

THIS PRINT COVERS CALENDAR ITEM NO. : 12

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs and Construction

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute San Francisco Municipal Transportation Agency Contract No. 1289, Van Ness Corridor Transit Improvement Project, with Walsh Construction Company II, LLC, for Phase 1 (pre-construction services), for a target duration of 300 calendar days, and in an amount not to exceed \$800,000.

SUMMARY:

- The Van Ness Corridor Transit Improvement Project will implement the first BRT service in San Francisco, which will improve transit reliability for the 47 and 49 Muni routes and provide reliable transit connections to transfer routes.
- The SFMTA will deliver the Project using an integrated project delivery approach, whereby the SFMTA retains a Construction Manager/General Contractor (CM/GC) during the design process to review and comment as to the constructability of the design. If the parties negotiate a guaranteed maximum price (GMP), the Project will proceed to the construction phase.
- The Agency received two proposals in response to a Request for Proposals, and selected Walsh Construction Company II, LLC as the highest-ranked proposer.
- Federal and local sources are providing funds for this contract.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Funding Plan
3. Contract
4. Van Ness BRT Project Final EIS/EIR: <http://www.sfcta.org/van-ness-avenue-bus-rapid-transit-planning-and-environmental-studies>.
5. SFMTA Board Resolution No. 13-214: <https://www.sfmta.com/sites/default/files/agendaitems/9-17-13%20Item%2011%20Van%20Ness%20BRT%20LPA.pdf>

APPROVALS:	DATE
DIRECTOR _____	<u>6/26/15</u>
SECRETARY _____	<u>6/26/15</u>

ASSIGNED SFMTAB CALENDAR DATE: July 7, 2015

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PURPOSE

The purpose of this calendar item is to authorize the Director of Transportation to execute SFMTA Contract No. 1289, Van Ness Corridor Transit Improvement Project, with Walsh Construction Company II, LLC, for Phase 1 (pre-construction services), for a target duration of 300 calendar days, and in an amount not to exceed \$800,000.

GOAL

Contract No. 1289 would assist in meeting or furthering the following goals of the SFMTA Strategic Plan:

Goal 1: Create a safer transportation experience for everyone

Objective 1.1: Improve security for transportation system users

Objective 1.3: Improve the safety of the transportation system

Goal 2: Make transit, walking, bicycling, taxi, ridesharing and car sharing the most attractive and preferred means of travel

Objective 2.1: Improve customer service & communications

Objective 2.2: Improve transit performance

Objective 2.3: Increase use of all non-private auto modes

Goal 3: Improve the environment and quality of life in San Francisco

Objective 3.1: Reduce the Agency's and the transportation system's resource consumption, emissions, waste, and noise

Objective 3.2: Increase the transportation system's positive impact to the economy

Objective 3.3: Allocate capital resources effectively

Objective 3.4: Deliver services efficiently

Objective 3.5: Reduce capital and operating structural deficits

DESCRIPTION

The Project

The Van Ness Corridor Transit Improvement Project [formerly known as the Van Ness Bus Rapid Transit (BRT) Project], will implement the first BRT service in San Francisco, which will improve transit reliability for the 47 and 49 Muni routes and provide reliable transit connections to transfer routes.

The transit service and infrastructure changes are expected to reduce transit travel times by over 30 percent. With the implementation of BRT, ridership is projected to be greater than 60,000 passengers per day by 2035. The 47 and 49 Muni routes currently service approximately 45,000 passengers per day, a 33% increase in ridership. Once completed, the Van Ness BRT will be an integral part of the Muni “Rapid” network of transit service that will gradually be implemented on all major corridors in San Francisco. The Project will also promote pedestrian safety and comfort, and enhance the urban design of Van Ness Avenue.

Elements of the BRT portion of the Project include:

- Dedicated bus lanes separated from regular (mixed-flow) traffic to reduce delays and improve reliability.
- Low floor boarding to decrease passenger loading time, increase service reliability, and improved access for all users.
- Consolidated transit stops to reduce delays due to existing stop spacing that does not meet minimum standards.
- High-quality stations, each with an elevated platform, vehicle arrival time information, landscaping, and other amenities. Platforms would be large enough to safely and comfortably accommodate waiting passengers, long enough to load two BRT vehicles, and designed to provide Americans with Disabilities Act accessibility.
- Traffic signal optimization using technology upgrades to allow real-time traffic management and optimal signal timing.
- Transit Signal Priority to recognize bus locations and provide additional green light time for buses approaching intersections and reduce delay at red lights.
- Fewer left-turn pocket lanes for mixed-flow traffic by eliminating left turns at certain intersections to reduce conflicts with the BRT operation.
- Pedestrian safety enhancements, including enhanced median refuges, nose cones, and curb bulbs to reduce crossing distances at intersections and increase safety. Accessible pedestrian signals with crossing time countdowns will be installed at all signalized intersections in the project corridor.
- Improved streetscape design to increase the green and permeable area of the corridor.
- New pedestrian and street lighting to improve safety, comfort, and reduce ongoing maintenance costs.

Additional infrastructure work being performed under the Project includes:

- Replacement of the overhead trolley bus contact system and supporting poles.
- Replacement of street lights.
- Replacement of the existing traffic signals with new traffic signals.
- Replacement of the existing sewer with new parallel sewer lines and catch basins along the length of Van Ness Avenue.
- Replacement of the existing domestic water lines with new domestic water lines along the length of Van Ness Avenue.
- Reconstruction and some relocation of the existing Auxiliary Water Supply System (AWSS).

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CM/GC Contract

On October 7, 2014, the SFMTA Board of Directors adopted Resolution No. 14-147, which authorized the SFMTA to use a Construction Manager/General Contractor (CM/GC) project delivery method for the Project to include teams of core trade subcontractors, minimum qualifications for the CM/GC and certain subcontractors; evaluation of the CM/GC primarily on non-cost criteria; and negotiation of a guaranteed maximum price with the selected CM/GC provided the price is fair and reasonable.

On December 9, 2014, the Board of Supervisors approved Ordinance No. 255-14, which authorized the SFMTA to issue an RFP to procure a CM/GC for the Project.

The Agency advertised an RFP for the CM/GC contract and received two proposals in response from Walsh Construction Company II, LLC (Walsh) and Van Ness Corridor Constructors (VNCC), a joint venture between Stacy and Witbeck, Inc. and Shimmick Construction Company, Inc.

As required under the RFP, each proposer identified a team of core subcontractors in the following trades: paving, overhead contact system, sewer and water main replacement, and traffic control (together, CM/GC + CS Team). As part of its proposal, each proposer submitted (1) a price for pre- construction services, and (2) a fixed fee for construction services. The fixed fee includes the entire profit of the CM/GC + CS Team for construction services, as well as various overhead expenses.

The SFMTA established a Proposal Evaluation Plan for the project prior to issuance of the RFP to provide a framework to evaluate Proposals submitted in response to the RFP and ensure selection of the CM/GC whose Proposal was the most advantageous to the SFMTA. The Proposal Evaluation Plan established a maximum of 90 point score for the written proposals, 60 points for the cost proposal, and 30 points for oral presentations for a total maximum score of 180 points. After technical evaluations, oral interviews, and evaluation of cost proposals, Walsh emerged as the highest-ranked proposer.

Proposer	Written Proposal	Oral Presentation	Price	Total
Walsh	69.53 points	17.17 points	60 points	146.7 points
VNCC	82.27 points	27 points	33.6 points	142.9 points

Scope of Services

Under this contract, the CM/GC + CS Team will assist and advise the Project team in completing the design and planning the construction of the Project. The CM/GC + CS Team will work with the SFMTA to develop an acceptable schedule for construction of the project, which will take into consideration construction sequencing and recommendations for schedule improvements. The CM/GC + CS Team will conduct significant outreach with the residents and businesses along the Van Ness Corridor in order to develop a schedule and assist the SFMTA in developing a traffic management plan that adequately addresses the concerns of the representative community within and adjacent to the Corridor.

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The CM/GC + CS Team will also assist during the pre-construction period in the advancement of the Project drawings into 100% final design and construction documents. As a first priority, the CM/GC

+ CS Team will perform a detailed review of the design drawings for constructability, value engineering and cost savings opportunities, and provide a detailed construction cost estimate and take-off that reflects current market conditions and pricing. (The current estimate for construction is approximately \$159 million.)

When the design has been completed, the parties will negotiate a GMP for Phase 2 of the contract (construction services). If the negotiations are successful, the Agency will bring a contract modification to the SFMTA Board for approval. If negotiations are not successful, the Agency will bid out a contract for construction of the Project.

PUBLIC OUTREACH

The following is the public outreach that SFMTA staff has performed during the design phase of the Project:

- The SFMTA created a Citizen Advisory Committee (CAC) to offer input to the Project team by providing varied perspectives from the surrounding communities and City, including feedback and guide decisions related to the design, construction and implementation of the Project.
- The SFMTA gave the CAC an overview of the parking and traffic changes at its July 24, 2014 meeting. The SFMTA received no comments from the CAC about the proposed parking and traffic changes.
- Project staff has had discussions with the Board of Supervisors and their staff.
- Project staff contacted and met with merchants with impacts to their color curbs to discuss proposed changes and alternatives. Staff also reached out to merchants fronting a station.
- The public hearing notices were posted on utility poles along Van Ness Avenue and on the SFMTA public hearing webpage. The public hearing notice/project brochure was mailed to 22,000 addresses covering the Project area, including those on Gough, Franklin, Van Ness, Polk, and Larkin. In addition, an e-mail blast was sent to 744 subscribers of the Project updates e-mail list.
- A Project e-mail address and telephone line was set-up to gather feedback about the parking and traffic changes.
- Project staff had ongoing communications with neighbors and residents, merchant and advocacy groups, and senior housing complexes.
- On August 22, 2014, the SFMTA held a public hearing to discuss the parking and traffic changes for the Project. The public comment received from public hearing included support for the Project, but also included concerns about parking and left turn removals.
- Hosted Tree Selection Open House for the public on January 29, 2015, for community members will have a chance to learn about the tree selection process for the project, see which tree species were evaluated and selected, and get the latest information about the Van Ness BRT project.
- Public notices regarding the installation of equipment cabinets were posted on utility polls for 30 days in February 2015 on Van Ness Avenue and side streets, and SFMTA staff met with concerned community members to identify an alternate location for one cabinet.

