

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Transportation Planning and Development

**BRIEF DESCRIPTION:**

Authorizing the San Francisco Municipal Transportation Agency ("SFMTA"), through its Executive Director/CEO (or his designee), to execute Contract No. CS-160, Eastern Neighborhoods Transportation Implementation Planning Study and Environmental Review, with Nelson\Nygaard Consulting Associates for an amount not to exceed \$496,911 and a term not to exceed 24 months.

**SUMMARY:**

- EN TRIPS is a coordinated multi-agency program led by the SFMTA that will analyze, design and address environmental impacts of a series of key transportation improvements needed to support the Eastern Neighborhoods Area Plans, a general planning document that establishes development and zoning parameters for the Mission, Central Waterfront, East South of Market and Showplace Square/Potrero Hill neighborhoods.
- The overall EN TRIPS work program proposes a staffing strategy that includes a combination of agency staff labor from SFMTA, the San Francisco County Transportation Authority ("SFCTA") and the San Francisco Planning Department to conduct significant portions of the project work, complemented by consultant assistance for tasks that cannot be completed in-house.
- The SFMTA Board of Directors adopted Resolution No. 09-022 on February 3, 2009 authorizing the Executive Director/CEO to issue an RFP for SFMTA Contract CS-160, Eastern Neighborhoods Transportation Implementation Planning Study and Environmental Review.
- Two proposals were received on March 10, 2009. Staff recommends awarding Contract CS-160 to Nelson\Nygaard Consulting Associates, as the highest-ranking proposer, for an amount not to exceed \$496,911 and a term not to exceed 24 months.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION  
PREPARING ITEM

\_\_\_\_\_

\_\_\_\_\_

FINANCE

\_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO

\_\_\_\_\_

\_\_\_\_\_

SECRETARY

\_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO

Suzanne Chen-Harding, 1 South Van Ness, 7<sup>th</sup> Floor

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

## **PAGE 2.**

### **PURPOSE**

SFMTA Board approval of this resolution would authorize the SFMTA through its Executive Director/CEO (or his designee) to execute Contract No. CS-160, Eastern Neighborhoods Transportation Implementation Planning Study and Environmental Review, with Nelson\Nygaard Consulting Associates for an amount not to exceed \$496,911 and a term not to exceed 24 months.

### **GOALS**

The SFMTA will further the following goals of the Strategic Plan through the execution of this agreement:

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

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

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

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

Objective 2.2 - Transit connectivity and span of service

Objective 2.3 - Fulfill bicycle and pedestrian network connectivity

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

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

Objective 4.2 - Ensure efficient and effective use of resources

### **DESCRIPTION**

On October 2, 2007 and November 18, 2008, the SFMTA Board passed resolutions authorizing SFMTA to accept and expend the grant funding for EN TRIPS from the San Francisco Foundation and the Metropolitan Transportation Commission, respectively.

Identified as a Priority Development Area (PDA), San Francisco's Eastern Neighborhoods comprise the mixed-use and mixed-income communities of the Mission, East SoMa, Central Waterfront and Showplace Square/Potrero. The San Francisco Planning Department has recently completed a multi-year planning process for the Eastern Neighborhoods. This process resulted in the adoption of new Area Plans and significantly revised zoning controls for the four Eastern Neighborhoods. These new policies and controls were adopted by the Board of Supervisors and signed by the Mayor and became effective in late January, 2009.

The Eastern Neighborhoods Area Plans provide a high-level roadmap for future infrastructure improvements and call for further analysis, identification and design of specific transportation projects through EN TRIPS. The preparation of EN TRIPS will be a coordinated, multi-agency program led by the SFMTA with partner agencies, the San Francisco Planning Department and the SFCTA. The overall EN TRIPS work program proposes a staffing strategy that includes a combination of agency staff labor from SFMTA, SFCTA and the San Francisco Planning Department to conduct significant portions of the project work, complemented by consultant assistance for tasks that cannot be completed in-house.

**Purpose and Scope of Contract:**

The selected consultant is to provide specialized professional and technical transportation planning, engineering and environmental services. The proposed work includes planning, designing and analyzing transportation projects; transportation engineering; and environmental review and analysis. The consultants will prepare environmental documents that meet requirements of both the National Environmental Policy Act and the California Environmental Quality Act. The scope of work under this contract is described in Exhibit A of the contract.

**Selection Process:**

The SFMTA Board of Directors adopted Resolution No. 09-022 on February 3, 2009, authorizing the Executive Director/CEO to issue a Request for Proposals (RFP), receive proposals, select the highest ranking proposal, and negotiate Contract CS-160 for an amount not to exceed \$500,000 and for a term not to exceed 24 months.

The RFP was advertised on February 11, 2009 and two proposals were submitted on March 10, 2009 in response to the advertisement. Both proposals were found to be responsive to the conditions of the Request for Proposal, and both firms were evaluated based on procedures and evaluation criteria specified in the approved Proposal Evaluation Plan for RFP No. CS-160.

Nelson\Nygaard Consulting Associates was determined to be the highest-ranking proposer. Therefore, SFMTA staff have negotiated Contract No. CS-160, Eastern Neighborhoods Transportation Implementation Planning Study and Environmental Review, with Nelson\Nygaard Consulting Associates for an amount not to exceed \$496,911 and a term not to exceed 24 months.

**ALTERNATIVES CONSIDERED**

SFMTA staff considered the alternative of performing all of the project tasks in-house. However, it was determined that SFMTA staff do not have the specialized expertise or staff resources to perform the entirety of the required work. If this contract with Nelson\Nygaard Consulting Associates is not executed, it will have an adverse impact on SFMTA's ability to provide adequate future service to the public.

**FUNDING IMPACT**

This contract will be funded from the \$1,250,000 in grant funding that SFMTA has secured to conduct the Eastern Neighborhoods Transportation Implementation Planning Study. The funding sources are: 1) a \$750,000 Metropolitan Transportation Commission Station Area Planning Grant providing Federal Highway Administration funding; and 2) a \$500,000 local match secured through a separate grant from the San Francisco Foundation.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

This contract received approval from the Civil Service Commission at the Commission's April 6, 2009 meeting.

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

A Caltrans requirement to perform a pre-award audit of the Contractor is pending and will be completed prior to the execution of the contract.

## **RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the SFMTA, through its Executive Director/CEO or his designee, to execute Contract No. CS-160, Eastern Neighborhoods Transportation Implementation Planning Study and Environmental Review, with Nelson\Nygaard Consulting Associates for an amount not to exceed \$496,911 and a term not to exceed 24 months.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA), as the lead agency, with partner agencies the San Francisco Planning Department and the San Francisco County Transportation Authority (SFCTA) will be conducting the Eastern Neighborhoods Transportation Implementation Planning Study (EN TRIPS) and Environmental Review; and,

WHEREAS, EN TRIPS will analyze, design and address environmental impacts of a series of key transportation improvements needed to support the Eastern Neighborhoods Area Plans, a general planning document that establishes development and zoning parameters for the Mission, Central Waterfront, East South of Market and Showplace Square/Potrero Hill neighborhoods; and,

WHEREAS, The overall EN TRIPS work program proposes a staffing strategy that includes a combination of agency staff labor from the SFMTA, the SFCTA and the San Francisco Planning Department to conduct significant portions of the project work complemented with consultant assistance for tasks that cannot be completed in-house; and,

WHEREAS, The City and County and the SFCTA do not have the necessary specialized expertise or staff resources to perform all of the required work; and,

WHEREAS, The SFMTA issued the Request for Proposals (“RFP”) on February 11, 2009 seeking proposals from consultants qualified to assist with EN TRIPS and received two proposals in response to the RFP; and,

WHEREAS, SFMTA staff has reviewed and evaluated the proposals, and determined that Nelson\Nygaard Consulting Associates is the highest-ranking proposer; and,

WHEREAS, The funding for EN TRIPS will be from a combination of federal, state and local sources; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA, through its Executive Director/CEO or his designee, to execute Contract No. CS-160, Eastern Neighborhoods Transportation Implementation Planning Study and Environmental Review, with Nelson\Nygaard Consulting Associates for an amount not to exceed \$496,911 and a term not to exceed 24 months.

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

\_\_\_\_\_.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

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

**AND**

**NELSON/NYGAARD CONSULTING ASSOCIATES**

**FOR**

**EASTERN NEIGHBORHOODS**  
**TRANSPORTATION IMPLEMENTATION PLANNING**  
**STUDY AND ENVIRONMENTAL REVIEW**

**CONTRACT NO. CS-160**

**CCO No. 08-1053**

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

**AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND  
NELSON\NYGAARD CONSULTING ASSOCIATES**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the City and County of San Francisco, State of California, by and between: Nelson\Nygaard Consulting Associates, 785 Market Street, Suite 1300, San Francisco, CA ("Consultant"), and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency ("SFMTA", or "Agency").

**Recitals**

**A.** The Transportation Planning and Development Division of the SFMTA provides the professional and technical services required to implement capital and other projects of the SFMTA.

**B.** The Agency wishes the services of a consulting firm to provide specialized professional transportation planning, engineering and environmental services to assist in the preparation of the Eastern Neighborhoods Transportation Implementation Planning Study (EN TRIPS).

**C.** On February 3, 2009, the SFMTA Board of Directors ("SFMTA Board") adopted Resolution No.09-022, which authorized the Executive Director/CEO to request proposals for said services.

**D.** Consultant submitted a proposal in response to the Request for Proposals, which proposal was rated highest by the selection committee.

**E.** On \_\_\_\_\_, the SFMTA Board adopted Resolution No. \_\_\_\_\_, which authorized the Executive Director/CEO to execute this Agreement with Consultant for said services.

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

**G.** Approval for said Agreement was obtained from Civil Service Commission by PSC No. 4119-08/09, dated April 6, 2009.

Now, THEREFORE, the parties agree as follows:

**1. Definitions**

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

**B. Agreement or Contract** refers to this Agreement and all referenced Exhibits to this Agreement.

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

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

**E. Controller** means the Controller of the City.

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

**G. Consultant** is Nelson\Nygaard consulting Associates.

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

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

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

**K. DPT** refers to the former Department of Parking and Traffic, a Division of the SFMTA.

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

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

**N. Federal Highways Administration (FHWA)** is an operating administration of the U.S. Department of Transportation.

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

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

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

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

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

**T. Request for Proposals; RFP** refers to the Request for Proposals for Contract No. CS-160, Eastern Neighborhoods Transportation Implementation Planning Study and Environmental Review, issued by the SFMTA on February 11, 2009.

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

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

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

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

**Y. Disadvantaged Business Enterprise or DBE** is as defined in 49 CFR 26.65 that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. One or more such individuals must also control the management and daily business operations. These individuals must be citizens of the United States and (1) any individual who the City finds to be a socially and economically disadvantaged individual on a case-by-case basis, or (2) who are either Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, women, or any other group found to be socially and economically disadvantaged by the Small Business Administration. This definition was revised in 1987 to include women.

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

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

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

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

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

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

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

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

### **3. Term of the Agreement**

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

**B. Effective Date.** This Agreement shall become effective when the Controller has certified to the availability of funds for the first Task Order issued and a written Notice to Proceed has been issued to the Consultant.

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

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

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

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

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

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

**F. Extra Work.** If the Contractor considers any work to be outside the defined scope of work, or not reasonably anticipated to be part of the defined scope of work, the Contractor shall notify the SFMTA Project Manager in writing within two (2) business days of discovering such work. Neither Contractor nor any subcontractor shall be reimbursed for out-of-scope work performed without first obtaining approval of SFMTA's Project Manager in accordance with the following procedures:

If the City desires the Contractor to perform work additional to the defined scope of work or if the Contractor discovers any work to be out-of-scope and necessary to the project, the following shall apply:

- (1) Within three (3) business days of notification by the SFMTA, the Contractor shall prepare and submit a proposal for the task to the SFMTA Project Manager showing:
  - (a) A detailed description by subtask of the work to be performed and the means and methods that will be used to perform it;
  - (b) Milestones for completion for each subtask and deliverables at each milestone;
  - (c) Personnel and the subconsultants assigned to each part of the work along with a justification as to why such personnel are qualified to perform the work;
  - (d) A detailed cost estimate for each subtask showing:
    - (i) Estimated hours and Direct Salaries by employee;
    - (ii) Overhead of prime contractor and subcontractors;
    - (iii) Proposed profit;
    - (iv) Reasonable out-of-pocket expenses.
  - (e) Any time extensions required to complete the extra work, as demonstrated by a CPM schedule analysis.
- (2) The City will review the proposal and promptly negotiate with the Contractor the cost and time to perform the additional work. City and Contractor shall make

every effort to complete such negotiations within three (3) business days.

- (3) Upon completion of negotiations, the City will direct the Contractor in writing to proceed with the additional work after obtaining appropriate City approvals. If warranted, Contractor shall update its project schedule/timeline to incorporate the additional work.
- (4) In the event that City and Contractor cannot reach agreement on the terms of any additional task order, City may either cancel the task order and have the work accomplished through other available sources, or City may direct the Contractor to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances may the Contractor refuse to undertake a City-ordered task that the Contractor is qualified to perform. The City and the Contractor shall continue to negotiate any outstanding terms under provisions of Section 61 of this Agreement while the additional task order is being performed. The City shall not deny the Contractor reasonable compensation for the approved additional task order performed.
- (5) If the Contractor proceeds to do work that it perceives to be out-of-scope without first obtaining City's written approval in accordance with the above procedures, regardless of the amount or value of the work, the City shall have no obligation to consider reimbursement at a later date for the work thus performed. Eagerness to respond to the City's comments or concerns, expediency, schedule constraints, will not be acceptable reasons to proceed with out-of scope work without City's prior written approval.

