C. Any travel expenses, including transportation, meals, lodging costs, which are beyond the limit set forth in the attached Professional Services Agreement under Appendix 3.
- D. Any overnight courier services extending outside of the Bay Area between Proposer offices or that are beyond the limit set forth in the attached Professional Services Agreement under Appendix 3.
- E. Any personal, entertainment, proposal, or marketing expenses.

- F. Expenses not reimbursable under federal grant provisions. See, in particular, OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments," 2 CFR Part 225.

3.4.9 On the assumption that SFMTA awards the Contract to the selected Proposer for all tasks of work based on the Scope of Services described in Section II above, the cost of the Contract will be negotiated for all tasks at the same time and concluded before the Contract is to be awarded.



REQUEST FOR PROPOSALS TO PROVIDE
ARCHITECTURAL AND ENGINEERING SERVICES
FOR THE FINAL DESIGN AND CONSTRUCTION OF THE
CENTRAL SUBWAY PROJECT (THIRD STREET LIGHT RAIL PROJECT PHASE 2)

IV. EVALUATION AND SELECTION CRITERIA

4.1 Selection Process

The selection process used by SFMTA generally follows City and FTA procurement guidelines. All responsive Proposals will be evaluated by a Selection Committee comprised of a Technical Evaluation Team (TET) that will evaluate the Proposals and conduct interviews, and an Executive Committee that will oversee the TET. SFMTA will be the sole judge as to which Proposal is best and, in ascertaining the best Proposal, and will also consider a Proposer's financial resources, experience with similar projects and its resources and facilities for performing the Work.

Step One: The SFMTA will evaluate each responsive written Proposal based on the evaluation criteria listed in Section 4.2, Items A through E, using a 100-point rating system. Each member of the TET will separately score each responsive written Proposal. The TET's members' scores for each firm will be totaled, and the result will be divided by the number of TET members to obtain an average written evaluation score for each firm, which will be a maximum of 100 points.

Based on the average score for each written Proposal, the SFMTA will determine which firms are within the competitive range (the "short list"). The firms that the SFMTA considers to be in the competitive range are those Proposers that the SFMTA determines, by the TET score, to have a realistic chance to be awarded the Contract. Proposers on the short list will be invited to give an oral presentation to and be interviewed by the TET.

Step Two: Each short-listed Proposers and their Subprime Consultants will be required to appear before the Selection Committee for an oral interview, presentation of its Proposal and detailed discussion of the elements of its Proposal. Presentations at the oral interview must be made by the the Proposer's Key Team Members who will be assigned to perform the Work. The Key Team Members should actively participate in the oral presentations to the TET. Members of the TET may direct questions to specific members of the Proposer's team. The SFMTA may require short-listed firms to furnish additional information prior to or at the oral presentation and interview.

Using the evaluation criteria in Section 6.2, Item F, each member of the TET will separately score each invited Proposer's oral interview and presentation (40 point maximum). The SFMTA will total individual evaluation scores from all Selection Committee members and then divide the

total by the number of TET members, to obtain an average interview evaluation score for each Proposer.

Step Three: The SFMTA will multiply each Proposer's score the evaluation of its written Proposal (Step 1) by 60 percent (.60); and add the total to the score received from the evaluation of the oral interview (Step 2). The result will determine the ranking of the Proposers.

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

The firm with the highest total score in Step 3 shall be invited to negotiate a contract with the SFMTA. At that time, the SFMTA will open and review Cost Proposals.

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

The SFMTA's strong preference is to award the final design contract for the CSP to a single Consultant. But if the SFMTA, in its sole and absolute discretion, determines that two responsive Proposals from experienced and responsible Proposers are sufficiently strong, and that the two Proposals have complimentary strengths, the SFMTA may award a final design contract for separate parts of the Project to each of the two Proposers. Proposers are cautioned that the SFMTA will evaluate Proposals on all of the selection criteria listed in this RFP. It is unlikely that the SFMTA would shortlist a Proposal that focuses on only part of the Project requirements. The SFMTA anticipates that if it divides final design into two contracts, one contract would cover the tunnel and three stations, and the other contract would cover the utility relocation and trackways, controls, traction power, and systems. The design consultant assigned the second group (systems), would be responsible for and would take the lead in designing the interfaces to the stations. The tunnel and station designer would be responsible for coordinating its designs with the systems designer.

4.2 Evaluation Criteria

Written Proposal:

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

- A. Proposal (5 points maximum):** Responsiveness to all items requested in the RFP, overall organization and clarity of Proposal.
- B. Organization and Management (55 points maximum):**
 - 1. Effectiveness of the Consultant's organizational structure to manage an Integrated Team and provide quality control; and management approach to ensure the Work is performed in a cost effective and timely manner. (7 points)

- maximum)
2. Utilization of qualified SBE firms at the Subprime Consultant level (one point for each SBE firm up to 6 points maximum).
 3. Utilization of qualified firms with locally based expertise at the Subprime Consultant level (one point for each firm up to 6 points maximum).
 4. Utilization of qualified SBE firms as Subconsultants performing key Discipline roles (one point for each firm up to 18 points maximum).
 5. Utilization of qualified firms with locally based expertise as Subconsultants performing key Discipline roles (one point for each firm up to 18 points maximum).

A Proposer shall receive one (1) point for each SBE and one (1) point for each locally based expertise firm listed as a Subprime Consultant or Subconsultant in the positions shown in the Organization Chart in Appendix 9. The Proposer shall not receive additional points for listing a SBE or locally based expertise firm more than once. Proposer shall not create additional Subprime Consultant or Subconsultant positions than are shown in the Organization Chart in Appendix 9.

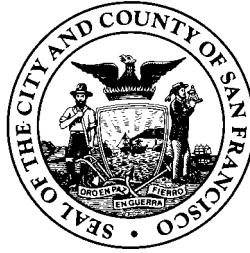
- C. Service and Staffing Ability (10 points maximum):** Ability of the Proposer to provide readily available qualified and adequate staffing and services in a timely manner to support Project demands and complete Work within the Project Schedule. Emphasis will be placed on timely provision of design personnel with expertise in transit tunnel/station projects, design personnel experienced with local codes and regulations, and technical coordinators/integrators experienced with projects involving multi-discipline/multi-bid packages. The TET reserves the right to visit the local offices of the Proposer, Subprime Consultants and Subconsultants as part of its evaluation to confirm that the Proposer, Subprime Consultant and Subconsultants listed in a Proposal have adequate and experienced staff and resources to perform the Work.
- D. Relevant Experience (20 points maximum):** The Proposer's ability to perform the Work, specific experience relevant to the Work, qualifications and those of each of its Subprime Consultants and Subconsultants, and the local experience of those firms on each tier, and client references as to past project(s) performance. The TET may independently verify and evaluate relevant experience and client references.
- E. Approach (10 points maximum):** Consultant's understanding of the Work; the effectiveness of its plan, program and method of execution to coordinate/integrate design among Subprime Consultants and Subconsultants, across disciplines and within the Integrated Team; Consultant's control of design quality, schedule, and cost; Consultant's ability to integrate systems and Project interfaces; Consultant's understanding of special issues, risks, problems and constraints of the Project, and its approach towards mitigating and resolving them.

Oral Interview/Presentation:

The SFMTA Selection Committee will conduct oral interviews at a time and location to be determined by the SFMTA. Prior to the interviews, SFMTA will notify the short-listed candidates in writing as to the time and length of the interview, the general format of the interview.

- F. Oral Interview/Presentation (40 points maximum):** In general, the oral interview will consider the Proposer's overall presentation and Proposer's ability to explain and answer questions from the TET regarding the Proposer's written Proposal. The TET will score the Oral Interview/Presentation based on the quality of substance presented and

the responses provided as well as the quality of the team attending and presenting at the interview, including their expertise, communication skills, knowledge of the Proposal and Program.

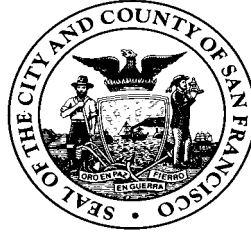


REQUEST FOR PROPOSALS TO PROVIDE
 ARCHITECTURAL AND ENGINEERING SERVICES
 FOR THE FINAL DESIGN AND CONSTRUCTION OF THE
 CENTRAL SUBWAY PROJECT (THIRD STREET LIGHT RAIL PROJECT PHASE 2)

V. TENTATIVE SCHEDULE

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

Advertise RFP	April 2009
Pre-Proposal Conference.....	April 2009
Proposals Due.....	May 2009
Evaluate & Notify Short-Listed Firms	June 2009
Interviews	June 2009
Send out letter on first ranked firm	July 2009
Negotiations	July 2009
Send out Letter of Intent to Award to All Proposers.....	August 2009
SFMTA Board Approval of Contract Award	September 2009
Board of Supervisors Approval.....	September 2009
Civil Service Commission Approval.....	September 2009
City Controller Certification of Funds	September 2009
Notice to Proceed.....	September 2009



REQUEST FOR PROPOSALS TO PROVIDE
ARCHITECTURAL AND ENGINEERING SERVICES
FOR THE FINAL DESIGN AND CONSTRUCTION OF THE
CENTRAL SUBWAY PROJECT (THIRD STREET LIGHT RAIL PROJECT PHASE 2)

VI. TERMS AND CONDITIONS FOR RECEIPT OF PROPOSALS

6.1 Validity of Proposal/Errors and Omissions in RFP/Requests for Information or Clarification

A Proposal (including cost Proposal) shall be valid for at least 150 calendar days from the date of the SFMTA's receipt of the Proposal.

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

Questions regarding this RFP should be addressed in writing to:

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

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

6.2 Addendum / Addenda

SFMTA may modify the RFP prior to the Proposal due date by issuing written addenda. Addenda will be sent via regular, first class U.S. mail to the last known business address of each firm listed with SFMTA as having received a copy of the RFP for Proposal purposes. SFMTA will make reasonable efforts to notify proposers in a timely manner of modifications to the RFP. Notwithstanding this provision, the Proposer shall be responsible for ensuring that its Proposal reflects any and all addenda issued by SFMTA prior to the Proposal due date

regardless of when the Proposal is submitted. Therefore, SFMTA recommends that proposers call SFMTA to verify, prior to submitting a Proposal, whether an addendum or addenda have been issued.

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

6.3 Revisions to Proposals

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

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

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

6.4 Reservation of Rights by City

The issuance of this RFP does not constitute an agreement by the City and SFMTA that any contract will actually be entered into by the City and/or SFMTA. The City and SFMTA expressly reserves the right, at any time, to:

- A. Cancel this RFP at any time without liability prior to execution of the contract;
- B. Waive any defect or informality in any response, Proposal, and Proposal procedure;
- C. Reject any or all Proposals;
- D. Accept any Proposals in whole or in part;
- E. Reissue a Request for Proposals;
- F. Prior to submission deadline for Proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the Proposals;
- G. Award a final design contract to one or more qualified design firms;
- H. Procure any service specified in this RFP by any other means; or
- I. Determine that no project/contract will be pursued.

SFMTA will be the sole judge as to which Proposal(s) is/are best and, in ascertaining the best Proposal(s), will take into consideration the financial resources, reputation, experience in similar situations and facilities for providing services of the Proposers and the needs of the SFMTA.

6.5 Award and Certification Required

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

contract awards are subject to certification by the Controller as to the availability of funds.

6.6 Objections to RFP Terms

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

6.7 Errors and Omissions in Proposal

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

6.8 Financial Responsibility

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

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

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

A. Policy

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

B. Questions

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

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

C. 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.

D. SBE Goal

The Contract Compliance Office has established a 30 percent SBE participation goal for this contract. Small business firms may qualify for this Program by enrollment in either the State of California's Small Business Program, the federal DBE Program, or the City and County of San Francisco's LBE Program. This SBE goal will apply to the following types of contracts or scope of work in the contract: Construction – Building, Heavy; Construction – Dredging and surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection, Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering Services; Surveying and Mapping; Drafting (design services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

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

6.10 Nondiscrimination In City Contracts-Benefits Ordinance

A. Chapter 12B and 12C of the Administrative Code are incorporated by reference as though fully set herein. Chapter 12B and 12C prohibit discrimination by city contractors in employment, the use of property and the provision of employee benefits.

1. Please refer to Appendix 7, Exhibit C regarding the Non-discrimination Program mandated by Chapter 12B of the San Francisco Administrative Code. Documentation regarding Charter 12B and 12C compliance must be on file with or submitted to the CCSF Human Rights Commission (HRC). For further information, contact Mr. Yong K. Lee at (415) 252-2514.
2. The successful Proposer must agree to abide by the following standard contract provisions regarding Chapter 12B and 12C.

B. Nondiscrimination; Penalties

1. Contractor Shall Not Discriminate. In the performance of this contract, Contractor agrees not to discriminate on the basis of the fact or

perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments, or organizations operated by Contractor.

2. Subcontracts. Contractor shall incorporate by reference in all subcontractors the provision of Sections 12B.2 (a), 12B.2(c) -12B.2 (k) and 12C.3 of the San Francisco Administrative Code, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with obligations in this subsection shall constitute a material breach of this Agreement.
3. Nondiscrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations within the United States, discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.
4. Condition to Contract. As a condition to this Agreement, Contractor shall execute the "Nondiscrimination in Contracts and Benefits" form and secure the approval of the form by the SF Human Rights Commission (HRC). See HRC's website at http://www.sfgov.org/site/sfhumanright_index.asp?id=4584 for the Equal Benefits Quick Reference Guide and S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits.
5. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 12B and 12C of the San Francisco Administrative Code are incorporated by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under Chapter 12B and 12C of the Administrative Code, including but not limited to remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payment due Contractor.

6.11 San Francisco Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFPs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a

contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

6.12 Public Access to Meetings and Records

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

6.13 Proposer's Obligations under the Campaign Reform Ordinance

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

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

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

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

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

documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

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

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

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

6.14 Resource Conservation

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

6.15 San Francisco Business Tax Certificate

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

6.16 Certification Regarding Lobbying

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

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

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

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

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

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

6.18 Notification of Limitations on Contributions

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

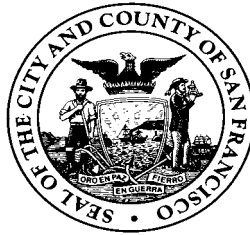
A party to any contract awarded under this solicitation must acknowledge that it understands that any public official who approves this contract may not accept campaign contributions, gifts, or future employment from the Contractor except as provided under the Conduct Code. The contractor must agree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

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

6.19 No Waiver

No waiver by the City of any provision of this RFP shall be implied from any failure by

the City to recognize or take action on account of any failure by a Proposer to observe any provision of this RFP.



REQUEST FOR PROPOSALS TO PROVIDE
ARCHITECTURAL AND ENGINEERING SERVICES
FOR THE FINAL DESIGN AND CONSTRUCTION OF THE
CENTRAL SUBWAY PROJECT (THIRD STREET LIGHT RAIL PROJECT PHASE 2)

VII. CITY CONTRACT REQUIREMENTS

7.1 AGREEMENT FOR PROFESSIONAL SERVICES

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

Proposers are urged to pay special attention to the requirements of Requiring Minimum Compensation for Covered Employees, Requiring Health Care Benefits for Covered Employees, and First Source Hiring Program, as specified in the Agreement (Appendix 3) and as summarized in this Section.

7.2 MINIMUM COMPENSATION ORDINANCE (MCO)

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

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

Additional information regarding the MCO is available on the web at www.sfgov.org/olse.

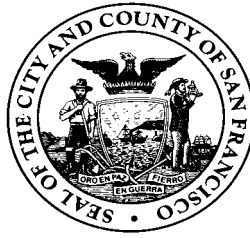
7.3 HEALTH CARE ACCOUNTABILITY ORDINANCE (HCAO)

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

7.4 FIRST SOURCE HIRING PROGRAM

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

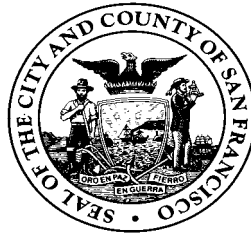
Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at http://www.sfgov.org/site/onestop_index.asp?id=95888.