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- Monthly project updates are sent to 1,054 email subscribers.
- SFMTA conducted a construction impact survey in the Spring of 2015, and received responses from 85% of the properties along the corridor.
- Project staff has had coordination meetings with other construction projects along the corridor such as CPMC Hospital, HealthRight 360, 1001 Van Ness, 1200 Van Ness, and Related California.

The following Small Business Enterprise (SBE) participation goals have been established for elements of the Project:

Core Subcontracts:

- Paving: 25%
- Overhead Contact System: 20%
- Sewer/Water Main Replacement: 25%
- Traffic Control: 10%

Additionally, the CM/GC shall set aside 100% of off-haul trucking work on the Project for SBE trucking firms.

The Contract Compliance Office reviewed the proposals and confirmed that Walsh has made a commitment to meeting the Small Business Enterprise (SBE) goals established for the core subcontract trades.

CONTRACTOR TEAM ORGANIZATION

Proposal from Walsh identified the following core subcontractors for performance of work under this Contract:

Subcontractor	Status	Scope of Work
Synergy Project Management, Inc.	LBE	AC Paving, Concrete Base, Sewer and Water, Traffic Control work
Phoenix Electric Company	SBE	Underground Electrical Work related to Overhead Contact System
Reliance Engineering, Inc.	SBE	Above ground Electrical Work related to Overhead Contact System
Fs3/Hodges		Scheduling Services
Mark Thomas & Company		Traffic Control Management Plan
Mark Thomas & Company		Quality Assurance and Testing

ALTERNATIVES CONSIDERED

The SFMTA hosted a project delivery selection and risk assessment workshop on February 6, 2014. The goal of this event was to allow for an open exchange of ideas between stakeholder agencies in order to come up with innovative ideas and recommendations for best project delivery methods, including construction sequencing and execution that would result in an efficient and timely completion of the Project with the least amount of interruption to residents, businesses, and all users of the public right-of-way.

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Some of the findings from the workshop include:

- The complexities of maintaining access to transit and traffic in the public right-of-way during construction of the Van Ness BRT will require detailed traffic management planning and decisions on phasing, sequencing, and staging of construction.
- Pre-planning efforts should be implemented with communities, residents, developers, hotels, businesses, and other active construction projects regarding pre-designated access ways, delivery schedules, and special interim parking.
- The CM/GC method reduces duplicate work during pre-bid planning for permits, community outreach, and sequencing. CM/GC will not save money, but it may save time on the front end for design, permitting, sequencing, and minimizing disruption to the community, and incorporating design changes.
- While the City has some experience in CM/GC, neither the SFMTA nor other City agencies have experience in using CM/GC in a horizontal/roadway construction project. This lack of experience poses some risk to the project schedule.
- The Design-Build delivery method was found to be inappropriate for this Project.
- Design-Bid-Build, the traditional method for delivering such projects, offers no advantages for accelerating the delivery of the Project or minimizing community impacts.

FUNDING IMPACT

The amount for Phase 1 of the contract (pre-construction services) is \$800,000. The funding plan for the entire project is included as information.

ENVIRONMENTAL REVIEW

On May 15, 2012, the SFMTA Board of Directors adopted Resolution No. 12-070, selecting the Center-running BRT with Right Side Boarding Platforms Single Median and Limited Left Turns as the Locally Preferred Alternative (LPA) for the Van Ness Avenue BRT Project to be analyzed in the final EIS/EIR. Under this alignment of the Project, BRT lanes would flank the center median except at stations where the BRT vehicles would transition to the center of the roadway and be protected by right side boarding platforms. This alignment would also eliminate all left turns from Van Ness Avenue between Mission and Lombard streets, with the exception of a two-lane left turn onto Broadway from southbound Van Ness, in order to gain the most transit travel time benefits. On September 10, 2013, the San Francisco County Transportation Authority (SFCTA), as lead agency under CEQA, certified the Final EIS/EIR for the Project. The certification of the Final EIS/EIR included incorporating the Vallejo Northbound Station Variant into the Project.

On September 17, 2013, the SFMTA Board of Directors, acting in the capacity as a responsible agency under CEQA, adopted Resolution No. 13-214, approving the Project, which was analyzed as the LPA in the Final EIS/EIR, including an amendment to include the Vallejo Northbound Station Variant in the approval of the LPA. As part of the resolution, the Board also adopted the CEQA Findings and Statement of Overriding Considerations for the EIS/EIR and authorized the Director of Transportation to direct staff to continue with obtaining the necessary approvals to implement the Van Ness BRT Project.

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On December 20, 2013, the Federal Transit Administration issued a Record of Decision (ROD) for the Van Ness Avenue Bus Rapid Transit Project, determining that the requirements of the National Environmental Policy Act have been met through the Final Environmental Impact Statement document and process.

The proposed actions are within the scope of the Van Ness BRT Project Final EIS/EIR. Since the adoption of CEQA Findings and the approval of the Van Ness BRT Project, the SFCTA has prepared a memo to file dated July 15, 2014, titled “Van Ness Avenue Bus Rapid Transit Project – Environmental Compliance for the Proposed Parking Removal from Conceptual Engineering Report” (Memo to File), which concludes that the removal of eleven parking spaces more than assumed in the Van Ness BRT Project Final EIS/EIR, as proposed by SFMTA in the Conceptual Engineering Report, will not result in a new significant environmental impact due to parking loss.

Final environmental documents may be found at <http://www.sfcta.org/van-ness-avenue-bus-rapid-transit-planning-and-environmental-studies>.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

On December 9, 2014, the Board of Supervisors approved Ordinance No. 255-14, which authorized the SFMTA to issue an RFP to procure a CM/GC for the Project.

If negotiation of a guaranteed maximum price (GMP) is successful, staff will request a contract modification for Phase 2 of the Project at a future meeting of the SFMTA Board.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Director of Transportation to execute San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1289, Van Ness Corridor Transit Improvement Project, with Walsh Construction Company II, LLC for Phase 1 (pre-construction services), for a target duration of 300 calendar days, and in an amount not to exceed \$800,000.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The goals of the Van Ness Bus Rapid Transit Project are robust and stable ridership, efficient, effective and equitable transit service, neighborhood livability and community vitality, and links to a citywide rapid transit network; and,

WHEREAS, On May 15, 2012, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted Resolution No. 12-070, which identified and endorsed the Locally Approved Alternative (LPA) for the Van Ness Avenue Bus Rapid Transit Project, “The Center-running BRT with Right Side Boarding Platforms Single Median and Limited Left Turns,” for further analysis in the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR); and,

WHEREAS, The San Francisco County Transportation Authority (SFCTA) Board certified the EIS/EIR, including an amendment to include the Vallejo Northbound Station Variant as adequate, accurate and objective and reflecting the independent judgment of the SFCTA on September 10, 2013; and,

WHEREAS, On September 17, 2013, the SFMTA Board of Directors adopted Resolution No. 13-214, approving the Van Ness Avenue Bus Rapid Transit Project, analyzed as the Locally Preferred Alternative in the Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Project, including an amendment to include the Vallejo Northbound Station Variant in the approval of the LPA, and adopted the CEQA Findings and Statement of Overriding Considerations for the EIS/EIR; and,

WHEREAS, the Project files, including the Final EIS/EIR and SFMTA Resolution No. 13-214, have been made available for review by the SFMTA and the public, and those files are part of the record before this Board; and,

WHEREAS, Since the adoption of CEQA Findings and the approval of the Van Ness BRT Project, the SFCTA has prepared a memo to file dated July 15, 2014, titled “Van Ness Avenue Bus Rapid Transit Project – Environmental Compliance for the Proposed Parking Removal from Conceptual Engineering Report” (Memo to File), which concludes that the removal of eleven parking spaces more than assumed in the Van Ness BRT Project Final EIS/EIR, as proposed by SFMTA in its Conceptual Engineering Report, will not result in a new significant environmental impact due to parking loss; and

WHEREAS, The SFMTA Board has reviewed and considered the information contained in the Final EIS/EIR; and

WHEREAS, Based on its review and consideration of the information contained in the Final EIS/EIR, the SFMTA Board finds that the proposed actions are within the scope of the Van Ness

BRT Project Final EIS/EIR and that no additional environmental review is required under Public Resources Code section 21166; and

WHEREAS, On October 7, 2014, the SFMTA Board of Directors adopted Resolution No. 14-147, which authorized the SFMTA to use a Construction Manager/General Contractor (CM/GC) project delivery method for the Van Ness BRT Project; and

WHEREAS, On December 9, 2014, the Board of Supervisors approved Ordinance No. 255-14, enabling the SFMTA to proceed with a CM/GC implementation for the Van Ness BRT Project, to include the CM/GC and a team of Core Subcontractors in the following trades: paving, overhead contact system, sewer and water main replacement, and traffic control; and

WHEREAS, The Agency advertised an RFP for the CM/GC contract on January 16, 2015, and received two proposals in response to the RFP on March 19, 2015, from Walsh Construction and Van Ness Corridor Constructors, a joint venture between Stacy Witbeck and Shimmick Construction; and