The following shall not be considered out-of-scope work, but shall be considered incidental to the "Scope of Services" outlined in Exhibit A. Contractor shall receive no additional compensation for performing the following work:

- (1) All work required to comply with local, state and federal codes, regulations and standards in effect at the time of contract execution, as interpreted by local, state, or federal agencies having approval or sign-off authority for this Project. .
- (2) Work related to addressing review comments and/or incorporating appropriate review comments into the deliverable documents specified in the scope of work in Exhibit A.
- (3) All reasonably implied work required to complete the technical portion of the scope of work, which is consistent with the scope of work in Exhibit A and the intent of the requirements of this Agreement and which is absolutely essential in order to achieve the purposes of the scope of services as stated in the RFP.
- (4) All work required to correct deficiencies and errors, including work related to resubmittals of work products that are evaluated reasonably by the City to be incomplete or inadequate.

**G. Key Team Members.** Work under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. The Consultant agrees that the following key team members shall be committed and assigned to work on the Project to the level required by SFMTA for the term of the Agreement and shall also be staffed at the local Consultant offices within the San Francisco Bay Area for all such time:

**Nelson\Nygaard**

Bonnie Nelson  
Jeff Tumlin  
Jeremy Nelson  
Michael Eiseman

**Fehr and Peers**

Matthew Ridgway  
Chris Mitchell  
Eric Womeldorff

**Community Design + Architecture**

Philip Erickson  
Thomas Kronemeyer  
Greg Pasquali  
Amy Sommer

**Turnstone Consulting**

Nancy Clark  
Barbara Sahm  
J Barlow

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

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

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

**J. Transmittal of Work Product.** When requested by Agency's Project Manager, and after completion of each task and subtask, the Consultant shall transmit to Agency all Work Product (duplicates and originals) produced or accumulated in the course of its and its subconsultants' work on this Agreement. The Consultant's Project Manager and Key Personnel

shall have thoroughly reviewed and approved all Work Product and signed off as such prior to transmitting them to Agency.

**K. Reproduction of Work Product.** Consultant shall arrange and provide for all printing (or other required reproduction) of interim Work Products unless Consultant is otherwise directed by Agency Project Manager. Reproduction of final reports for public distribution shall be the responsibility of SFMTA.

**L. Agency's Responsibilities Regarding Submittals.** Agency will review and comment on Consultant's submittals generally within four calendar weeks of submittal. Agency will submit a single set of conforming non-conflicting comments in writing, which will be addressed by the Consultants. Comments submitted after the review deadline will not be addressed in the document but may be addressed in a final report. Consultant will provide a matrix showing the disposition of all comments. Assuming all comments are adequately addressed, the submittal will be considered final.

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

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

## **5. Compensation**

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 4 of this Agreement. Consultant will submit a progress report documenting all work completed during the billing period, at a level of detail agreeable to the Senior Director, Transportation Planning and Development (or designee). Progress payments will be made based on the actual work completed during the billing period. If the Senior Director, Transportation Planning & Development (or designee), in his or her sole discretion, concludes that work claimed on the progress report was not adequately or accurately completed he or she may notify the Consultant in writing of a withholding from the invoiced amount. The consultant will have five days to produce documentation substantiating the invoiced amount and/or to correct any conditions that resulted in a withholding from the invoice.

Final determination of payment will be made by the Senior Director, Transportation Planning & Development (or designee).

In no event shall the amount of this Agreement exceed Four hundred ninety six thousand, nine hundred eleven Dollars (\$496,911) which amount includes a fixed fee of Forty thousand six hundred seventy Dollars (\$40,670) payable to the Contractor and all lower tier subcontractors for performance of services under this Agreement. The breakdown of costs associated with this

Agreement appears in Exhibit B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

Tasks 2.c and 10.b.1 as shown in Exhibit B are optional services to be provided at the City's discretion. No charges shall be incurred nor shall any payments become due to Contractor for these optional services unless the City directs the Contractor in writing to proceed with those tasks.

The City, in its sole discretion, may elect to reduce the scope of work in any task or subtask under this Agreement. If the scope of work is reduced or increased for any task, the parties will renegotiate the fixed fee for that task.

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 Transportation Planning and Development as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments. The City will endeavor to pay all invoices within 30 days of receipt.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of the SFMTA Progress Payment Form (SFMTA Form 6, Exhibit D). 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% of the payment due pursuant to that invoice until the SFMTA Progress Payment Form is provided.

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

**A. Method of Computing Compensation.** Compensation for Consultant's services under this Agreement shall be based on costs plus fixed fee. Compensation for services will be computed as follows:

- (1) Actual direct salaries paid by Consultant and subconsultants as per Appendix B, Schedule of Rates.
- (2) Overhead and burden of prime Consultant and subconsultants as per Appendix B, Schedule of Rates
- (3) Actual cost of approved out-of-pocket expenses for the Consultant and subconsultants
- (4) A fixed fee calculated as a prorated portion of Consultant's total fee for the task(s) for which Consultant seeks payment.

Compensation will be paid in accordance with the cost breakdown in Exhibit B and shall not exceed the amount shown for each task. Consultant may request the City's approval to transfer unused funds from one task to another task to cover the unexpected shortfall of another task provided that the task from which the funds are transferred out of is at least ninety-five percent (95%) complete and provided the main reason for the task requiring additional funds is not due to Consultant's poor management or planning. Such request must be made in writing to the SFMTA Project Manager at least 15 calendar days in advance of the need to transfer funds across tasks. The City's approval of task amount changes will not be unreasonably withheld. The City will not allow fund transfer between labor costs and other direct costs. If the parties determine that additional work must be performed in any Phase or on any Task, the parties may negotiate an increase to the costs allowance for said work, but Consultant's fee shall not be increased.

The rates in Appendix B shall be fixed and continue at those levels for not less than six (6) months after the effective date of this Agreement. Direct Salary Rates in Appendix B may be adjusted twelve (12) months after the effective date of this Agreement, and thereafter, at twelve (12) month intervals but each increase shall be no more than five percent (5%). Any individual salary adjustments above five percent (5%) will require the Senior Director's prior written approval. The Consultant shall not submit requests to SFMTA asking for salary adjustments for the same individual more than once within any 12-month period. Rate increases requiring SFMTA approval shall only be effective for work performed after approval by SFMTA. The Consultant's and subconsultants' combined overhead and salary burden rates will be audited for conformance with Federal Requirements. All payment requests must include back-up documentation of costs and expenditures at the prime and subconsultant level.

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

**C. Out-of-Pocket Expenses.** The SFMTA will reimburse Consultant for the actual cost of approved out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups. Reimbursable Out-of-Pocket Expenses are listed in Exhibit B as Other Direct Costs. No payments shall be made for Other Direct Costs unless charges have first been approved by the Project Manager in writing. Compensation for Other Direct Costs shall not exceed amounts listed in Exhibit B for each task and/or subtask under any circumstances.

**D. Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Consultant and subconsultant personnel relocation costs and entertainment or personal expenses of any kind will not be reimbursable under this Contract. Office and field supplies/equipment expenses will also not be reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for this Project.

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

## **6. Payment**

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

### **B. Invoices.**

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

Each invoice must contain the following information:

- (a) Contract Number
- (b) Task and/or subtask number(s) for which the Contractor is seeking payment
- (c) Description of the work performed or services rendered
- (d) Name, position, direct hourly rate and hours worked of employee(s) whose labor is invoiced
- (e) Overhead costs
- (f) Other direct costs
- (g) Subconsultant costs supported by invoice itemization in the same format as described here
- (h) Fixed Fee for current invoice period and amount of Fixed Fee paid as of date of invoice. Fixed fee will be calculated as a prorated portion of the total fixed fee for the task for which Consultant seeks payment
- (i) Total costs
- (j) SBE utilization report (SFMTA Form 6)

- (k) Certified payroll records substantiating all labor charges for Consultant and all subconsultants shown on the invoice

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

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

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

#### **D. Payment of Invoices.**

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

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

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

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

### **7. Guaranteed Maximum Costs**

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

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

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

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

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

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

## **9. Disallowance**

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

## **10. Taxes**

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

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

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

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

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

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

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

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

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

## **12. Qualified Personnel**

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

## **13. Equipment**

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

whether such damage be to Consultant, its employees, the City's employees, or third parties, or to property belonging to any of the above.

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

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

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

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

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

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

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

#### **15. Insurance**

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

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

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

(iii) Professional liability insurance as follows:

(a) From the effective date of this Agreement, each partner of the joint association constituting the Consultant shall maintain professional liability insurance coverage with limits not less than \$1,000,000 each claim/annual aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement. Such insurance shall be maintained for period of not less than three (3) years following completion of services.

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

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

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

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

Shahnam Farhangi  
Manager, Contracts and Quality Management  
San Francisco Municipal Transportation Agency  
1 South Van Ness Ave., 3<sup>rd</sup> Floor  
San Francisco, CA 94103

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

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

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

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

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

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

## **16. Indemnification**

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

### **B. Limitations**

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

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

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

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

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

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

## **18. Liability of City**

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

## **19. Liquidated Damages**

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the milestones and timelines as provided in Appendix A, and such delays are not due to Unavoidable Delays, as defined in Section 62, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of Two Hundred Dollars (\$200.00) per day, for each day of delay beyond scheduled milestones and timelines for the tasks described in Appendix A and indicated by asterisks on the Compensation Schedule attached as Appendix B, is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by the SFMTA.

For the purposes of measuring the Contractor's adherence to the timelines provided in Exhibit B, start dates for each task and/or subtask shall be established in writing by the SFMTA Project Manager upon delivery of all relevant information to the Contractor for performance of services.

## **20. Default; Remedies**

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

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

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

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

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

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

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

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

## **21. Termination for Convenience**

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

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

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

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

(iii) Terminating all existing orders and subcontracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **23. Conflict of Interest**

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

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

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

## **25. Notices to the Parties**

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

To SFMTA:

Carter R. Rohan, R.A.  
Senior Director of Transportation Planning and Development  
San Francisco Municipal Transportation Agency  
1 South Van Ness Ave., 7<sup>th</sup> Floor  
San Francisco, CA 94103

Tel: 415-701-4282  
Fax: 415-701-4300  
Carter.Rohan@sfmta.com

Shahnam Farhangi  
Manager, Contracts and Quality Management  
San Francisco Municipal Transportation Agency  
1 South Van Ness Ave., 3<sup>rd</sup> Floor  
San Francisco, CA 94103  
Tel: 415-701-4284  
Fax: 415-701-4300  
Shahnam.Farhangi@sfmta.com

To Consultant:

Bonnie Nelson  
Principal  
Nelson\Nygaard Consulting Associates  
785 Market Street, Suite 1300  
San Francisco, CA 94103  
Tel: 415-284-1544  
Fax: 415-284-1554  
bnelson@nelsonnygaard.com

Any notice of default must be sent by registered mail.

## **26. Ownership of Work Product**

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

## **27. Works for Hire**

If, in connection with services performed under this Agreement, Consultant or its subconsultants create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City.

If it is ever determined that any works created by Consultant or its subconsultants under this Agreement are not works for hire under U.S. law, Consultant hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.

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

**A. Access to Records.** Consultant agrees to maintain and make available to the City accurate books and accounting records relative to its activities under this Agreement. Consultant

will permit the City to audit, examine and make excerpts and transcripts from such books and records and to make audits of all invoices, materials, payrolls, records or personnel and other data related to reimbursable expenses and additional services provided on an hourly basis, whether funded in whole or in part under this Agreement.

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

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

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

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

## **29. Subcontracting**

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

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

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

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

## **30. Assignment**

The services to be performed by Consultant are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Consultant unless first approved by City by written instrument executed and approved as required by SFMTA policy and City ordinance. Consultant and the partners of any joint venture or association that Consultant may establish for the Project, or any of the Consultant's

subconsultants may incorporate or change their business names; provided such incorporation or change does not decrease their obligation or liability under this Agreement. This Agreement shall be binding upon the City and the Consultant and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any funds due or to become due there under may be assigned by the Consultant without the prior written consent and approval of the City.

### **31. Non-Waiver of Rights**

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

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

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

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

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

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

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

### **33. Disadvantaged Business Enterprise Program and Equal Employment Opportunity.**

**A. Disadvantaged Business Enterprise Program.** This Agreement is subject to the Disadvantaged Business Enterprise ("DBE) Program requirements established by the Federal Highway Administration, as such programs are administered by the California Department of Transportation. The requirements for the DBE Program applicable to this Agreement and the required forms are set out in Exhibit D to this Agreement..

**B. Equal Employment Opportunity.** Contractor shall comply with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part

60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

### **34. Nondiscrimination; Penalties**

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

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

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

### **35. MacBride Principles—Northern Ireland.**

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

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

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

### **37. Drug-Free Workplace Policy**

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

### **38. Resource Conservation**

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

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

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

### **40. Sunshine Ordinance**

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

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

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

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

Through execution of this Agreement, Contractor acknowledges that it is familiar with

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**C.** Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO,

Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) Set the term of the requirements.

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

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

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

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

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

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

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

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

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

(iv) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and

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

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

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

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

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

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

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

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

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

Consultant may not purchase preservative-treated wood products containing arsenic in the

performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Consultant may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Consultant from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

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

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

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

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

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

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

#### **51. Construction**

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

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

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

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

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

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

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or

attorneys, including, without limitation, as subconsultants of Consultant, will be paid unless the provider received advance written approval from the City Attorney.

## **55. Prompt Payment of Subconsultants**

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

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

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

## **56. Disputes**

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

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

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

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

**E. Claims for Additional Compensation.** For disputes involving a claim for additional compensation, parties involved shall attempt to resolve such disputes expediently and in good faith so as not to impact the performance or schedule of the Project. Under no circumstances shall the Consultant or its sub-consultants stop work due to an unresolved dispute.