REQUEST FOR PROPOSALS TO PROVIDE
ARCHITECTURAL AND ENGINEERING SERVICES
FOR THE FINAL DESIGN AND CONSTRUCTION OF THE
CENTRAL SUBWAY PROJECT (THIRD STREET LIGHT RAIL PROJECT PHASE 2)

VIII. PROTEST PROCEDURES

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



REQUEST FOR PROPOSALS TO PROVIDE
ARCHITECTURAL AND ENGINEERING SERVICES
FOR THE FINAL DESIGN AND CONSTRUCTION OF THE
CENTRAL SUBWAY PROJECT (THIRD STREET LIGHT RAIL PROJECT PHASE 2)

IX. APPENDICES

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

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



Appendix 2

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

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

REQUEST FOR PROPOSALS (RFP)

FOR

**CS-155: Architectural and Engineering Services
For the Final Design and Construction
of the Central Subway Project
CCO NO. 08-1017**

FTA FUNDED

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

Appendix 2

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

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

FOR FEDERALLY-FUNDED PROJECTS

	<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 - 4
		b. SBE Subconsultant	SBE - 5
		c. SBE Joint Venture Partner	SBE - 5
		d. SBE Regular Dealer	SBE - 5
		e. Other SBEs	SBE - 5
		f. Materials or Supplies	SBE - 5

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

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

FOR FEDERALLY-FUNDED PROJECTS

<u>SECTION</u>	<u>CONTENTS</u>	<u>PAGE</u>
	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 - 9
	4. Good Faith Efforts	SBE - 10
	B. Recommendation for Award of Contract	SBE - 11
	1. SFMTA CCO's Recommendation for Award	SBE - 11
	C. Successful Proposer	SBE - 11
	1. Substitution of Subconsultants & Suppliers	SBE - 11
	2. Addition of Subconsultants and Suppliers	SBE - 12
	3. Prompt Payment to Subconsultants	SBE - 12
	4. Reporting Requirements	SBE - 12
	D. Administrative Remedies	SBE - 13
	1. Monitoring SBE Participation	SBE - 13
	2. Enforcement Mechanisms	SBE - 13
	E. Confidentiality	SBE - 13
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 (See Page SBE-18)	

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

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

FOR FEDERALLY-FUNDED PROJECTS

<u>SECTION</u>	<u>CONTENTS</u>	<u>PAGE</u>
B.	FORMS SUBMITTED WITH PROPOSAL (CONTINUED)	SBE - 15
	• SFMTA SBE Form No. 2 – SBE Consultant Participation – Good Faith Efforts (<i>See Page SBE-19</i>)	SBE - 15
	• SFMTA SBE Form No. 2A – Bidders List (<i>See Page SBE-21</i>)	SBE - 15
	• SFMTA SBE Form No. 2B –SBE Consultant/Joint Venture Partner/Subconsultant –Gross Revenue Declaration (<i>See Page SBE-22</i>)	SBE - 15
	• SFMTA SBE Form No. 3 – Questionnaire on Recruitment, Hiring, and Training Practices for Contractors (<i>See Page SBE-23</i>)	SBE - 16
	• SFMTA SBE Form No. 4 – SBE Subconsultant Participation Declaration (<i>See Page SBE-29</i>)	SBE - 16
	• SFMTA SBE Form No. 5 – Small Business Enterprise Acknowledgment Declaration (<i>See Page SBE-30</i>)	SBE - 16
	• SCHEDULE B – IF APPLICABLE	SBE - 16
C.	FORMS SUBMITTED POST-AWARD	SBE - 16
	• SFMTA SBE Form No. 6 – Progress Payment Report (<i>See Page SBE-32</i>)	SBE - 16
	• SFMTA SBE Form No. 7 - Subconsultant Payment Declaration (<i>See Page SBE-34</i>)	SBE - 16
	• SFMTA SBE Form No. 8 – Amendment/Modification Declaration Professional Services & Construction Contracts (<i>See Page SBE-36</i>)	SBE - 17
	• SFMTA SBE Form No. 9 – Contractor Exit Report and Declaration (<i>See Page SBE-38</i>)	SBE - 17

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
Small Business Enterprise Program Requirements

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

I. 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.

II. DEFINITIONS

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

A. Small Business Enterprise (SBE)

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

B. Contractor

The term "Contractor" includes consultants.

III. SBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

A. SBE Participation Goal

The Contract Compliance Office has established a thirty percent (30%) Small Business Enterprise participation goal for this contract. Small business firms may qualify for this program by enrollment in either the State of California's Small Business Program with the Department of General Services ("State Program"), the California Unified Certification Program with a U.S. Department of Transportation recipient ("Federal DBE program"), or the City and County of San Francisco's LBE program with the Human Rights Commission ("City Program"). This SBE goal will apply to the following types of contracts or scope of work in the contract: Architecture & Engineering Services (to include professional and technical services), Computer Programming and Design, Drafting (design services); Landscape Architecture; Building Inspection; Public Relations; Telecommunications; Merchant Wholesalers, Durable Goods, and Machinery and Equipment Rental (construction) ("SBE Work".)

To be determined responsive, a proposer must demonstrate in its submittal that it will meet this goal in the performance of this contract; or if it is unable to meet the goal, the proposer must submit documentation (SFMTA SBE Form No. 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.bidsync.com/DPXBisCASB>
- 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. 2B) 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, an SBE may contract out a portion of the work if it is considered to be a normal industry practice. If an 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 an 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 an 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-Peguese, CCO Certification Unit

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

State Program:

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

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 Architectural and Engineering Trainee 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 Architectural and Engineering 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 Architectural and 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 Architectural and Engineering 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 No. 2) submitted by the proposer with its proposal. A proposer must submit a report explaining the steps taken and the reasons the efforts were not successful to obtain SBE participation. The CCO shall determine whether, prior to submission of the proposal, the proposer has performed the quality, quantity and intensity of efforts that demonstrate a reasonably active and aggressive attempt to meet the established SBE goal.

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

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

- a. Soliciting through all reasonable and available means (e.g. attendance at pre-proposal meetings, advertising and/or written notices) the interest of all certified SBEs who have the capability to perform the work of the contract. The proposer must solicit this interest within sufficient time to allow the SBEs to respond to the solicitation. The proposer must determine with certainty if the SBEs are interested by taking appropriate steps to follow up initial solicitations.
- b. Selecting portions of the work to be performed by SBEs in order to increase the likelihood that the SBE goal(s) will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate SBE participation, even when the prime consultant might otherwise prefer to perform these work items with its own forces.
- c. Providing interested SBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- d. (i) Negotiating in good faith with interested SBEs. It is the proposer's responsibility to make a portion of the work available to SBE subconsultants and suppliers and to select those portions of the work of material needs consistent with the available SBE subconsultants and suppliers, so as to facilitate SBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of SBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for SBEs to perform the work.

- (ii) A proposer using good business judgment would consider a number of factors in negotiating with subconsultants, including SBE subconsultants, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for a proposer's failure to meet the contract SBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime consultant to perform the work of a contract with its own organization does not relieve the proposer of the responsibility to make good faith efforts. Prime consultants are not, however, required to accept higher quotes from SBEs if the price difference is excessive or unreasonable.
- e. Not rejecting SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The consultant's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the consultant's efforts to meet the project goal.
- f. Making efforts to assist interested SBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- g. Effectively using the services of available small business community organizations; small business consultants' groups; local, state, and Federal small business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of SBEs.

B. Recommendation for Award of Contract

1. SFMTA CCO's Recommendation for Award

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

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

C. Successful Proposer

1. Substitution of Subconsultants and Suppliers

The Consultant shall not terminate an SBE subconsultant or supplier for convenience and then perform the work with its own forces. The Consultant must make good faith efforts to substitute another SBE for an original SBE subconsultant or supplier when the original SBE subconsultant or supplier is terminated or fails to complete the work on the contract. The Consultant shall notify SFMTA in writing of any request to substitute an 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 – 18
SFMTA SBE Form No. 2	SBE Consultant/Subconsultant – Good Faith Efforts	SBE – 19
SFMTA SBE Form No. 2A	Bidders List	SBE – 21
SFMTA SBE Form No. 2B	SBE Consultant/Joint Venture Partner/Subconsultant Gross Revenue Declaration	SBE – 22
SFMTA SBE Form No. 3	Questionnaire on Recruitment, Hiring, and Training Practices for Consultants	SBE – 23
SFMTA SBE Form No. 4	Subconsultant Participation Declaration	SBE – 29
SFMTA SBE Form No. 5	Small Business Enterprise Acknowledgment Declaration	SBE – 30
SCHEDULE B	Joint Venture Participation Form	From CCO, if needed.
	FORMS SUBMITTED POST AWARD	
SFMTA SBE Form No. 6	Progress Payment Report	SBE – 32
SFMTA SBE Form No. 7	Subconsultant Payment Declaration	SBE - 34
SFMTA SBE Form No. 8	Declaration – Modification of Professional Service Contracts	SBE - 36
SFMTA SBE Form No. 9	Consultant Exit Report and Declaration	SBE - 38

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

B. 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, as well as lower tier SBEs, 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 two (2) copies 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 shall be submitted with the proposal unless an extension of time is granted by CCO.

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

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

Schedule B - Joint Venture Participation Form (If applicable)

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

C. FROMS SUBMITTED 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)

- Sole Proprietor**
- Partnership**
- Corporation, s-Corp, LLC**
- DBE** (Issued by Calif. Unified Certification Prog.)
- SBE** (Issued by Calif. Dept. of General Services)
- 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).

SUBMIT WITH PROPOSAL

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-27.)

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

SFMTA SBE FORM No. 3

WORKFORCE DATA SPREADSHEET #1

8. Please fill out this workforce breakdown

Name of firm: _____
 Address: _____

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

3/30/95

COMPLETED BY Name: _____ Title: _____ Date: _____

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

**SFMTA SBE FORM No. 3
WORKFORCE DATA SPREADSHEET #2**

8a. Hires in 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.:
Note: The information submitted on Parts 1 and 2 of this form is accurate for the progress payment period immediately preceding that of the current payment application attached herewith.
1. Amount of Prime Contract \$
2. Amount of Change Orders, Amendments and Modifications to Date \$
3. Total Contract to Date including Change Orders, Amendments and Modifications (Line 1 + Line 2) \$
4. Amount Invoiced this Reporting Period \$
5. Total Amount Paid to Date including Retention (excluding Line 4) \$
6. Amount of Progress Payment Requested to Date (Line 4 + Line 5) \$
7. Percent Complete (Line 6 ÷ Line 3)
8. Reporting Period - From (date): To (date):

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

Owner/Authorized Representative (Signature) Owner/Authorized Representative
Name & Title (Please Print) Date Name & Title (Please Print) Date
Firm Name Firm Name
Telephone Fax Telephone Fax

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

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

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

**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

SFMTA SBE FORM No. 8

DECLARATION – AMENDMENTS OF PROFESSIONAL SERVICE CONTRACTS

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

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

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

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

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

Owner/Authorized Representative (Signature): _____ Date: _____

Owner/Authorized Representative (Print): _____ Title: _____

POST AWARD SUBMITTAL

SFMTA SBE FORM No. 8

DECLARATION – AMENDMENTS TO PROFESSIONAL SERVICE CONTRACTS

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

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

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

END OF SFMTA SBE FORM No. 8

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

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



Appendix 3

Form of Agreement

City and County of San Francisco

Professional Services

Contract Agreement

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

**for Final Design Architectural and Engineering and
Construction Support Services
for
the San Francisco Municipal Transportation Agency
Central Subway Project**

Contract No. CS-155

DRAFT DRAFT DRAFT

TABLE OF CONTENTS

	<u>Page</u>
1. THE PROJECT.....	1
1.1. General Description	1
1.2. Term.....	2
2. DEFINITIONS.....	2
3. CONSULTANT’S BASIC SERVICES.....	6
3.1. Inclusive Services	6
3.2. Subconsultants	6
3.3. Quality Assurance.....	6
3.4. Code Compliance.....	7
3.5. Coordination of Design Team.....	7
3.6. Reports	7
3.7. Coordination with City Departments and Personnel, Other Public Agencies	7
3.8. Authorization for Bid and Construction Support Services	9
3.9. Bid Support Services	10
3.10. Construction Support Services.....	10
3.11. Operations Control Center Design.....	15
4. DESIGN RESPONSIBILITY AND STANDARDS	15
4.1. Responsibility for Design	15
4.2. Standard of Performance	15
4.3. No Waiver.....	15
4.4. Expertise	16
4.5. Qualified Personnel.....	16
5. PROGRAM DIRECTION	16
5.1. SFMTA Direction.....	16
5.2. SFMTA Program Manager	16
5.3. Evaluation of Consultant's Performance	16
6. PROGRAM BUDGET AND COST CONTROLS.....	17
6.1. Fixed Budget Limit of Project Construction Cost	17
6.2. Cost Estimating.....	18
6.3. City Cost Change Control Procedure.....	19

6.4.	Task Budgets.....	19
6.5.	Retention.....	20
7.	PROGRAM SCHEDULE.....	20
7.1.	Schedule of Services.....	20
7.2.	Time is of the Essence.....	20
7.3.	Force Majeur.....	20
7.4.	Extension of Time.....	20
7.5.	Construction Support Services.....	21
7.6.	Commencement and Completion of Project Work.....	21
7.7.	Annual Design Plans.....	21
8.	CHANGES IN SCOPE.....	21
8.1.	Work Revised at SFMTA Request.....	21
8.2.	Proposal for Additional Work.....	21
8.3.	Proposal Review.....	22
8.4.	Request for Additional Work.....	22
8.5.	Approval Required.....	22
8.6.	Consultant at Risk.....	23
8.7.	Changes to Design Plan.....	23
8.8.	Decrease in Scope.....	23
8.9.	Change Through Fault Of Consultant.....	23
9.	SUBCONTRACTING.....	23
9.1.	Assignment of Work.....	23
9.2.	Responsibility.....	24
9.3.	Substitutions of Subconsultants.....	24
9.4.	Prompt Payment of Subconsultants.....	24
9.5.	Interest on Unpaid Amounts.....	24
9.6.	Retention.....	24
9.7.	Substitutions of SBE Firms.....	24
9.8.	Addition of Subconsultants.....	24
9.9.	Subcontracts.....	24
9.10.	Activity Reports.....	25
10.	SMALL BUSINESS ENTERPRISE PROGRAM.....	25
10.1.	General.....	25
10.2.	Compliance with SBE Program.....	25

10.3.	SBE Goal	25
10.4.	Non-Discrimination in Hiring.....	25
11.	WORK PRODUCT, DELIVERABLES AND SUBMITTALS	25
11.1.	Construction Documents Requirements	25
11.2.	Transmittal of Work Product	26
11.3.	Reproduction of Work Product.....	26
11.4.	Agency’s Responsibilities Regarding Submittals	26
12.	CONSULTANT PERSONNEL.....	26
12.1.	Consultant’s Principal-in-Charge.....	26
12.2.	Key Personnel	26
12.3.	Departure Notice and Corrective Action Plan	27
12.4.	Substitutions of Key Team Members	27
12.5.	Liquidated Damages	27
13.	COMPENSATION	28
13.1.	Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.....	28
13.2.	Guaranteed Maximum Costs.....	28
13.3.	Total Amount.....	28
13.4.	Fixed Fee.....	29
13.5.	Change in Scope of Services.....	30
13.6.	Calculation of Compensation.....	31
13.7.	Redesign Due to Consultant's Error.....	31
13.8.	Cost Plus Fixed Fee Payment	31
13.9.	Additional Work	31
13.10.	Salary Rates	32
13.11.	Overhead Rates - Provisional Rates and Annual Audit.....	32
13.12.	Transfer of Unused Funds.....	32
13.13.	Non-Reimbursable Expenses	33
13.14.	Prepayment	33
13.15.	Refunds, Rebates and Credits	33
13.16.	Payment of Invoices.....	33
13.17.	No Interest on Late Payment.....	33
13.18.	Payment Limitations	33
13.19.	Invoices	34

13.20.	Progress Payment Form	34
13.21.	Documentation for Payment	34
13.22.	Submitting False Claims; Monetary Penalties	35
13.23.	Disallowance and Disputed Amounts	35
13.24.	Payment Does Not Imply Acceptance of Work	35
13.25.	Project Suspension or Termination	36
13.26.	Final Payment	36
14.	TAXES, INDEPENDENT CONTRACTOR	36
14.1.	Obligation of Consultant	36
14.2.	Possessory Interest	36
14.3.	Independent Contractor	37
14.4.	Payment of Employment Taxes and Other Expenses	37
15.	INSURANCE REQUIREMENTS	38
15.1.	Workers Compensation	38
15.2.	General Liability	38
15.3.	Automobile	38
15.4.	Valuable Papers	38
15.5.	Professional Liability	38
15.6.	Requirements of Insurance Policies	39
15.7.	Notice	39
15.8.	Claims-Made Form	40
15.9.	General Annual Aggregate Limit	40
15.10.	Lapse of Insurance	40
15.11.	Proof of Insurance	40
15.12.	No Decrease of Liability	40
15.13.	Subconsultant Insurance	40
16.	INDEMNITY, LIABILITY, AND REMEDIES	40
16.1.	Indemnification	40
16.2.	Limitations	40
16.3.	Intellectual Property Infringement	41
16.4.	Joint Venture Partners	41
16.5.	Incidental and Consequential Damages	41
16.6.	Liability of City	42
16.7.	Default; Remedies	42

16.8.	Remedies.....	42
16.9.	No Preclusion of Remedies.....	42
17.	EQUIPMENT	42
17.1.	Responsibility for Equipment	43
17.2.	Ownership of Equipment	43
18.	CITY'S RESPONSIBILITIES	43
18.1.	Approvals.....	43
18.2.	Bids	43
18.3.	Building Inspectors	43
18.4.	Deficiencies	43
18.5.	Fees	43
18.6.	Hazardous Substances.....	43
18.7.	Nonaffixed Furniture and Equipment	43
18.8.	Project Data.....	43
18.9.	Program Manager	43
18.10.	Respond to Submittals	44
18.11.	Tests and Inspections	44
19.	TERMINATION OF CONTRACT	44
19.1.	Termination for Cause	44
19.2.	Termination for Convenience	44
19.3.	Rights and Duties Upon Termination or Expiration	45
20.	CONFLICT OF INTEREST	46
20.1.	Applicable Authority	46
20.2.	Other Bids Prohibited	46
20.3.	No Financial Interest in the Project	46
20.4.	Conflicts of Interest	46
20.5.	Other Agreements between the City and the Consultant	47
20.6.	Lobbyists and Gratuities	47
20.7.	Collusion in Contracting	47
20.8.	Remedies.....	47
21.	CONFIDENTIALITY, PRIVACY AND SECURITY OF INFORMATION	48
21.1.	Proprietary, Confidential and Security Sensitive Information.....	48
21.2.	Project Security	48
21.3.	Protection of Private Information	48

22.	WORK PRODUCT AND WORKS FOR HIRE.....	48
22.1.	Ownership.....	48
22.2.	Assignment.....	49
22.3.	Moral Rights.....	49
22.4.	Assistance.....	49
22.5.	Delivery of Work Product.....	49
22.6.	Representations and Warranties.....	49
22.7.	Indemnity for Copyright or Patent Infringement.....	50
22.8.	Notations.....	50
22.9.	Reuse.....	50
22.10.	Artists Rights.....	50
22.11.	Subcontracts.....	50
23.	AUDIT AND INSPECTION OF RECORDS.....	50
23.1.	Access to Records.....	50
23.2.	Maintenance of Records.....	50
23.3.	Audit of Subconsultants.....	51
23.4.	Audit.....	51
23.5.	Rights of State or Federal Agencies.....	51
24.	NONDISCRIMINATION; PENALTIES.....	51
24.1.	Consultant Shall Not Discriminate.....	51
24.2.	Subcontracts.....	51
24.3.	Nondiscrimination in Benefits.....	51
24.4.	Condition to Contract.....	52
24.5.	Incorporation of Administrative Code Provisions by Reference.....	52
24.6.	Compliance with Americans with Disabilities Act.....	52
25.	GENERAL CONTRACT REQUIREMENTS.....	52
25.1.	Compliance with All Laws and Regulations.....	52
25.2.	MacBride Principles - Northern Ireland.....	52
25.3.	Use of Public Transportation.....	52
25.4.	Earned Income Credit (EIC) Forms.....	53
25.5.	Sunshine Ordinance.....	53
25.6.	Public Access to Meetings and Records.....	53
25.7.	Limitations on Contributions.....	54
25.8.	Requiring Minimum Compensation for Covered Employees.....	54