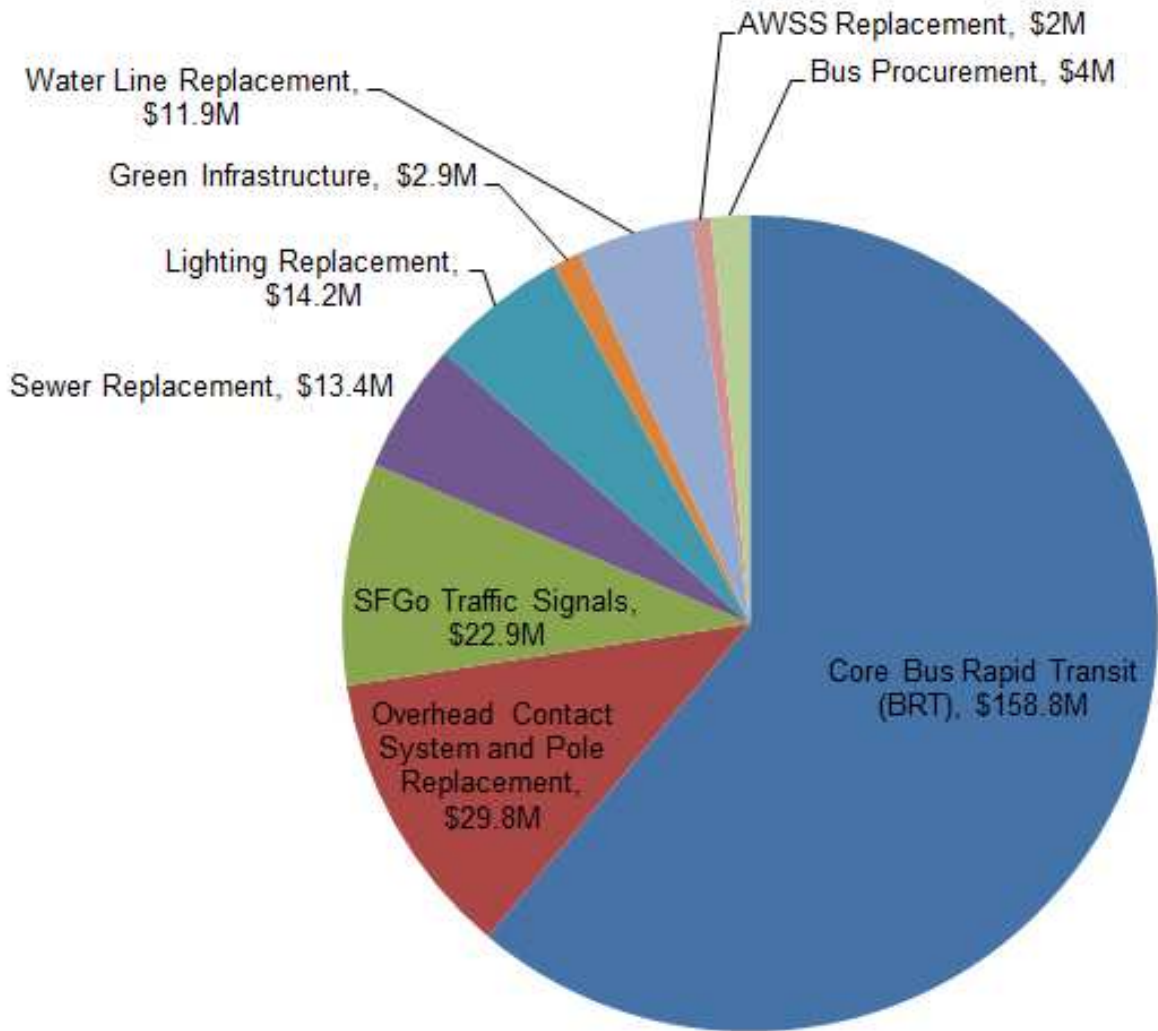
WHEREAS, After a technical evaluation and oral interview, Walsh Construction emerged as the highest-ranked proposer; now, therefore, be it

RESOLVED, The Board has reviewed and considered the EIS/EIR and record as a whole; finds that the Van Ness BRT Final Environmental Impact Report and Environmental Impact Statement is adequate for its use as the decision-making body for the approval of the Construction Manager/General Contractor contract for the Van Ness Bus Rapid Transit Project, and incorporates the CEQA findings contained in Resolution No. 13-214, including the Statement of Overriding Considerations, by this reference as though set forth in this Resolution; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute San Francisco Municipal Transportation Agency Contract No. 1289, Van Ness Corridor Transit Improvement Project, with Walsh Construction Company II, LLC, for Phase 1 (pre-construction services), for a target duration of 300 calendar days, and in an amount not to exceed \$800,000.

Secretary, Board of Directors
San Francisco Municipal Transportation Agency

Project Budget and Funding Plan



Project Element	Estimate (2017\$)
Core Bus Rapid Transit (BRT)	\$158.8 M
Overhead Contact System and Pole Replacement	\$29.8 M
SFGO Traffic Signals	\$22.9 M
Sewer Replacement	\$13.4 M
Lighting Replacement	\$14.2 M
Green Infrastructure	\$2.9 M
Water Line Replacement	\$11.9 M
AWSS Replacement	\$2 M
Bus Procurement	\$4.0 M
Total	\$259.9 M

Source	<u>Amount (2017\$)</u>
FTA Section 5309 Bus	\$30,000,000
FTA Small Starts	\$44,999,999
FTA CMAQ	\$20,000,000
FTA 5337	\$23,871,440
State Highway Operation and Protection Program (SHOPP)	\$7,304,868
Prop K Sales Tax	\$44,306,444
PPM: Planning, Programming and Monitoring funds	\$197,907
SFMTA Revenue Bonds	\$26,941,347
Central Freeway Parcel Revenues	\$12,654,135
CPMC Development Impact Fees	\$5,000,000
PUC Funds	\$44,370,200
AB664 Bridge Tolls	\$251,860
Total	\$259,898,200

Agreement

between

**the City and County of San Francisco,
through its
Municipal Transportation Agency**

and

**Walsh Construction Company II, LLC
for CM/GC Pre-Construction Services**

for the

Van Ness Corridor Transit Improvement Project

**Contract No. 1289
CCO 15-1331**

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Exhibits

- A. Scope of Work – Pre-Construction Services
- B. Price Schedule
- C. Federal Transit Administration Requirements CM/GC Contracts
- D. SBE Provisions

**Agreement for CM/GC Pre-Construction Services
for the Van Ness Corridor Transit Improvement Project
Contract No. 1289
CCO 15-1331**

This Agreement is made this _____ day of July, 2015, in the City and County of San Francisco, State of California, by and between: Walsh Construction Company II, LLC, 929 W. Adams, Chicago, IL 60607 (Contractor or CM/GC), and the City and County of San Francisco, a municipal corporation (City), acting by and through its Municipal Transportation Agency (SFMTA).

A. The SFMTA wishes to hire a Construction Manager/General Contractor with a Core Subcontractors Team (CM/GC + CS Team) to perform Pre-Construction Services for the Van Ness Corridor Transit Improvement Project (Project). Pre-Construction Services will be Phase 1 of the Project. If the Team successfully performs Phase 1 services, and the SFMTA and Contractor are able to negotiate a Guaranteed Maximum Price for construction services (Phase 2), this Contract will be modified to include Phase 2 services.

B. On January 23, 2015, the SFMTA issued a Request for Proposals (RFP) for Phase 1 services, and City selected Contractor as the highest-ranked proposer.

C. Contractor represents and warrants that the CM/GC + CS Team is qualified to perform the services required by City as set forth under this Contract.

Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of the Agreement, 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.

Agreement or Contract: This Agreement and all referenced Exhibits to this Agreement, including the Modification for construction services and any other Amendments.

Award: Authorization by resolution of the SFMTA Board of Directors for the Director of Transportation to execute the Contract with the selected proposer.

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.

Contract Compliance Office (CCO): The SFMTA office that administers compliance with federal regulations governing the Disadvantaged Business Enterprises/Equal Employment and Non-Discrimination Programs, in addition to the SFMTA Small Business Enterprise Program and the City's Local Business Enterprise/Non-Discrimination Program. .

Contractor or CM/GC: Walsh Construction Company II, LLC

Controller: Controller of the City.

Core Subcontractors: Subcontractors that are part of the CM/GC & CS Team (as specified in the CM/GC's Proposal) in the following trades: paving, overhead contact system, sewer and water main replacement, and traffic control

Days: See General Provisions.

Design Team: The team of City engineers and City engineering design contractors assigned to the Project.

Director: The Director of Transportation of the SFMTA or his or her designee.

Exhibit: An attachment to the Agreement that is made part of the Agreement.

Federal Transit Administration (FTA): An operating administration of the U.S. Department of Transportation.

Final Acceptance: The formal written acceptance by the Director that all contract deliverables for the Contract have been satisfactorily completed and accepted. This will authorize the Project Manager to release the final payment, including any retention, to the Contractor.

Fixed Fee: See Section 5.3.

Guaranteed Maximum Price (GMP): The maximum price that the Contractor would be paid in Phase 2 for its Reimbursable Costs and Fixed Fee.

Key Personnel: Those participants on a project who contribute in a substantive, measurable way to the project's development.

Modification or Amendment: 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.

Notice To Proceed: A letter from the SFMTA advising the Contractor of the day when work is to commence under the Contract,

Pre-Construction Services: The services to be performed by the CM/GC and Core Subcontractors during Phase 1 of the Project, as described more fully in Exhibit A-1.

Program Manager: The designated SFMTA employee who will assume all duties and responsibilities to manage the Contract.

Project Manager: The designated representative of the CM/GC with the authority to make binding decisions and commitments for the CM/GC, who will serve as the single official point of contact with SFMTA on all matters of the Contract and who is responsible for managing the Project for the CM/GC.

Proposal: The Contractor's written response/submittal to the RFP dated March 19, 2015.

Reimbursable Costs: The construction trade costs and the General Conditions.

Request for Proposals; RFP: The Request for Proposals for CM/GC Services issued by the SFMTA on January 23, 2015.

San Francisco Municipal Railway (Muni): The public transit system of San Francisco, under the jurisdiction of the SFMTA.

San Francisco Bay Area: The area within the nine Bay Area counties as currently defined by the Association of Bay Area Governments, 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 Transportation Agency (SFMTA or Agency): 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 former Department of Parking and Traffic (now included within the Agency's Sustainable Streets Division), with exclusive authority over contracting, leasing and purchasing by the Agency.