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

## **57. Severability**

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

## **58. Protection of Private Information**

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

## **59. Graffiti Removal**

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

Consultant shall remove all graffiti from any real property owned by Consultant in the City and County of San Francisco within forty eight (48) hours of the earlier of Consultant's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public

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

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

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

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

## **61. Sole Benefit**

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

## **62. Unavoidable Delays**

A delay in Contractor's performance of its duties under the Agreement that Contractor demonstrates could not have been avoided by Contractor's exercise of due care, prudence, foresight, or diligence and that arises directly from: an act of God; fire; flood; windstorm; tornado; earthquake; war; riot; insurrection; epidemic; quarantine restrictions; acts of terrorism; inability of Contractor to procure labor to the extent that such inability is not caused by disputes related to collective bargaining; inability of Contractor to procure material; fuel shortage; freight embargo; accident; priorities or privileges established for the manufacture, assembly or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority; the prevention by the City of Contractor from commencing or prosecuting any of its duties under the

Agreement; inability of Contractor to obtain applicable and timely input, reviews, approvals, permits and licenses from relevant governmental authorities; or failure of public utility service or internet service outside the control of Contractor.

### **63. FHWA Requirements**

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

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

CITY

San Francisco Municipal Transportation Agency

By \_\_\_\_\_  
Nathaniel P. Ford, Sr.  
Executive Director/CEO

Approved as to Form:

Dennis J. Herrera  
City Attorney

By \_\_\_\_\_  
David A. Greenburg  
Deputy City Attorney

SFMTA Board of Directors  
Resolution No. \_\_\_\_\_  
Dated: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary, SFMTA Board of Directors

CONSULTANT

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

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

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
City Vendor Number

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, ZIP

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Federal Employer ID Number

## **EXHIBITS**

- A. Services To Be Provided By Consultant
- B. Compensation and Payment
- C. FHWA Requirements for Personal Services Contracts
- D. Disadvantaged Business Enterprise Information
- E. Directory of Subconsultants

**Exhibit A**  
**Services to be Provided by Consultant**

**I. Description of Services**

Consultant agrees to perform the services described below. Services shall be provided in conformance with the City's "Request for Proposals, Eastern Neighborhoods Transportation Implementation Planning Study and Environmental Review," issued February 11, 2009, the Proposal submitted by the Consultant on March 10, 2009, and as required under this Agreement.

Services to be provided under this Agreement include:

**TASK 1: KICKOFF MEETING**

*Consultant roles: to participate in project kickoff and prepare refined workscope and schedule*

*City and County staff role: to participate in project kickoff*

Expected schedule: Within 2 weeks of receiving Notice to Proceed

***Consultant Task 1: Project Kick-off Meeting***

Within two weeks of receiving a notice to proceed, Nelson\Nygaard will lead a kickoff meeting with the consultant team and key City agency staff. Prior to the meeting, the consultant team will prepare a refined project work scope, as well as a meeting agenda. Nelson\Nygaard will also prepare meeting minutes.

**Task 1 Deliverable:**

Refined project scope of work including project schedule and deadlines for project deliverables.

*Consultant role: to assist City and County staff in preparation of outreach materials and attendance at outreach events*

*City and County staff role: to lead outreach program (including reserving meeting locations, conduct mailings, reproduction costs, and translation services)*

Expected schedule: On-going

**TASK 2: OUTREACH PROGRAM**

The outreach program will support the City agency and consultant team's technical planning and implementation analyses by a) working with stakeholders to identify their mobility needs and b) helping the project team prioritize the recommended transportations projects and programs to meet those needs. In addition, the outreach program will both educate and inform residents about how proposed development may help fund transportation improvements in their neighborhoods.

City staff will lead all the Task 2 outreach activities. Nelson\Nygaard's role on this task will be to a) assist City staff in preparation of outreach materials; and b) help City staff prepare for meetings of the CAC and TAC; and c) serve as facilitators and recorders as needed at outreach events such as larger workshops, smaller forums/focus groups, and regular meetings of existing stakeholder groups. In addition, Nelson\Nygaard will prepare summaries of all outreach activities. Nelson\Nygaard will be the lead on all outreach activities for the consultant team, but will incorporate key subconsultant staff as necessary and desirable.

### **Task 2a: Technical Advisory Committee (TAC) and Citizen Advisory Committee (CAC)**

For the Citizen's Advisory Committee (CAC), the Nelson\Nygaard team shall support City staff in their efforts to work with a diverse and opinionated group of stakeholders. Nelson\Nygaard's role on the TAC will be similar to its role on CAC, but it will emphasize the preparation of briefing materials appropriate for public agency staff.

For both bodies, Nelson\Nygaard's first task will be to work with City staff to understand in detail the level of meeting support desired. The consultant team would provide a minimum level of administrative support (e.g. preparing agendas and minutes, schedule management, etc) as well as graphic support (e.g. creating PowerPoint presentations, maps, etc.). However, the Nelson\Nygaard team may be asked to play a larger role in TAC, CAC, and CAC working group meetings as needed at key project decision points.

### **Task 2b: Public Workshops**

Nelson\Nygaard will assist City staff in preparing workshop materials and staffing two series of workshops. Each series will consist of 4 workshops, one in each of the four Eastern Neighborhoods. An overview of Nelson\Nygaard's role at each of these workshop series is described below.

**Community Workshop Series #1:** For this workshop series, Nelson\Nygaard will assist the City team in: reminding and informing community stakeholders about the transportation objectives in the adopted Eastern Neighborhoods Plan; articulating the necessity of transportation investments in maintaining and improving quality of life while also accommodating new growth; providing an overview of the EN TRIPS project; presenting and discussing findings from the "Issues and Opportunities Analysis" and the "Base and Future Year Land Use and Transportation Conditions Report."; and soliciting feedback on their issues, goals, and ideas for potential solutions to be developed as part of the EN TRIPS project.

**Community Workshop Series #2:** For this workshop series, Nelson\Nygaard will assist the City team in: presenting findings from the "Circulation Analysis / Evaluation of Alternatives"; presenting key transportation and public realm improvement project design (work to date); highlighting how feedback from the first series of workshops helped inform the development of designs for key projects; soliciting feedback and input from stakeholders, with a special emphasis on facilitation techniques that help workshop attendees articulate their priorities.

One of the first tasks for the consultant team will be to work with City staff to identify in more detail City staff's desired role for the consultant on the outreach. At a minimum, the consultant team will assist City staff with planning the outreach events, facilitating and recording the events as needed, and preparing summaries of the outreach events.

For all outreach summaries that the City staff intends to be publicly distributed, Nelson\Nygaard will create a deliverable template and emphasize user-friendly graphics, maps, and charts to enhance readability by the general public.

### **Optional Task 2c: Stakeholder Meetings**

At the written direction of SFMTA's Project Manager, Nelson\Nygaard will assist City staff in preparing for and/or attending regularly-scheduled meetings of existing community groups. The purpose of these meetings would be to provide information and updates to these groups and to bring feedback received from these groups back to the entire project team. This optional task assumes that key staff from the Nelson\Nygaard team may attend up to 6 stakeholder meetings (at the written direction of SFMTA's Project Manager) and provide a level of support similar to Task 2a (e.g. logistics, administrative, and graphics. support).

### **Task 2 Deliverables:**

- TAC/CAC meeting minutes, agendas, and graphic materials
- Summary of public workshops (assumes City printing and translation as needed)
- Final summary report of all outreach at the conclusion of the Study (assumes City printing and translation as needed)

### **TASK 3: CURRENT CONDITIONS, ISSUES AND OPPORTUNITIES**

*Consultant role: to assist in the System Level Analysis work for this task and provide mapping and graphics assistance for Issues and Opportunities Report*

*City and County staff role: to conduct Current Conditions Operational modeling, to perform Current*

*Conditions Modal Analysis, and provide existing data and text to Consultants for Issues and Opportunities Report*

Expected schedule: 12 weeks from start of task

In this task, the Agency staff and the Consultants will identify and summarize current transportation issues and opportunities for improving system performance and transportation circulation in the Eastern Neighborhoods, identifying existing system gaps and improvement needs as a foundation for the later identification of potential improvement projects.

This task has two primary components: developing an evaluation framework and conducting the technical evaluation.

#### **Task 3a: Developing a System Performance Evaluation Framework**

Nelson\Nygaard will assist the City in developing a framework for analyzing existing transportation conditions and future potential projects and programs to improve system performance. This framework could consist of evaluative criteria related to direct measures of the transportation system's success, going beyond traditional measures (e.g. intersection seconds of delay, transit vehicle crowding and on-time performance, infrastructure conditions, etc.) to also include multimodal measures (e.g. travel time variability, pedestrian/bicycle connectivity, traveler safety). In addition, the evaluative framework could include secondary measures that the transportation system influences, such as public health and safety, economic development,

and environmental sustainability. To optimize the utility of the evaluative framework, metrics can be developed at the systemwide level, corridor-level, and for mode specific outcomes.

It is anticipated that the development of a prioritization framework and evaluative criteria will be informed by the transportation policies and objectives in the adopted Eastern Neighborhoods Plans, and the ongoing EN TRIPS community outreach.

### **Task 3b: Circulation Analysis**

The second component of Task 3 is to conduct a detailed circulation analysis of the existing transportation system. The consultant team shall to perform two key roles in this task. These roles are 1.) modeling support and 2.) identification of key street functions / proposals to modify key streets in the grid system.

**Modeling Support.** City staff will conduct the majority of the technical traffic operational analysis using some of the most advanced traffic analysis software tools available (Synchro isolated intersection analysis software and the SimTraffic and VisSim microsimulation software).

The consultant team will provide 30 professional hours dedicated to consultation with City staff regarding the technical analysis. However, the consultant team is fully ready and able to react if the City's needs change during the course of the study.

The Nelson\Nygaard team may also help tailor and refine the traffic modeling efforts to measure how various transportation investments, programs, or policies can improve transportation system performance on key streets in the EN TRIPS area. To the extent budget is available, such refinements would be based on rigorous, empirically-based, and defensible modeling inputs or post-processing factors to provide a conservative estimate of how changes expected as part of the implementation of Eastern Neighborhoods Plans (e.g. greater land use intensity and mixing of uses on key transit corridors) as well as potential impact fee funded transportation improvements such as new transit service, expanded bike lanes, or a district-wide parking and demand management program (e.g. subsidized transit passes, demand-responsive parking prices, etc.). Nelson\Nygaard and Fehr & Peers would provide City staff with a brief memo summarizing expected reduction factors.

### **Identification of Key Street Functions / Proposals to Modify Key Streets in the grid system.**

Following the completion of model runs, the Nelson\Nygaard team will work in an iterative process with the project team, SFMTA staff, and others, as appropriate, to interpret the analysis results, identify system-level deficiencies in the existing Eastern Neighborhoods street network and to identify opportunities for improvements that focus on overall circulation of the Eastern Neighborhoods. Nelson\Nygaard will assist the City team in identifying existing challenges with these streets, including multimodal network gaps, travel delay/congestion chokepoints, and infrastructure and safety issues.

The consultant team, led by Nelson\Nygaard, will then assist the City in identifying the primary function of key streets in the EN TRIPS study area by trip type (local vs. regional, passenger vs. freight, etc.) and travel mode. This effort will draw from: Eastern Neighborhoods Plans and data; other existing transportation data and documents; SFMTA's base and updated traffic modeling analysis for key streets; qualitative information from ongoing EN TRIPS community outreach; the consultant team's experience with San Francisco transportation planning issues; and the consultant team's understanding of recent and relevant citywide planning initiatives, including the SFMTA Transit Efficient Project, San Francisco Better Streets Plan, and San

Francisco Bicycle Plan. The consultant team will work with the City project team to develop recommendations for how to improve the overall and corridor-level performance of the transportation system. Potential recommendations would include:

***Street classification overlay.*** Based on how streets are currently functioning (or are expected to function as Eastern Neighborhoods Plans are implemented), key streets may need to be reclassified to recognize their specific functions. State- and federally-recognized functional classifications (local, arterial, etc.) would remain in place, but an overlay street classification system (primary transit network, primary bike network, primary pedestrian network, etc.) would be developed. This overlay would be developed in coordination with existing and pending street designations, including the existing General Plan modal network maps, Transit Efficiency Projects routing and frequency recommendations, and the Bicycle Plan network. The comprehensive street classification analysis completed for the Better Streets Plan will be an input to this task.

***Revised performance measures.*** Proposed performance measures developed earlier in this task will be linked to the potential new street classification overlay system described above. For example, on streets within a hypothetical “primary pedestrian network,” auto level of service may be deemphasized and measures that capture “pedestrian level of service” may be prioritized.

### **Task 3 Deliverable(s): Issues and Opportunities Report**

The Nelson\Nygaard team will compile the relevant analysis and findings from the system-level analysis and mode-specific analysis into an “Issues and Opportunities Report.” At the direction of SFMTA’s Project Manager, this deliverable may also include: developing a draft outline and template for City review, feedback, and approval; creating relevant GIS maps and other graphics; developing a stand-alone Executive Summary for decision-makers and/or a user-friendly fact sheet for community stakeholders; and/or Creating PowerPoint presentation summarizing analytical process and key findings.

### **TASK 4: TRAVEL DEMAND MODELING ANALYSIS AND ANALYSIS SUPPORT**

*Consultant roles: 1) to conduct post-processing of travel demand forecast model outputs; and 2) to prepare a report of the Preliminary Travel Demand Modeling Results*

*City and County staff roles: 1) to conduct the Phase 2 of the 2008 Eastern Neighborhoods Travel Behavior Survey; and 2) to provide travel demand forecasting through use of the SFCTA’s SF-CHAMP model*

Expected schedule: 14 weeks from start of task

The demographic analysis and travel demand forecasts will consider not only the Eastern Neighborhoods Plan defined Study area but the impacts of the surrounding high-growth areas such as Mission Bay, Transbay Terminal, Rincon Hill and Western SoMa. The base analysis year will be determined by the most current existing conditions data and the future analysis year will be 2030. The PM peak travel period will be the primary focus for analysis of traffic conditions..