25.9.	Requiring Health Benefits for Covered Employees.....	55
25.10.	First Source Hiring Program.....	57
25.11.	Prohibition of Political Activity with City Funds.....	59
25.12.	Services Provided by Attorneys.....	60
26.	CONTRACT ADMINISTRATION AND CONSTRUCTION.....	60
26.1.	Notices to the Parties.....	60
26.2.	Assignment.....	60
26.3.	Successors and Assigns.....	61
26.4.	Non-Waiver of Rights.....	61
26.5.	Modification of Agreement.....	61
26.6.	Successors and Assigns.....	61
26.7.	Agreement Made in California; Venue.....	61
26.8.	Priority of Documents.....	61
26.9.	Construction of Agreement.....	61
26.10.	Entire Agreement.....	61
26.11.	Compliance with Laws.....	61
26.12.	Disputes and Resolution.....	62
26.13.	Mutual Agreement.....	62
26.14.	Severability.....	63
26.15.	No Third Party Beneficiary.....	63
26.16.	Signatories Authorized.....	63
27.	ENVIRONMENTAL REQUIREMENTS.....	63
27.1.	Resource Efficiency and Conservation.....	63
27.2.	Preservative-Treated Wood Containing Arsenic.....	63
27.3.	Graffiti Removal.....	63
27.4.	Food Service Waste Reduction Requirements.....	64
27.5.	Tropical Hardwood and Virgin Redwood Ban.....	64
27.6.	Recycled Products.....	64
28.	FEDERAL REQUIREMENTS.....	64
28.1.	Federal Contract Requirements and Applicable Law.....	64
28.2.	Incorporation of Federal Transit Administration (FTA) Terms.....	64
28.3.	Applicability of Federal Grant Contract.....	65
28.4.	Federal Funding Limitation.....	65
28.5.	No Federal Government Obligation to Third Parties.....	65

28.6. Federal Lobbying Restrictions..... 65

28.7. Lobbying Certification and Disclosure..... 66

28.8. Certification Regarding Debarment, Suspension And Other Responsibility Matters..... 66

28.9. Exclusionary Or Discriminatory Specifications 67

28.10. Conservation 67

28.11. Clean Water 67

28.12. Clean Air..... 67

28.13. Fly America 67

28.14. Seismic Safety..... 68

28.15. National Intelligent Transportation Systems Consultanture and Standards..... 68

28.16. Electronic and Information Technology 68

28.17. Nondiscrimination 68

28.18. Title VI Compliance 69

28.19. Requirements of Americans with Disabilities Act..... 70

28.20. Recycled Products..... 71

28.21. Privacy 71

28.22. False or Fraudulent Statements and Claims..... 71

28.23. Drug-Free Workplace Policy 72

29. INCLUDED EXIBITS..... 72

Agreement between the City and County of San Francisco and

for Final Design Architectural and Engineering and
Construction Support Services for
the San Francisco Municipal Transportation Agency Central Subway Project

This Agreement, dated for convenience as _____, 2009, in the City and County of San Francisco, State of California, by and between: _____ (“Consultant” or “Consultant”) 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 desires that the Consultant renders professional architectural and engineering and related services in connection with the design and construction of the Central Subway Project, Phase 2 of the SFMTA Third Street Light Rail Project (“the Project”).
- B.** A Request for Proposals was issued on April ____, 2009 (“the RFP”), and the SFMTA selected Consultant as the highest qualified proposer pursuant to the RFP.
- C.** Consultant represents and warrants that it is qualified to perform and that it possesses the requisite experience and resources to render the services required by the SFMTA as set forth under this Contract.
- D.** The City and Consultant intend that this Agreement comply with the regulations of the Federal Transit Administration of the United States Department of Transportation (“FTA”).
- E.** On _____, 2009, the SFMTA Board of Directors adopted Resolution No. _____, which authorized the Executive Director to execute this Agreement.
- F.** On _____, 2009 the San Francisco Board of Supervisors adopted Resolution No. _____ approving this Agreement.
- G.** Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number _____ on _____, 2009.

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

1. THE PROJECT.

1.1. General Description. The City does hereby engage the Consultant to perform, under the terms and conditions in this Agreement, professional services to complete Final Design of and related Construction Support Services for the Central Subway Project (the “Project”), which is Phase Two of the Third Street Light Rail Transit Project. The Project is fully described in the Request for Proposals (“RPF”) dated March 27, 2009, the documents referenced therein and referenced in Appendix 10 of the RFP. It is the responsibility of the Consultant to request, review and incorporate requirements for the Central Subway Project that may be established in such referenced documents.

As directed by the SFMTA, Consultant shall perform all work reasonably related and necessary to the Final Design and to support the construction of the Project, as determined by the SFMTA and as that work is described here and in the RFP. The Parties’ failure to list a particular task or area of work within Attachment A does not mean that such work is Additional Work

under Section 8 for which Consultant shall be entitled to additional compensation or is work that otherwise is excluded from the Consultant's responsibilities, to the extent that such unidentified task(s) or area(s) of work are referenced in the RFP, the Proposal or are reasonably related to architectural or engineering services necessary to complete the existing conceptual and preliminary designs for the Project and produce a complete set of Construction Documents sufficient for the City to seek construction bids to build to the Project. In addition, as an option to be exercised by the SFMTA, the City does hereby engage the Consultant to perform conceptual and preliminary engineering, required environmental analyses, and Final Design of a control center facility to serve the Project and existing operations of the Municipal Railway.

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

2. DEFINITIONS.

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

2.1. Additional Services or Additional Work means work or services requested by the SFMTA that are outside the Scope of Services set out in this Agreement, included appendices, approved modifications to the Agreement, the RFP, and the Consultant's Proposal.

2.2. Agreement or Contract means this Agreement for Final Design architectural and Engineering Services and all referenced Attachments to this Agreement.

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

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

2.5. Attachment means a document or set of documents incorporated by reference into this Agreement.

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

2.7. Base Contract Services or Basic Services means the creation, design and provision of Work Product and work and services incidental thereto that are described or listed in Attachment A to this Agreement, the RFP and the Proposal.

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

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

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

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

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

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

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

2.15. Construction Management means the daily management of the construction and quality control of the Project, including but not limited to oversight and coordination of contractors to ensure that the Project is constructed in conformance with design specifications and requirements.

2.16. Consultant means _____ [name and address of selected Consultant].

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

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

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

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

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

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

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

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

2.25. Final Design means the architectural and engineering services and related Work to be performed by Consultant under this Agreement.

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

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

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

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

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

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

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

2.33. OCC means an Operations Control Center.

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

2.35. Party means an entity bound by this Agreement.

2.36. Parties mean all entities bound by this Agreement.

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

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

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

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

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

2.42. Proposal means the Consultant's written response to the RFP submitted to the SFMTA on or about _____.

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

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

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

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

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

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

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

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

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

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

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

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

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

3. CONSULTANT'S BASIC SERVICES.

3.1. Inclusive Services. Except for services specifically designated herein as Additional Services, Consultant shall perform as Basic Services all customary and necessary architectural, engineering and other consulting services necessary to complete the design of the Project, produce the Construction Documents, and support the construction of the Project. Consultant shall commence the Basic Services by reviewing the environmental, conceptual and preliminary design documents referenced in Appendix 10 of the RFP. Consultant shall confirm the validity of said design work and shall incorporate and build upon that work in its own Work Product. Consultant's Basic Services are further described in the Scope of Services set out in Attachment A to this Agreement. Basic Services includes but is not limited to the following:

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

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

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

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

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

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

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

3.3. Quality Assurance. The Consultant shall establish and maintain a Quality Assurance Plan, subject to the approval of the SFMTA, setting forth the Consultant's policy for quality assurance and procedures for implementing that policy. Consultant's Quality Assurance Plan must apply to all of Consultant's employees, Subprime Consultants and Subconsultants

performing work on the Project, and must provide written procedures for the performance of all Project activities, and provide sufficient information to the SFMTA's Program Manager and Consultant's senior managers to allow them to effectively supervise the Project. The procedures shall provide for sufficient documentation to allow review and audit by the SFMTA or its designees. The Consultant shall submit two copies of its Quality Assurance Plan to the Program Manager for SFMTA review within 30 calendar days of NTP.

3.4. Code Compliance.

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

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

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

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

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

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

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

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

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

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

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

3.7.6. Art Commission: The Consultant shall coordinate, meet and work with City departments and personnel necessary to determine relevant City requirements, develop designs, incorporate artwork under the San Francisco Public Art Program, and review and obtain required City approvals of the designs. Artwork commissioned by the City that is to be incorporated in the Project as an integral building or site element may require coordination with the design and structure of the building or site. Involvement by the Consultant to assist in the selection of artwork by the San Francisco Art Commission and services by the Consultant to coordinate the design and structure of the building or site to accommodate the installation of such artwork shall be a part of Basic Services. As directed by the City, the Consultant shall coordinate and work with any representatives the City may designate in the selection of artists for the Project to incorporate requirements for the chosen artwork into the design for the Project. The Consultant shall make presentations to and/or attend meetings as necessary for the Civic Design Committee and the Visual Arts Committee of the San Francisco Art Commission. Substantial changes required of the Consultant to incorporate requirements for the chosen artwork into the Project after the completion and acceptance of the Design Development documents shall be Additional Services under this Agreement.

3.7.7. Open Design. In the performance of this Agreement, the Consultant shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through competitive procurement, or through standard or proven production techniques, methods, and processes. Unless Consultant presents evidence justifying the use of a sole source and seeks prior written approval from the SFMTA, Consultant shall not produce a design or specification for the Project that would require the use of structures, forms, machines, products, materials, construction methods, equipment, or processes that the Consultant knows to be patented or that would be restrictive or written in such a manner

as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment. When one or more brand names or trade names of comparable quality or utility are listed, they must be followed by the words "or approved equal."

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

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

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

3.7.11. Use Of Computer Technology For Design and Coordination of Drawings. The Consultant may use CADD or similar technology in developing the design for the Project. The cost of any software, hardware, clerical work, or services related to CADD support shall be included in the Basic Services fee. Additionally, the SFMTA and the Consultant will implement a multi-dimensional Building Information Modeling ("BIM") system, the scope and extent of which shall be determined jointly by the SFMTA and the Consultant. Consultant shall be responsible for entering the existing conceptual and preliminary design documents and Consultant's Work Product into the BIM. Services associated with the development and population of a BIM system for modeling and clash detection during design shall be included in the Basic Services fee. If the SFMTA elects to further refine the BIM system as a facilities management tool beyond design and construction of the Project, such work would be considered an Additional Service.

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

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

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

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

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

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

3.9.5. Perform necessary redesign services as may be required under Section 6.1 (Fixed Budget Limit of Project Construction Cost).

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

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

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

3.10.2. Update checklists of all special inspection and testing, equipment startups, submittals, warranties, guarantees, maintenance and operation manuals, spare parts and all other close-out documents that will be required of the Program Manager or Contractor. Determine the acceptability of each item during the course of construction and provide a final status report of all items by the end of construction.

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

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

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

3.10.6. The Consultant will assist the Program Manager with preparation of drawings, specifications and other documents that may be necessary for the Program Manager to prepare change orders and construction change directives for City approval

and execution in accordance with the Contract Documents. The City will prepare and effect any required contract modifications and change orders.

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

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

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

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

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

3.10.12. The Consultant shall interpret the Contract Documents and advise the City of all decisions rendered. Interpretations by the Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form.

3.10.13. The Consultant acknowledges that a construction contract will be awarded based on the lowest responsive bid by a responsible bidder for the Construction Bid Package; that there is no certainty that the successful bidder will cooperate willingly with the Contract Documents; and that the level of administrative difficulties faced by the Consultant during the construction phase may vary substantially. Accordingly, the Consultant agrees that it shall not seek additional compensation for administrative difficulties the Consultant may encounter with the Contractor on the Project; unless the City in its sole discretion determines that the Contractor's performance constitutes a substantial/cardinal breach of the construction contract that would legally permit the City to terminate the construction contract for default should the City so desire.

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

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

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

3.10.17. The Consultant shall review the construction contractor's application for payment, and recommend to the City certification of the amounts due the construction contractor. The Consultant's certification of completed work to authorize payment shall constitute a representation to the City, based on the Consultant's observations at the site and on the data comprising the construction contractor's application for payment, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent test and inspections, to minor deviations from the Contract Documents correctable prior to completion and to specific qualifications expressed by the Consultant. The issuance of a Certificate for Payment shall constitute a further representation that the construction contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation that the Consultant has (a) made exhaustive or continuous on-site inspections to check the quality or quantity of the work; (b) reviewed construction means, methods, techniques, sequences or procedures; (c) reviewed copies of requisitions received from subcontractors and material suppliers and other data requested by the City to substantiate the construction contractor's right to payment; or (d) ascertained how or for what purpose the construction contractor has used money previously paid on account of the Contract Sum.

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

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

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

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

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

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

3.10.24. Assist the Program Manager and a commissioning agent if retained by the City in arranging for building and or facility commissioning, start-up and testing, adjusting and balancing and the coordination of operational testing and proper functioning of all installed equipment, and any building commissioning that may be

required related to applications by the City for LEED (Leadership in Energy and Environmental Design) certification. Submit a statement to the City as to the proper functioning of all items of equipment prior to the release of final payment to the construction contractor.

3.10.25. Conduct observations and review completed work to determine the date or dates of substantial completion and the date of final completion and advise the City in writing as to the same. The Consultant shall advise the City as to the appropriateness of the issuance of a final Certificate for Payment.

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

3.10.27. The Consultant shall have authority to make interpretations and decisions in matters relating to appearance and aesthetic or artistic effects where they do not conflict with any design element previously approved by the City and where such decisions are consistent with the intent of the Contract Documents; provided the City shall retain the authority to make the final interpretations and decisions. Whenever interpreting or making decisions concerning an integrated artwork commissioned by the City, the Consultant must obtain City approval prior to making any such interpretation or decision. The Consultant shall be responsible for any additional construction costs arising out of any aesthetic change initiated by the Consultant after the commencement of construction, unless payment to the construction contractor for and notice to the Consultant to implement such changes have been specifically approved in writing by the City in advance of the Consultant making the changes to the construction documents.

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

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

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

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

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

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

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

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

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

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

4. DESIGN RESPONSIBILITY AND STANDARDS.

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

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

4.3. No Waiver. SFMTA's approval of any of the Work Product or services shall not in any way relieve the Consultant of responsibility for the technical adequacy or accuracy thereof. Neither SFMTA's review, approval, acceptance of, nor payment for any of the services or Work Product shall be construed to operate as a waiver of any rights under this Agreement.

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

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

5. PROGRAM DIRECTION.

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

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

5.1.2. Review and, where required, approve, disapprove, accept or refuse submittals or other product prepared by Consultant in the performance of its services.

5.1.3. Assign or reassign staff to perform particular tasks.

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

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

John Funghi
 Central Subway Program Manager
 San Francisco Municipal Transportation Agency
 821 Howard Street
 San Francisco, CA 94103
 tel: 415-701-4299
 fax: 415-701-5222

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

5.3.1. Consultant's adherence to this Agreement

5.3.2. Quality of performance of Key Team Members and other staff assigned to the Project

5.3.3. Quality of performance of Subprime Consultants and Subconsultants

- 5.3.4. Management of authorized budget for each Task
- 5.3.5. Adherence to agreed schedule
- 5.3.6. Quality of deliverables
- 5.3.7. Monitoring, reporting and updating of progress of assigned work
- 5.3.8. Timeliness in resolving issues, including issues arising from performance evaluations
- 5.3.9. Working relationship between Consultant's team and other agencies

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

6. PROGRAM BUDGET AND COST CONTROLS.

6.1. Fixed Budget Limit of Project Construction Cost. The Fixed Budget Limit, as set out below, represents the City's budget for bid and award of the construction contracts for the complete construction of the Project. The Fixed Budget Limit shall be final and may not be changed except by written amendment to this Agreement specifically referring to a change in the sum specified below.

6.1.1. The Fixed Budget Limit for each of the Construction Bid Packages is as follows:

Utility Contract 1	\$5,200,000
Utility Contract 2	\$3,200,000
Tunneling	\$203,200,000
Union Square Station	\$169,100,000
Chinatown Station	\$146,400,000
Moscone Station	\$89,800,000
Surface, Track work and Systems	\$147,700,000
Total Fixed Budget Limit	\$764,600,000

The Fixed Budget Limit includes all of the costs of basic construction. The Fixed Budget Limit excludes construction contingencies and alternates, either additive or deductive, the cost of furniture, operating and office equipment, telephones and business networks, and the cost of artwork that is to be incorporated in the Project as an integral building or site element.

6.1.2. The Consultant is responsible for designing a comprehensive and complete Project that conforms to the Total Fixed Budget Limit and that conforms to the Fixed Budget Limit of each of the Construction Bid Packages, where the lowest responsive bid submitted by a responsible bidder is within five percent (5%) of the Fixed Budget Limit. In the event that cost estimates prior to bidding or actual bids indicate that the Construction Cost will exceed the Fixed Budget Limit, the Consultant shall, at the

request of the City and at no additional cost to the City: (a) revise the design and Construction Documents, plans and specifications and (b) assist the City with re-bidding of the Project, until the construction cost is within +/-5% of the Fixed Budget Limit, subject to the following conditions:

6.1.3. The City, in its sole discretion, may modify the Fixed Budget Limit, or may apply additive or deductive alternates to the lowest responsive bid to meet the Fixed Budget Limit. The Consultant and the City will confer at all phases of design and before the design of any alternates. The Consultant shall design additive alternates with an estimated value of not less than seven and one-half percent (7.5%) and deductive alternates with an estimated value of not less than seven and one-half percent (7.5%) of the Fixed Budget Limit, with final determination by the City as to the scope of such alternates, which alternates shall be a part of the bid package, and the order in which the City would accept such alternates. The alternates shall be set out in the Construction Documents and clearly identified as optional work to be separately set out in contractors' bids.