Scope of Services: The services, tasks, and deliverables that the Contractor will provide to the SFMTA under this Contract.

Subcontractor: Any firm under contract to the Contractor for services under this Agreement.

Task Order: A written directive from the SFMTA to the Contractor to perform specified work within a specified time frame.

Work Product: All reports, studies, data, specifications, design criteria, graphs, tape recordings, pictures, memoranda, letters, computer-generated data, calculations, estimates, summaries and such other information and materials as may have been accumulated or generated by the Contractor or its subcontractors, in connection with the services performed under this Agreement, whether completed or in process.

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 begin on the Effective Date and not exceed one year for Phase 1 services and four years for Phase 2 services, for a total not to exceed five years.

3 Effective Date of Agreement.

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

4 Services Contractor Agrees to Perform

4.1 Scope of Agreement. The Contractor agrees to perform the services provided for in Exhibit A-1, "Pre-Construction Services," attached hereto and incorporated by reference as though fully set forth herein.

4.2 Task Orders. The SFMTA will assign work to Contractor through Task Orders, as numbered and described on Exhibit A-1. Task Orders will specify the time(s) for completion of tasks, including interim milestones. There is no guarantee that all tasks or all subtasks within a task will be assigned. Contractor shall not proceed with any Work under this Agreement until directed by the SFMTA through a Task Order. The SFMTA will not authorize any payment for unauthorized work performed by the Contractor.

4.3 Priority of Documents . All requirements of the RFP (to the extent it applies to Pre-Construction Services) that, in the view of the SFMTA, 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, this Agreement shall control except where the RFP refers to services not otherwise mentioned in this Agreement, in which case and to such extent the RFP shall control. Contractor's Proposal is incorporated by reference as though fully set forth. If the SFMTA deems there to be a conflict between the Proposal and the RFP, the RFP shall control.

Documents listed as Exhibits to this Agreement are incorporated by reference as though fully set forth herein.

4.4 Project Manager. The Contractor agrees to commit and assign an experienced individual as the Project Manager to direct Contractor's Work and to serve as the official contact and spokesperson on behalf of the CM/GC in matters related to the Project for the Term of this Project. The Contractor's Project Manager must work in the SFMTA Project office for Phase 1 and in the Contractor's field office in San Francisco during Phase 2. The Contractor has identified Jay Simms as its Project Manager.

4.5 Key Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of

Contractor. The Contractor agrees that the following Key CM/GC + CS Team members (Key Team members) shall be committed and assigned to provide services under this Agreement to the level required by SFMTA for the term of the Agreement and shall also be staffed at offices within the San Francisco Bay Area for all such time:

- Wayne Mayer (Walsh), Lead Estimator
- Mark Petty (Walsh), VE Manager
- Workforce Development (to be designated and submitted for approval to SFMTA)
- Community Outreach (to be designated and submitted for approval to SFMTA)
- Terry Ayyad (Synergy), Paving Superintendent; Sewer/Water Superintendent
- Wilson Lew (Phoenix Electric), OCS Superintendent (underground)
- Stephen Wong (Reliance Engineering), OCS Superintendent (above-ground)
- Mehdi Malek-Madani (Synergy), Traffic Control Superintendent
- Sasha Dansky (Mark Thomas & Co.), Traffic Control Support

4.5.1 Assignment. Contractor shall assign for the period necessary and for the level of effort necessary for the Project (as that period and level of effort shall be reasonably determined by the SFMTA) the persons identified above as Key Personnel. Except as provided below, Key Personnel shall not be assigned to any other Project for the period and level of effort required by the SFMTA. Contractor may request that particular Key Personnel be allowed to work on other projects, which approval the SFMTA shall not arbitrarily withhold, so long as the Project is not thereby delayed or otherwise harmed, the determination of which shall be in the SFMTA's sole discretion.

4.5.2 Departure Notice and Corrective Action Plan. Contractor 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 Contractor to provide a corrective action plan to replace that Key Team member. All candidates to replace a departing Key Team member must have equivalent experience and expertise to the Key Team member he or she would replace.

4.5.3 Substitutions of Key Personnel

- (a) Substitutions of Key Personnel will not be allowed except for extenuating circumstances, such as death, illness or departure from the firm, or with the SFMTA'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 Contractor shall propose a replacement in writing to the Program Manager for approval.

- (b) The Contractor 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 30 Days of the departure of the Key Team member, unless the SFMTA's Program Manager grants an extension to that time limit in writing. Contractor's failure to replace a Key Team member shall be cause for the City to suspend invoice payments.
- (c) Contractor shall not be relieved of its obligation for full performance of the Work as a result of any unfilled position. The Contractor 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.
- (d) Contractor 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.

4.5.4 Liquidated Damages. Contractor acknowledges that the SFMTA's selection of Contractor was based, in part, on the expertise and experience of Contractor's proposed Key Personnel as submitted in the Proposal. The Contractor acknowledges and agrees that the replacement of Key Personnel 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 Contractor, therefore, shall pay to the City a charge of Fifty Thousand Dollars (\$50,000) for the first Key Team member whom the Contractor replaces without written approval by the City. For each additional Key Team member whom the Contractor replaces without written approval by the City, the Contractor shall pay to the City a charge of One Hundred Thousand Dollars (\$100,000). 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 Project that the Parties agree will necessarily arise from the unauthorized departure of a Key Team member of the Contractor. The SFMTA reserves the right to require Contractor to replace or reassign any personnel assigned by Contractor to the Project, including but not limited to Key Personnel. Should the City require Contractor to replace or reassign any of its Key Personnel so that said persons are no longer working on the Project, the liquidated damages provisions of this Section 4.5.4 shall not apply.

4.6 Agency's Responsibilities Regarding Submittals. Agency will review and comment on Contractor's submittals generally within two calendar weeks of submittal. The Agency and Contractor will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the approved Task Order. Agency's review and

comments of Contractor submittals shall in no way relieve the Contractor of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the Agency relieve the Contractor of its independent responsibility to provide submittals and deliverables in full compliance with local, state and federal codes, regulations and standards.

5 Compensation

5.1 Type of Contract. This is a fixed price contract. Tasks, as set forth on Exhibit A, are priced on a lump sum or unit price basis. Payments by lump sum will be made in accordance with the amounts set forth in Exhibit B (Price Schedule), which is attached to, and made a part of, this Contract. Payment for services performed on a unit price basis (including units measured by time (i.e., hourly, monthly) shall be made in accordance with the unit price rates set forth in Exhibit B. The Contractor shall not be entitled to an increase in unit costs regardless of the final actual time spent on the task. Nor is Contractor guaranteed to perform all tasks set forth on Exhibit A. All unit prices include all of the CM/GC + CS Team's profit for Pre-Construction Services, and all costs incurred by the Team, including, but not limited to, any materials, payroll, overhead and administrative costs, travel and living expenses, licenses, insurance, and any other fees or expenses incurred by the Team in providing Pre-Construction Services.

5.2 Amount. In no event shall the amount of this Agreement exceed Eight Hundred Thousand Dollars (\$800,000) for the tasks on Exhibit A.

5.3 Fixed Fee for Construction Services. In addition to the not-to-exceed price set forth in Section 5.2 above, the Contractor agrees to be bound to the proposed Fixed Fee in the lump sum amount of Nine Million, Five Hundred Seventy-Six Thousand, Six Hundred Twenty Dollars (\$9,576,620) applicable to construction services, provided the SFMTA and the Contractor successfully execute a modification to this Contract for construction services. Should SFMTA and the Contractor not execute a modification for construction services, neither party shall have any rights, liabilities or obligations to each other for the proposed Fixed Fee. The Fixed Fee shall include the following and apply for the duration of Phase 2 services:

5.3.1 Profit of the CM/GC and its Core Subcontractors

5.3.2 Any negotiation or other such costs incurred prior to the execution of the construction contract amendment;

5.3.3 All home, branch or regional office-related costs, including general and administrative expenses, overhead, indirect costs and non-direct salaries, including any taxes attributable to the above;

5.3.4 Salary of any partner of the CM/GC related to this Project, if a partnership or joint venture; any officer of the CM/GC, if a corporation; the individual, if the CM/GC is a sole proprietor; any person employed, during the execution of the Work, in the main office or in any regularly established branch office; and any taxes attributable to the above expenses;

- 5.3.5 Cost of employees who expedite production or transportation of materials or equipment, whether engaged at home office, shops or on the road; transportation of the Contractor's tools, materials, and equipment to the site, and the cost of unloading and loading them'
- 5.3.6 Subsistence and travel costs for any and all personnel of the Contractor, subcontractors, consultants and subconsultants;
- 5.3.7 Cost of data processing services;
- 5.3.8 Any claim for Reimbursable Costs (as defined in Appendix C) in excess of the agreed-upon GMP.

5.1 Federally Reimbursable Costs. The Contractor acknowledges that it is familiar with the provisions of the Office of Management and Budget's (OMB) "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards," 2 C.F.R. part 200 (Super Circular); that it understands the City does not intend to pay the Contractor for costs under this Agreement that are not reimbursable to City from its funding agencies in accordance with the Super Circular; and that all payments under this Agreement are subject to audit and adjustment.

6 Payment.

6.1 General. 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 the 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, and for which SFMTA has provided written advance notification of such failure or refusal. 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 Contractor 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 Subcontractors.

6.2 Invoices.

6.2.1 Form of Invoice. 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. The Contractor shall submit invoices 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 \$1,500, except that an invoice may be submitted if three months have elapsed since the last invoice was submitted. No more than one invoice shall be submitted in a month. The Contractor shall submit invoices in quadruplicate, or as otherwise specified, with each invoice containing the following information:

- (a) Contract Number
- (b) Task Order Number

- (c) Description of the work performed or services rendered
- (d) Name, position, and hours worked of employee(s) whose labor is invoiced
- (e) Subcontractor costs supported by invoice itemization in the same format as described here
- (f) Total costs
- (g) SBE utilization report (MTA Form 6)
- (h) Certified payroll records substantiating all labor charges for Contractor and all subcontractors shown on the invoice

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

6.3 Payment of Invoices.

6.3.1 Monthly Payments. Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement that the SFMTA's Director of Transportation (or designee), in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. City shall make payment to Contractor at the address specified in the section entitled "Notices to the Parties." All amounts paid by City to Contractor shall be subject to audit by City.