#### **Task 4a: Travel Demand Forecasting Support**

The SFCTA will provide travel demand forecasts using the SF-CHAMP model with a horizon year of 2030. Traffic forecasting is frequently the most challenging and time-consuming component of large area transportation studies, often delaying studies by several months, as well as other studies that must rely on the results of the large area study. The consultant team will work with SFMTA, SF Planning Department, and SFCTA staff before the SFCTA performs model runs to ensure that the roadway network, transit service, and land use assumptions are clear and that the inputs are as transparent as possible. This is to reduce the likelihood that manual and subjective corrections need be made to the model output and to ensure that forecasting time spent by the SFCTA is used efficiently. The consultant team anticipates conducting a basic review of inputs as described above and providing a memo to appropriate City staff, including Planning Department MEA staff, with our findings. Adjustments to model inputs will be conducted by the City and SFCTA staff prior to conducting model runs.

#### **Task 4b: Travel Demand Modeling Post-Processing**

The initial traffic forecasting run will include proposed land use changes associated with the Eastern Neighborhoods Plan and adjacent high growth areas (Western SoMa, Transbay Terminal, Rincon Hill, and Mission Bay) and only currently programmed transportation improvements. The first traffic forecast scenario (land use growth but only funded transportation improvements) will set the baseline and will be provided by the SFCTA. The consultant team will conduct post-processing of SF-CHAMP model output using methodologies described in NCHRP 255<sup>1</sup>, which describes the standard industry methodology for adjusting peak hour turning movement volumes from a forecasting model to be appropriate for use in operational analyses. The consultant team will submit proposed traffic forecasts to appropriate City staff, again, likely including Planning Department MEA staff, for review and approval so that the forecasts used in our analysis are deemed acceptable for inclusion in future environmental review. This scope of work assumes that inputs to the model will be accurate and that post-processing beyond the standard practice described here to account for model input errors or changes to model inputs during the course of the study will require a fee increase.

The initial forecasting results will be used to inform potential improvements. The consultant team will work with City staff and SFCTA staff to test up to three additional scenarios (i.e., model runs performed by the SFCTA) to determine the efficacy of various proposed transportation improvements. The changes will be transportation infrastructure related, and not land use changes, such that model outputs will be used to assess relative changes in traffic volumes that can be applied to the baseline forecasts, and that additional forecasting will not be required. Where appropriate, the consultant team may propose application of additional post-processing procedures such as route or station-specific Direct Ridership Forecasts, which offer the ability to quantify changes in transit ridership based on the relationship between land use characteristics of the surrounding area and levels of transit service. This may allow for quantification of the benefits of various transit improvements. The schedule does not include time for alternative forecasting methods, but those services are available should the need arise. This scope of work assumes the development of PM peak hour intersection turning movement volumes from the SF CHAMP model output at up to 30 intersections in the study area for a total of up to four scenarios (including baseline and three alternatives).

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<sup>1</sup> Pedersen, N.J. and Samdahl, D.R. National Cooperative Highway Research Program Report 255 (NCHRP 255), Highway Traffic Data for Urbanized Area Project Planning and Design. Transportation Research Board, 1982.

## **TASK 5: FUTURE CONDITIONS, CIRCULATION AND OPERATIONAL NEEDS ANALYSIS**

*Consultant roles: 1) to conduct Future Conditions Circulation and Operational Needs Analysis; and 2) to prepare Base and Future Year Land use and Transportation Conditions Report*

*City and County role: 1) to conduct the Future Conditions Operational Modeling using SYNCHRO, SimTraffic and/or VISSIM as necessary; and 2) to provide data and direction to Consultant*

Expected schedule: 10 weeks from start of task

Beginning with data collected for earlier portions of the study, including the Current Conditions and Opportunities Analysis and the Travel Demand Modeling Analysis, the Nelson\Nygaard team will collaborate with SFMTA staff to analyze future circulation and operation needs in the study area. This analysis will focus on the street grid in the eastern South of Market and on other selected priority corridors, including 16<sup>th</sup> Street and Townsend Street.

In this task, SFMTA staff and the Nelson\Nygaard team will collaborate to analyze the future circulation needs in the Eastern Neighborhoods, and prepare a base and future year land use and transportation conditions report.

### **Task 5a: Overall Circulation**

Fehr & Peers will use land use and travel demand projections to assess the ability of the existing circulation system to meet future transportation needs. The consultant team will assess the adequacy of the system to the needs of all modes. The consultant team will identify key priorities for needed change. There will be an effective communication between this task and the mode-specific analysis.

Following development of year 2030 baseline traffic forecasts, SFMTA staff will assess the ability of the existing transportation system to accommodate expected future growth using the analysis software discussed in Task 3. Fehr & Peers will work with the project team and City staff to identify operational deficiencies using the results of the Synchro/SimTraffic and VisSim analyses conducted by SFMTA staff. It is anticipated that this will largely be a comparison of existing and future conditions transportation MOE's (such as travel times, intersection levels of service, etc.) that are developed as part of the evaluation framework.

### **Task 5b: Transit**

Nelson\Nygaard will lead an analysis of future transit service needs. The work will begin with a preliminary line-by-line review of expected transit route structure serving the Eastern Neighborhoods. Because the time horizon for this project is 20 years, the 'expected route structure' analyzed in this part of the task will not be the current network, but the system of routes developed for the TEP. Because the TEP developed system-wide ridership projections but not route-level ridership projections, a key element of this task will be to create route-level estimates of ridership and passenger loads for transit service in the Eastern Neighborhoods. Relying on the existing distribution of ridership between routes, the scheduled transit service

changes, and future system-wide ridership projections, Nelson\Nygaard will develop line-by-line ridership and load factor estimates for each route.

Using a GIS analysis of the expected new population and employment density throughout the study area, the study team will then apply additional ridership factors to each route segment that take into account the growth in the study area over the next 20 years resulting from the Eastern Neighborhoods Plans. It is likely that this growth will result in substantial new demand for Muni: without additional changes, it may also result in crowding and the need for additional service vehicles, service hours, and facilities. Nelson\Nygaard will provide high-level cost estimates for the additional service and facilities required to ease any expected crowding.

In the third part of this task, the consultant team will develop recommendations for investments that will speed up average transit travel time in a way that allows the proposed route network to serve the projected demand. The consultant team will aim to develop a program of improvements that will enhance transit service enough to serve the expected demand using current vehicles and service hours. Proposed improvements may include bus bulbs; transit signal priority; dedicated transit lanes; and others. In this part of the study, the consultant team will focus on key transit corridors where improving transit efficiency and reliability is a high priority. The consultant team will select these high-priority corridors in collaboration with SFMTA staff. They may include 16th Street, Mission Street, Potrero Avenue, and/or others. Transit service analysis will also focus on station access needs from BART and Caltrain, and on the possibility of consolidating shuttle service to UCSF/Mission Bay. Selection of proposed improvements to transit corridors will be coordinated with overall circulation plan proposals (Task 6).

#### **Task 5c: Pedestrian**

The Nelson\Nygaard team will develop a pedestrian circulation and access needs analysis for Eastern Neighborhoods. For this task, the consultant team will draw on an inventory of existing and proposed land uses in the Eastern Neighborhoods Plan, the General Plan Citywide and Neighborhood Pedestrian Network maps, and pedestrian planning that was conducted as part of the San Francisco Better Streets Plan, including work by city agencies (SFMTA, SF Planning) and consultants (including Community Design+Architecture, Fehr & Peers and Nelson\Nygaard). The outcome of this analysis will be recommendations for pedestrian infrastructure improvements to create a continuous, safe, and high-quality pedestrian network in the Eastern Neighborhoods, with prioritized access to major transit stops/stations, linkages between residential and employment areas, and safe routes to schools, parks, libraries, community centers, and other public uses,

#### **Task 5d: Bicycles**

In this task, the consultant team will conduct a future bicycle needs analysis for the Eastern Neighborhoods. Starting with the current bicycle network in the EN TRIPS study area and the proposed “build-out” network for this area contained in the San Francisco Bicycle Plan, Nelson\Nygaard will work with City staff to estimate future bicycle travel demand and desire lines based on future changes to land use types and intensities expected under the Eastern Neighborhoods Plan and, if necessary, make recommendations for how the planned build-out bike network could be refined.

In addition to bike paths and lanes, the Nelson\Nygaard team will also explore the feasibility of bike boulevards, where bikes are encouraged to travel in mixed flow on traffic-calmed residential streets. the consultant team will also address the adequacy of bike parking facilities as part of this needs analysis.

### **Task 5e: Traffic**

Fehr & Peers will review the results of the future conditions technical traffic operations analysis to be conducted by SFMTA staff using the Synchro/SimTraffic or VisSim. The consultant team will review, interpret, and summarize the results of the analysis. The assessment of overall traffic operations will keep in mind the context of the facilities in question such that traffic constraints on streets that prioritize other modes, such as transit or pedestrians, and where alternate vehicular routes exist will be given less importance than those streets that are intended to better facilitate automobile movements.

### **Task 5f: Parking**

Nelson\Nygaard will conduct an on-street parking needs analysis for the EN TRIPS study area to understand the existing and future parking supply and demand for: private vehicle parking (resident, employee, shopper/visitor); freight parking/loading; and taxi stands.

The outcome of this analysis will be recommendations for providing adequate on-street parking to meet the different parking needs of different motorists. Nelson\Nygaard will also analyze pro and cons of on-street parking, and make recommendations of street types where on-street parking should be encouraged or prohibited. Finally, Nelson\Nygaard will develop recommendations to help manage demand and optimize revenue for on-street parking demand in impacted areas.

### **Task 5g: Goods movement**

The consultant team will work with City staff to qualitatively assess the degree to which local and inter-district goods movement may be impacted by proposed development and associated traffic increases.

For this task, Nelson\Nygaard will analyze the City's existing General Plan Freight Network as well as any analysis of the existing and future commercial/industrial transportation needs undertaken as part of the Eastern Neighborhoods Plans. The consultant team will then make recommendations on the necessary infrastructure and capacity to serve the goods movement needs as the Eastern Neighborhoods industrial and commercial uses evolve and change. Examples of issues the consultant team will help resolve in the EN TRIPS study include:

- How to accommodate the circulation, parking, and loading needs of larger delivery trucks in mixed-use neighborhood commercial districts.
- How to integrate quality pedestrian and bicycle infrastructure onto streets that are primarily industrial in character.
- How to protect primarily residential districts from the negative impacts of cut through traffic by large trucks.

### **Task 5 Deliverable: Base and Future Year Land Use and Transportation Conditions Report**

Nelson\Nygaard will assemble findings from this and preceding tasks into a base and future land use and transportation conditions report. The report will focus on communicating the outcomes of a technically rigorous analysis in a way that is clear and understandable to all stakeholders.

Nelson\Nygaard will also prepare materials for Community Workshop Series #1, using information from the Base and Future Year Land Use and Transportation Conditions Report, and will summarize public comments received at the workshops.

## **TASK 6: CIRCULATION PLAN ALTERNATIVES ANALYSIS**

*Consultant role: 1) to propose preliminary circulation plan alternatives; and 2) to evaluate alternatives per System Performance Evaluation Framework*

*City and County staff role: 1) to provide feedback to Consultants including an initial assessment of the operational and physical feasibility of preliminary circulation plan alternatives and project specific design concepts; and 2) to conduct initial assessment of financial feasibility of project specific design concepts*

Expected schedule: 14 weeks from start of task

The consultant team will propose preliminary options for circulation plan alternatives. These plans will take into account capacity, level of service, directionality, and connectivity for the street network, relying on the analysis prepared for prior tasks. The consultant team will analyze each alternative using the System Performance Evaluation Framework developed in Task 3. There will be an iterative process, with the plan refined to determine how negative impacts can be minimized or plans adjusted to make the system as functional as possible. The outcome will be a preferred circulation plan.

### **Task 6a: Preliminary Circulation Plan Alternatives**

Through the development of the System Performance Evaluation Framework and based on feedback received from public workshops, the project team will understand the priorities of various neighborhoods as well as potentially competing interests. With this understanding, and based on the needs assessment conducted in Task 5, Fehr & Peers will work with the project team to develop up to three preliminary circulation alternatives. Their technical experience using the software programs proposed for use by SFMTA staff will also allow them to interpret the results accurately and have a “gut sense” of how proposed solutions may benefit overall circulation in the area prior to a more formal and detailed technical analysis to be conducted by the SFMTA. This process may be conducted through a series of up to four mini-charrettes at which project alternatives are developed and refined.

Once the circulation options are developed, the consultant team will provide support to the project team to evaluate the alternatives using the System Performance Evaluation Framework developed in Task 3. This includes interpretation of operational analysis conducted by the SFMTA. The consultant team will work with the project team to present these options to the TAC and CAC along with the evaluations.

### **Task 6b: Preliminary Project-specific design concepts**

Based on the preferred circulation plan developed in Task 6a and direction from the SFMTA, CD+A will lead the team in developing up to six project specific design concepts, including the three Early Start Capital Projects and up to three additional projects. The consultant team will work with the SFMTA to define the consultant team’s roles and responsibilities for the additional projects, once the outreach process and City agency input have determined priorities.

For each of the design concepts, the consultant team anticipates the process described below. However with discussion with the SFMTA, there could be about reorganization and restructuring of these responsibilities based on individual project priorities:

- For each project, the consultant team will begin with a broad list of ideas informed by public outreach, Better Streets Plan concepts, City and consultant team input, and Best Practices from similar projects in other jurisdictions. The consultant team will integrate these ideas into up to three (3) preliminary concepts.
- The up to three (3) preliminary concept alternatives will be vetted with the SFMTA to ensure they reflect the SFMTA's priorities for the project.
- CD+A will develop initial sketches of prototypical sections, concept diagrams, plans, and/or intersection diagrams, as well as focused sketch-level details as necessary for each alternative.
- The SFMTA will then develop "hard line" plans and sections for each alternative.
- CD+A will develop outreach-focused supporting illustrations that highlight the unique aspects of each design concept such that the TAC, CAC, public, and other stakeholders may easily review, compare, and critique both the concepts as a whole and the individual elements they like and dislike. Supporting illustrations may include detail studies, perspective sketches (if budget allows), rendered and/or hand drawn plans and sections, or others that will translate the hard line engineers' drawings into exhibits that are more legible and attractive to the layperson.