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

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

6.1.6. Should the City accept a bid for a Construction Bid Package which exceeds the Fixed Budget Limit for that portion of the Project or for the overall Fixed Budget Limit for the Project, there shall be no additional compensation (i.e., no proportional increase in fee) to the Consultant.

6.2. Cost Estimating.

6.2.1. Within 60 days of the SFMTA's issuing NTP to Consultant, the Consultant shall review the existing conceptual and preliminary design documents for the Project and shall also review the Fixed Budget Limits for each Contract Bid Package, as listed in Section 6.1.1. Within 90 days of NTP, Consultant shall then prepare an independent Probable Opinion of Construction Cost ("Cost Estimate") for SFMTA approval. The Cost Estimate shall be prepared following ASTM UNIFORMAT II standards, broken down to UNIFORMAT Level III, and shall reflect the estimated cost of each element of the Project. The Cost Estimate shall contain a quantity take-off and unit pricing, consistent with the level of design completion, together with a statement of assumptions regarding design contingencies and exclusions.

6.2.2. The Consultant shall update the Cost Estimate, changing the format to the CSI/MASTERFORMAT 2004, and according to the CSI 50 Division classifications at the following phases of design: 65 percent completion of Construction Documents, 90

percent completion of Construction Documents, and 100 percent (total) Construction Documents.

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

6.2.4. The Consultant shall prepare a new final Consultant's Estimate of Construction Cost based on the fully (100%) complete Construction Documents issued for bidding, and considering the Fixed Budget Limit for the Project.

6.3. City Cost Change Control Procedure.

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

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

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

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

6.3.4. The Consultant shall maintain a Change Log of all recommended, pending, approved and incorporated changes, and submit the Change Log to the SFMTA monthly throughout the design phases.

6.3.5. City approval of any change shall not entitle the Consultant to a change in the Consultant's compensation, unless approved in writing by the SFMTA.

6.4. Task Budgets. During performance under this Agreement, the Consultant shall manage its work and that of its Subprime Consultants' and Subconsultants' so that all services are provided and performed in a cost-effective and efficient manner. Within each Annual Design

Plan, a task budget shall be established for each task. The Consultant shall complete its work and services within said task budgets. The SFMTA will control the budget at the Project level, not at the work task level. The Consultant will have the authority to reallocate budget between work tasks as long as the overall project budget is not increased due to reallocation of budget between work tasks. Task budgets may be modified only upon authorization of Program Manager. Task budgets shall not be increased because of any unwarranted delays, conduct or costs attributable to the Consultant, but will be increased by SFMTA in the event of Additional Work within or affecting a task, because of unavoidable delay by any governmental action, or other conditions beyond the control of the Consultant that could not be reasonably anticipated.

6.5. Retention. The SFMTA shall retain Five Percent (5%) of every payment to Consultant as security of the faithful performance by the Consultant of all the conditions, covenants and requirements specified or provided in this Agreement. The City shall release amounts retained to Consultant upon completion of construction and safety certification of the Project (i.e., authorization to the SFMTA for revenue service).

7. PROGRAM SCHEDULE.

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

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

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

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

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

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

7.7. Annual Design Plans. The Parties will meet no later than 10 days after the SFMTA issues NTP to the Consultant to agree on a Design Plan consistent with the Project milestone dates, which shall include a description of the work the and Work Product that the Consultant shall complete within one year from NTP and applicable Milestones and appropriate compensation for said Milestones. The Parties shall meet thereafter no later than 45 days before the anniversary of NTP to agree on a Design Plan for the following year. The purpose of Annual Design Plans is to allow the Consultant, the City, and other City consultants to coordinate and allocate resources and to assist the SFMTA in Project financial planning.

8. CHANGES IN SCOPE.

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

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

A proposal for Additional Work shall include:

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

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

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

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

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

(b) Overhead, including Salary Burden costs;

(c) Estimated out-of-pocket expenses;

(d) Fixed Fee proportionate to the value of but not exceeding 8.5 percent of the value of total direct salaries and applicable Overhead, including Salary Burden, of each task or subtask provided that the total value of all Fixed Fees shall not exceed the value set out in Section 13.4, below.

8.3. Proposal Review.

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

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

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

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

8.5. Approvals Required.

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

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

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

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

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

8.9. Change Through Fault Of Consultant.

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

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

9. SUBCONTRACTING.

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

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

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

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

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

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

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

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

9.9. Subcontracts. Consultant shall fully inform all Subprime Consultants, and shall require each of its Subprime Consultants to warrant that it has fully informed each of its respective Subconsultants, of the terms and conditions of this Agreement. Consultant shall ensure that all services performed and material furnished and the manner by which those services and materials are provided shall conform to the requirements of this Agreement. The terms and

conditions of Consultant's subcontracts shall conform to the requirements of this Agreement. Each of Consultant's Subprime Consultant contracts and a cost summary of each of those agreements shall be subject to review by the SFMTA prior to the Subprime Consultant proceeding with the work. Upon request, Consultant shall provide the SFMTA copies of any written agreements between a Subprime Consultant and a Subconsultant.

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

10. SMALL BUSINESS ENTERPRISE PROGRAM.

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

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

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

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

11. WORK PRODUCT, DELIVERABLES AND SUBMITTALS.

11.1. Construction Documents Requirements.

Work Product shall be created and maintained as follows:

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

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

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

11.1.4. Audiovisual presentations in Microsoft PowerPoint 2003.

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

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

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

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

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

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

11.4. Agency's Responsibilities Regarding Submittals. The Agency will review and comment on Consultant's submittals generally within four weeks of receipt. The Agency and Consultant will establish a timetable of submittals and reviews during initial Project coordination meetings, which the Consultant shall include in the Annual Design Plan. The Agency's review and comments of Consultant submittals shall in no way relieve the Consultant of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the Agency relieve the Consultant of its independent responsibility to provide submittals and deliverables in full compliance with local, State and federal codes, regulations and standards.

12. CONSULTANT PERSONNEL.

12.1. Consultant's Principal-in-Charge. The Consultant agrees to commit and assign a senior Consultant or engineer as the Principal-in-Charge to direct Consultant's Work and to serve as the official contact and spokesperson on behalf of the Consultant in matters related to the Project for the Term of this Agreement. The Consultant's Principal-in-Charge must work in the Project office in San Francisco for Term of the Agreement. The Consultant has identified _____ [TBD] as the Consultant's Principal-in-Charge.

12.2. Key Personnel.

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

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

- (a) Consultant's Principal-in-Charge identified in Section 12.1
- (b) TBD
- (c) TBD

(d) TBD

(e) TBD

12.2.2. The Consultant further agrees to commit and assign additional Key Team Members (in addition to the Key Team Members listed in Subsection 12.2.1) as necessary for the Project. The additional Key Team Members shall be determined on an annual basis and identified in each Annual Design Plan.

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

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

12.4. Substitutions of Key Team Members.

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

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

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

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

12.5. Liquidated Damages. Consultant acknowledges that the SFMTA's selection of Consultant and the negotiated amount of Consultant's Fixed Fee were based, in part, on the expertise and experience Consultant's proposed Key Team Members as submitted in the Proposal. The Consultant acknowledges and agrees that the replacement of Key Team Members during the course of the Project would be extremely disruptive and damaging to the City, the cost of which is difficult, if not impossible, to calculate. The Consultant, therefore, shall pay to the City a charge of Two Hundred Thousand Dollars (\$200,000) for the first Key Team Member whom the Consultant replaces without written approval by the City. For each additional Key Team Member whom the Consultant replaces without written approval by the City, the Consultant shall pay to the City a charge of Four Hundred Thousand Dollars (\$400,000). Said

charges shall not be considered or act as a penalty, but shall be liquidated damages to the City to compensate the City for the additional costs and inefficiencies to the Central Subway Project that the Parties agree will necessarily arise from the unauthorized departure of a Key Team Member of the Consultant. The SFMTA reserves the right to require Consultant to replace or reassign any personnel assigned by Consultant to the Project, including but not limited to Key Team Members. Should the City require Consultant to replace or reassign any of its personnel so that said persons are no longer working on the Project, the liquidated damages provisions of this Section 12.5 shall not apply.

13. COMPENSATION.

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

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

13.2. Guaranteed Maximum Costs

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

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

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

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

13.3. Total Amount.

13.3.1. The total amount of compensation under this Agreement for all Work performed by Consultant, shall not exceed _____ Dollars (\$ _____) ("Total Price").

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

13.4. Fixed Fee.

13.4.1. For all of the Consultant's Basic Services, which are all services provided by Consultant except for those tasks and work specifically identified as Additional Work, the Agency shall pay the Consultant a Fixed Fee, which is Consultant's profit for performing the Basic Services under this Agreement. The Fixed Fee shall not exceed a sum total of \$_____ [TBD]. Such profit will be allocated to the Prime and Subconsultants and is included in the Total Price set forth above. The SFMTA will pay Consultant the Fixed Fee proportionate to the completion of the design, as set out in the following Table No. 1.

Table No. 1:

Project Phase	Percentage of Total Contract Amount	Consultant's Fee
65% Design	30%	\$ TBD
Pre-Final Design (90 % Complete)	20%	\$ TBD
Construction Documents (100% Complete Design)	15%	\$ TBD
Bid & Award Support	4%	\$ TBD
Construction Administration	30.0%	\$ TBD
Warranty Period Support	1.0%	\$ TBD
TOTAL:	100.0%	\$ TBD

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

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

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

13.5. Change in Scope of Services. If the Scope of Services of any Phase or other portion of the Project is reduced, that reduction shall be memorialized in an amendment to the relevant Task Order(s) or Annual Design Plan, and the Fixed Fee for that Work shall be reduced, as negotiated by the Parties, but such reduction shall not be less than the proportional value of the reduced Work, as measured by the value of that Work set out in Attachment C (Summary of Fees) to this Agreement or other agreed document setting out the relative value of tasks. If the Scope of Services is increased, then the Parties will negotiate an appropriate Fixed Fee for the Additional Services. Any negotiations for changes in the scope of services shall be subject to the

agreement of the SFMTA's Program Officer and the Consultant. The Consultant shall do no work in addition to or beyond the scope of the services set forth and contemplated by this Agreement unless and until it is authorized to do so by the issuance to it of a "Modification of Contract," duly executed and approved.

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

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

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

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

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

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

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

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

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

13.9. Additional Work. Where the City designates Additional Work to be performed, the Parties shall negotiate a reasonable Cost-plus-Fixed Fee amount or a Lump Sum amount as

compensation for the Additional Work. The SFMTA shall in its sole authority determine which pricing method shall be used for specified Additional Work. The City shall make monthly progress payments for Lump Sum Work based on agreed Milestones or proportionate to the percentage of tasks completed, as provided an approved Task Order, where the time to complete all Lump Sum Work under the relevant Task Order exceeds one month.

13.10. Salary Rates. Compensation under this Agreement will be based on the overhead and direct salary rates as shown on the Schedule of Rates attached as Attachment C. The direct salary rates in Attachment C may be adjusted at twelve (12) month intervals, but each increase shall be no more than the lesser of the Consumer Price Index (CPI) or two percent (2%). The CPI shall be defined as the Consumer Price Index for San Francisco-Oakland-San Jose, All Items, [1982-84=100] for All Urban Consumers. Consultant shall not make any individual salary adjustments above two percent (2%) for which the SFMTA would incur additional costs unless approved by the SFMTA's Program Manager in writing and in advance. The Consultant shall not submit requests to the SFMTA asking for salary adjustments for the same individual more than once within any 12-month period. Rate increases requiring SFMTA approval shall apply only to Work performed after the SFMTA's approval of the increased rates.

13.11. Overhead Rates - Provisional Rates and Annual Audit. The rates set out in this Section 13.10 are "team Composite Rates" applicable to the Consultant as well as all subconsultants. Composite Field Overhead rates are applicable to all Consultant and subconsultant personnel working full time at the CSP field office for more than six months continuously. Because the said employees are not working out of their home offices and are not receiving home office support in their day-to-day activities, the hours they bill do not qualify for the Home Office Overhead rate. The Field Overhead rate is a reduced rate as consideration for the support those personnel receive from SFMTA. The purpose of the Field Office Overhead Rate is to reimburse the Consultant for the Salary Burden and home office support provided to the field employees. Composite Home Office Overhead rates are applicable to all other personnel who provide non-continuous or part time services to the project.

The following Provisional overhead rates shall apply to this Agreement in the first year:

Field Overhead Rate: _____ TBD [____multiplier]

Home Office Overhead Rate: _____ TBD [____multiplier]

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

13.12. Transfer of Unused Funds. Consultant may request City's approval to transfer unused funds from one subtask to another subtask within the same main task to cover the unexpected shortfall of another subtask provided that the need for additional funds to complete the subtask is not due to Consultant's poor management or planning. Consultant may request City's approval to transfer unused funds from one task(s) to other tasks to cover the unexpected shortfall of the other Tasks, provided that (1) the task(s) from which the funds are transferred out

of (including all subtasks within the task(s)) is at least ninety-five percent (95%) complete; (2) the funds are no longer necessary for the original task(s) for which the funds were allotted; and (3) the main reason for the task(s) requiring additional funds is not due to Consultant's poor management or planning. Such request must be made in writing to the Program Manager at least 15 calendar days in advance of the need to transfer funds across subtasks. City's approval of subtask or task amount changes will not be unreasonably withheld. City's approval shall be by the SFMTA Program Manager.

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

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

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

13.16. Payment of Invoices. Compensation shall be made in monthly payments on or before the last day of each month for Work, as set forth in an Annual Design Plan or Task Order, that the Executive Director/CEO of the SFMTA or his designee, in his sole discretion, concludes has been performed as of the last day of the immediately preceding month in accordance with the Scope of Services attached to this Agreement as Attachment A and applicable Annual Design Plans and Task Orders. The City shall endeavor to issue payments of undisputed amounts to the Consultant within ninety (90) days following the receipt of complete and accurate invoices. City shall make payment to Consultant at the address specified in Section 26.1 (Notices to the Parties). All amounts paid by City to Consultant shall be subject to audit by City.

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

13.18. Payment Limitations.

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

13.18.2. The City may reasonably withhold payment to the Consultant pending resolution, in an amount equal to questioned, disputed, or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for

amounts incurred by the City in connection with the Consultant's negligent errors or omissions. Payments for undisputed amounts due on the same or other invoice shall not be unreasonably withheld or delayed.

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

13.19. Invoices.

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

1. Contract Number
2. Annual Design Plan or Task Order Number
3. Name, position, hourly rate and hours worked of employee(s) whose labor is invoiced
4. Description of the work performed or services rendered
5. Cost by employee (per hour or other agreed increment of measure) and other direct costs
6. Subconsultant costs supported by invoice itemization in the same format as described here
7. Fixed-Fee for current invoice period and amount of Fixed Fee paid as of date of invoice
8. Total costs
9. SBE utilization report (MTA Form 6)
10. Certified payroll records substantiating all labor charges for Consultant and all subconsultants shown on the invoice

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

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

hours by employee and by subtask for all Consultant and subconsultant charges for the month being invoiced (accounting for a minimum of 28 calendar days of the month), and an itemized breakdown of out-of-pocket expenses by task incurred since the previous billing, along with copies of bills of materials and expenses incurred, and certified payroll records. Failure to submit a complete Monthly Cost Control Report, Monthly Updated Schedule and Monthly Progress Report by the due date shall constitute cause for suspension of invoice payments. In addition to the above, the SFMTA's Program Manager may, prior to authorization for payment of invoices, require delivery of either a complete or partial set of current work products as evidence of the status of the Consultant's work.

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

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

13.24. Payment Does Not Imply Acceptance of Work. The issuance of any progress payment or final payment by the City or the receipt thereof by the Consultant shall in no way lessen the liability of the Consultant to correct unsatisfactory work although the unsatisfactory nature of such work may or may not have been apparent or detected at the time such payment was

made. Work that does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced or performed again by Consultant without delay.

13.25. Project Suspension or Termination

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

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

13.26. Final Payment. Final payment of any balance earned by the Consultant for Project work will be made within ninety (90) days after all of the following:

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

14. TAXES; INDEPENDENT CONTRACTOR.

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

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

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

14.2.2. Consultant, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Consultant accordingly agrees on behalf of itself and its permitted

successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code Section 480.5, as amended from time to time, and any successor provision.

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

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

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

14.3. Independent Contractor.

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

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

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

14.4. Payment of Employment Taxes and Other Expenses.

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

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

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

15. INSURANCE REQUIREMENTS.

Without in any way limiting Consultant's liability pursuant to the indemnity and indemnification provisions of this Agreement, including but not limited to Section 16, Consultant must maintain in force for as long as the City faces exposure to liability from Consultant's activities performed pursuant to this Agreement, insurance in the following amounts and coverages set out below.

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

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

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

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

15.5. Professional Liability. Professional liability insurance as follows:

15.5.1. From the effective date of this Agreement, Consultant shall maintain professional liability insurance coverage with limits not less than Twenty Million Dollars (\$20,000,000) each claim/annual aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement. Any deductible for said policy shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000). The Consultant shall be responsible for the payment of all claim expenses and loss payments within the deductible. If required by the SFMTA, Consultant shall provide said professional liability insurance under insurance policy specific to the Project.