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

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

6.4 Payment of Subcontractors. Following City's payment of an invoice, Contractor has 10 days to file an affidavit using SFMTA's Payment Affidavit verifying that all Subcontractors have been paid and specifying the amount.

7 Guaranteed Maximum Costs

7.1 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.

7.2 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 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.

7.3 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 Controller.

7.4 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 Contractor or Subcontractor 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 or Subcontractor 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 or Subcontractor will be deemed to have submitted a false claim to the City if the Contractor or Subcontractor: (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 as not being an allowed cost under the Super Circular or any other provision of state or federal law, 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.

10 Taxes

10.1 Obligation of Contractor. 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.

10.2 Possessory Interest. 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:

- 10.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
- 10.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
- 10.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of 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.
- 10.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.
- 10.2.5 Contractor shall provide a San Francisco Business Tax Registration to the SFMTA in order for the City to certify this Agreement.
- 10.2.6 Should the City determine that a possessory interest arises during Phase 1 of the Agreement and assesses a possessory interest tax on Contractor, the SFMTA will negotiate a contract modification with Contractor to reimburse Contractor for such tax.

11 Payment Does Not Imply Acceptance of Work.

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

12 Qualified Personnel.

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor or its Subcontractors. Contractor's personnel and Subcontractors shall comply with the licensing requirements of the State of California in their respective professional fields. Persons employed by Contractor and its Subcontractors who are not subject to licensing requirements of California law are exempt from the requirements of this Section Contractor will comply with City's reasonable

requests regarding assignment of personnel, but Contractor must supervise all personnel, including those assigned at City's request.

13 Equipment

13.1 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 Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees shall be construed to mean that Contractor 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 Contractor, its employees, the City's employees, or third parties, or to property belonging to any of the above.

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

14 Independent Contractor; Payment of Taxes and Other Expenses

14.1 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.

14.2 Payment of Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due

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

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

15 Insurance

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

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

15.1.2 Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

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

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

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

15.3 Notice. All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the following:

Shahnam Farhangi
Contract Administration
San Francisco Municipal Transportation Agency
SFMTA Capital Programs and Construction Division
One South Van Ness Avenue, 3rd Floor
San Francisco, CA 94103

- 15.4 Claims-Made Form.** 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.
- 15.5 General Annual Aggregate Limit** Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.
- 15.6 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.
- 15.7 Proof of Insurance.** Before commencing any services under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder
- 15.8 No Decrease of Liability.** Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.
- 15.9 Waiver of Subrogation.** The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and Subcontractors.
- 15.10 Subcontractor Insurance.** Contractor shall ensure that Subcontractors 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.
- 15.11 CCIP.** The City and Contractor will entertain participating in a contractor-controlled insurance program (CCIP) for the construction phase of the Project if the City determines, in its sole discretion, that the CCIP is to its financial benefit. Any approval of a CCIP shall be subject to the prior written approval of the City.

16 Indemnification

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17 Incidental and Consequential Damages

Contractor shall have no liability to City for any type of special, consequential or incidental damages arising out of or connected with Contractor's performance of the Work. This limit of liability applies under all circumstances including, but not limited to, the breach, completion, termination, suspension or cancellation of the services under this Contract, and negligence or strict liability of Contractor. This limit of liability shall NOT, however, apply to, limit or preclude: (i) Contractor's obligation to pay Liquidated Damages as set forth in the Contract Documents; (ii) damages caused by Contractor's gross negligence, reckless conduct, willful acts or omissions, fraud or illegal or unlawful acts; (iii) Contractor's obligations to indemnify and defend the City and other indemnified parties as set forth in the General Provisions; (iv) Contractor's liability for any type of damage to the extent such damage is required to be covered by insurance as specified in the Contract Documents; (v) wrongful death caused by Contractor; (vi) punitive or treble damages; (vii) Contractor's liability for statutory damages imposed by the City upon Contractor under the City Ordinances and Municipal Codes specified in the Contract Documents; and (viii) Contractor's warranties and guarantees under the Contract Documents.

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 Reserved

20 Default; Remedies

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

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

20.1.2 Contractor fails or refuses to perform or observe any other material term, covenant or condition contained in this Agreement, and such default continues for a period of 10 days after written notice thereof from City to Contractor.

20.1.3 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.

20.1.4 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.

20.2 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.

20.3 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

21.1 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 Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

21.2 Duties of Contractor Upon Notice of Termination. 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:

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

21.2.2 Not placing any further orders or subcontracts for materials, services, equipment or other items.

21.2.3 Terminating all existing orders and subcontracts.

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

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

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

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

21.3 Invoice for Services Performed. 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:

21.3.1 The reasonable cost to Contractor for all services and other work City directed Contractor and its Subcontractors to perform prior to the specified termination date, for which services or work City has not already tendered payment. Said costs shall be based on the amount of time spent on particular tasks, as verified by Contractor and/or the percentage of a lump sum task performed (as determined by City).

21.3.2 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.

21.3.3 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.

21.4 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 Section 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 Section 21.3.

21.5 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 Section 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.

21.6 Survival of Payment Obligations. City's payment obligations under Section 21 shall survive termination of this Agreement.

22 Rights and Duties Upon Termination or Expiration

22.1 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.

22.2 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. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23 Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III,

Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement. Contractor 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 Contractor shall ensure that its employees and SubContractors are aware of those requirements and comply with them.

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, 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. Contractor agrees that all information disclosed by City to Contractor, and marked or otherwise designated as confidential, 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 SFMTA:

Municipal Transportation Agency
One South Van Ness Ave. 3rd floor
San Francisco, CA 94102
Attn: Peter Gabancho
peter.gabancho@sfmta.com
Tel: 415-701-4306
Fax: 415-701-4300

To Contractor:

Walsh Construction Company II, LLC
929 W. Adams
Chicago, IL 60607
Attn: Sean C. Walsh
swalsh@walshgroup.com
Tel: 312-563-5400
Fax: 312-563-5466

with a copy to:

Walsh Construction Company II, LLC
1390 Willow Pass Road, Suite 950
Concord, CA 94520
Attn: Jay Simms
rsimms@walshgroup.com
Tel: 925-627-1710
Fax: 925-935-1700

Any notice of default must be sent by registered mail.

26 Ownership of Work Product

Any interest of Contractor or its Subcontractors, in its Work Product 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. Contractor shall require its Subcontractors, if any, to assign all rights, title and interest in and to the Intellectual Property to the extent prepared by subcontractors to City and to agree to provide any material and execute any documents necessary to allow City to claim sole ownership of the Intellectual Property.

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 and its Subcontractors may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28 Audit and Inspection of Records

28.1 Access to Records. Contractor agrees to maintain and make available to the City accurate books and accounting records relative to its activities under this Agreement. Contractor shall 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.

28.2 Maintenance of Records. 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.

28.3 Flowdown to Subcontractors. Contractor shall include the provisions of this Section 28 in all sub-agreements between Contractor and its Subcontractors giving the City the same rights against the Subcontractors.

Cancelled checks of payments to subContractors must be maintained by Contractor and made available to the City upon request.

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

28.5 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 Core Subcontractors

The CM/GC +CS Team will include Core Subcontractors to assist the CM/GC and the Project Design Team. Any proposed substitution of Core Subcontractors must meet the requirements of the Subletting and Subcontracting Fair Practices Act, and in particular, Public Contract Code Section 4107, as well as the SFMTA's SBE Program.

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 as required by SFMTA policy and City ordinance. Contractor and the partners of any joint venture or association that Contractor may establish for the Project, or any of the Contractor's Subcontractors 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 Contractor and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any funds due or to become due under the Agreement, may be assigned by the Contractor 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 Small Business Enterprise Program; Workforce Program

32.1 General. The SFMTA is committed to a Small Business Enterprise Program ("SBE Program") for the participation of SBEs in contracting opportunities. In addition to complying with the SBE Program, the Contractor 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, 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/civilrights/12326.html>.

32.2 Compliance with SBE Program. Contractor shall comply with the SBE provisions contained in Exhibit D, attached to this Agreement and incorporated by reference as though fully set forth, including, but not limited to, achieving and maintaining the SBE goals set for each of the Core Subcontractor services to be performed under this Agreement.

Failure of Contractor to comply with any of these requirements shall be deemed a material breach of this Agreement.

32.3 SBE Program -- Administrative Remedies

32.3.1 SFMTA will report to the DOT any false, fraudulent, or dishonest conduct in connection with the Program so that DOT may take appropriate action, which may include referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, or action under suspension and debarment or Program Fraud and Civil Penalties rules, as provided in 49 CFR Part 26, Subpart F.

32.3.2 Contractor may also be subject to penalties and/or a debarment action under the San Francisco Administrative Code, or liquidated damages under the Contract for failure to meet particular contract SBE requirements. Failure to comply with the requirements of the SBE Program constitutes a material breach of Contract and may 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.

