File No. 251005 **Committee Item No.** 4
Board Item No. 6

COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee **Date** October 29, 2025
Board of Supervisors Meeting **Date** November 4, 2025

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Completed by: Brent Jalipa **Date** October 23, 2025
Completed by: Brent Jalipa **Date** October 30, 2025

[Agreement - Complete Coach Works - Perform Mid-Life Overhaul Services for 221 Coaches - Not to Exceed $95,443,127.86]

Resolution approving an agreement with Complete Coach Works to perform Mid-Life Overhaul services to replace and rehabilitate systems for up to 152 standard (40ft) Hybrid Electric New Flyer Coaches and 69 articulated (60ft) Hybrid Electric New Flyer Coaches, in an amount not to exceed $95,443,127.86, for an initial term of five years to commence from the date of Notice to Proceed with two one-year options to extend.

WHEREAS, The current rubber tire fleet, is consistently maintaining a mean distance between service interruptions (MDBSI) that meets the daily coach availability demand and is the best performance the fleet has achieved in several decades; and

WHEREAS, A midlife overhaul program is needed to sustain the current MDBSI until the end of the asset life of each bus (12 years for 40-ft and 60-ft hybrid coaches); and

WHEREAS, The Transportation Authority Prop K Grant agreement requires the SFMTA to perform mid-life overhauls on all vehicles; and

WHEREAS, This overhaul program will include substantial work to 221 coaches that have reached their mid-life period; and

WHEREAS, On August 30, 2024, SFMTA Fleet Engineering issued an RFP for the Mid-Life Overhaul Phase II to replace or rehabilitate systems for up to 152 standard (40ft) Hybrid Electric New Flyer Coaches and 69 articulated (60ft) Hybrid Electric New Flyer Coaches; and

WHEREAS, On November 8, 2024, the SFMTA received one proposal from Complete Coach Works (CCW); and

WHEREAS, Per Administrative Code, Section 21.4(b), the SFMTA project team entered negotiations with CCW; and

WHEREAS, SFMTA staff has negotiated an agreement with Complete Coach Works, to perform Mid-Life Overhaul Phase II to replace or rehabilitate systems for up to 152 standard (40ft) Hybrid Electric New Flyer Coaches and 69 articulated (60ft) Hybrid Electric New Flyer Coaches; and

WHEREAS, Based on the above, the SFMTA Board of Directors found that it is in the best interests of the City that the SFMTA procure the mid-life overhaul services from Complete Coach Works; and

WHEREAS, On October 7, 2025, the SFMTA Board of Directors adopted Resolution No. 251007-94, authorizing the Director of Transportation of the SFMTA to execute Contract No. SFMTA-2024-74-FTA with Complete Coach Works to perform Mid-Life Overhaul services to replace and rehabilitate systems for up to 152 standard (40ft) Hybrid Electric New Flyer Coaches and 69 articulated (60ft) Hybrid Electric New Flyer Coaches, in an amount not to exceed $95,443,127.86, and for an initial term of five years with two one-year options to extend; and

WHEREAS, On June 17, 2025, the SFMTA, under authority delegated by the Planning Department, determined that the Contract No. SFMTA-2024-74-FTA is not a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations, Sections 15060(c) and 15378(b); and,

WHEREAS, Under Charter, Section 9.118, the Board of Supervisors must approve this Contract since it is an expenditure contract in excess of $10 million dollars; and

WHEREAS, A copy of the said contract is on file with the Clerk of the Board of Supervisors in File No. 251005, which is declared to be a part of this resolution as if set forth fully herein; now therefore, be it

RESOLVED, That the Board of Supervisors authorizes the SFMTA to enter into a contract with Complete Coach Works to perform Mid-Life Overhaul services to replace and rehabilitate systems for up to 152 standard (40ft) Hybrid Electric New Flyer Coaches and 69 articulated (60ft) Hybrid Electric New Flyer Coaches, in an amount not to exceed $95,443,127.86, and for an initial term of five years with two one-year options to extend; and, be it

FURTHER RESOLVED, That the Board of Supervisors authorizes the SFMTA to approve any additions, amendments or other modifications to the Contract that the Director of Transportation, in consultation with the City Attorney, determines is in the best interest of the SFMTA, do not materially increase the obligations or liabilities of the SFMTA or City, or materially decrease the public benefits accruing to the SFMTA, and are necessary or advisable to complete the transactions contemplated and effectuate the purpose and intent of this Resolution, such determination to be conclusively evidenced by the execution and delivery by the Director of Transportation of any such documents; and, be it

FURTHER RESOLVED, That within 30 days of Contract No. SFMTA-2024-74-FTA being fully executed by all parties, the SFMTA shall provide the final contract to the Clerk of the Board of inclusion into the official file.