15.5.2. If and as directed by the SFMTA, Consultant shall obtain on behalf of the City, in addition to the policy described in Section 15.5.1, a professional liability excess liability policy (catastrophic risk umbrella policy) with a coverage limit of One Hundred Million Dollars (\$100,000,000), which shall provide coverage for claims and losses that exceed the coverage of Consultant's professional liability policy.

15.5.3. The actual cost for the insurance coverage will be reimbursed as an Other Direct Cost. Consultant shall not request or receive any mark-ups on insurance costs reimbursed.

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

15.5.5. All professional liability policies shall protect against any negligent act, error or omission arising out of the design or engineering activities or with respect to the Project, including coverage for acts by Subprime Consultants and Subconsultants for whose work the Consultant is responsible under this Agreement. Professional liability policies shall be endorsed to provide the following: (1) that the City is the sole agent for notice and premiums; (2) that there will be a joint defense coverage against third party claims; and (3) that the City, as the Additional Named Insured-Owner, may assert claims against other Named Insureds.

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

15.5.7. If the Consultant is a joint venture partnership, each partner of the [name] joint venture partnership shall ensure and does warrant that each partner's Professional Liability (Errors and Omissions) Insurance policy does not contain any provision excluding coverage for its services performed as part of the joint venture partnership. All insurance policies and certificates shall carry such endorsements, which shall be provided to the City.

15.6. Requirements of Insurance Policies. Workers Compensation, Valuable Papers, Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

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

15.6.2. 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.

15.6.3. All rights of subrogation against the City shall be waived.

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

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

Shahnam Farhangi

Senior Manager of Contract and Quality Management
San Francisco Municipal Transportation Agency
1 South Van Ness, 3rd floor
San Francisco, CA 94103

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

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

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

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

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

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

16. INDEMNITY, LIABILITY, AND REMEDIES,

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

16.2. Limitations.

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

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

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

16.4. Joint Venture Partners.

16.4.1. If the Consultant is a joint venture partnership, notwithstanding the joint venture status of Consultant or other separate legal status of the Consultant from its owner partners, each of the joint venture partners, _____ and _____ [names of JV partners], as the owners of the Consultant, shall remain jointly and severally liable for the performance, errors and omissions of Consultant.

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

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

16.5. Incidental and Consequential Damages. Consultant shall be responsible for incidental and consequential damages 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.

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

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

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

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

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

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

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

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

17. EQUIPMENT.

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

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

18. CITY'S RESPONSIBILITIES

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

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

18.2. Bids. Advertise and receive contractors' bids for the construction of the Project.

18.3. Inspectors. Provide inspectors for the construction phase.

18.4. Deficiencies. Promptly notify the Consultant in writing of apparent deficiencies in materials or workmanship discovered within eleven (11) months from submission of the final punchlist.

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

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

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

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

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

18.10. Respond to Submittals. Review and respond in writing at the following phases within ten (10) working days of submittal by the Consultant to all aspects of the documents.

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

19. TERMINATION OF CONTRACT.

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

19.2. Termination for Convenience.

19.2.1. Exercise of Option to Terminate for Convenience. Notwithstanding any other provision of this Agreement, the City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Consultant written notice of termination. The notice shall specify the date on which termination shall become effective. Consultant shall not have the right to terminate this Agreement for convenience. Consultant does not have the right to terminate for convenience,

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

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

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

(a) A reasonable allowance for profit on the cost of the services and other work described necessary to effect termination, 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 five percent (5%) of such cost.

(b) 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.

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

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

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

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

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

19.3. Rights and Duties Upon Termination or Expiration.

19.3.1. Survival of Provisions. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 13.22 (Submitting False Claims; Monetary Penalties), 13.23 (Disallowance and Disputed Amounts), 13.24 (Payment Does Not Imply Acceptance of Work), 14 (Taxes, Independent Contractor), 15 (Insurance Requirements), 16.1 (Indemnification), 16.5 (Incidental and Consequential Damages), 16.6 (Liability of City), 17 (Equipment), 19.1 (Termination for Cause), 19.2 (Termination for Convenience), 21.3 (Protection of Private

Information), 22 (Work Product and Works for Hire), 23 (Audit and Inspection of Records), 26 (Contract Administration and Construction),

19.3.2. Duties Upon Termination. Subject to the immediately preceding Subsection 19.3.1, upon termination of this Agreement prior to expiration of the term specified in Section 1.2, 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.

20. CONFLICT OF INTEREST.

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

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

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

20.4. Conflicts of Interest. By submission of its Proposal, the Consultant covenants that it has no direct or indirect pecuniary or proprietary interest and that it shall not acquire any interest that conflicts in any manner or degree with the work, services or materials required to be performed or provided under this Agreement. Furthermore, the Consultant shall not employ any person or agent having any such conflict of interest. In the event that the Consultant or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately

disclose such interest to SFMTA and take action immediately to eliminate the conflict or to withdraw from this Agreement, as SFMTA requests. The Consultant shall not employ any consultant who is concurrently employed by SFMTA or by another consultant to the SFMTA (including, but not limited to, surveyors, engineers, Consultants, and testing laboratories), without first obtaining SFMTA's approval in writing.

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

20.6. Lobbyists and Gratuities.

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

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

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

20.8. Remedies. If the Executive Director/CEO has reason to believe that the Consultant has breached the covenants set forth in this Section 20, he shall so notify the Consultant in writing. The Consultant shall respond to said notice within ten (10) days of receipt with a detailed written explanation or answer to any facts, allegations, or questions contained or referenced in said notice. The Consultant may request a hearing on the matter by Executive Director/CEO or his designee that shall be conducted within fifteen (15) days of the receipt by the

Executive Director/CEO of the request unless a later date is concurred in by SFMTA and the Consultant. The decision of the Executive Director/CEO shall be a prerequisite to appeal thereof to SFMTA Board of Directors or to Superior Court in the County of San Francisco, State of California. If, after consideration of the Consultant's response and any hearing, the Executive Director/CEO determines that the covenants have been breached, the Executive Director/CEO shall have the discretion to exercise those remedies provided by any applicable federal or state laws or regulations or by this Agreement in the event of said breach and/or prohibited conflicts of interest.

21. CONFIDENTIALITY, PRIVACY AND SECURITY OF INFORMATION.

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

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

21.3. Protection of Private Information. Consultant has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Consultant agrees that any failure of 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 Consultant pursuant to Chapter 6 or Chapter 21 of the San Francisco Administrative Code, or debar the Consultant.

22. WORK PRODUCT AND WORKS FOR HIRE.

22.1. Ownership. All Work Product, including but not limited to documents, electronic, written, graphic, or three dimensional models, including drawing sets, CADD files, BIM files, schematics, system designs, blue prints, specifications, presentation drawings, models, films and videos, simulations or other presentation materials and other documents, models or computer files prepared by the Consultant are works for hire as defined under Title 17 of the United States Code commissioned by the SFMTA, and all such works shall be made and remain

the property of the City, including all intellectual property rights to all documents; provided, however, that the Consultant shall be entitled to retain one reproducible copy thereof and CADD files, made at the Consultant's expense. As part of its Basic Services, the Consultant shall provide the City with one licensed copy of software that will allow the City to view the electronic CADD files prepared by the Consultant and its Subprime Consultants and Subconsultants. Additionally, the Consultant shall provide technical specifications for any computer hardware required to use the provided software and files.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. AUDIT AND INSPECTION OF RECORDS.

23.1. Access to Records. Consultant agrees to maintain and make available to the City accurate books and accounting records relative to its activities under this Agreement, irrespective of whether such services were funded in whole or in part by this Agreement. Consultant will permit the City to audit, examine, reproduce, and make excerpts and transcripts from such books and records and to make audits of all invoices, materials, payrolls, records or personnel and other data necessary to determine or audit allowable expenses, overhead, including costs and overhead incurred as work performed as Additional Services,.

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

such litigation, claims, or exceptions have been finally resolved. Consultant shall require its subconsultants to also comply with the provisions of this Section, and shall include the provisions of the Section in each of its subcontracts.

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

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

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

24. NONDISCRIMINATION; PENALTIES.

24.1. Consultant Shall Not Discriminate. In the performance of this Agreement, Consultant agrees not to discriminate against any employee, City and County employee working with such Consultant or subconsultant, applicant for employment with such Consultant or subconsultant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the City deems appropriate.

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

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

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

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

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

25. GENERAL CONTRACT REQUIREMENTS.

25.1. Compliance with All Laws and Regulations.

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

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

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

25.3. Use of Public Transportation. San Francisco is a transit-first city, and the SFMTA encourages Consultant and subconsultants to use public transit in the performance of its services to the maximum extent possible. The SFMTA will closely review the Consultant's requests for reimbursement of travel expenses. Travel from and to airports must be by public

transit to the maximum extent possible. Taxicabs, and hired vans and cars are not considered public transit. The City reserves the right to refuse to reimburse travel expenses that are not in accord with these policies.

25.4. Earned Income Credit (EIC) Forms. Administrative Code Section 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.

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

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

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

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

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

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

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

25.8. Requiring Minimum Compensation for Covered Employees.

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

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

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

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

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

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

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

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

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

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

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

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

25.9.3. Consultant's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Consultant if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Consultant fails to cure such breach or, if such

breach cannot reasonably be cured within such period of 30 days, Consultant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

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

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

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

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

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

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

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

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

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

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

the cumulative amount of agreements between Consultant and the City to be equal to or greater than \$75,000 in the fiscal year.

25.10. First Source Hiring Program.

25.10.1. Incorporation of Administrative Code Provisions by Reference.

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

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

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

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

(c) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing

and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(d) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(e) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(f) Set the term of the requirements.

(g) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(h) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(i) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

25.10.3. Hiring Decisions. Consultant shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

25.10.4. Exceptions. Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

25.10.5. Liquidated Damages. Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA. Consultant agrees:

(a) To be liable to the City for liquidated damages as provided in this Section;

(b) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this Section;

(c) That the Consultant's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the Consultant to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public

assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the Consultant from the first source hiring process, as determined by the FSHA during its first investigation of a Consultant, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the Consultant's failure to comply with its first source referral contractual obligations.

(d) That the continued failure by a Consultant to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the Consultant's continued failure to comply with its first source referral contractual obligations;

(e) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this Section is based on the following data:

- The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and
- In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

(f) That the failure of Consultants to comply with this Chapter, except property Consultants, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(g) That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the Consultant will be liable for the City's costs and reasonable attorneys fees.

25.10.6. Subcontracts. Any subcontract entered into by Consultant shall require the subconsultant to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

25.11. Prohibition of Political Activity with City Funds. No funds appropriated by the City for any contract, grant agreement or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign for any candidate or measure. Recipients of City funds will cooperate in audits conducted by the Chief Financial Officer to verify that no City funds were used for political purposes.

In accordance with San Francisco Administrative Code Chapter 12.G, Consultant may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided

under this Agreement. Consultant agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Consultant violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (A) terminate this Agreement, and (B) prohibit Consultant from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Consultant's use of profit as a violation of this Section.

25.12. Services Provided by Attorneys. Any services to be provided as part of Consultant's services under this Agreement that are provided by a law firm or attorney retained by the Consultant must be reviewed and approved in writing in advance by the San Francisco City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subconsultants of Consultant, will be paid unless the provider received advance written approval from the City Attorney.

26. CONTRACT ADMINISTRATION AND CONSTRUCTION.

26.1. Notices to the Parties. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To SFMTA: Carter R. Rohan, R.A.
 Central Subway Program Officer
 Senior Director of Transportation Planning and Development
 San Francisco Municipal Transportation Agency
 1 South Van Ness, 7th floor
 San Francisco, CA 94103
 Tel: 415-701-4282
 Fax: 415-701-4300
 carter.rohan@SFMTA.com

Shahnam Farhangi
 Senior Manager of Contract and Quality Management
 San Francisco Municipal Transportation Agency
 1 South Van Ness, 3rd floor
 San Francisco, CA 94103
 Tel: 415-701-4284
 Fax: 415-701-4300
 shahnam.farhangi@SFMTA.com

To Consultant:

Any notice of default must be sent by registered mail.

26.2. Assignment. The services to be performed by Consultant are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Consultant unless first approved by City by written instrument executed and approved as required by SFMTA policy and City law. Consultant and the partners of any joint venture or association that constitute the Consultant or any of the Consultant's subconsultants

may incorporate or change their business names, and such actions shall not be considered an assignment for purposes of this Agreement provided such incorporation or name change does not decrease that entity's obligation or liability under this Agreement.

26.3. Successors and Assigns. This Agreement shall be binding upon the City and the Consultant and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any funds due or to become due there under may be assigned by the Consultant without the prior written consent and approval of the City.

26.4. Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

26.5. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required by the terms of this Agreement or as otherwise required by law.

26.6. Successors and Assigns. This Agreement shall be binding upon the City and the Consultant and their respective successors and assigns.

26.7. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco or as provided by Code of Civil Procedure Section 394; the venue for litigation in a county other than San Francisco pursuant to Section 394 will be Alameda County.

26.8. Priority of Documents. The Final Design services Consultant shall provide to the City for the Project are described in this Agreement, the RFP, and the Proposal. All requirements of the RFP and the representations made in the Consultant's Proposal that are not in conflict with provisions of this Contract are hereby incorporated by reference and made an integral part of the contract as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or the 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 shall control. The Proposal shall control only where an issue or subject is not addressed in either the RFP or this Agreement. A Task Order or Annual Design Plan shall control as to any matter not specifically addressed in the Agreement, RFP or Proposal.

26.9. Construction of Agreement. All article or section titles and paragraph captions are for reference only and shall not be considered in construing this Agreement. This Agreement is the result of and memorializes a negotiated contract between the Parties, each of which is experienced and knowledgeable in professional services contracting for public works architectural and engineering design, construction support and related services, and each of which was represented by and had the assistance of legal counsel of its choosing. No rule of construction in which an ambiguity in a contract is construed against the drafter shall be applied to interpret this Agreement or the Parties' intentions thereto.

26.10. Entire Agreement. This Agreement and its listed Attachments and other documents incorporated by reference constitute an integrated document that sets forth the entire agreement between the parties as to the matters addressed therein, and the provisions of this Agreement and its listed Attachments supersede all other oral or written provisions, drafts of the Agreement. This contract may be modified only as provided in Section 8.

26.11. Compliance with Laws. Consultant shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any

manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

26.12. Disputes and Resolution.

26.12.1. Notice of Dispute. For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved Party shall furnish the other Party with a notice of dispute within fifteen (15) days of the determination of the dispute. The Party receiving a notice of dispute shall submit a written reply with fourteen (14) days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the Party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the Party's position.

26.12.2. Resolution of Disputes. Disputes arising in the performance of this Agreement that are not resolved by negotiation between the SFMTA Program Manager and Consultant's Principal-in-Charge shall be decided in writing by the SFMTA Senior Manager of Contract and Quality Management. The decision shall be administratively final and conclusive unless within ten (10) days from the date of such decision, the Consultant mails or otherwise furnishes a written appeal to the SFMTA Program Officer, or his/her designee. In connection with such an appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the SFMTA Program Officer shall be administratively final and conclusive. This Section applies to all disputes unless a specific provision of this Agreement provides that the SFMTA Program Manager's decision as to a particular dispute is final.

26.12.3. No Cessation of Work. Pending final resolution of a dispute hereunder, the Consultant shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the SFMTA Program Manager.

26.12.4. Alternative Dispute Resolution. If agreed to by both Parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

26.12.5. Claims for Additional Compensation. For disputes involving a claim for additional compensation, parties involved shall attempt to resolve such disputes expediently and in good faith so as not to impact the performance or schedule of the Project. Under no circumstances shall the Consultant or its sub-consultants stop work due to an unresolved dispute.

26.12.6. Disputes among Consultant Partners. If Consultant is a joint venture partnership, the resolution of any contractual disputes related to Consultant's joint venture or association partners (if any) shall be the sole responsibility of the Consultant. 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 Consultant's performance of the Contract or otherwise delay the Project. 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.

26.13. Mutual Agreement. This Agreement is the product of negotiations between the Parties. Each Party represents that it is a sophisticated and experienced participant in contracting for public works. Each Party has been represented by legal counsel of their choosing. Each Party represents that it has read and understands this Agreement, and enters into this Agreement of its own free-will and without coercion of any kind. The Parties agree that this Agreement shall not

be subject to any rule of contract construction that may hold or would result in any ambiguity of any provision of this Agreement being held against the drafter of said provision.

26.14. Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

26.15. No Third Party Beneficiary. This Agreement is intended for the sole benefit of the City and the Consultant, and is not intended to create any third-party rights or benefits.

26.16. Signatories Authorized. By signing below, each signatory warrants that he or she is authorized to execute this Agreement and thereby bind the Party he or she represents.

27. ENVIRONMENTAL REQUIREMENTS.

27.1. Resource Efficiency and Conservation. Consultant shall adhere to the extent practicable to all requirements of Chapter 82 Resource Efficiency Requirements for City-owned Facilities (Green Building Ordinance), attached hereto as Attachment J. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Consultant to comply with any of the applicable requirements of Chapter 5 specifically required by the SFMTA may be deemed a material breach of contract.

27.2. Preservative-Treated Wood Containing Arsenic. Consultant shall not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Consultant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Consultant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

27.3. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Consultant shall remove all graffiti from any real property owned or leased by Consultant in the City and County of San Francisco within forty eight (48) hours of the earlier of Consultant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This Section is not intended to require a Consultant to breach any lease or other agreement that it may have concerning its use of the real property. The

term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Consultant to comply with this Section of this Agreement shall constitute an Event of Default of this Agreement.

27.4. Food Service Waste Reduction Requirements. Consultant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Consultant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Consultant agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Consultant's failure to comply with this provision.