32.3.3 If Contractor fails to meet either the requirements of the SBE set-aside or any of the SBE participation goals specified in the Contract, and fails to demonstrate good faith efforts to meet those requirements, the SFMTA will suffer actual damages that will be impractical or extremely difficult to determine. Such damages may include, but are not limited to, potential loss of all or part of FTA grant(s), and the costs of implementation, administration, and enforcement of SFMTA's SBE Program. Said liquidated damages shall not be considered a penalty, but rather monetary damages agreed by the parties that SFMTA has sustained because of Contractor's failure to comply with the SBE requirements. Said liquidated damages shall be calculated as an amount equal to the difference between the SBE participation goal/set-aside requirement and the actual SBE goal/set-aside attainment at the time a deficiency is determined, multiplied by the liquidated damage assessment as set forth below. The Contractor shall pay an amount of \$100,000 for each tenth (0.1%) percentage point below the SBE goal/set-aside. Example: For this Contract there is a 20% SBE participation goal for the overhead contact system work. Should Contractor achieve only 18.59% SBE participation at Contract closeout and fail to demonstrate good faith efforts to meet the goal, the liquidated damages would be as follows: 20 minus 18.59, or 1.41 percentage points, multiplied by \$100,000 for each .1% point, for a total of \$1,410,000. The SFMTA may deduct these liquidated damages from any payments due the Contractor or from any funds retained.

32.4 Workforce Program. Pursuant to City and SFMTA policy, Contractor 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 Contractor's employment practices.

33 Nondiscrimination; Penalties

- 33.1 Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such Contractor or subconsultant, applicant for employment with such Contractor 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.
- 33.2 Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from the SFMTA) and shall require all subconsultants to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.
- 33.3 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 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.
- 33.4 Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.
- 33.5 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. 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.

34 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.

35 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.

36 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.

37 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.

38 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. Contractor must inform each such persons of the prohibitions contained in Section 1.126 and provide the names of the persons required to be informed to the City.

39 Requiring Minimum Compensation for Covered Employees

Contractor agrees to pay covered employees no less than the minimum compensation required by San Francisco's Minimum Compensation Ordinance (MCO), and shall otherwise comply with the MCO as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P). The provisions of Chapter 12P, including but not limited to the penalties for noncompliance provided therein, are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.

40 Requiring Health Benefits for Covered Employees

Contractor agrees to choose and perform one of the Health Care Accountability options set forth in Section 12Q.3 of the Health Care Accountability Ordinance (HCAO), and agrees to otherwise comply with the HCAO as set forth in San Francisco Administrative Code Chapter 12Q. The provisions of Chapter 12Q, including but not limited to the penalties for noncompliance provided therein, are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.

41 First Source Hiring Program

Contractor shall comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, including but not limited to the remedies for noncompliance provided therein. The provisions of Chapter 83 are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.

42 Prohibition on Use of Public Funds for Political Activity

In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12.G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The provisions of Chapter 12.G, including but not limited to the penalties for noncompliance provided therein are incorporated by reference and made a part of this Agreement as though fully set forth herein.

43 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.

44 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 Director of Transportation (or designee), for final administrative interpretation of the Agreement.

45 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.

46 Construction

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

47 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 43.

48 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.

49 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 Contractor, will be paid unless the provider received advance written approval from the City Attorney.

50 Prompt Payment of Subcontractors

50.1 Progress Payments. In accordance with SFMTA's SBE Program, no later than three working days from the date of Contractor's receipt of progress payments by the City, the Contractor shall pay any Subcontractors for work that has been satisfactorily performed by said Subcontractors, 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 Contractor and the Subcontractor. Within five working days of such payment, Contractor shall provide City with a declaration under penalty of perjury that it has promptly paid such Subcontractors for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Contractors.

50.2 Retention. Contractor may withhold retention from Subcontractors if City withholds retention from Contractor. Should retention be withheld from Contractor, within 30 days of City's payment of retention to Contractor for satisfactory completion of all work required of a Subcontractor, Contractor shall release any retention withheld to the Subcontractor. Satisfactory completion shall mean when all the tasks called for in the subcontract with Subcontractor have been accomplished and documented as required by City. Within 30 days of satisfactory completion of all work required of the Subcontractor, Contractor should release any retention withheld to the Subcontractor.

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

51 Disputes

51.1 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 15 days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with 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.

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

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

51.4 Alternative Dispute Resolution. Subsequent to a decision by the Director of Transportation, either party may seek resolution of a dispute by a mutually agreed to alternative dispute resolution process.

51.5 Claims for Additional Compensation. For disputes involving a claim for additional compensation, parties involved shall attempt to resolve such disputes expeditiously and in good faith so as not to impact the performance or schedule of the work. Under no circumstances shall the Contractor or its Subcontractors stop work due to an unresolved dispute.

51.6 Disputes among Contractor Partners. The resolution of any contractual disputes related to Contractor's Joint Venture or Association partners (if any) shall be the sole responsibility of the Contractor. Each party of the Joint Venture or Association shall resolve all such disputes within 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 that impact the Project and that are left unresolved for more than one month shall be cause for the City to withhold and/or reduce invoice payments to the Contractor's Joint Venture or Association firms until the dispute is resolved.

51.7

52 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.

53 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.

54 Sole Benefit

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

55 FTA Requirements

The provisions contained in "FTA Requirements for Personal Services 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.

56 Cooperative Drafting

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

57 Consideration of Criminal History in Hiring and Employment Decisions.

57.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code, including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at www.sfgov.org/olse/fco. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor shall comply with all of the applicable provisions of Chapter 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

- 57.2** The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.
- 57.3** Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all Subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this section shall constitute a material breach of this Agreement.
- 57.4** Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.
- 57.5** Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.
- 57.6** Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.
- 57.7** Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least five percent of the employees at the workplace, job site, or other location at which it is posted.
- 57.8** Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent

violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

58 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.

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

CITY

CONTRACTOR

San Francisco Municipal Transportation Agency

Edward D. Reiskin
Director of Transportation

Authorized Signature

SFMTA Board of Directors

Printed Name

Resolution No. _____

Title

Dated: _____

Attest:

Vendor Address:

Secretary

City Vendor ID No:

Approved as to Form:

Federal Employer ID Number:

Dennis J. Herrera
City Attorney

By _____
Robin M. Reitzes
Deputy City Attorney

Exhibits:

- A. Scope of Work – Pre-Construction Services
- B. Price Schedule
- C. FTA Requirements – CM/GC Contracts
- D. SBE Program

EXHIBIT A
SCOPE OF WORK
PRE-CONSTRUCTION SERVICES

<u>TASK ORDER NUMBER</u>	<u>DESCRIPTION OF ANTICIPATED TASK</u>
1	Consult with; advise, assist and provide recommendations to SFMTA and Design Team on civil and utility elements as requested by SFMTA.
2	Consult with; advise, assist and provide recommendations to SFMTA and Design Team on systems elements as requested by SFMTA.
3	Consult with, advise, assist and provide recommendations to SFMTA and the Design Team on traffic management and control as requested by SFMTA to support the completion, and approval by Caltrans, of the SFMTA Traffic Management Plan. CM/GC may be called on to provide construction staging or sequencing information and drawings as developed under Task 8 (Construction Plan).
4	Not Used.
5	Prepare a Supplemental Archeological Mitigation Plan acceptable to the California State Historic Preservation Office.
6	Provide full time services of the proposed Project Manager for up to eight months from NTP. The Project Manager will be co-located with SFMTA at the local project office. The anticipated scope of work will include, but not be limited to, design review, cost estimating, project coordination between systems, civil and architectural, public meetings, and schedule preparation. The Project Manager will be involved with and spend time on all of the other Task Orders listed; however, he or she will not charge his time to those Task Orders. All Project Manager time will be charged only to this Task Order and will be paid at the agreed upon monthly rate.
7	Provide, and submit a written report of value engineering and constructability recommendations based on the 65% Design drawings in Appendix P.1 and the 95% final design drawings.

TASK ORDER NUMBER	<u>DESCRIPTION OF ANTICIPATED TASK</u>
8	Submit a preliminary and a final Construction Plan to SFMTA. The preliminary plan will be reviewed by all interested parties and used to establish the final plan. In each plan, the CM/GC shall address proposed construction phasing; staging; sequencing of work; duration of work within work zones; field office needs; parking requirements during construction; construction equipment storage and use of public roadways; coordination of work with the public, including utility disruptions; protection of private and public properties; dirt/debris mitigation; storm water drainage management; temporary facilities; construction zone pedestrian and vehicular traffic management, including signage; noise and vibration control; work hours, including number of shifts and weekend work; temporary road closures or detours; emergency vehicle provisions; maintaining access to all properties; public and worker safety protections; construction restrictions during special events; and security and maintenance of construction work zones. The final plan will be used as a basis for establishment of the GMP and the management of the construction following NTP.
9	Submit a report in compliance with San Francisco's construction recycling ordinance, identifying materials that may be cost-effectively recycled during construction, including an estimate of potential cost increases or decreases from the baseline estimate (Recycling Plan).
10	Perform a quality assurance review of the 65% and 95% final design and construction drawings and specifications; identify revisions to improve clarity for bidding, and propose revisions that reduce construction costs as necessary to meet budget.
11	Work with SFMTA to finalize a Contracting Plan that maximizes SBE opportunities, in accordance with the SBE program identified in Appendix B. Prepare for implementation of the SBE Trucking Set-Aside program. Include a proposed management plan to oversee SBE program implementation.
12	Identify any long-lead items immediately after completion of 100% final design so that the milestone schedule can be met.
13	Work with SFMTA to finalize and submit a Contracting Plan for accomplishment of all construction, including systems work. Recommend packaging of the work to facilitate bidding and award of trade contracts. The Contracting Plan shall at a minimum present the number of packages, a description of the scope of work for each package, the sequence and schedule for procurement, the Engineer's Estimate for each trade work package, and an outreach plan. With respect to work that the CM/GC and Core Subcontractors will be performing, explain how competitive pricing will be accomplished.
14	Prepare, submit, and maintain for SFMTA approval a detailed, baseline, cost-loaded CPM schedule using Primavera 6 that can be integrated into the SFMTA's Capital Projects Control System. The schedule will be used for schedule management during design and construction, and progress payments during construction.