Item 4 File 25-1005	Department: Municipal Transportation Agency (MTA)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve a contract between the San Francisco Municipal Transportation Agency (MTA) and Complete Coach Works for a not-to-exceed amount of $95,443,128 and a term of five years to complete Phase II mid-life overhaul services on 221 coaches, with two one-year options to renew for a maximum term of seven years.

Key Points

- MTA maintains a fleet of 856 coaches (rubber tire fleet) that will require mid-life overhaul repairs in phases. Phase I covered the first set of 315 coaches. Phase II will cover the second set of 221 coaches, which are now in the midpoint of their 12-year life cycle, and Phase III will cover 278 coaches and will commence at a date to be determined by the MTA.
- On August 30, 2024, the MTA issued a Request for Proposals (RFP) for Phase II of the mid-life overhaul program. The MTA received one proposal from Complete Coach Works in November 2024. The agency is currently contracted with the vendor for Phase I mid-life overhaul services. Because there was only one proposal, the MTA did not formally score the proposal and instead began negotiating price and schedule with Complete Coach. Complete Coach Works' bid was found to be within five percent of an independent cost estimate prepared before the procurement process.
- The mid-life overhaul work to be completed by Complete Coach Works includes fully repairing, upgrading, testing and preparing each coach so it is ready to be used for regular passenger service.
- The proposed contract contains a liquidated damages provision, a one-year or 50,000 miles (whichever comes first) workmanship warranty requirement, and a minimum $4 million performance and payment bond to guarantee the vendor's performance of all contractual obligations. Coaches are subject to City inspection prior to payment.

Fiscal Impact

- The proposed resolution would approve a contract between the MTA and Complete Coach Works for a total not-to-exceed amount of $95,443,128. The total budget for the entire Phase II of the mid-life overhaul program is $120.6 million, or $545,580 per bus. Approximately 82 percent of expenditures for the entire Phase II program are funded by federal and state funds, and approximately 18 percent are funded by local funds.

Recommendations

- Amend the proposed resolution to correctly state that the term is five years with two one-year options to renew for a maximum contract term of seven years.
- Approve the proposed resolution, as amended.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of $10 million or more, or (3) requires a modification of more than $500,000 is subject to Board of Supervisors approval.

BACKGROUND

San Francisco Municipal Transportation Agency Mid-Life Overhaul Program

The San Francisco Municipal Transportation Agency (MTA) maintains a fleet of 856 coaches (rubber tire fleet). Between 2013 and 2019, the MTA replaced its entire rubber tire fleet with new coaches on a staggered cycle. The agency staggered vehicle purchases to spread out the strain of mid-life maintenance and to average out the age of the fleet. The estimated useful life of 40-foot and 60-foot hybrid coaches is approximately 12 years, as determined by the Federal Transit Administration. The MTA is performing a mid-life overhaul on all the coaches in three phases, as required by the San Francisco County Transportation Authority (SFCTA) Prop K Grant Agreement.[1] Phase I covered the first set of 315 coaches. The MTA overhauled 112 coaches in-house, and Complete Coach Works is overhauling 203 coaches[2] under a contract previously approved by the Board of Supervisors (File 22-0152).

Phase II will cover the second set of 221 coaches, which are now in the midpoint of their life cycle, and Phase III will cover the newest set of 278 coaches[3] and will commence at a date to be determined by the MTA. Phase II consists of a proposed 221 coaches to be overhauled (152 standard 40-foot Hybrid Electric New Flyer Coaches, and 69 articulated 60-foot Hybrid Electric New Flyer Coaches), as detailed in Exhibit 1 below.

[1] SFCTA plans, funds and delivers transportation projects in the City, as well as administers and allocates funds from the City's half-cent transportation sales tax. The Prop K Grant agreement (for the purchase of the vehicles) required the MTA to perform mid-life overhauls on all vehicles.

[2] MTA states that the overhauling of 186 coaches have been completed, and the remaining 17 coaches will be completed by early February 2026.

[3] This does not include 30 El Dorado coaches; MTA is planning for an overhaul project for these coaches in FY27-28

Exhibit 1: Coaches included in Phase II Mid-Life Overhaul

Sales Release (Batch) Number	Type (Coach Length)	Quantity	Propulsion[4]	Arrival Date (at SFMTA)
SR-2043	40-foot	54	Allison	October 2016
SR-2116	60-foot	69	Allison	May 2017
SR-2117	40-foot	68	BAE	June 2018
SR-2118	40-foot	30	BAE	June 2017
Total		**221**		

Source: MTA Phase II Mid-Life Overhaul Request for Proposals

Procurement of Phase II Mid-Life Overhaul Services

On August 30, 2024, the MTA issued a Request for Proposals (RFP) to provide system replacement and rehabilitation services for 221 coaches under Phase II of the mid-life overhaul program. The MTA received one proposal from Complete Coach Works in November 2024.[5] As previously mentioned, the agency is currently contracted with the vendor for Phase I mid-life overhaul services. Because there was only one proposal, the MTA did not formally score the proposal and instead began negotiating price and schedule with Complete Coach Works as allowed under Administrative Code Section 21.4(b). Eight MTA staff members from the Transit division and three consultants from STV comprised the negotiation team.