27.5. Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges its contractors and consultants not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

27.6. Recycled Products. Consultant shall use recycled products, as set out in Sections 28.10 and 28.19, below.

28. FEDERAL REQUIREMENTS.

28.1. Federal Contract Requirements and Applicable Law. The provisions set out this Section 28 are required by federal law. If there is any conflict between said provisions or any federal law, regulation or requirement, including such limitations and requirements as the FTA may impose, such federal requirements, terms and conditions shall take precedence over any terms and conditions set out in this Agreement. The City and County of San Francisco is a chartered City and County with home rule powers under the Constitution of the State of California. The terms of this Agreement are governed by California Law and the ordinances and Charter of the City and County of San Francisco. Except as expressly provided for in this Agreement, the Federal Acquisition Regulations (FAR) shall not apply to this Agreement, except as to provide guidance as to accounting and auditing standards, including but not limited to calculation of compensable costs and overhead.

28.2. Incorporation of Federal Transit Administration (FTA) Terms.

28.2.1. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, (http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html), as amended and the Master Grant Agreement (<http://www.fta.dot.gov/documents/15-Master.pdf>), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Consultant shall not perform any act, fail to perform any act, or refuse to comply with any SFMTA request that would cause SFMTA to be in violation of the FTA terms and conditions.

28.2.2. The FTA Master Agreement obligates SFMTA to incorporate certain provisions into this Agreement and any lower tier subcontracts at any level and to take appropriate measures to ensure that Consultant and its lower tier subconsultants at any level comply with certain applicable requirements set forth in the Master Agreement. The FTA Master Agreement is hereby incorporated by reference into this Agreement, and Consultant shall comply with all such requirements.

28.2.3. Copies of the FTA Master Agreement are available from SFMTA.

28.3. Applicability of Federal Grant Contract.

28.3.1. This procurement may be subject to one or more financial assistance contracts between SFMTA and the U.S. Department of Transportation, which incorporate the current FTA Master Agreement and Circular 4220.1F as amended. U.S. Department of Transportation's level of financial assistance may be between zero and eighty percent (0-80%). The Consultant is required to comply with all terms and conditions prescribed for third party contracts in these documents.

28.3.2. Federal laws, regulations, policies and administrative practices may be modified or codified after the date this Agreement is established and may apply to this Agreement. To assure compliance with changing federal requirements, Contract Award indicates that the Consultant agrees to accept all changed requirements that apply to this Agreement.

28.4. Federal Funding Limitation. Consultant understands that funds to pay for Consultant's performance under this Agreement are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All funds must be approved and administered by FTA. SFMTA's obligation hereunder is payable from funds that are appropriated and allocated by FTA for the performance of this Agreement. If funds are not allocated, or ultimately are disapproved by FTA, SFMTA may terminate or suspend Consultant's services without penalty. SFMTA shall notify Consultant promptly in writing of the non-allocation, delay, or disapproval of funding.

28.5. No Federal Government Obligation to Third Parties. Consultant agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party contractor, or any other person not a party to the Grant Agreement in connection with this Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including a subrecipient or third party contractor.

28.6. Federal Lobbying Restrictions.

28.6.1. This Agreement is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 C.F.R. Part 20, which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an office or employee of Congress or an employee of any Member of Congress in connection with the

awarding of any federally funded contract, the making of any Federal grant or loan, or entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Consultants and Subconsultants at any time who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Consultant shall submit the "Certification Regarding Lobbying" included in this document. The Consultant's signature on this certification shall certify that: a) it has not engaged in the prohibited activity and b) the language of the certification shall be included in all lower tier subcontracts, which exceed \$100,000, and that all such subconsultants shall certify and disclose accordingly. SFMTA is responsible for keeping the certification form of the Consultant, who is in turn responsible for keeping the certification forms of subconsultants. Further, by executing the Agreement, the Consultant agrees to comply with these laws and regulations.

28.6.2. If the Consultant has engaged in any lobbying activities to influence or attempt to influence the awarding of this Agreement, the Consultant must disclose these activities. In such a case, the Consultant shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities". SFMTA must also receive all disclosure forms.

28.6.3. The Consultant and any subconsultants shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Agreement; or

(b) A change in the person(s) influencing or attempting to influence this federally funded Agreement; or

(c) A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Agreement.

28.7. Lobbying Certification and Disclosure. Pursuant to 49 C.F.R. Part 20 (which is by this reference incorporated herein), the Consultant shall execute and return the Certification Regarding Lobbying by Consultant form set forth in Attachment H with the execution of this agreement.

28.8. Certification Regarding Debarment, Suspension And Other Responsibility Matters.

28.8.1. Pursuant to Executive Order 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 and federal regulations in 49 C.F.R. 29, entities and individuals who are debarred or suspended by the federal government are excluded from obtaining federal assistance funds under this Contract. To assure that such entities and individuals are not involved as participants on this FTA-financed contract, if the contract

exceeds \$25,000 each Consultant shall complete and submit, as part of its Proposal, the certification form, contained in these documents. The inability of a Consultant to provide a certification will not necessarily result in denial of consideration for contract award. A Consultant that is unable to provide a certification must submit a complete explanation attached to the certification form. Failure to submit a certification or explanation may disqualify the Consultant from participation under this Contract. SFMTA, in conjunction with FTA, will consider the certification or explanation in determining contract award. No contract will be awarded to a potential third-party contractor submitting a conditioned debarment or suspension certification, unless approved by the FTA.

28.8.2. The certification is a material representation of fact upon which reliance is placed in determination of award of contract. If at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately provide written notice to SFMTA. If it is later determined that the Consultant knowingly rendered an erroneous certification, or failed to notify SFMTA immediately of circumstances which made the original certification no longer valid, SFMTA may disqualify the Consultant. If it is later determined that the Consultant knowingly rendered an erroneous certification, or failed to notify SFMTA immediately of circumstances which made the original certification no longer valid, SFMTA may terminate the contract, in addition to other remedies available including FTA suspension and/or debarment.

28.8.3. Further, the Consultant shall not knowingly enter into any subcontract with an entity or person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds. As such, the Consultant shall require all subconsultants seeking subcontracts to complete and submit the same certification form contained in these documents before entering into any agreement with said subconsultant.

28.9. Exclusionary Or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, the Consultant agrees that it will comply with the requirement of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

28.10. Conservation. The Consultant shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State Energy Action plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.).

28.11. Clean Water. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Consultant agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

28.12. Clean Air. The Consultant agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Consultant agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

28.13. Fly America. International air transportation of any persons involved in or property acquired for the Project must be provided by U.S. flag air carriers to the extent service

by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, in accordance with U.S. GAO regulations, "Uniform Standards and Procedures for Transportation Transactions," 4 C.F.R. Part 52, and U.S. GAO Guidelines for Implementation of the "Fly America Act" B-138942, 1981 U.S. Comp. Gen. LEXIS 2166. March 31, 1981.

28.14. Seismic Safety. The Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Consultant also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

28.15. National Intelligent Transportation Systems Consultance and Standards. The Consultant agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Consultance and Standards as required by Section 5206(e) of TEA-21, 23 U.S.C. § 502-, and with FTA Notice, "Federal Transit Administration National ITS Consultance Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other subsequent Federal directives that may be issued.

28.16. Electronic and Information Technology. When providing reports or other information to the SFMTA, or to the Federal Transit Administration (FTA), among others, on behalf of the SFMTA, the Consultant agrees to prepare such reports or information using electronic or information technology capable of assuring that the reports or information delivered will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

28.17. Nondiscrimination. In addition to the provisions prohibiting discrimination set out in Sections 10.4 and 24.1, above, the Consultant shall ensure compliance by it and its subconsultants with all requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d), federal Executive Order No. 11246, regulations of the U. S. Department of Labor issued thereunder, the regulations of the federal Department of Transportation issued thereunder, and the Americans with Disabilities Act, as they may be amended from time to time. Accordingly, during the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

28.17.1. The Consultant shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter "DOT"), Title 49, Code of Federal Regulations, Part 21 ("Nondiscrimination in Federally-Assisted Programs of the Dept. of Transportation"), as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

28.17.2. In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, creed, sex, sexual orientation, disability, age, or nationality.

28.17.3. The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SFMTA or FTA to be pertinent to ascertain compliance with such regulations, orders,

and instructions. Where any information is required of a contractor or subconsultant that is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to SFMTA, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

28.17.4. In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, SFMTA shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:

- (a) Requiring the Consultant to take remedial action to bring the Consultant into compliance;
- (b) Withholding of payments to the Consultant under the Agreement until the Consultant complies; and/or
- (c) Cancellation, termination, or suspension of the Agreement, in whole or in part.

28.17.5. The Consultant shall include the provisions of these Subsections 28.17.1 to 28.17.4 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as SFMTA or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the Consultant may request SFMTA to enter into such litigation to protect the interests of SFMTA and, in addition, the Consultant may request the United States to enter into such litigation to protect the interest of the United States.

28.18. Title VI Compliance. During the performance of this Agreement, Consultant, for itself, its assignees, and its successors in interest agrees as follows:

28.18.1. Compliance with Regulations: Consultant shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

28.18.2. Nondiscrimination: Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

28.18.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.

28.18.4. Information and Reports: Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall

permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SFMTA or the FTA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to SFMTA, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

28.18.5. Sanctions for Noncompliance: In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, SFMTA shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

- (a) Withholding of payments to Consultant under the Agreement until Consultant complies, and/or,
- (b) Cancellation, termination or suspension of the Agreement, in whole or in part.

28.18.6. Incorporation of Provisions: Consultant shall include the provisions of Subsection 28.18.1 through 28.18.5 of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as SFMTA or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, Consultant may request SFMTA to enter into such litigation to protect the interests of SFMTA, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

28.19. Requirements of Americans with Disabilities Act. The Consultant is required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

28.19.1. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

28.19.2. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 27;

28.19.3. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

28.19.4. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

28.19.5. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

28.19.6. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

28.19.7. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. Part 64, Subpart F; and

28.19.8. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

28.19.9. Any implementing requirements that the FTA may issue.

28.20. Recycled Products. To the extent practicable and economically feasible, the Consultant agrees to provide a competitive preference for recycled products to be used in the Project pursuant to the U.S. Environmental Protection Agency Guidelines at 40 C.F.R. Parts 247, implementing Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962. If possible, the Consultant shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical at the fulfillment of this Agreement.

28.21. Privacy.

28.21.1. Should the Consultant, or any of its subconsultants, or their employees administer any system of records on behalf of the federal government, the Privacy Act of 1974, 5 USC § 552a, imposes restrictions on the party administering the system of records.

28.21.2. For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, SFMTA and any Consultants, third-party contractors, subcontractors, and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Agreement will make this Agreement subject to termination.

28.21.3. The Consultant agrees to include this clause in all subcontracts awarded under this Agreement that require the design, development, or operation of a system of records on individuals subject to the Act.

28.22. False or Fraudulent Statements and Claims.

28.22.1. The Consultant recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Accordingly, by signing this Agreement, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered Grant Agreement, Cooperative agreement, Contract or Project. In addition to other penalties that may be applicable, the Consultant acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Consultant, to the extent the Federal Government deems appropriate.

28.22.2. The Consultant also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Consultant the penalties of 18 U.S.C. § 1001, 31 USC §§ 3801, et seq., and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

28.22.3. The Consultant agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is

further agreed that the clauses shall not be modified, except to identify the subconsultant who will be subject to the provisions.

28.23. Drug-Free Workplace Policy. Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, 41 U.S.C. 702, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns will be deemed a material breach of this Agreement.

29. INCLUDED ATTACHMENTS .

The following documents included as exhibits to this Agreement are incorporated by reference as if fully set out herein.

- A. Scope of Services/Scope of Work
- B. Directory of Subconsultants
- C. Summary of Fees - Cost Breakdown/Schedule of Charges
- D. Other Direct Costs
- E. Organization Chart
- F. SBE Forms
- G. Small Business Enterprise (SBE) Program
- H. Certification Regarding Lobbying
- I. San Francisco Art Commission Civic Design Review Committee Guidelines
- J. Chapter 82 Resource Efficiency Requirements for City-owned Facilities (Green Building Ordinance).
- K. CityBuild Implementation Policy
- L. Quality Management Manual
- M. Design Schedule

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

CITY

City and County of San Francisco
Municipal Transportation Agency

By _____
NATHANIEL P. FORD, SR.
Executive Director/CEO

SFMTA Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Roberta Boomer, Secretary
SFMTA Board of Directors

Approved as to Form:

Dennis J. Herrera
City Attorney

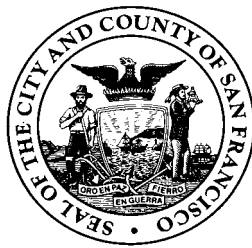
By _____
Robert K. Stone
Deputy City Attorney

CONSULTANT

By signing this Agreement, Consultant certifies that it complies with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

Consultant has read and understands paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Federal Employer ID Number



Appendix 4

Business Tax Registration Declaration



Business Registration Certificate Requirement

Unless you have previously submitted this form, failure to complete the Declaration on the reverse and return this form to Purchasing with your bid will be a basis for rejection of the bid, and Purchasing will assume that your company does not intend to apply for a Business Tax Certificate.

General

To receive an award, a vendor must have a current Business Registration Certificate or else not be required to register. The registration fee is \$25, \$150, \$250 or \$500, depending on the type and size of your business. The fee (except the \$25 fee) is pro-rated for new registrations, depending on when during the year you started your business in San Francisco, and is based on estimated tax liability for your payroll expense. To determine the registration fee due, you can check the website at “<http://sfgov.org/tax/busfaq.htm#reg>”.

Who must obtain a registration certificate?

Any business located, or conducting business, in San Francisco.

What is “conducting business in San Francisco”?

Briefly, it means having employees or a place of business in San Francisco, or having employees visit San Francisco regularly. Questions 1-4 on the reverse specifically relate to “conducting business.”

Are there exceptions?

Yes. A non-profit, tax-exempt business need not register or pay the registration fee. See Question 5 on reverse. Government agencies, banks and insurance companies are exempt. See Question 6.

My business is not located in San Francisco. Is a registration certificate still required?

Yes, if the business “conducts business in San Francisco,” unless it is non-profit and tax-exempt, or a bank, or an insurance company.

All businesses, including those which do not “do business in San Francisco” but excluding government agencies, must sign and return the Declaration.

Businesses whose computed tax is \$2,500 or less do not have to pay the tax, but are required to file an annual statement with the Tax Collector to qualify for this Small Business Exemption. However, all businesses are subject to the annual Business Registration fee, which varies depending on the type and size of business.

What's involved in obtaining a registration certificate?

Obtaining a certificate is easy, but not automatic. Once the Tax Collector receives an application, the office must check the payment status of other taxes (Unsecured Personal Property Tax, Payroll/ Business Tax) and licenses or permits. If any tax or license/permit fee is delinquent, the certificate cannot be issued. Only when all taxes and fees are paid in full will the certificate be issued.

Where do I obtain the certificate?

At the Tax Collector’s Office. You would obtain an application form from, and submit it and the registration fee to:

Tax Collector’s Office
Taxpayer Assistance
City Hall, Room 140
San Francisco, CA 94102-4696
(415) 554-6718 or (415) 554-4400

P-25 (6-01)

Do Company Divisions, Parents and Subsidiaries have to register separately? That depends on a company’s individual situation. Contact the Tax Collector at (415) 554-6718 or 554-4400 for more information.

Can I do business with the City without a certificate?

Not if you “conduct business in San Francisco.” The City can make purchases from businesses only in the following situations:

- The business conducts business in San Francisco and has registered.
- The business does not conduct business in San Francisco and has signed the Declaration.
- The business is non-profit and tax-exempt, has signed the Declaration and has submitted an IRS exemption letter.
- The business is a government agency, bank, or insurance company.
- There is an emergency. Although Purchasing can award the contract, the vendor may be subject to business taxes and required to possess a certificate.

These requirements cover service contracts, construction contracts and product purchases.

What if my application is pending during a bid evaluation?

If you are the low bidder on a City contract, and have applied for the certificate but your application has not yet been approved, the City may make the award to you if you sign the Declaration. If you have a receipt from the Tax Collector for the registration fee, submit a **copy** of the receipt with this form.

What if I currently “do not conduct business in San Francisco,” but if I win this bid, I will?

You may answer the questions based on your current status, and you should not register at this time. If you win the bid, you should register with the Tax Collector.

For more information

For information on how to apply for the certificate, call the Tax Collector’s Office. For information on your eligibility to receive a particular award, call Purchasing. See the bottom of the reverse of this form.

Completing the Declaration; Failure to do so

Unless you previously submitted this form, complete the Declaration and, if possible, return it **with your bid or quotation** in the envelope provided. If you submit this form separately, see the mailing address under “Routing” near the bottom of the reverse of this form.

If you do not complete and return this form, that will be a basis for Purchasing’s rejecting the bid, and for assuming that your company should register but will not and therefore that the City cannot do business with you.

If you submitted this form previously

If you submitted this form for an earlier transaction, and if your business tax status has not changed, please discard this form.

Business Tax Declaration

Please answer Yes or No to Questions 1-6, based on your company's situation *as of now*. If any answers would change if your company won a bid that is pending, you may submit a new form later.

Tax-Exempt Businesses, Banks, Insurance Companies

Yes No

- ___ ___ 5. This business is non-profit, tax-exempt. If "yes," you need not register and may omit items 6-10, but you must sign the declaration and submit proof of tax-exempt status to Purchasing. Proof is usually an exemption letter from the IRS, noting §501(c) or (d) of the Internal Revenue Code.
- ___ ___ 6. This business is a bank or an insurance company. (Please indicate on this form your type of business.)

Applying for a Business Registration Certificate

If you answered "yes" to any of Questions 1-4, and "no" to Questions 5 and 6, check item 7, 8, or 9 and complete any applicable blanks. If no item is checked, or if the Declaration is not signed, this will constitute a basis for Purchasing to reject the bid.

- ___ 7. This company has registered with the Tax Collector. Certificate # _____ (6 digits, e.g., "123456").
- ___ 8. This company applied for a Certificate by mailing the application and fee to the Tax Collector, or by submitting the application in person, on _____, 20____. The application is pending. (NOTE: Completing this Declaration is not the same as applying for a Certificate.) If you submitted the application in person, please submit with this Declaration a copy of the fee receipt you received from the Tax Collector.
- ___ 9. This company does not intend to apply for a certificate.
- ___ 10. If, as a result of winning this bid, this company is required to register, we will do so.