TASK ORDER NUMBER	<u>DESCRIPTION OF ANTICIPATED TASK</u>
15	Provide outreach services to the public, attend public meetings, and prepare outreach materials, as requested by SFMTA, to assist in resolution of any Project-related issues.
16	Prepare and submit to SFMTA construction cost estimates of the 65% and 95% final design and construction documents. If SFMTA's preliminary construction cost estimate is exceeded, identify feasible cost-reducing options, including projected cost savings offset with any additional design costs, to bring construction costs within SFMTA's budget.
17	Prepare and submit for SFMTA approval a public and worker safety plan (Safety Plan), in cooperation with and subject to approval by, SFMTA's Safety Division, for use during construction.
18	Prepare and submit for SFMTA approval a Project-specific Quality Assurance Process/Quality Control Plan, in compliance with SFMTA's QA/QC program, for use during construction, as explained in the Technical Specifications.
19	Prepare and submit for SFMTA approval a plan to handle both anticipated and unanticipated hazardous materials that may be encountered during construction (HazMat Plan).
20	Work with SFMTA to finalize a Workforce Development Plan in accordance with SFMTA's workforce training and hiring program requirements, including a construction management trainee plan.
21	Prepare and submit a plan to manage stormwater runoff during construction in accordance with the requirements of all applicable federal, state and local governing agencies, including Caltrans and the City's PUC (Stormwater Plan).
22	Work with SFMTA as requested to prepare a Safety Certification Plan for use during and for closeout of construction.
23	Work with SFMTA to prepare and submit a Risk Management Plan, including risk identification, allocation and mitigation. This first draft of the Plan shall be based on 65% drawings and the final draft shall be based on 95% drawings. Review site conditions, site surveys, and soils reports. Advise the SFMTA as to anticipated site challenges (other than those that would properly be addressed through CM/GC means and methods) and recommended mitigation measures.
24	Following completion of 100% final design and construction documents, prepare and submit a Guaranteed Maximum Price (GMP). The GMP shall be prepared in compliance with the sample construction services agreement in Appendix D to the RFP. If the initial GMP construction cost estimate appears to be exceeding SFMTA's established construction budget, the contractor shall notify SFMTA accordingly and propose how to complete the work within budget.

<u>TASK ORDER NUMBER</u>	<u>DESCRIPTION OF ANTICIPATED TASK</u>
25	Monitor market conditions for the Project with subcontractors and material suppliers to (a) determine workloads, bonding capacity availability, and worker/mechanic availability; (b) develop interest in the Project and in bidding on the Work; and (c) adjusting/fine tuning the Project schedule.
26	Prepare and submit a draft Partnering Charter in compliance with Appendix E of the RFP - General Provisions Section 16.03.A. Hire a Professional Neutral Facilitator acceptable to the SFMTA for up to two partnering sessions during pre-construction (see Section 16.08 of Appendix E of the RFP).

EXHIBIT B
PRICE SCHEDULE

Unit Price Rates					

TASK ORDER NO.	DESCRIPTION	UNIT	ANTICIPATED NO. OF UNITS	x UNIT PRICE	= TOTAL PRICE
1	Consultation, Civil	HR	300	\$175	\$52,500
2	Consultation, Systems	HR	560	\$130	\$72,800
3	Consultation, Traffic Management	HR	300	\$160	\$48,000
4	Not Used	-	-	-	-
5	Supplemental Archeological Mitigation Plan	EA	1	\$5,000	\$5,000
6	Full-Time Project Manager	MO	8	\$14,000	\$112,000
7	Value Engineering (65% & 95%)	EA	2	\$13,000	\$26,000
8	Construction Plan (Preliminary and Final)	EA	2	\$39,000	\$78,000
9	Recycling Plan	EA	1	\$5,000	\$5,000
10	QA Review (65% and 95%)	EA	2	\$12,000	\$24,000
11	DBE Plan	EA	1	\$5,000	\$5,000
12	Long-Lead Items	EA	1	\$2,500	\$2,500
13	Contracting Plan	EA	1	\$44,000	\$44,000
14	CPM Schedule	EA	1	\$40,000	\$40,000
15	Public Meetings	HR	300	\$100	\$30,000
16	Cost Estimate (65% and 95%)	EA	2	\$56,150	\$112,300
17	Safety Plan	EA	1	\$14,000	\$14,000
18	QA/QC Plan	EA	1	\$22,400	\$22,400
19	Haz. Mat. Plan	EA	1	\$5,000	\$5,000
20	Workforce Training Plan	EA	1	\$5,000	\$5,000
21	Stormwater Mgt. Plan	EA	1	\$5,000	\$5,000
22	Safety Certification Plan	EA	1	\$15,000	\$15,000
23	Risk Management Plan	EA	2	\$5,000	\$10,000
24	GMP Preparation/Negotiation	EA	1	\$41,500	\$41,500
25	Market Monitoring	HR	200	\$100	\$20,000
26	Partnering Charter	EA	1	\$5,000	\$5,000
TOTAL PRICE =					\$800,000

EA = each
HR – hour
MO = month

EXHIBIT C

FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS CM/GC CONTRACTS

1 DEFINITIONS

1.1 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.

1.2 Contractor means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

1.3 CM/GC means Construction Manager/General Contractor.

1.4 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.

1.5 Federal Transit Administration (FTA) is an operating administration of the U.S. DOT.

1.6 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.

1.7 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.

1.8 Government means the United States of America and any executive department or agency thereof.

1.9 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.

1.10 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.

1.11 Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.

1.12 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.

1.13 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.

1.14 U.S. DOT is the acronym for the U.S. Department of Transportation, including its operating administrations.

2 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.

3 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 (less than \$100,000) made with capital, operating, or planning funds. Contractor agrees to be solely responsible for all costs relating to compliance with the Buy America requirements. Failure to comply with these requirements constitutes a material breach of this contract. See 49 CFR § 661.17. Contractors who intentionally or wilfully fail to comply with the Buy America requirements may also be subject to debarment or suspension proceedings. 49 CFR §§ 661.18, 661.19.

4 CARGO PREFERENCE REQUIREMENTS - 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 contract 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 loading 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 contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5 SEISMIC SAFETY REQUIREMENTS

The Contractor 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 CFR Part 41 and Contractor will certify to compliance to the extent required by the regulation. The Contractor 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.

6 ENERGY CONSERVATION REQUIREMENTS

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

7 ACCESS TO RECORDS AND REPORTS

7.1 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 contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C.F.R. 633.17, to provide the FTA Administrator or his or her authorized representatives, including any PMO Contractor, access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

7.2 In all contracts between the City and County of San Francisco and the Contractor for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) entered into through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

7.3 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.

7.4 The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the City and County of San Francisco, 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).

8 CLEAN AIR REQUIREMENTS *(Applicable to all contracts exceeding \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year)*

8.1 The Contractor 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 Contractor agrees to report each violation to the City and County of San Francisco and understands and agrees that the City and County of San Francisco will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

8.2 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.

9 CLEAN WATER REQUIREMENTS *(Applicable to contracts that exceed \$100,000)*

9.1 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. 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.

9.2 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.

10 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.

11 DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

11.1 Minimum wages

11.1.1 All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph A.4 of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph A.2 of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

11.1.2 a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(iv) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A.2.b. or c. of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

11.1.3 Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

11.1.4 If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

11.1.5 a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(c) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A.5.b or c. of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

11.2 Withholding - The Municipal Transportation Agency 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 the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, MTA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

11.3 Payrolls and basic records

11.3.1 Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a

plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

11.3.2 a. The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the MTA for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(b) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph C.2.b. of this section.

(c) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

The contractor or subcontractor shall make the records required under paragraph C.1 of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

11.4 Apprentices and trainees

11.4.1 Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

11.4.2 Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws

approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

11.4.3 Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

11.5 Compliance with Copeland Act requirements - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

11.6 Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the FTA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

11.7 Contract termination: debarment - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

11.8 Compliance with Davis-Bacon and Related Act requirements - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

11.9 Disputes concerning labor standards - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

11.10 Certification of eligibility

11.10.1 By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

11.10.2 No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

11.10.3 The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

12 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (*applies to any construction contract over \$100,000*)

12.1 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 40 hours in such workweek.

12.2 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 therefor 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 40 hours without payment of the overtime wages required by the clause set forth in paragraph A. of this section.

12.3 Withholding for unpaid wages and liquidated damages - The MTA 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 B. of this section.

12.4 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.

13 NO GOVERNMENT OBLIGATION TO THIRD PARTIES

13.1 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.

13.2 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.

14 PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

14.1 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 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, 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.

14.2 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.

14.3 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.

15 CIVIL RIGHTS REQUIREMENTS

15.1 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.

15.2 Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

15.2.1 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. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. 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.

15.2.2 During the performance of this contract the Contractor agrees as follows:

(a) 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin.

(c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall

post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(e) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(f) The contractor will include the provisions of subsections 1 and 2 in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the City and the United States to enter into such litigation to protect the interests of the City and the United States.

15.2.3 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.

15.2.4 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 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

15.3 Equal Opportunity Clauses

15.3.1 As used in these specifications:

(a) "Covered area" means the geographical area described in the solicitation from which this contract resulted;

(b) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

(c) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

(d) "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

15.3.2 Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

15.3.3 If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

15.3.4 The Contractor shall implement the specific affirmative action standards provided in paragraphs 7.a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

15.3.5 Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women, shall excuse the Contractor's obligations under these specifications, Executive Order 11246, as amended, or the regulations promulgated pursuant thereto.

15.3.6 In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have

made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

15.3.7 The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

(b) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(c) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

(d) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

(e) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7.b above.

(f) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

(g) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of these items with onsite supervisory personnel such as

Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(h) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

(i) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(j) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

(k) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

(l) Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(m) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

(n) Ensure that all facilities and company activities are non-segregated, except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(o) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(p) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

15.3.8 Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7.a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7.a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce

participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

15.3.9 A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

15.3.10 The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

15.3.11 The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

15.3.12 The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

15.3.13 The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

15.3.14 The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15.3.15 Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

15.4 DBE/SBE Assurances. 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, sub recipient 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 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor 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 the recipient deems appropriate, which may include, but is not limited to:

- Withholding monthly progress payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the contractor from future bidding as non-responsible.