Nelson\Nygaard and Fehr & Peers will play a supporting role in this process by making initial determinations about the operational feasibility of design concepts for all modes. CD+A will develop initial order-of-magnitude cost estimates based on unit costs provided by the City from recent projects and by establishing per block or per linear foot of cross section costs for the contemplated improvements. CD+A will then compile the cost information into an easy-to-compare format to allow the SFMTA and other agencies to make determinations on priorities for investing limited resources. It is anticipated that the City agencies will complete a more thorough operational and cost evaluation of each alternative as the concepts are refined.

### ***Folsom Street Redesign***

CD+A will develop concepts for Folsom Street as a "civic boulevard," reflective of its transition from an auto-oriented industrial street to a major neighborhood commercial street that accommodates bikes, pedestrians, and transit in a mixed-use commercial and residential corridor. This will likely involve sidewalk widening, well-coordinated aesthetic streetscape improvements, pedestrian-oriented lighting treatments, improved crossings, more comfortable and attractive transit facilities, and more consistent and improved landscaping treatments. Improvements may also include the conversion of the street to two-directional traffic, provision of corner and mid-block curb extensions, and/or provision of spaces for dining or other amenities as detailed in the Better Streets Plan. Because these changes may impact cross traffic and bicycle circulation, the consultant team will provide a summary of potential impacts to adjacent streets that will need to be considered as trade-offs between different redesign objectives are weighed for each alternative.

### ***16<sup>th</sup> Street Corridor Transit Improvements***

Further developing the circulation alternatives identified in Task 6a and the transit analysis carried out in task 5.2, Nelson\Nygaard will develop detailed transit improvement plans for 16<sup>th</sup> street. CD+A will support Nelson\Nygaard in the refinement of transit improvements by developing design concepts for aspects of these potential future transit changes that require design elaboration. Changes to 16<sup>th</sup> Street that may benefit transit operations include new bus

bulbs, signal retiming and transit signal priority, and/or transit-only lanes. Designs may also include extending Connecticut Street north of 16<sup>th</sup> Street to Hubbell Street, the 16<sup>th</sup> Street Caltrain Crossing, providing pedestrian plazas at oblique angle corners, or other opportunities to improve the extremely long crossings along 16<sup>th</sup> Street created by the geometries of the different City street grids that intersect here. Additionally, improved streetscaping, landscaping and spacious transit stops with improved passenger amenities can all help to soften the aesthetics of this corridor to make it a more attractive, comfortable, and safe place for pedestrians and for those waiting for transit.

### **Townsend Street Pedestrian Improvements**

The Nelson\Nygaard team will consider the current and potential future land uses on Townsend Street and its role as an important bike and pedestrian corridor and connection to major regional transit in determining the appropriate role that the street can play in the future of the neighborhood. Alternatives may involve test assignment of different Better Streets Plan street types .

### **Other Projects (to be determined)**

The team has allocated time and budget to support design concept development for up to three of the possible project types listed in the RFP. The specific transportation projects to be addressed will be identified through the analysis and outreach phases of the study. Some possible projects, such as a street level, multimodal green boulevard in the Central Freeway corridor or design of a pedestrian plaza in the vicinity of the triangular block bounded by 16<sup>th</sup>, 8<sup>th</sup> and Wisconsin Streets, will require a major investment of effort in design. Others, such as proposed improvements on Mission, Potrero, or Market streets will require a heavier emphasis on transit operations. The consultant team will work with SFMTA project management staff to determine the appropriate consultant role and mix of responsibilities for each project. This discussion will reflect the final number and type of projects selected, City agency and public outreach defined priorities, and consultant team budget.

Using elements including stakeholder input and operational and financial evaluation, Nelson\Nygaard and CD+A will compile the findings from this task into a comparison matrix for each project. This matrix, the related maps and graphics, and a brief summary of each alternative as well as a more detailed summary of the preferred alternative for each transportation project will be included in a Circulation Plan Alternatives and Preliminary Project Specific Design Concepts Report.

### **Task 6 Deliverable: Circulation Plan Alternatives and Preliminary Project Specific Design Concepts Report**

The Nelson\Nygaard team will assemble and compile the findings from this analysis into a clear and easy-to-understand report that details the circulation plan alternatives and Preliminary Project Specific Design Concepts.

## **TASK 7: REFINE KEY TRANSPORTATION AND PUBLIC REALM IMPROVEMENT PROJECTS**

*Consultant role: 1) to provide peer review of SFMTA designs; and 2) to assist with production of maps and drawings for inclusion into a Key Eastern Neighborhoods Transportation and Public Realm Improvement Projects Report for public review*

*SFMTA role: 1) to lead the design work with the preparation of cross sections and intersection drawings for key projects; and 2) to provide cost estimates for key projects*

*SFCTA role: to assist SFMTA in delivery of this work product*

*Planning Department role: to assist SFMTA in delivery of this work product*

Expected schedule: 12 weeks from start of task

Based on preferences that will emerge from the stakeholder and public input process for EN TRIPS, this task will translate preliminary design concepts for the preferred alternative of several key transportation and public realm improvements identified in the earlier task into more fully developed designs. For the street reconfigurations, these conceptual designs will specify right-of-way and dimensions dedicated to auto/mixed-flow, buses, bicycles, pedestrians, and parking. For all projects, the conceptual designs will incorporate information about potential utility and drainage issues into design feasibility considerations and cost estimates.

Planning level costs will include costs for developing detailed designs, construction, construction management and on-going maintenance where applicable.

#### **Task 7a: Project Design Assistance**

CD+A will lead the team's efforts in Task 7. CD+A will provide support to the SFMTA and its partners in translating preliminary design concepts into more fully developed designs. CD+A will review the work of SFMTA's designers and engineers and provide comments focused on urban design, multimodal transportation, and Better Streets Plan coordination to ensure that they are consistent with the initial concepts developed in Task 6 and the input from the public and other agencies.

CD+A will also support the development of the conceptual designs by providing supplementary graphics, potentially including detailed drawings or perspective renderings, to ensure that concepts are clearly communicated and documented.

#### **Task 7 Deliverable: Key Eastern Neighborhoods Transportation and Public Realm Improvement Projects Report**

Nelson\Nygaard, with the assistance of CD+A, will assemble the project designs into a Key Eastern Neighborhoods Transportation and Public Realm Improvement Projects Report for public review and comment. Because the contents of this report may be used as support material for grant proposals, earning public stakeholder or other agency buy-in, or other project marketing, CD+A will ensure that all materials included reflect a consistent and high-quality look. The consultant team will use the graphic standards developed as part of the Better Streets Plan and refined through the recent Columbus Avenue Neighborhood Transportation Plan. Use of these standards will continue the development of a San Francisco graphic standard that is

attractive, user-friendly, and balances technical measured drawings, with graphic rendering and color illustration techniques that make them more visually legible and appealing.

## **TASK 8: CREATE FUNDING AND IMPLEMENTATION STRATEGY**

*Consultant role: none for this task*

*City and County staff role: to prepare Funding and Implementation Strategy Document*

Expected schedule: 12 weeks from start of task

The consultant team will not have an explicit role in the development of a funding and implementation strategy. However, with extensive experience doing transportation funding plans of all kinds, the Nelson\Nygaard team may provide assistance to city staff as needed, constrained only by study resources.

## **TASK 9: PREPARATION OF DRAFT EN TRIPS REPORT**

*Consultant role: to compile components of earlier deliverables, prepare additional maps and illustrations as needed into a Draft EN TRIPS Report for public review*

*City and County staff role: 1) to provide report text and additional updated information to Consultants, as needed; 2) to provide additional technical proof-writing and graphic design assistance for report preparation; and 3) to pay for reproduction and report distribution costs*

Expected schedule: 13 weeks from start of task

### **Task 9 Deliverable: Draft EN TRIPS Report**

The Nelson\Nygaard team will compile a complete EN TRIPS study report. It will include the analysis and findings from the rest of the study, summarizing the outcomes of the community engagement process; project goals and opportunities; land use considerations; parking demand; and circulation and connectivity issues. The report will provide a detailed analysis of the priority corridors identified by the study; the key transportation infrastructure projects that the study team develops; and the funding and implementation plan. City staff will provide report text and technical proof-reading, while Nelson\Nygaard planners, design support staff, and GIS staff will work to assemble the outcome of earlier project tasks in to a clear and comprehensive document.

## **TASK 10: DRAFT ENVIRONMENTAL REVIEW DOCUMENTS FOR SELECT PROJECTS**

*Consultant role: to prepare draft environmental review document(s) addressing the environmental impacts of, at a minimum, one top priority project; an optional task is to prepare draft environmental review documents for additional high priority projects, as funds allow .*

*City and County staff role: 1) to conduct evaluation of required level of environmental review; and 2) to provide input and assistance to Consultant*

Expected schedule: To be determined.

### **Task 10 Deliverable: Draft Environmental Review Documents**

The exact extent of the environmental review required will depend upon the final list of key identified improvement projects. It is anticipated that, prior to the Consultant team's commencement of the environmental review tasks (Tasks 10 and 12), the contract negotiations team will reconvene to refine the scope, budget and schedule for these tasks. The current budget and schedule for Tasks 10 and 12 are placeholders that will provide for the preparation of environmental review documents addressing the environmental impacts of, at a minimum, one highest priority project.

Turnstone Consulting will manage preparation of draft environmental review documents for one or more of the highest priority EN TRIPS projects. The EN TRIPS Report prepared in Task 9 will provide the blueprint for guiding critical new transportation infrastructure in the Eastern Neighborhoods plan areas over the next 20 years. For those projects identified in that report and priority projects for the Eastern Neighborhoods, the SFMTA and Turnstone will evaluate the appropriate level of environmental analysis for the key transportation and public realm improvement projects which have not already been cleared under CEQA. Because the projects will meet the objectives of the Eastern Neighborhood Area Plans, Turnstone Consulting will make maximum use of information already developed in the Eastern Neighborhood Area Plans, the Eastern Neighborhoods EIR, the Bike Plan EIR, and the Transbay Transit Center District EIR (if available). The analyses will build on and be consistent with the Eastern Neighborhoods EIR, and the projects will be timed to precede or coincide with the major phases of development.

Turnstone will coordinate closely with the consultant team, SFMTA project management staff, and MEA to insure that the transportation planning and technical analysis prepared for the preceding phases of EN TRIPS will support the requirements of the environmental review documents for the highest priority projects. This coordination will reduce the amount of analysis necessary for the EIR (and NEPA EA/FONSI, if required), and conserve budget.

It should be noted that the approach, scope, and cost of environmental review under CEQA and NEPA are entirely dependent on the nature of the project and the scope of analysis required by the SFMTA. The effort would be simpler if NEPA compliance is not necessary or the project falls under a categorical exclusion. It is not known at this time what the priority project to be analyzed will be. The scope of environmental review for the Folsom Street Redesign, for example, which would require an EIR, background studies and perhaps an EA/FONSI, would be quite different from the scope for the Townsend Street Pedestrian Improvements. A Mitigated Negative Declaration could be appropriate for the Townsend Street project, and it is likely to be

covered by a NEPA categorical exclusion. Turnstone has addressed this uncertainty by assembling a team that can handle all contingencies for the potential projects identified in the RFP, and providing a scope that is general in nature. The number and types of background studies and the actual allocation of effort among the firms and personnel will be determined after the priority project(s) to be analyzed is selected.

As it is unknown at this time what the priority project will be, and whether an EIR or Mitigated Negative Declaration will be appropriate, the schedule shows timelines for both EIR and MND. It includes two rounds of review for technical background studies (preliminary draft and proposed final), and three rounds of review for a Initial Study leading to a MND or Draft EIR and a Comments and Responses document (administrative drafts I and II, Screencheck, and published document). Three weeks are assumed for MEA's review of each document. Given the nature of the priority projects under consideration, it is unlikely that a full joint EIR/EIS will be needed, so that possibility is not reflected in the schedule.

***Compliance with San Francisco Consultant Guidelines and NEPA Considerations.*** The type and scope of the environmental document will be determined by MEA in consultation with the SFMTA and Turnstone. The nature of the work necessary will be driven by the project that is selected for analysis and its potential impacts. The process described here is, of necessity, general and will be tailored to fit the high priority project or projects actually selected for review.

All work will be performed in accordance with FHWA/FTA regulations and the CEQA guidelines as directed in the San Francisco Administrative Code Chapter 31, and the San Francisco Consultant Guidelines. Along with submission of any document or deliverable, Turnstone will provide a signed Consultant's Checklist, with draft submittals, attesting to completeness of review of their own work, required content, and verification that requested changes have been incorporated.

***NEPA Compliance.*** Construction projects funded in part by FHWA or FTA will need to undergo environmental review under the National Environmental Policy Act (NEPA) as well as CEQA review. CEQA supports preparation of joint documents (CEQA Guidelines §15220 et seq.), and both federal transportation agencies prepare joint documents. It is not likely that any of the projects contemplated under the EN TRIPS program would be considered major federal actions resulting in significant environmental impacts that warrant preparation of an EIS under NEPA. It is possible that one or more of the EN TRIPS projects could be actions that meet the criteria established in FHWA/FTA regulations for Categorical Exclusions (23 CFR 771.117); in this case, Turnstone would assist the SFMTA in preparing appropriate documentation to support the determination. Examples of Categorical Exclusions include construction of bus transfer facilities such as passenger shelters in commercial areas.