Conducting Business in San Francisco

Yes No

This person, business, or person's or business's employee:

- ___ ___ 1. maintains, owns or leases a fixed place of business within San Francisco.
- ___ ___ 2. regularly maintains a stock of tangible personal property in San Francisco for sale in the ordinary course of business.
- ___ ___ 3. in the ordinary course of business, loans capital on property within San Francisco.
- ___ ___ 4. is physically present within San Francisco through property (e.g., trucks or inventory) or employees (e.g., sales representatives) during **7 or more separate days per year** (e.g., 4 employees in San Francisco for 2 days each constitute 8 separate days, and require a "yes" answer to this question). If a manufacturer does not conduct business in San Francisco but the manufacturer's independent representative does, only the representative must register.

If you answered "no" to Questions 1-4, ordinarily you are not conducting business in San Francisco, need not register with the Tax Collector and may omit items 5-10 below, but you must sign and return this Declaration. However, this is subject to review by the Tax Collector. **If you answered "yes" to any of the questions**, you must answer the remaining questions in this Declaration and, unless an exemption applies **must register**.

I understand that my representation, if any, that I am not engaged in business in San Francisco is subject to review by the Tax Collector. If the Tax Collector determines that I am conducting business in San Francisco, the City may either cancel the contract or withhold payment ten days after written notification by the Tax Collector.

I declare (or certify) under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this ____ day of _____, 20____, at _____, _____ (City) (State).

Name of Company (please print)

Signature

Name of Signatory (please print)

Title

Telephone Number

General Address { _____
Mailing Address for General Corresp., Purchase Orders, etc.

City, State, ZIP

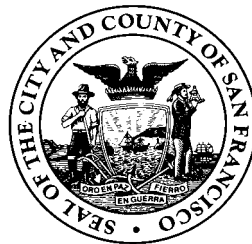
Remit Address { _____
Remittance Address, if different

City, State, ZIP

Federal ID or Social Security Number

Routing

If you are registering, send the application to the Tax Collector (address on obverse). **Do not send this form to the Tax Collector.** We encourage you to send this form **with your bid or quotation** in the envelope provided. If you submit this form separately, send it to: Purchasing Department, Business Tax Compliance, City Hall, Room 430, San Francisco, CA 94102-4685. If you submitted this form previously and if your business tax status has not changed, discard this form



Appendix 5

Protest Procedures for the Bidding and Award of Federally Assisted Third Party Contracts

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

PROTEST PROCEDURES FOR THE BIDDING AND AWARD OF FEDERALLY ASSISTED THIRD PARTY CONTRACTS

(Construction, public improvements, personal services,
negotiated procurement and other major procurement contracts)

REVISED: April 2007

1. Policy

In the event that any protests, discrepancies, or legal questions arise during the bidding and award process of federally assisted construction, public improvements, personal services, negotiated procurement and other major procurement contracts, the Contract Manager shall report unresolved protests to the Executive Director/CEO, who shall review the protest and recommend its resolution to the San Francisco Municipal Transportation Agency. These procedures shall be incorporated by reference in all bid packages.

2. Definitions

Contract Manager (CM) refers to the San Francisco Municipal Transportation Agency engineer in charge of administering the contract that is the subject of the protest. CM also refers to the Project Manager for the project when there is no engineer administering the contract.

Award shall mean authorization by resolution of the San Francisco Municipal Transportation Agency Board of Directors or authorization by the Executive Director/CEO, for contracts under the Executive Director/CEO's authority, for its staff to contract with a bidder or proposer, or recommendation by resolution of the SFMTA Board of Directors that the City's Board of Supervisors approve a contract with a bidder or proposer.

Award Process includes the pre-award, award and post-award phases of a negotiated procurement, a Request for Proposals (RFP) and a sealed bid.

Bid includes the terms "offer" or "Proposal" as used in the context of negotiated procurements, Requests for Proposals and sealed bids.

City means the City and County of San Francisco, acting through the San Francisco Municipal Transportation Agency.

Contract Compliance Office (CCO) is the SFMTA office that administers compliance with federal regulations governing Disadvantaged Business Enterprises, as well as SFMTA's program governing Small Business Enterprises.

Days refer to working days of the City and County of San Francisco (unless otherwise indicated).

Executive Director/CEO refers to the Executive Director/CEO of the SFMTA.

Department of Parking and Traffic (DPT) refers to the Department of Parking and Traffic of the San Francisco Municipal Transportation Agency.

Disadvantaged Business Enterprise (DBE) is a for-profit, small business concern (1) that is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one (51%) of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Federal Transit Administration (FTA) is an operating administration of the U.S. Department of Transportation.

San Francisco Municipal Transportation Agency (SFMTA or Agency) is the agency of the City and County of San Francisco that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the San Francisco Municipal Railway and the Department of Parking and Traffic, and has exclusive authority over contracting, leasing and purchasing by the Municipal Railway and the Department of Parking and Traffic, subject to certain restrictions of the City's Charter. The Agency acts through its Board of Directors.

Protest is a complaint by a bidder or proposer regarding a bid or the award process which arises prior to award and is formally communicated to the Director, as provided below.

Post-Award Protest is a complaint by a bidder or proposer when San Francisco Municipal Transportation Agency awards a contract, or recommends that the Board of Supervisors award a contract, to other than the bidder or proposer recommended for award by SFMTA staff.

San Francisco Municipal Railway refers to the San Francisco Municipal Railway of the San Francisco Municipal Transportation Agency.

Small Business Enterprise (SBE) refers to a for-profit, small business concern that qualifies for the program by being certified under any of the following programs: the State of California's Small Business Program, the City and County of San Francisco's LBE Program, or the Federal DBE program.

3. Responsibilities:

- 3.1 The Contract Manager (CM) obtains the response to issues not related to DBE compliance and coordinates the resolution of all protest issues.
- 3.2 The Contract Compliance Office (CCO) resolves issues regarding DBE compliance.
- 3.3 In the event that a protest is not resolved by the CM, the Director shall review the protest and make a recommendation to the Agency for final action.

4. Implementation

4.1. Submit Protest

A person or firm wishing to protest an award of a contract prior to the award must submit a protest describing the nature of the disagreement in writing to SFMTA no later than five (5) days following notification of proposed award. A person or firm wishing to protest an award of a contract after the award must submit a protest describing the nature of the disagreement in writing to SFMTA no later than five (5) days following the Notification of Award of the contract. If the bid procedure requires submission of documents in separate phases and bidders may be disqualified at the end of a phase prior to the final award, then protests regarding a phase of the procedure (including protests concerning documents received by bidders during the phase) must be submitted in writing with a description of the disagreement to SFMTA no later than five (5) days following receipt of notification of the results of that phase.

Protests shall be addressed to:

Executive Director/CEO
San Francisco Municipal Transportation Agency
One South Van Ness Ave, 7th Floor
San Francisco, CA 94103

with a copy to:

Senior Director
Transportation Planning And Development Division
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

Area Manager
Contracts And Quality Management
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 3rd Floor
San Francisco, CA 94103

4.2 Coordination Efforts

With direction from the Executive Director/CEO, and following the requirements of FTA Circular 4220.1F, the AE shall determine the nature of the disagreement and coordinate resolution efforts.

4.3. DBE or SBE Requirements

If the protest involves meeting DBE or SBE requirements, the Contract Manager shall forward a copy of the protest to the Contract Compliance Office for review and recommendations. The CM shall also send a copy to the City Attorney for information.

The CCO shall review DBE or SBE requirements for the project and examine whether the protest has merit. Based on the examination, the CCO shall notify the Director and the CM of its decision. The CM shall provide copies of the decision to the Senior Director of Transportation Planning and Development Division. The CM shall then inform the protester, in writing, of the decision, responding at least generally to each material issue raised in the protest. The CM's letter to the protester shall state that (a) the protester may contact the CM to discuss the response, (b) the protester has the right to appeal his decision to the Director pursuant to Section 4.5, and (c) the protester has the right to address the Agency on the date when the matter is calendared to be heard if the Director denies the appeal.

Regarding the issue of whether a bidder has met its DBE or SBE goal or demonstrated good faith efforts in reaching the contract-specific DBE or SBE goal, the CCO's determination will be administratively final.

4.4 Issues Not Related to DBE or SBE Requirements

If the protest concerns complaints regarding discrepancies in the bid documents, missing or required documentation, or the selection process, and is not related to DBE or SBE requirements, the CM or designee shall prepare a memorandum to the City Attorney's Office requesting an opinion on the protest. The CM shall attach a copy of the bidder's protest and all documentation from the bid package and any other document deemed necessary by the attorney.

Upon receipt of the memorandum, the City Attorney's Office will investigate and respond with an opinion to the Executive Director/CEO and the CM for review and evaluation. The CM shall provide copies of the opinion to the Senior Director of Transportation Planning and Development Division, and the CCO. The CM shall inform the protester in writing of the CM's recommendation, stating the reasons for the recommendation, and responding at least generally to each material issue raised in the protest. The CM's letter to the protester shall state that (a) the protester may contact the CM to discuss the response, (b) the protester has the right to appeal the decision to the Executive Director/CEO pursuant to Section 4.5, and (c) the protester has the right to address the Agency on the date when the matter is calendared to be heard if the Director denies the appeal.

4.5 Disagreement by Protester

Except as provided in Section 4.3, in the event that the protester disagrees with the recommendations or decisions rendered, the protester may submit a written request to the Executive Director/CEO for review of the decision within five (5) days of receipt of the CM's letter responding to the protest. The Executive Director/CEO shall review the decision and make a recommendation to Agency for final action. The CM shall inform the protester of the Executive Director/CEO's recommendation, the date when the Agency will consider the item, and the protester's opportunity to address the Agency regarding the matter.

4.6 Incorporate Legal Opinion/Recommendation

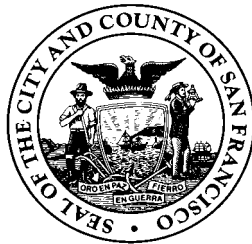
The CM shall incorporate appropriate language reflecting the outcome of the protest in the calendar item and resolution for approval of the contract by the Agency. However, in the event of a multi-phased bid procedure as described in Section 4.1 above, the protest may be considered by the Agency prior to the meeting when final award is determined.

4.7 Final Action

The protester shall be notified in writing of the Agency decision regarding the protest and/or award of the contract. The action of the Agency is final. Subject to the provisions of Section 4.8, the protester may seek a remedy in State or Federal court, as appropriate, from the final action of the Agency.

4.8 Protest to FTA

FTA may only entertain a protest that alleges that the Agency (1) failed to have written protest procedures; (2) failed to follow its written protest procedures; or (3) failed to review a complaint or protest. A protest to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) days of the date the protester knew or should have known of the violation. A protester must exhaust all administrative remedies with the Agency before pursuing a protest with FTA.



Appendix 6

Certification Regarding Lobbying

APPENDIX A, 49 CFR, PART 20--CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans and Cooperative Agreements
(To be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

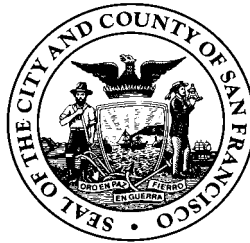
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant/Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant/Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, *et seq.*, apply to this certification and disclosure, if any.

Executed this _____ day of _____, 20__.

By: _____
(signature of authorized official)

(title of authorized official)



Appendix 7

San Francisco Administrative Code 12B and 12C Declaration Form



CITY AND COUNTY OF SAN FRANCISCO HUMAN RIGHTS COMMISSION

S.F. ADMINISTRATIVE CODE CHAPTERS 12B & 12C DECLARATION: NONDISCRIMINATION IN CONTRACTS AND BENEFITS

(HRC-12B-101)

Section 1. Vendor Information

Name of Company: _____

Name of Company Contact Person: _____

Phone Number: _____ Fax Number: _____

Vendor Number (if known): _____

Federal ID or Social Security Number: _____

Approximate Number of Employees in the U.S.: _____

Are any of your employees covered by a collective bargaining agreement or union trust fund? [] Yes [] No

Union name(s): _____

DATE & TIME RECEIVED BY HRC (FOR HRC USE ONLY)

Section 2. Compliance Questions

Question 1. Nondiscrimination – Protected Classes

A. Does your company agree to not discriminate against your employees, applicants for employment, employees of the City, or members of the public on the basis of the fact or perception of a person’s membership in the categories listed below? Please note: a “YES” answer means your company agrees it will not discriminate; a “NO” answer means your company refuses to agree that it will not discriminate. Please answer yes or no to each category.

- Race [] Yes [] No
• Color [] Yes [] No
• Creed [] Yes [] No
• Religion [] Yes [] No
• National origin [] Yes [] No
• Ancestry [] Yes [] No
• Age [] Yes [] No
• Height [] Yes [] No
• Sex [] Yes [] No
• Sexual orientation [] Yes [] No
• Gender identity (transgender status) [] Yes [] No
• Domestic partner status [] Yes [] No
• Marital status [] Yes [] No
• Disability [] Yes [] No
• AIDS/HIV status [] Yes [] No
• Weight [] Yes [] No

B. Does your company agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract you have with the City? Please note: you must answer this question even if you do not intend to enter into any subcontracts.

[] Yes [] No

Question 2. Nondiscrimination – Equal Benefits for Employees with Spouses and Employees with Domestic Partners

A. Does your company provide or offer access to any benefits to employees with spouses or to spouses of employees?

[] Yes [] No

B. Does your company provide or offer access to any benefits to employees with (same or opposite sex) domestic partners* or to domestic partners of employees?

[] Yes [] No

Questions 2A and 2B should be answered YES even if your employees must pay some or all of the cost of spousal or domestic partner benefits.

*The term “Domestic Partner” includes both same-sex and opposite-sex couples who have registered with a state or local government domestic partnership registry. See S.F. Admin. Code Chapter 12B.1(c).

If you answered “NO” to both Questions 2A and 2B, go to Section 4 (on the back of this form), complete and sign the form, filling in all items requested.

If you answered “YES” to either or both Questions 2A and 2B, please continue to Question 2C.

(OVER)

Question 2. (continued)

C. Please check all benefits that apply to your answers above and list in the “other” section any additional benefits not already specified. **Note:** some benefits are provided to employees because they have a spouse or domestic partner, such as bereavement leave; other benefits are provided directly to the spouse or domestic partner, such as medical insurance.

BENEFIT	Yes for Employees with Spouses	Yes for Employees with Domestic Partners	No, this Benefit is Not Offered	Documentation of this Benefit is Submitted with this Form
• Health	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Dental	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Vision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Retirement (Pension, 401(k), etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Bereavement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Family Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Parental Leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Employee Assistance Program	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Relocation & Travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Company Discount, Facilities & Events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Credit Union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Child Care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Note: If you can't offer a benefit in a nondiscriminatory manner *because of reasons outside your control*, (e.g., there are no insurance providers in your area willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form (HRC-12B-102) with all necessary attachments, and have your application approved by the HRC. For more information, see Rules of Procedure section II B or contact the HRC.

➤ **Section 3. Required Documentation**

YOU MUST SUBMIT SUPPORTING DOCUMENTATION

to verify each benefit marked in Question 2C. Without proper documentation, your company cannot be certified as complying with Chapter 12B. For example, to document medical insurance submit a statement from your insurance provider or a copy of the eligibility section of your plan document; to document leave programs, submit a copy of your company's employee handbook. If documentation for a particular benefit does not exist, attach an explanation. For more information see the Quick Reference Guide at www.ci.sf.ca.us/sfhumanrights/quickref.htm or contact the HRC.

Have you submitted supporting documentation for each benefit offered? Yes No

➤ **Section 4. Executing the Document**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, in the year _____, at _____, _____
(City) (State)

Signature

Mailing Address

Name of Signatory (please print)

City, State, Zip Code

Title

➔ **Return this form to:** HRC, 25 Van Ness Ave., Suite 800, San Francisco, CA 94102-6033, or to the City department that sent it to you if the department so requests.

✓ **Resource Materials** and additional copies of this form may be found at: www.ci.sf.ca.us/sfhumanrights/12b.htm

☎ **For assistance** please contact the Human Rights Commission at 415-252-2500.

HRC-12B-101 (9/01)



Appendix 8

Attestation of Compliance

**Architectural and Engineering Services
for the
Final Design and Construction
of the
Central Subway Project**



APPENDIX 8

ATTESTATION OF COMPLIANCE

To be completed by all Proposing Firms and all Individual Subproposers

(Please check each box, sign this form and submit it with your response.)

Name of Individual Completing this Form: _____

The Form is Submitted on Behalf of Firm: _____

Name of RFP: **Architectural and Engineering Services for the Final Design and Construction of the Central Subway Project**

- 1. I attest that I and all members of the firm listed above will and have complied to date with Section 1.12 of the above RFP Yes
- 2. I understand that if my firm or any members of the firm listed above are found to be in violation of the Section 1.12 of the above RFP, this will disqualify my firm and bidding consortium for further consideration Yes

I have entered required responses to the above questions to the best of my knowledge and belief.