16 SUBSTANCE ABUSE

Contractor shall comply with U.S. DOT regulations, "Drug Free Workplace Requirements (Grants)," 49 C.F.R. Part 29, Subpart F, and other applicable U.S. DOT and FTA regulations and guidance pertaining to substance abuse (drugs and alcohol) that may be promulgated.

17 BONDING REQUIREMENTS

See Section 10.02 of the General Provisions.

18 DEBARMENT AND SUSPENSION *(applicable to contracts greater than or equal to \$25,000)*

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters, Article V of the Request for Proposals.

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

See Section 14.03 of the General Provisions.

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

See Section 14.01 of the General Provisions.

21 INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

22 NATIONAL ITS ARCHITECTURE POLICY *(Applicable to contracts for ITS projects)*

If providing Intelligent Transportation Systems (ITS) property or services, Contractor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, "FTA National ITS Architecture Policy on Transit Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

23 TEXTING WHILE DRIVING; DISTRACTED DRIVING

Consistent with Executive Order 13513 “Federal Leadership on Reducing Text Messaging While Driving”, Oct. 1, 2009 (available at <http://edocket.access.gpo.gov/2009/E9-24203.htm>) and DOT Order 3902.10 “Text Messaging While Driving”, Dec. 30, 2009, SFMTA encourages Contractor to promote policies and initiatives for employees and other personnel that adopt and promote safety policies to decrease crashes by distracted drivers, including policies to ban text messaging while driving, and to include this provision in each third party subcontract involving the project.

24 SEAT BELT USE

In compliance with Executive Order 13043 “Increasing Seat Belt Use in the United States”, April 16, 1997 23 U.S.C. Section 402 note, the SFMTA encourages Contractor to adopt and promote on-the-job seat belt use policies and programs for its employees and other personnel that operate company owned, rented, or personally operated vehicles, and to include this provision in each third party subcontract involving the project.

25 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.

EXHIBIT D

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

SBE REQUIREMENTS

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 Subcontractors 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 Director of Transportation 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 Director of Transportation 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. See also Section VII of Exhibit C (FTA Requirements for Personal Services Contracts).

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:

An SBE is a for-profit, small business concern with a three-year average gross revenue that does not exceed the thresholds set forth in SFMTA's SBE Program and either: 1) 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"), or 2) has received written confirmation from CCO that it meets the SFMTA's program eligibility requirements.

III. SBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

A. SBE Participation Goal

The SBE participation goals for the Core Subcontractors for this Project are described in Section V.Q.2 of the RFP (SFMTA will establish separate goals for non-Core Subcontractors in Phase 2). 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 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 this goal, 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 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. 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.

C. Prompt Payment to Subcontractors

In accordance with SFMTA's SBE Program, no later than three 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 Subcontractors unless the Contractor 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 Contractor and the Subcontractor. Within five working days of such payment, Contractor shall provide City with a declaration under penalty of perjury that it has promptly paid such Subcontractors for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Contractor.

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

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

D. Substitution of Subcontractors and Suppliers

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

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 supply CCO with copies of all contracts with SBE and non-SBE Subcontractors and suppliers.

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 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.

A. Monitoring SBE Participation

CCO will monitor and track the actual SBE participation through Contractor and Subcontractor reports of payments, site visits and other appropriate monitoring. CCO will ensure

that SBE participation is counted towards Contract goal(s) and the overall annual DBE goal in accordance with the Regulations.

The Contractor shall 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 Subcontractor.

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

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

V. SUBMISSION OF FORMS AND INSTRUCTIONS

Contractor shall submit the following forms as instructed during performance of the Contract. Copies of the forms are attached below. Electronic spreadsheet versions of Forms 6 and 7 are available from the CCO for Contractor's convenience.

A. SFMTA SBE FORM NO. 6 - PROGRESS PAYMENT REPORT

This form shall be completed by Contractor, including each joint venture partner, if applicable, and submitted to the Program Manager (copy to CCO) with its monthly progress payment applications after award of the Contract. Contractor must provide complete information and documentation on SFMTA SBE FORM No. 6 for the immediately preceding period for SBE joint venture partners and all Subcontractors that are utilized on the Contract.

B. SFMTA SBE FORM No. 7 - SUBCONTRACTOR PAYMENT DECLARATION

Contractor shall complete SFMTA SBE FORM No. 7 and submit it to CCO (copy to Program Manager) within five working days following each payment to Subcontractors in compliance with prompt payment requirements. This form shall provide evidence that the Contractor has complied with the prompt payment provisions of the Contract.

C. SFMTA SBE FORM No. 8 - DECLARATION – AMENDMENTS OF PROFESSIONAL SERVICES CONTRACTS

Contractor shall complete this form when processing all modifications, supplements or change orders that cumulatively increase the original amount of the contract. Contractor, individual joint venture partners, Subcontractors, and any other vendors participating in the modification must be listed.

D. SFMTA SBE FORM No. 9 - CONTRACTOR EXIT REPORT AND DECLARATION

Contractor, including all joint venture partners, if any, shall complete SFMTA SBE FORM No. 9 and submit it to the Program Manager (copy to CCO) with its final progress payment application. Contractor must provide complete and accurate information on SFMTA SBE FORM No. 9 and have it executed by all SBE joint venture partners and all Subcontractors.

**SFMTA SBE FORM No. 6
PROGRESS PAYMENT REPORT**

To be completed by Contractor and submitted to Program Manager with its monthly progress payment application (transmit and copy to all of the following.)

TRANSMITTAL TO: Program Manager

Copy To: Contract Compliance Office

From: Contractor _____

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 Amendments and Modifications to Date \$

3. Total Contract to Date including Amendments and Modifications (Line 1 + Line 2) \$

4. Amount Invoiced this Reporting Period \$

5. Total Amount Invoiced to Date as of Last Progress Payment Request (excluding Line 4) \$

6. Amount of Progress Payment Requested to Date (Line 4 + Line 5) \$

7. Percent of Contract Completed (Line 6 ÷ Line 3)

8. Reporting Period - From (date): _____ To (date): _____

Contractor, including each joint venture partner, must execute this form.

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name & Title (Print)

Name & Title (Print)

Firm Name Date

Firm Name Date

Telephone Email

Telephone Email

PROGRESS PAYMENT REPORT

PART 2: Provide complete information in the following table for Contractor, each SBE joint venture partner and all Subcontractors. Make copies of this sheet as needed. Attach copies of all invoices from Subcontractors supporting the information tabulated on this form and Contractor'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 Contractor, including each joint venture partner, and all Subcontractors, and indicate if firm is an SBE)	B Description of Work	C Amount of Subcontract or Purchase Order	D Amount of Modifications and Amendments to Date	E Current Contract Amount (C + D)	F Amount Invoiced this Reporting Period	G Total Amount Invoiced as of Last Progress Payment Request	H Percent of Contract Completion [F + G] / E
TOTALS							

END OF FORM No. 6

SBE-

**SFMTA SBE FORM No. 7
SUBCONTRACTOR PAYMENT DECLARATION**

To be completed and submitted by Contractor, including all joint venture partners, if any, and submitted to the Contract Compliance Office within five working days following actual payment to Subcontractor. Payments to Subcontractor shall be made no later than three working days following receipt of progress payment from the SFMTA.

TRANSMITTAL TO: Contract Compliance Office **COPY TO:** Program Manager

From: Prime Contractor: _____ **Date Transmitted:** _____

Provide the following information for each progress payment received from SFMTA. Use additional sheets to include complete payment information for all Subcontractors 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: **SFMTA**

Progress Payment No.: _____ Period Ending: _____

Amount Received: \$ _____ Date: _____ Warrant/Check No.: _____

Subcontractor/ 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 Contractor, including each joint venture partner, must sign this form.

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name & Title (Print)

Name & Title (Print)

Firm Name	Date	Firm Name	Date
-----------	------	-----------	------

Telephone	Email	Telephone	Email
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END OF FORM No. 7

SFMTA SBE FORM No. 8

DECLARATION – AMENDMENTS OF PROFESSIONAL SERVICE CONTRACTS

This section is to be completed by the Contractor for all modifications to this contract. Prime contractor, individual joint venture partners, Subcontractors, and any other vendors participating in the modifications must be listed.

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

JV/P/S: Indicate if Contractor 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

Information is needed for each firm listed on Page 1 (prime contractor, joint venture partners, Subcontractors 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</u>
STATE:	ZIP:	<u>I D NO.</u>	VENDOR NO
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		
FIRM NAME			
ADDRESS:			
CITY:			<u>FEDERAL I.D.</u>
STATE:	ZIP:	<u>NO.</u>	
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		
FIRM NAME			
ADDRESS:			
CITY:			<u>FEDERAL I.D.</u>
STATE:	ZIP:	<u>NO.</u>	
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		
FIRM NAME			
ADDRESS:			
CITY:			<u>FEDERAL I.D.</u>
STATE:	ZIP:	<u>NO.</u>	
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		

ETHNIC OWNERSHIP: Asian, Black, Hispanic, Native American, White, Other.

END FORM No. 8

SFMTA SBE FORM No. 9

CONTRACTOR EXIT REPORT AND DECLARATION

To be completed by Contractor, including all joint venture partners if any, with its final progress payment application (transmit and copy to all of the following.)

TRANSMITTAL TO: Program Manager

Copy To: Contract Compliance Office

From: Contractor: _____ **Date Transmitted:** _____

Contract Name: _____ **Contract Number:** _____

Contractor must complete SFMTA SBE Form No. 9, Page 2 and have it executed by all SBE joint venture partners and all Subcontractors.

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 30 days after the date of SFMTA's final payment under the Contract.

Contractor, including each joint venture partner, must execute this form.

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name & Title (Print)

Name & Title (Print)

Firm Name

Date

Firm Name

Date

Telephone

Email

Telephone

Email

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 Contractor, including each joint venture partner, and all Subcontractors, and indicate if the firm is a SBE.)	Description of 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 (Contractor, including each joint venture partner, and all Subcontractors)
TOTALS				

END OF FORM No. 9