The priority project(s) may warrant preparation of an Environmental Assessment leading to a Finding of No Significant Impact (FONSI). The EA could be prepared as a joint document with an EIR leading to a federal FONSI, or jointly with a CEQA Initial Study resulting in a MND under CEQA and a FONSI under NEPA. Or, as for the San Quentin Prison seawall project, the City's CEQA document may become the basis for a separately-prepared FTA or FHWA EA and FONSI. An EA requires analysis of topics that are not generally included in CEQA documents, particularly environmental justice and social/economic impacts; in addition, alternatives must be assessed, and public involvement must be summarized. Thus, joint EA/EIR includes a special section on NEPA-required issues; a joint EA/MND includes special sections to add social and economic issues, public involvement, and a brief discussion of alternatives. Noticing requirements are also slightly different. EAs and FONSI do not need to be circulated for public

review, but must be circulated through the State Clearinghouse; notice of availability for review is required to be sent to federal, state, and local agencies; and newspaper notice of the availability of the EA for public comment during a 30-day public review period is required.

### **Task 10a: Prepare Draft Environmental Review Documents**

#### *Task 10a.1. Kick-Off, Notice of Preparation / Initial Study*

Members of the Turnstone EIR team will meet with MEA and SFCTA staff to initiate environmental review and establish the scope of work for the environmental document. It will be determined at this time if the requirements of NEPA will apply to the priority project and what the next steps will be. Turnstone will obtain the MEA environmental coordinator's approval of the written scope of work. Turnstone will prepare for MEA review, revise, publish and distribute an Initial Study. If it is clear that an EIR is necessary, then a Notice of Preparation will also be prepared. The analysis supporting the Initial Study will "tier off" the Eastern Neighborhoods FEIR and use information contained in it to scope out all topics which have already been adequately covered. The Initial Study will further scope out topics where independent analysis or analysis already prepared for other relevant EIRs, such as the Bike Plan FEIR and Transbay Transit Center District FEIR, demonstrates that the priority project does not have to potential the cause a significant impact. When desirable, background studies described in Subtask 10a.2 may be completed during this phase to provide support for scoping out other topics. Turnstone will prepare two drafts and a Screencheck, before publication of these documents.

If the Initial Study shows that the priority project could not have a significant impact on the environment, then a Negative Declaration would be issued, and an EIR would not be prepared. If the Initial Study shows that all potential impacts of the priority project could be avoided with mitigation, and the mitigation measures are incorporated into the project, then a Mitigated Negative Declaration would be issued, and an EIR would not be necessary.

#### *Task 10a.2. Background Studies, Administrative Draft EIRs I and II, Screencheck, Draft EIR*

If it is clear at the outset of analysis, or determined through the Initial Study process, that an EIR is needed, Turnstone will first prepare a detailed project description for review by the SFMTA and MEA. This will set out the specifics of the priority project to be analyzed. In accordance with the scope or the EIR defined in Task 10a.1, the Turnstone environmental review team will prepare background studies and ADEIR I for the selected priority project. The discussion below covers the topics that could be included in the EIR, although many of these topics may also be scoped out in the Initial Study, making analysis in the EIR unnecessary. Background studies may also support no potential for impact and could be summarized in the Initial Study. Therefore, the following topics identified would not all necessarily need to be analyzed in the EIR. However, the Turnstone environmental review team as assembled is capable of addressing all issues that may arise.

*Plans and Policies Consistency and Compatibility.* This section will address conflicts and inconsistencies with existing zoning and adopted plans and policies, including the Eastern Neighborhood Area Plan(s), Bike Plan, and General Plan.

*Land Use.* Because the focus of the Eastern Neighborhoods policies is on connectivity, this section is likely to be scoped out of the EIR by using information contained in the relevant Eastern Neighborhoods Area Plan(s) and EIR, and further developed in the EN TRIPS Report (Task 9). Effects on the integrity and character of existing communities will be addressed.

*Aesthetics and Visual.* Turnstone will concentrate along the corridor on changes in the streetscape and neighborhood character from a pedestrian perspective, discussing close-up and mid-range views. Scenic resources will be identified.

*Transportation and Circulation.* The effect of the priority project on traffic, circulation, loading, and existing and proposed bikeway, transit and pedestrian systems will be addressed by Nelson\Nygaard and Fehr & Peers in the EN TRIPS Report. This information will be summarized for the EIR section. Turnstone has worked on many projects using the SF-CHAMP (SFCTA model) as the basis for the transportation analysis.

*Air Quality.* Orion will evaluate air quality impacts in accordance with BAAQMD CEQA Guideline, although the detailed analysis of intersections to be examined will be determined based on the specific project(s) selected for environmental review. Health issues associated with location of sensitive receptors in proximity to these pollution sources, including toxic air contaminants such as diesel particulate emissions, will be discussed, consistent with the Eastern Neighborhoods Rezoning analysis performed by Orion. The EIR will also review consistency of the project with the Clean Air Plan. Consistent with the recent EIRs for the Eastern Neighborhoods Rezoning and the Water System Improvement Program, Orion will quantify anticipated greenhouse gas emissions that could result from project implementation. In addition, the EIR will evaluate the potential for impacts related to air contaminant emissions adjacent to sensitive uses. The Construction Dust Control Ordinance (Ordinance 176-08, effective July 30, 2008), which intends to reduce the quantity of dust generated during site preparation, demolition and construction work, will address potential impacts from construction activities.

*Noise and Vibration.* Wilson Ihrig will evaluate the potential for noise and vibration from construction and implementation of the priority project to impact sensitive receptors in the area. The DEIR will identify potential noise impacts from construction activities and future development in the Plan area. Wilson Ihrig utilizes many standard acoustical programs such as SoundPlan, Traffic Noise Model, Sound32, etc., in addition to deriving custom analyses for unique situations, but, more importantly, from its decades of experience on EIR/EIS projects, Wilson Ihrig knows how to deliver noise and vibration sections that can withstand the scrutiny of the harshest critic. From previous vibration work in the Eastern Neighborhoods area, Wilson Ihrig understands that much of the soil in that area is fill, which increases the probability of vibration issues from buses, trucks, and rail vehicles.

*Biological Resources.* Turnstone biologists will conduct a site reconnaissance and consult the California Natural Diversity Data Base (CNDDDB), as well as California Native Plant Society (CNPS) publications, to determine whether special status species could be affected by the proposed priority project. Removal of “landmark”, “significant” or street trees will be evaluated under Article 16 of the San Francisco Public Works Code., and the effect of the proposed landscaping will be considered. Appropriate mitigation measures related to disturbance of nesting birds will be included.

*Hazardous Materials.* Hazardous materials and public health impacts are associated with the increased potential to encounter hazardous materials or waste due to implementation of transportation infrastructure improvements. As with any urban area, land uses in the project area currently incorporate use, handling or storage of hazardous materials/wastes, such as in building materials or commercial uses; these uses may have also affected soil and groundwater in the area. Depending on the nature, extent and location of proposed demolition, construction and long-term land uses, there could be increased exposure to hazardous materials or waste. Orion will discuss the types of contaminants that are expected to be encountered within the study area

and describe both construction-related and operation impacts. Consistent with the analysis Orion conducted for the Eastern Neighborhoods Rezoning EIR, Orion will describe the legal requirements and required processes for protecting public health and the environment through remediation, abatement or other control measures that would mitigate potential impacts to less than significant.

*Hydrology/Drainage/Water Quality/Sanitary Sewer System.* Similar to the approach taken in the Eastern Neighborhoods EIR, the Hydrology section will assess potential construction-related impacts to water quality and will qualitatively analyze potential changes in municipal sewage and stormwater runoff associated with implementation of transportation infrastructure improvements. Given the highly developed nature and limited geographic scope of the project area, it is expected that the proposed development would not affect overall operations of the City's combined sewer system and related discharges to the Bay. This section will describe the City's combined sewer-storm drain system, discuss the regulatory framework for control of water quality, and qualitatively assess changes in the volume of discharges to the combined sewer system, if any, as a result of the project along with any substantial cumulative increases from other development. Orion will discuss the relationship of potential hydrologic and water quality impacts to the SFPUC's Sewer System Master Plan currently being developed and for which Orion is currently conducting the environmental review.

*Public Services.* Turnstone will evaluate whether the priority project has the potential to adversely impact utilities, or to generate additional solid waste. Effects on police, fire, and schools that would be addressed in the EN TRIPS report would largely be related to access; any such effects will be summarized in the environmental review documents.

*Cultural and Historical Resources.* Should the priority project involve extensive excavation, or excavation in a sensitive area, William Self Associates will conduct an archaeological archival and records search, and prepare a cultural resource assessment report, and ARD/TP under the direction of Randall Dean of MEA. Pursuant to the requirements of NHPA Section 106, potential impacts to known or suspected resources will be identified. Those resources judged, in accordance with NRHP criteria, to be significant and eligible for Register listing will be identified for mitigation. Although demolition of structures is not anticipated, a National Register designated or eligible historic resources district may be affected by the priority project. If so, under the direction of Planning Department historic preservation technical staff, William Self Associates, experienced in Section 106 compliance, will provide the necessary documentation.

*Growth Inducing and Cumulative Impacts.* Using information developed for the Eastern Neighborhood EIR, the EIR will consider whether the priority project has the potential to induce growth. Cumulative impacts will be discussed in the context of other development within the Eastern Neighborhoods. The cumulative analysis year for transportation is 2030.

*Alternatives.* The EIR will assess alternatives to the project and compare the impacts to existing conditions and the priority project. No Project will be discussed, as will some or all of the alternatives developed in EN TRIPS Task 6b: Preliminary Project Specific Design Concepts.

*Task 10a.3. Draft and Final Mitigation Monitoring and Reporting Program.*

At the time of submission of ADEIR II, Turnstone will prepare a draft MMRP for review by Planning Department and SFMTA staff. The MMRP will be based on mitigation measures identified in the EIR. After review, the MMRP will be revised and finalized.

**OPTIONAL Task 10b: Prepare an EIR for Additional Select Project(s).**

Should the SFTCA desire to have an EIR prepared for an additional priority project or projects, the approach would parallel that given in Task 10a and Task 12, and the cost would be dependent on the nature of the project and scope of the analysis. Turnstone proposes to work with the MEA and the SFCTA to determine the appropriate environmental documents and develop a scope and budget estimate for the document and necessary background studies, as soon as the additional select projects are identified. The optional task described in this proposal plans for the preparation of a scope and budget, but does not include sufficient resources to complete environmental review for a second project.

**TASK 11: FINAL EN TRIPS REPORT**

*Consultant role: to assist with any final revisions to EN TRIPS Report based on public review*

*City and County staff role: 1) to make final revisions to the EN TRIPS Report based on public review; and 2) to pay for reproduction and report distribution costs*

Expected schedule: 6 weeks from start of task

**Task 11 Deliverable: Final EN TRIPS Report**

Following public review, SFMTA staff will make revisions to the final report. The Nelson\Nygaard team will provide assistance with report revisions as requested by the EN TRIPS project management team.

**TASK 12: FINAL ENVIRONMENTAL REVIEW DOCUMENTS FOR SELECT PROJECT**

*Consultant role: to prepare final environmental review documents*

*City and County staff role: to issue final environmental review documents*

Expected schedule: To be determined.

**Task 12 Deliverable: Final Environmental Review Documents**

Turnstone will organize public comment letters and the transcript from the public hearing on the Draft EIR and annotate by topic for review by the MEA. It is assumed that the comments need not be retyped and organized by topic; comment letters will be numbered and comments identified in the margin, with responses on following pages. Turnstone will meet with MEA and SFMTA staff to discuss approaches to responses, including Master Responses for appropriate topics. Preliminary draft responses to comments will be submitted to the MEA for review.

Based on a consolidated set of comments, Turnstone will revise and submit a second draft and a Screencheck to the MEA for final review and authorization to publish. Turnstone will publish and distribute the Responses to Comments document, and create CDs as directed by the MEA. Turnstone staff will attend the public hearing on certification of the Final EIR by the Planning Commission, and will supply a court reporter to transcribe that action. San Francisco requires that a Consolidated Final EIR be prepared and printed. This document includes the Draft EIR, with the revisions identified in the responses and in the staff-initiated text changes section integrated into the Draft EIR text, a chapter containing the Comments and Responses, and the certification motion(s).

## **PROJECT MANAGEMENT/IMPLEMENTATION PLAN**

Contractor's Project Manager, in coordination with SFMTA's Project Manager and subconsultant managers (as necessary), shall:

- Prepare a project implementation plan, to be updated as needed throughout the project, with all background information, contacts, protocols and an outline of the deliverables to be produced.
- Schedule and hold bi-weekly, approximately one-hour, project meetings via conference call to discuss project milestones, activities, and potential issues.
- Conduct monthly program management meetings involving the key technical disciplines to coordinate work efforts, check on task completion, and review budget conformance.
- Prepare monthly progress reports to SFMTA that include estimates of percentage completion for tasks that are in progress.
- Update and distribute project schedule once a month.
- Issue minutes identifying action items by responsible party after each meeting.

## **II. Reports**

Consultant shall submit written reports as requested by the SFMTA. Format for the content of such reports shall be determined by the SFMTA. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

## **III. SFMTA Liaison**

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

**Suzanne Chen-Harding, Project Manager**  
San Francisco Municipal Transportation Agency  
1 South Van Ness Ave., 7th floor  
San Francisco, CA 94103  
tel: 415-701-5228  
fax: 415-701-4343

## **IV. Special Provisions**

1. Contractor shall respond to all emails and telephone calls within 1 business day.
2. Contractor shall provide the SFMTA at least 48 hours notice if it is unable to meet any milestone contained in Appendix B, along with the reasons for such failure. Along with such notice, Contractor shall submit a proposed timeline to meet the milestone without affecting the timeline for other milestones or the completion date of the project, if feasible. The Contractor's submission of a new milestone date(s) and the SFMTA's acceptance of such date(s) shall not affect Contractor's liability for payment of liquidated damages under Section 19 of this Agreement.
3. All documents prepared for the Environmental Review tasks must be in compliance with the San Francisco Planning Department's "Consultant Guidelines for the Preparation of Environmental Review Documents."
4. Contractor shall comply with the existing SFMTA Quality Assurance Program, and develop and submit for SFMTA acceptance Contractor's Quality Assurance / Quality Control (QA/QC) procedures, within 45 days of receipt of the NTP, covering all Contractor's activities and deliverables under this Agreement. The QA/QC procedures must describe the controls to be implemented by the Contractor to assure compliance with SFMTA Quality Assurance Program requirements. SFMTA reserves the right to undertake QA/QC audits and surveillances to confirm compliance with the above requirements. The preparation of QA/QC procedures shall be incidental to all tasks and shall not be billed separately to the SFMTA.