Signature: _____

Date: _____



Appendix 9

Organization Chart

CENTRAL SUBWAY FINAL DESIGN

- Design Project Management (City Staff)
 - Peer Review (Consultant under separate RFPs)
 - Project Admin/Control (Consultant under separate RFPs)

Final Design RFP

- Prime Design Mangement (Consultant staff)
 - Systems Integration (Consultant staff)
 - Sustainability (Consultant staff)
 - Community Design Coordination (Consultant staff)
 - Quality Control (Consultant staff)
 - Local/ SBE Compliance Support (Consultant staff)

Construction Contact Packages

- Subprime Utility Relocation Contract Package/ Support (Consultant staff)
 - Civil (City, Consultant or a combination)
 - Electrical (Consultant or a combination)
 - Mechanical (Consultant staff)
 - Structural (Consultant staff)
 - Architectural (Consultant staff)
- Subprime Tunnel/Portal/Shaft Contract Package (Consultant staff)
 - Civil (City, Consultant or a combination)
 - Structural (Consultant staff)
- Subprime Moscone Station Contract Package Structural (Consultant staff)
 - Civil (City, Consultant or a combination)
 - Electrical (Consultant or a combination)
 - Mechanical (Consultant or a combination)
 - Structural (Consultant staff)
 - Architectural (Consultant staff)
- Subprime Union Square/Market Street Contract Package (Consultant staff)
 - Civil (City, Consultant or a combination)
 - Electrical (Consultant or a combination)
 - Mechanical (Consultant or a combination)
 - Structural (Consultant staff)
 - Architectural (Consultant staff)
- Subprime Chinatown Station Contract Package (Consultant staff)
 - Civil (City, Consultant or a combination)
 - Electrical (Consultant or a combination)
 - Mechanical (Consultant or a combination)
 - Structural (Consultant staff)
 - Architectural (Consultant staff)
- Subprime Systems, Track and Surface Contract Package (Consultant staff)
 - Civil (City, Consultant or a combination)
 - Electrical (Consultant or a combination)
 - Mechanical (City staff)
 - Architectural (City staff)



Appendix 10

Available References

Appendix 10: Available References

All Proposers who wish to view any of the following documents may make an appointment with

Mr. Mario Gallardo
Contract Management Office
Transportation and Development Contract Management Office
One South Van Ness Ave., 3rd Floor
San Francisco, CA 94103
(415) 701-4348:

1. Recommended Tunnel Construction Methods Report, March 16, 2004
2. Central Subway Project (CSP) Portal and Surface Station Locations Study, December 23, 2004
3. CSP Special Alignment and Validation Studies, June 30, 2005
4. CSP Hazardous Material Phase 1 ESA & Site History, December 18, 2003
5. CSP Addendum 1 to Phase 1 ESA & Site History, April 1, 2005
6. CSP Addendum 2 to Phase 1 ESA & Site History, February 11, 2009
7. CSP Phase II HMI Report for 4th / Stockton Alignment, May 18, 2006
8. CSP Preliminary Phase 1A GDR & Geologic Profile, November 19, 2003
9. CSP Phase 1A GDR & Geologic Profile – Volume 1 & 2, February 27, 2004
10. CSP Addendum to GDR & Geologic Profile for 4th / Stockton Alignment, March 30, 2005
11. CSP Phase 1B GDR & Geologic Profile for 4th / Stockton Alignment, May 1, 2006
12. CSP Geotechnical Interpretive Report, dated February 5, 2009
13. CSP Design Criteria – Compilation, dated September 29, 2006, updated April 8, 2008
14. CSP SEIS/SEIR, dated September 2008
15. CSP Preliminary Engineering Report/Drawings, dated October 23, 2008
16. Central Subway – Third Street Light Rail Phase 2, FY2009 Section 5309, New Starts Criteria Report, dated September 2008
17. CSP Risk Register dated February 23, 2009
18. CSP Mitigation Monitoring and Reporting Program, dated July 2008
19. CSP Quality Assurance Plan and Design Control Procedures, dated June 23, 2008
20. CSP Safety and Security Management Plan, dated January 15, 2009
21. CSP FTA Project Management Oversight Program report, dated N/A
22. CSP MOA between SFMTA, FTA and SHPO
23. CSP CSP11-9r2 Schedule
24. Operational Concept Document for the New Operations Control Center, dated September 2008

All Proposers who wish to view any of the following documents located at the Central Subway Project Office may make an appointment with

Mr. Mario Gallardo
 Contract Management Office
 Transportation and Development Contract Management Office
 One South Van Ness Ave., 3rd Floor
 San Francisco, CA 94103
 (415) 701-4348:

Central Subway Issued Deliverables

Updated: February 20, 2009

Task	Deliverable	Rev #	Status	Date
1.02-02	Stations/Portals Utility Studies North of Howard Street – Working Paper	0	Complete	03/31/04
1.02-02	Stations/Portals Utility Studies North of Howard Street – Working Paper	0	Complete	04/30/04
1.02-03	Phase I Environmental Site Assessment & Site History Report	0	Complete	12/18/03
1.02-03	Addendum 1 to Phase 1 Environmental Site Assessment & Site History Report	0	Complete	04/01/05
1.02-03	Addendum 2 to Phase 1 Environmental Site Assessment & Site History Report	0d	Draft	02/11/09
1.02-03	Phase II Hazardous Material Investigations - Work Plan	0	Complete	07/20/05
1.02-03	Phase II Hazardous Material Investigation Report for 4 th /Stockton Alignment	0	Complete	05/18/06
1.02-03	Phase II Environmental Screening Program Work Plan	0	Complete	06/14/05
1.02-03	Hazardous Materials, Affected Environment, Environmental Consequences and Mitigation Measures Sections of SEIS/SEIR – Tech Memo	N/A	Complete	06/27/07
1.02-05	Preliminary Catalog of Affected Structures – Volumes 1, 2 & 3	0	Complete	02/20/04
1.02-05	Effects of NCS Underground Construction on Existing Structures	2	Complete	06/10/04
1.02-06	Geotechnical Field Exploration Plan	1	Complete	11/05/03
1.02-06	Addendum to Phase 1 Geotechnical Field Exploration Plan	0	Complete	06/30/05
1.02-06	Health & Safety Plan for Phase 1A Geotechnical Investigations	0	Complete	10/13/03
1.02-06	Health & Safety Plan for Phase 1B Geotechnical Investigations	0	Complete	06/09/05
1.02-06	Preliminary Phase 1A GDR & Geologic Profile	1	Complete	11/19/03
1.02-06	Phase 1A GDR & Geologic Profile – Vol 1 & 2	1	Complete	02/27/04
1.02-06	Addendum to Phase 1A GDR & Geologic Profile for 4 th /Stockton Alignment	0	Complete	03/30/05
1.02-06	Phase 1B GDR & Geologic Profile for 4 th /Stockton Alignment	0	Complete	05/01/06
1.02-07	Groundborne Noise and Vibration Study – Technical Memo	1	Complete	02/27/04
1.02-08	Seismic Hazard Analysis and Recommendations Report	0a	Draft	02/06/09
1.02-10	Traction Power Analysis – Technical Memo	0	Complete	03/02/04
1.02-11	NCS Fire Protection Report with Schematic	0	Complete	03/03/04
1.02-11	NCS Track Drainage Report with Schematic	0	Complete	03/03/04
1.02-11	Development of Fire Heat & Smoke Release Rate Using Breda LRV2 Vehicles - TM	0	Complete	06/02/04
1.02-11	Emergency Ventilation Concepts & Criteria – Working Paper	0	Complete	06/08/04
1.02-11	Emergency Ventilation Schematic Arrangement – Technical Memo	0	Complete	06/15/04

Task	Deliverable	Rev #	Status	Date
1.02-12	Train Control/Signaling Alternatives	0	Complete	05/09/05
1.03-01	Recommended Tunnel Construction Methods – Working Paper	0	Complete	03/16/04
1.03-01	Shaft Locations for Tunnel Construction – Technical Memo	0	Complete	06/28/04
1.03-01	Construction Portal and Spoil Disposal Study – Technical Memo	0	Complete	06/28/04
1.03-02	Station Construction Method Study – Moscone Station – Working Paper	0	Complete	02/19/04
1.03-02	Station Construction Method Study – Market St Station – Working Paper	0	Complete	03/11/04
1.03-02	Station Construction Method Study – Chinatown Station – Working Paper	0	Complete	04/27/04
1.03-02	Station Construction Method Study – Union Square Station – Working Paper	0	Complete	06/10/04
1.03-03	As-needed Utility Relocation Studies for Market Street Crossing	Not required due to use of deep tunnel profile		
1.03-04	ROW Acquisition Report	0	Complete	05/24/04
1.04-01	Portal & Surface Station Locations Study – Working Paper	0	Complete	12/23/04
1.04-03	Station Location & Access Recommendations – Union Square Sta – Working Paper	0	Complete	05/10/04
1.04-03	Station Location & Access Recommendations – Chinatown Station - Working Paper	0	Complete	05/10/04
1.04-03	Station Location & Access Recommendations – Market St Station - Working Paper	0	Complete	05/10/04
1.04-03	Station Location & Access Recommendations – Moscone Station - Working Paper	0	Complete	05/10/04
1.04-04	Track Alignment Study – Technical Memo	0	Complete	03/08/04
1.04-04	Track Crossover & Trail Track Alternative Analysis – Working Paper	0	Complete	03/15/04
1.04-06	Geary Subway Connect Feasibility – Working Paper	0	Complete	07/29/04
1.04-07	Bus/Rail Shared Use Options – Working Paper	0	Complete	05/04/24
1.04-08	Archaeological Research Design/Treatment Plan	0a	Draft	02/27/04
1.04-08	Preconstruction Subsurface Archaeological Testing Program	Superseded by SEIS/SEIR		
		0a	Draft	04/30/04
		Superseded by SEIS/SEIR		
1.05-01	Review of NCS Travel Demand Method & New Operating Scenarios	0	Not issued	12/23/04
1.05-01	Travel Demand Estimates SEIS/SEIR Alternatives – Tech Memo	0	Complete	07/24/08
1.05-01	Travel Demand Estimates: Fisherman's Wharf Extension – Tech Memo	0	Complete	06/27/08
1.05-02	NCS Train Simulation – Working Paper	0	Complete	04/26/04
1.05-02	Route Schematics for Alternative Alignments - Drawings	0	Complete	03/05/04
1.05-02	NCS Operating Plan, Additional Service Scenarios	0	Complete	03/23/04
1.05-02	Travel Time Analysis for Modified LPA - Working Paper	0	Complete	02/21/07
1.06-00	Design Criteria - Compilation	0	Complete	09/29/06
1.07-10	Fourth Street Alignment Construction Sequencing & Staging	0	Complete	05/31/06
1.08-01	Update of the EIS/EIR Capital Cost Estimate	not assigned	Draft	09/17/04
1.08-02	Fourth Street Alignment Conceptual Capital Cost Estimate	0a	Draft	08/24/05
1.08-03	Cost Reduction Measures - Summary Report	0	Complete	07/24/06
1.08-03	Update Cost Estimate for FTA New-Starts Submittal	N/A	Complete	08/04/06
1.08-03	4 th St/Stockton Alignment – Evaluation of Shallow Profile Alternative – Tech Memo	0	Complete	02/08/07
1.10-00	Construction Contract Delivery Recommendations	0	Complete	12/19/08
1.13-01	Community Involvement & Public Information Plan	N/A	Complete	07/20/04
1.13-01	Central Subway Outreach Materials	0	Complete	12/4/03 -

<u>Task</u>	<u>Deliverable</u>	<u>Rev #</u>	<u>Status</u>	<u>Date</u>
1.14-00	Urban Design, Art and Architectural Concepts			6/21/05
1.15-01	FEIR/FEIS Re-evaluation Report		Refer to Section 28, Public Art, of Design Criteria (1.06-00)	
1.16-01	Phase 1 Preliminary Engineering Status Report		Superseded by SEIS/SEIR	
		0n	Draft	5/07/07
			Incorporated into Phase 2 PE Status Report (2.06-00)	
1.30-00	Permitting/Agency Coordination		Deferred to Prelim Engineering	
1.40-01	Project Management & Implementation Plan	not assigned	Complete	08/12/03
1.40-05	Project Management Plan	0i	Draft	01/15/09
1.42-00	Quality Assurance/Quality Control Plan	0	Complete	01/04/07
1.60-01	Summit Modeling	0	Complete	12/01/03
1.60-02	CFD Analysis of Ventilated Smoke from a Train on Fire in a Tunnel	0	Complete	07/21/04
1.60-04	Special Alignment & Validation Studies	0	Complete	06/30/05
1.60-05	Modification to Summit Software	0	Complete	12/14/04
1.60-06	4th St Alignment Addendum to Effects of CS Underground Construction on Existing Structures	0	Complete	04/19/05
1.60-06	Preliminary Catalog of Affected Structures for 4 th St Alignment	0	Complete	04/20/05
1.60-07	Track Dampers Ventilation Alternative – Technical Memorandum	0	Complete	12/23/04
1.60-09	4 th St Alignment Addendum to Recommended Tunnel Construction Methods – Working Paper	0	Complete	06/03/05
1.60-10	Additional Station Construction Methods Study – Working Paper	0	Complete	06/20/05
1.60-11	Additional Station Location & Access Study – Working Paper	0	Complete	05/24/05
1.60-12	Additional Archaeological Study – Technical Memorandum		Superseded by SEIS/SEIR	
1.60-13	Additional Track Alignment Recommendations – Technical Memorandum	0a	Draft	04/08/05
1.60-14	Additional Utilities Study - Addendum		Superseded by PE Status Report	
1.60-16	Geary/Post Street Alignment Study		Superseded by PE Status Report	
1.70-01	Camera Ready Final SEIS/SEIR – Volumes I and II	0	Complete	07/24/06
1.70-01	Historic Architectural Evaluation Report	N/A	Executed	09/25/08
1.70-01	Historic Property Survey Report	N/A	Complete	11/20/07
1.70-01	Finding of Adverse Effect	N/A	Complete	04/09/08
1.70-01	Central Subway Scoping Report	N/A	Complete	04/09/08
1.70-01	Historic Context & Archaeological Survey Report	N/A	Complete	May 07
1.70-01	EIS Record of Decision	N/A	Complete	11/16/07
1.71-01	FY2008 New Starts Criteria Report	N/A	Complete	11/20/08
1.72-01	Conceptual Alternative Downtown Rail Alignment Studies (Vol 1 & 2)	N/A	Complete	08/04/06
2.01-01	Value Engineering Study Report	0c	Final Draft	03/20/06
2.03-00	FY 2009 New Starts Criteria Report	N/A	Complete	05/15/08
2.03-00	FY 2010 New Starts Criteria Report	N/A	Complete	06/20/07
2.04-00	Central Subway in the News 2000 – Present (Volume I)	N/A	Complete	09/05/08
2.04-02	Workforce Projection, Outreach, and Training Program Report	N/A	Complete	05/03/07
2.04-02	Contracting Opportunities, Availability, and Outreach Report	0c	Draft	02/17/09
2.05-01	Preliminary Hazard Analysis Report	0e	Draft	02/17/09
2.05-01	Rail Crossing Hazard Analysis (RCHA) Report	0j	Draft	01/16/09
2.05-03	Security Risk Analysis Report	0b	Draft	12/16/08
2.06-00	Preliminary Engineering Status Report Submittal	0n	Draft	12/16/08
2.06-00	Central Subway CADD Standard	0	Complete	10/23/08
2.06-02	Market Street Crossing Modeling Work Plan – Tech Memo	0b	Draft	10/03/08
				02/11/09

Task	Deliverable	Rev #	Status	Date
2.06-02	Effect of TBM Launch Box on I-80 Bayshore Fwy Xing over 4 th St. – Tech Memo	0	Complete	08/12/08
2.06-02	FLAC Analyses for Seismic Effects of TBM Launch on Adjacent Pile Foundations	0	Complete	05/30/08
2.06-02	Preliminary Engineering Catalog of Affected Structures, Vol. I, II, III - Report	1c	Draft	02/06/09
2.06-02	Effects of Central Subway Underground Construction on Existing Structures - Report	3d	Draft	02/10/09
2.06-02	SEM Tunneling Settlement & Structural Analysis – Tech Memo	0b	Draft	10/08/08
2.06-02	Settlement and Structural Analysis for Chinatown Station Platform Cavern, Crossover Cavern, Cross Cut Cavern – Tech Memo	0c	Draft	02/02/09
2.06-03	Addendum 2 Geotechnical Field Exploration Plan	0a	Draft	02/15/08
2.06-04	Hydrogeologic Setting in Vicinity of BART Powell Station – Tech Memo	0	Complete	11/14/08
2.06-04	Health and Safety Plan for Phase 1C Geotechnical Investigations – Addendum	0	Complete	08/29/08
2.06-04	Health and Safety Plan for Phase 2 Geotechnical Investigations – Addendum	0	Complete	11/06/08
2.06-04	Phase 2 Geotechnical Data Report	0c	Draft	01/28/09
2.06-05	Station Fire CFD Modeling Record of Calculations – Tech Memo	0	Complete	09/22/08
2.06-05	Record of Tunnel Ventilation SES Calculations – Tech Memo	0	Complete	09/23/08
2.06-05	Time of Tenability in Stations – Tech Memo	0	Complete	10/13/08
2.06-05	Station Fire Pump Analysis – Tech Memo	0	Complete	09/23/08
2.06-05	Design Fire Scenarios	0b	Draft	08/16/07
2.06-08	Evaluation of the Fourth Street South Portal Grade – Tech Memo	0	Complete	08/20/08
2.06-08	Evaluation of Chinatown Crossover Number – Tech Memo	0	Complete	10/14/08
2.06-08	Evaluation of IOS Track Connection – Tech Memo	0	Complete	10/10/08
2.06-09	Evaluation of Station Emergency Egress - Report	0n	Draft	09/12/08
2.06-09	Micro-Simulation of Passenger Circulation in Stations - Report	0g	Draft	1/29/09
2.06-09	Station Exiting and Operational Capacity Calculation – Tech Memo	0a	Draft	05/06/08
			Incorporated into Evaluation of Station Emergency Egress	
2.06-11	MOS & Portal Utilities Relocation – Intermediate Review Package	0a	Draft	11/01/08
2.06-16	Geotechnical Baseline Report – Annotated Outline	0n	Draft	11/05/08
2.07-01	2007 Capital Cost Estimate Fourth/Stockton (Option B) Alignment	0	Complete	09/10/07
2.07-01	2008 Capital Cost Estimate	0i	Draft	12/31/08
2.12-01	UMS Risk Assessment – Working Paper	0	Complete	05/01/08
2.12-01	Guideway Tunnel Risk and Opportunity Assessment – Working Paper	0	Complete	09/10/08
2.40-02	Document Control Procedures	0	Complete	07/16/08
2.42-01	Quality Control Plan and Design Control Procedures	1	Complete	06/23/08