**Exhibit B  
Compensation and Payment**

**Schedule of Rates:**

**Direct Hourly Rates by Position and Overhead rates**

**Nelson\Nygaard**

Bonnie Nelson	\$82.19
Jeff Tumlin	\$82.19
Jeremy Nelson	\$50.58
Michael Eiseman	\$44.26
Anneka Imkamp	\$44.26
Associate	\$35.82
Publications	\$35.82
Overhead/Burden	130%

**Fehr and Peers**

Matthew Ridgway	\$79.32
Chris Mitchell	\$51.44
Eric Womeldorff	\$33.65
Phyllis Chan	\$31.73
Seth Andrzejewski	\$30.05
Christine Fitzgerald	\$43.27
Brooke Dubose	\$33.65
Matt Goyne	\$27.88
Jill Manning	\$28.13
Aba Owens	\$22.60
Overhead/Burden	171%

**Community Design + Architecture**

Philip Erickson	\$70.67
Thomas Kronemeyer	\$36.00
Greg Pasquali	\$26.50
Amy Sommer	\$23.50
Project Urban Designer	\$25.00
Overhead/Burden	180%

**Turnstone Consulting**

Nancy Clark	\$109.61
Barbara Sahn	\$109.61
J Barlow	\$47.19
M Kometani	\$49.99
M Li	\$49.97
B Westree	\$39.73
Senior Planner	\$52.14
Staff Planner	\$48.29
Staff Scientist	\$41.86
Project Planner	\$30.82
Editor	\$36.49
Project Coordinator	\$24.68
Overhead/Burden	221%

## EN TRIPS Subtask Budget

Task	Description	Milestone	Amount	Due Date*
<b>1. Project Kickoff</b>				
1.a	Project kickoff Meeting			
Task Deliverable	Refined Workscope, Meeting agenda and minutes	Delivered/accepted by SFMTA		2 weeks from NTP
Direct Labor + Overhead			<b>\$3,190</b>	
Other Direct Costs			<b>\$0</b>	
Fixed Fee			<b>\$320</b>	
<b>TOTAL TASK</b>			<b>\$3,510</b>	
<b>2. Outreach program</b>				
2.a	TAC and CAC	Completion of meetings		
2.b	Public Workshops	Completion of workshop		
Task Deliverable	Workshop Series Summaries and Outreach Program Final Report.	Delivered/accepted by SFMTA		2 weeks from each workshop series
Direct Labor + Overhead			<b>\$33,973</b>	
Other Direct Costs			<b>\$100</b>	
Fixed Fee			<b>\$3,396</b>	
<b>TOTAL TASK</b>			<b>\$37,469</b>	
<b>3. Current Conditions: Issues and Opportunities</b>				
3.a	Develop a system performance evaluation framework	Reviewed/approved by SFMTA		
3.b	Circulation Analysis	Reviewed/approved by SFMTA		
Task Deliverable	Issues and Opportunities Report	Delivered/accepted by SFMTA		12 weeks from start of task
Direct Labor + Overhead			<b>\$36,346</b>	
Other Direct Costs			<b>\$100</b>	
Fixed Fee			<b>\$3,635</b>	
<b>TOTAL TASK</b>			<b>\$40,081</b>	
<b>4. Travel Demand Modeling Analysis and Analysis Support</b>				
4.a	Travel-Demand Modeling Post-processing	Reviewed/approved by SFMTA		
Task Deliverable	Travel Demand Modeling Results			14 weeks from start of task
Direct Labor + Overhead			<b>\$23,546</b>	
Other Direct Costs			<b>\$100</b>	
Fixed Fee			<b>\$2,355</b>	
<b>TOTAL TASK</b>			<b>\$26,001</b>	
<b>5. Future Conditions: Circulation and Operational Needs Analysis</b>				
Task 5.a	Overall Circulation	Reviewed/approved by SFMTA		
Task 5.b	Transit	Reviewed/approved by SFMTA		

<b>Task</b>	<b>Description</b>	<b>Milestone</b>	<b>Amount</b>	<b>Due Date*</b>
Task 5.c	Pedestrian	Reviewed/approved by SFMTA		
Task 5.d	Bicycles	Reviewed/approved by SFMTA		
Task 5.e	Traffic	Reviewed/approved by SFMTA		
Task 5.f	Parking	Reviewed/approved by SFMTA		
Task 5.g	Goods movement	Reviewed/approved by SFMTA		
Task Deliverable	Base and Future Year Land Use and Transportation Conditions Report	Delivered/accepted by SFMTA		10 weeks from start of task
Direct Labor + Overhead			<b>\$74,962</b>	
Other Direct Costs			<b>\$400</b>	
Fixed Fee			<b>\$7,496</b>	
<b>TOTAL TASK</b>			<b>\$82,858</b>	
<b>6. Circulation Plan Alternatives Analysis</b>				
Task 6.a	Preliminary Circulation Plan alternatives	Reviewed/approved by SFMTA		
Task 6.b1	Preliminary Project-specific design concepts - General Task coordination etc	Reviewed/approved by SFMTA		
Task 6.b2	Preliminary Project-specific design concepts - Folsom St Redesign	Reviewed/approved by SFMTA		
Task 6.b3	Preliminary Project-specific design concepts - 16th St Corridor	Reviewed/approved by SFMTA		
Task 6.b4	Preliminary Project-specific design concepts - Townsend Street Pedestrian Improvements	Reviewed/approved by SFMTA		
Task 6.b5	Preliminary Project-specific design concepts - Other Projects TBD	Reviewed/approved by SFMTA		
Task Deliverable	Circulation Plan Alternatives and Preliminary Project Specific Design Concepts	Delivered/accepted by SFMTA		14 weeks from start of task
Direct Labor + Overhead			<b>\$77,109</b>	
Other Direct Costs			<b>\$300</b>	
Fixed Fee			<b>\$7,711</b>	
<b>TOTAL TASK</b>			<b>\$85,120</b>	
<b>7. Refine Key Transportation and Public Realm Improvement Projects</b>				
7.a1	Project design assistance - Review SFMTA designs	Reviewed/approved by SFMTA		
7a.2	Project design assistance - Renderings/other additional drawings	Reviewed/approved by SFMTA		
Task Deliverable	Deliverable: Transportation and Public Realm Improvement Projects Report	Delivered/accepted by SFMTA		12 weeks from start of task
Direct Labor + Overhead			<b>\$24,295</b>	
Other Direct Costs			<b>\$300</b>	
Fixed Fee			<b>\$2,430</b>	
<b>TOTAL TASK</b>			<b>\$27,025</b>	
<b>8. Create Funding and Implementation Strategy (No Consultant Role)</b>				
<b>9. Preparation of Draft EN Trips Report</b>				

Task	Description	Milestone	Amount	Due Date*
9.a	Report Preparation Assistance	Reviewed/approved by SFMTA		
Task Deliverable	Deliverable: Draft EN Trips Report	Delivered/accepted by SFMTA		13 weeks from start of task
Direct Labor + Overhead			\$12,956	
Other Direct Costs			\$300	
Fixed Fee			\$1,295	
<b>TOTAL TASK</b>			<b>\$14,551</b>	
<b>10. Draft Environmental Review Documents for Select Projects - Scope, budget and schedule to be refined dependent upon priority project(s)</b>				
10.a1	Kick-Off, Notice of Preparation, Initial Study			
10.a2	Background Studies, Administrative Draft EIRs 1 and 2, Screencheck, and Draft EIRS			
10.a.3	Draft and Final Mitigation Monitoring and Reporting Programs			
10b.1	Optional: Kick-off, Scoping for Environmental Review for Additional Priority Project			
Task Deliverable	Draft Environmental Review Documents for Select Projects			TBD
Direct Labor + Overhead			\$84,879	
Other Direct Costs			\$45,339	
Fixed Fee			\$8,488	
<b>TOTAL TASK</b>			<b>\$138,706</b>	
<b>11. Final EN Trips Report</b>				
11.a	Final Report Preparation Assistance			
Task Deliverable	Final EN Trips Report			6 weeks from start of task
Direct Labor + Overhead			\$4,344	
Other Direct Costs			\$300	
Fixed Fee			\$434	
<b>TOTAL TASK</b>			<b>\$5,078</b>	
<b>12. Final Environmental Review Documents for Select Projects - Scope, budget and schedule to be refined dependent upon priority project(s)</b>				
12.a	Deliverable: Final Environmental Review Documents			
Task Deliverable	Final Environmental Review Documents for Select Projects			TBD
Direct Labor + Overhead			\$18,313	
Other Direct Costs			\$2,300	
Fixed Fee			\$1,832	
<b>TOTAL TASK</b>			<b>\$22,445</b>	
<b>PROJECT TOTAL</b>			<b>\$482,844</b>	
<b>Optional Tasks</b>				
2.c	Optional: Stakeholder Meetings			
Direct Labor + Overhead			\$6,907	

<b>Task</b>	<b>Description</b>	<b>Milestone</b>	<b>Amount</b>	<b>Due Date*</b>
Other Direct Costs			<b>\$0</b>	
Fixed Fee			<b>\$690</b>	
<b>TOTAL TASK</b>			<b>\$7,597</b>	
10b.1	Optional: Kick-off, Scoping for Environmental Review for Additional Priority Project			
Direct Labor + Overhead			<b>\$5,882</b>	
Other Direct Costs			<b>\$0</b>	
Fixed Fee			<b>\$588</b>	
<b>TOTAL TASK</b>			<b>\$6,470</b>	
<b>OPTIONAL TASKS TOTAL</b>			<b>\$14,067</b>	

\* Liquidated damages will accrue if milestone is not met as per Article 19 of this Agreement.

## EXHIBIT C

### FHWA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

#### 1. DEFINITIONS

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

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

**C. Federal Highways Administration (FHWA)** is an operating administration of the U.S. DOT.

**D. FHWA Directive** includes any FHWA circular, notice, order or guidance providing information about FHWA's programs, application processing procedures, and Project management guidelines. In addition to FHWA directives, certain U.S. DOT directives also apply to the Project.

**E. Grant Agreement** means the instrument by which FHWA awards Federal assistance to a specific Recipient to support a particular Project, and in which FHWA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.

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

**G. 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.

**H. Recipient** means any entity that receives Federal assistance directly from FHWA to accomplish the Project. The term "Recipient" includes each FHWA "Grantee" as well as each FHWA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

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

**J. 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 FHWA.

**K. 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 FHWA.

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

## **2. FEDERAL CHANGES**

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

## **3. DEBARMENT AND SUSPENSION**

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

## **4. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR**

**A.** The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

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

## **5. ENERGY CONSERVATION REQUIREMENTS**

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

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

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

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

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

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

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

## **8. CIVIL RIGHTS**

**A. Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FHWA may issue.

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

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

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

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

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

**D.** The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FHWA.

## **9. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS**

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

**B.** The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FHWA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

## **10. 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.

#### **11. COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Contractor; to solicit or secure this Agreement; and that it has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award, or formation of this Agreement. For breach or violation of this warranty, the SFMTA shall have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

## Exhibit D

### DISADVANTAGED BUSINESS ENTERPRISE INFORMATION (PROFESSIONAL SERVICE INSERT)

#### 1.1 FEDERAL HIGHWAY ADMINISTRATION (FHWA) FUNDED CONTRACTS

- A. This project is subject to Title 49, Code of Federal Regulations part 26 (49 CFR 26) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs." The regulations in their entirety are incorporated herein by this reference.
- B. Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26.5 are encouraged to participate in this Contract. The Contractor shall ensure that DBEs have the opportunity to participate in the performance of this Contract and shall take all necessary and reasonable steps for this assurance. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.
- C. On May 1, 2006, Caltrans implemented a race-neutral DBE program, which include the following changes with respect with third party contracts funded by grants from FHWA:
  - 1. The City may no longer advertise and award contracts with federal-aid funds containing race-conscious DBE goals.
  - 2. The City will still collect and report participation and utilization by DBEs on federal-aid contracts.
  - 3. Federal-aid contracts shall contain race-neutral DBE contract language.

#### 1.2 TERMS AS USED IN THIS DOCUMENT

- A. **Annual Anticipated DBE Participation Level (AADPL)**: The level of participation that the local agency would expect DBEs to achieve in the absence of discrimination and the effects of past discrimination on federal-aid contracts awarded in its jurisdiction in a given Federal Fiscal Year. This includes an assessment of the availability for specific items of work that DBEs could reasonably be expected to compete for subcontracting opportunities on a federal-aid contract and their likely availability for work on federal-aid contracts that will be awarded in a given fiscal year. The AADPL is not a goal that the local agency needs to achieve, but the AADPL will be used by Caltrans to establish a statewide overall DBE participation goal as required by Title 49, Part 26 of the CFR. The local agency must have an approved AADPL on file with the DLAE before federal funds can be authorized on any new federal-aid consultant or construction contract.
- B. **Disadvantaged Business Enterprise (DBE)**: A for-profit "small business concern" is as defined in 49 CFR 26.65 that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals. One or more such individuals must

also control the management and daily business operations. These individuals must be citizens of the United States and (1) any individual who the City finds to be a socially and economically disadvantaged individual on a case-by-case basis, or (2) who are either Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, women, or any other group found to be socially and economically disadvantaged by the Small Business Administration. This definition was revised in 1987 to include women.

- C. **Race-Neutral Measure of Program:** A race-neutral measure or program is one that, while benefiting DBEs, is not solely focused on DBE firms. For example, small business outreach programs, technical assistance programs, and prompt payment clauses can assist a wide variety of small businesses, not just DBEs. For purposes here, race-neutral includes gender neutrality.
- D. **Small Business Concern:** Small Business Concern means, with respect to firms seeking to participate as DBEs in U.S. Department of Transportation (DOT) assisted contracts, a small business concern as defined pursuant to Section 3 of Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in Section 26.65(b) of 49 CFR.
- E. **Statewide Overall DBE Goal:** As required by federal law, Caltrans has established a statewide overall DBE goal. This is the level of DBE participation that Caltrans would expect DBEs to achieve in the absence of discrimination and the effects of past discrimination in a given fiscal year. In order to ascertain whether the Statewide Overall DBE Goal is achieved, Caltrans will track DBE participation on all Federal-aid contracts.

### 1.3 DBE PROGRAM

- A. Bidders shall be fully informed in respect to the requirements of the referenced federal DBE regulations and the DBE program developed by the California Department of Transportation pursuant to those regulations. Attention is directed to the following matters:
  - 1. A DBE must be a small business concern as defined pursuant to 13 CFR 121 and be certified through the California Unified Certification Program (CUCP).
  - 2. A DBE may participate as a prime contractor, subcontractor, joint venture partner with a prime or subcontractor, as a vendor of material or supplies, or as a trucking company.
  - 3. A DBE joint venture partner must be responsible for specific contract items of work, or clearly defined portions thereof. Responsibility means actually performing, managing and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks and profits of the joint venture commensurate with its ownership interest.
  - 4. A DBE must perform a commercially useful function pursuant to 49 CFR 26.55; that is responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work.

5. The bidder (prime contractor) shall list only one subcontractor for each portion of work as defined in their bid/proposal and all DBE subcontractors should be listed in the bid/cost proposal list of subcontractors.
6. A prime contractor who is a certified DBE is eligible to claim all of the work in the contract toward the DBE participation except that portion of the work to be performed by non-DBE subcontractors.
7. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
  - a. The Caltrans "Civil Rights" web site at:  
<http://www.dot.ca.gov/hq/bep>
  - b. The Caltrans DBE Directory: This Directory may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520.

**B. When reporting DBE participation, bidders may count the cost of materials or supplies purchased from DBEs as follows:**

1. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies will count toward DBE participation. A DBE 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.
2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph B.2. if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph B.2.
3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.

**C. When reporting DBE participation, bidders may count the participation of DBE**

trucking companies as follows:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
  2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract;
  3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks its owns, insures, and operates using drivers it employs;
  4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract;
  5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE;
  6. For the purposes of this paragraph C, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- D.** When a DBE performs as a participant in a joint venture, a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces will counted toward the DBE participation.

#### **1.4 POST AWARD FORMS:**

**1. SFMTA FORM No. 6 - PROGRESS PAYMENT REPORT**

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

**2. SFMTA FORM No. 7 - SUBCONSULTANT PAYMENT DECLARATION**

Consultant shall complete SFMTA FORM No. 7 and submit it to CCO (copy to Project Manager) within five (5) working days following each payment to subconsultants in compliance with prompt payment requirements. Note: This form shall provide evidence that the Consultant has complied with the prompt payment provisions of the Contract.

3. **SFMTA FORM No. 8 – DECLARATION – AMENDMENTS OF PROFESSIONAL SERVICES CONTRACTS**

This form shall be completed when processing all modifications, supplements or change orders that cumulatively increase the original amount of the contract. All prime consultants, individual joint venture partners, subconsultants and any other vendors participating in the modification must be listed.

4. **EXHIBIT 17-F FINAL REPORT UTILIZATION OF DISADVANTAGED BUSINESSES**

Consultant, including all joint venture partners, if any, shall complete Exhibit 17-F and submit it to the Project Manager (copy to CCO) with its final progress payment application. Consultant must provide complete and accurate information on Exhibit 17-F and have it executed by all DBE joint venture partners and all subconsultants.

**POST AWARD SUBMITTAL**

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

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

TRANSMITTAL To: Project Manager Copy: Contract Compliance Office

From: Consultant \_\_\_\_\_ Date Transmitted: \_\_\_\_\_

<b><i>PART 1: Fill in all blanks and check the box below.</i></b>	
Contract Number:	Contract Title:
Reporting Period (Month and Year): _____	
Corresponding Progress Payment No.: _____	
<u>Note:</u> The information submitted on Parts 1 and 2 of this form is accurate for the progress payment period immediately preceding that of the current payment application attached herewith.	
1. Amount of Prime Contract	\$
2. Amount of Change Orders, Amendments and Modifications to Date	\$
3. Total Contract to Date including Change Orders, Amendments and Modifications (Line 1 + Line 2)	\$
4. Amount Invoiced this Reporting Period	\$
5. Total Amount Paid to Date including Retention (excluding Line 4)	\$
6. Amount of Progress Payment Requested to Date (Line 4 + Line 5)	\$
7. Percent Complete (Line 6 ÷ Line 3)	
8. Reporting Period - From (date):	To (date):

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Owner/Authorized Representative

Name & Title (Please Print) Date

\_\_\_\_\_  
Firm Name

( ) \_\_\_\_\_  
Telephone

( ) \_\_\_\_\_  
Fax

Name & Title (Please Print) Date

\_\_\_\_\_  
Firm Name

( ) \_\_\_\_\_  
Telephone

( ) \_\_\_\_\_  
Fax



<b>TOTALS</b>							

**END OF SFMTA FORM NO. 6**

**POST AWARD SUBMITTAL  
SFMTA FORM No. 7  
SUBCONSULTANT PAYMENT DECLARATION**

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

**TRANSMITTAL TO:** Contract Compliance Office

**COPY TO:** Project Manager

From: Prime Consultant: \_\_\_\_\_ Date Transmitted: \_\_\_\_\_

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

Contract No.: \_\_\_\_\_ Contract Title: \_\_\_\_\_

Contract Awarding Department: \_\_\_\_\_

Progress Payment No.: \_\_\_\_\_ Period Ending: \_\_\_\_\_

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

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

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

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

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Name (Please print/type)

\_\_\_\_\_  
Name (Please print/type)

\_\_\_\_\_  
Title (Please print/type)                      Date

\_\_\_\_\_  
Title (Please print/type)                      Date

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Telephone                                      Fax

\_\_\_\_\_  
Telephone                                      Fax

**END OF SFMTA FORM NO. 7**





**POST AWARD SUBMITTAL  
SFMTA FORM 8**

**DECLARATION – AMENDMENTS TO PROFESSIONAL SERVICE CONTRACTS**

Information is needed for each firm listed on Page 1 (prime consultants, joint venture partners, subconsultants and suppliers). Firms that have previously worked on City contracts may already have a vendor number. You may enter the vendor or federal I.D. number instead of completing the rest of the information. Use additional sheets if necessary.

FIRM NAME			
ADDRESS:			
CITY:		FEDERAL I.D. NO.:	VENDOR NO.
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		
FIRM NAME			
ADDRESS:			
CITY:		FEDERAL I.D. NO.:	
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		
FIRM NAME			
ADDRESS:			
CITY:		FEDERAL I.D. NO.:	
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		
FIRM NAME			
ADDRESS:			
CITY:		FEDERAL I.D. NO.:	
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		

ETHNIC OWNERSHIP: Asian, Black, Hispanic, Native American, White, Other (please state) \_\_\_\_\_.

**END OF SFMTA FORM NO. 8**



**EXHIBIT 17-F**  
**Final Report of Utilization of Disadvantaged Businesses**

**EXHIBIT 17-F**

EXHIBIT 17-F FINAL REPORT UTILIZATION OF DISADVANTAGED BUSINESSES



STATE OF CALIFORNIA - DEPARTMENT OF TRANSPORTATION  
**LOCAL ASSISTANCE - FEDERAL - FINAL REPORT - UTILIZATION OF  
DISADVANTAGED BUSINESS ENTERPRISES (DBE), FIRST-TIER  
SUBCONTRACTORS**  
Revised 8/04

CONTRACT NUMBER		COUNTY	LOCATION	PROJECT DESCRIPTION	FEDERAL AID PROJECT NO.	ADMINISTERING AGENCY			CONTRACT COMPLETION DATE	
PRIME CONTRACTOR/CONSULTANT				BUSINESS ADDRESS			FEDERAL SHARE (For local agency to complete) \$		FINAL CONTRACT AMOUNT \$	
CONTRACT ITEM No.	DESCRIPTION OF WORK PERFORMED AND MATERIAL PROVIDED	SUBCONTRACTOR NAME AND BUSINESS ADDRESS	DBE CERT. NUMBER & EXP. DATE	CONTRACT PAYMENTS					FEDERAL SHARE \$	
				NON-DBE	DBE	DBE (MINORITY)	DBE (NON- MINORITY WOMEN)	DBE (MINORITY WOMEN)	DATE WORK COMPLETE	DATE OF FINAL PAYMENT
\$ _____ ORIGINAL DBE COMMITMENT      _____ Original DBE %				TOTAL PAYMENTS	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	DBE GOAL ATTAINMENT _____
List all First Tier Subcontractors and all Disadvantaged Business Enterprises (DBE s) regardless of tier, whether or not the firms were originally listed for goal credit. If actual DBE utilization (or item of work) was different than that approved at time of award, provide comments on the back of the form. List actual amount paid to each of the DBE even if different than originally listed for goal credit.										
CONTRACTOR/CONSULTANT REPRESENTATIVE'S SIGNATURE						BUSINESS PHONE NUMBER			DATE	
RESIDENT PROJECT ENGINEERS SIGNATURE						BUSINESS PHONE NUMBER			DATE	
AGENCY										

Distribution: (1) Original plus one copy included in the Report of Expenditures - DLAE  
(2) Copy - Local Agency file

FHWA DBE

**EXHIBIT 17-F**  
**Final Report of Utilization of Disadvantaged Businesses**

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Form CP-CEM 2402(F) (Rev. 08/04)  
FINAL REPORT – UTILIZATION OF DISADVANTAGED BUSINESS  
ENTERPRISES (DBE), FIRST-TIER SUBCONTRACTORS (FEDERALLY FUNDED PROJECTS)

The form requires specific information regarding the construction project: Contract Number, County, Route, Post Miles, a box to check that the project is indeed a Federal Aid Project, the Administering Agency, the Contract Completion Date and the Estimated Contract Amount. It requires the Prime Contractor’s name and Business Address. The focus of the form is to describe who did what by contract item numbers and descriptions, asking for specific dollar values of item work completed broken down by subcontractors who performed the work, both DBE and non-DBE work forces. DBE prime contractors are required to show the date of work performed by their own forces along with the corresponding dollar value of work.

The form has a column to enter the Contract Item No (or Item No's) and Description of work performed or Materials provided, as well as a column for the Subcontractor’s Name and Business Address. For firms who are DBE, there is a column to enter their DBE Certification No. The DBE should provide their Certification Number to the Contractor and notify the Contractor in writing with the date of the decertification if their status should change during the course of the project.

The form has five columns for the dollar value to be entered for the item work performed by the subcontractor.

The Non-DBE Column is used to enter the dollar value of work performed for firms who are not certified DBE.

The decision of which column to be used for entering the DBE dollar value is based on what Program(s) the firm is Certified. This Program status is determined by the Civil Rights Certification Unit based on ethnicity, gender, ownership and control issues at time of certification. The certified firm is issued a certificate by the Civil Rights Unit that states their program status as well as the firms Expiration Date. DBE Program status may be obtained by accessing the Civil Rights website ([www.dot.ca.gov/hq/bep/](http://www.dot.ca.gov/hq/bep/)) and downloading the Calcert Extract or by calling (916) 227 2207. Based on this DBE Program status, the following table depicts which column to be used:

DBE Program Status	Column to be used
If program status shows DBE only with no other programs listed	DBE
If program status shows DBE, SMBE	DBE Minority
If program status shows DBE, SMBE, SWBE	DBE (Minority Women)
If program status shows DBE, SWBE	DBE (Non-Minority Women)

If a contractor performing work as a DBE on the project becomes decertified, and still performs work after their decertification date, enter the total dollar value performed by this contractor on Form 2402(F) under the appropriate DBE Program Status (include all work performed after decertification) and complete and submit Form CEM-2403(F) as appropriate. Any comments to be made on the Form 2402(F) are to be explained on the reverse side of the Form. Indicate in the Comment section that Form CEM 2403(F) is being submitted.

**EXHIBIT 17-F**  
**Final Report of Utilization of Disadvantaged Businesses**

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If a contractor performing work as a Non-DBE on the project becomes certified as a DBE enter the dollar value of all work performed as a DBE on CEM-2402(F) and CEM-2403(F). Any comments to be made on the Form 2402(F) are to be explained on the reverse side of the Form. Indicate in the Comment section that Form CEM 2403(F) is being submitted.

There is a space provided on the CEM-2402(F) where the TOTAL is entered for these five columns.

There is a column on the CEM-2402(F) to enter the Date Work Complete as well as a column to enter the Date of Final Payment, which is an indicator of when the Prime Contractor made the "final payment" to the subcontractor for the portion of work listed as being completed.

The Original DBE Commitment area on the CEM-2402(F) is based on information at Award time of the project and is the total dollar value of those subcontractors listed at Award based on the above table.

The CEM-2402(F) has an area at the bottom where the Contractor and the Resident Engineer sign and date that the information provided is complete and correct.

**Exhibit E**  
**Directory of Subconsultants**

Fehr & Peers  
332 Pine Street, 4<sup>th</sup> Floor, San Francisco, CA 94104

Community Design + Architecture, Inc.  
350 Frank H. Ogawa Plaza, 5<sup>th</sup> Floor, Oakland, CA 94612

Turnstone Consulting  
330 Townsend Street, Suite 216, San Francisco, CA 94107

Wilson, Ihrig & Associates, Inc.  
5776 Broadway, Oakland, CA 94618

William Self Associates, Inc.  
61d Avenida de Orinda, Orinda, CA 94563

Orion Environmental Associates  
211 Sutter Street, #500A, San Francisco, CA 94108