In March 2024 (before the RFP issuance), MTA obtained an independent cost estimate from STV, a consulting firm, for the cost of the Phase II mid-life overhaul work. In April 2025, the pricing analysis was completed to compare and evaluate the independent cost estimate and vendor's proposal. Complete Coach Works' bid was found to be within five percent of that independent estimate.[6]

[4] Allison and BAE are both manufacturers of the type of propulsion system on the respective coaches. BAE uses series hybrid technology, while Allison uses parallel hybrid technology.

[5] According to MTA, these are possible reasons for the limited number of responses to the RFP: (1) only a few bus manufacturers in the country are currently operating; (2) overhaul work requires a highly niche skillset and is higher risk because of the difficulty in projecting materials and labor costs due to variances in bus conditions; and (3) some vendors may need to make large capital investments to accommodate the workload of overhauling 221 coaches within the project timeline. MTA states that three potential prime contractors attended the pre-bid conference but two decided not to submit a proposal due to reasons unknown by MTA. The RFP also stated that the contractor is required to have (at its own expense) a Post-Delivery Inspection site located within 50 miles of San Francisco so that MTA staff can perform acceptance inspections of the vehicles. According to MTA, this is required because a local site reduces downtime of vehicles returning to service. In addition, the vendor often needs to re-work items found during inspection. Without a local site, all repair and warranty services would need to be conducted at MTA facilities, which are limited and would impair daily maintenance work.

[6] The independent cost estimate used Phase I costs (per the existing contract) with a three percent escalation for inflation to establish an estimated pricing baseline for the overhaul of 40-foot and 60-foot hybrid coaches. The

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a contract between the MTA and Complete Coach Works for a not-to-exceed amount of $95,443,128 and a term of five years to complete Phase II of the mid-life overhaul program for MTA's rubber tire fleet, with two one-year options to renew for a maximum term of seven years. This includes replacing and rehabilitating systems for up to 152 standard (40 foot) Hybrid Electric New Flyer Coaches and 69 articulated (60 foot) Hybrid Electric New Flyer Coaches. The term of the proposed contract will commence upon Board of Supervisors' approval. The proposed resolution states that the maximum term of the contract is five years. However, the proposed contract states that there are two one-year options to renew for a maximum term of seven years. We recommend that the Board of Supervisors amend the proposed resolution to correctly state the term.

Scope of Work

Under the proposed contract, Complete Coach Works would complete Phase II mid-life overhaul services on 221 coaches. This includes fully repairing, upgrading, testing and preparing each coach so it is ready to be used for regular passenger service. The necessary rehabilitations vary by type of coach; however, a summary of general work to be performed includes the following:

- Restoring interior flooring and exterior finish;
- Restoring and replacing operator's seating area;
- Rehabilitating HVAC and cooling systems;
- Electronic equipment (e.g., surveillance cameras) replacement and/or repair;
- Identifying and replacing missing or damaged components;
- Propulsion system replacement and/or repair;
- Electrical wiring and component upgrades and installation; and
- Rehabilitating wheelchair ramps.

The costs associated with each type of coach are summarized in Exhibit 2 below.

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vendor's total vehicle price was approximately 2.58 percent higher than the independent cost estimate. The Phase I independent cost estimate included the review of other overhaul procurements to validate the pricings. MTA states that because Phase II's scope of work is similar, Phase I pricing was used as a baseline. MTA also notes that overhaul contracts from other agencies may include services for different vehicle types, smaller vehicle quantities and other price factors (such as inflation).

Exhibit 2: Phase II Mid-Life Overhaul Costs for Proposed Contract

Quantity	Description[7]	Unit Price	Total Price
54	SR-2043 – 40-foot Allison Hybrid with New ISL Engine	$360,308	$19,456,641
30	SR-2116 – 60-foot Allison Hybrid with New ISL engine and SFMTA Rebuilt Drive Unit	$460,148	$13,804,435
10	SR-2116 – 60-foot Allison Hybrid with SFMTA Rebuilt Engine and SFMTA Rebuilt Drive Unit	$381,383	$3,813,833
29	SR-2116 – 60-foot Allison Hybrid with New ISL engine, Rebuilt Drive Unit with Stator A replaced	$532,008	$15,428,229
68	SR-2117 – 40-foot BAE Hybrid with New ISL engine	$389,559	$26,490,015
30	SR-2118 – 40-foot BAE Hybrid	$364,999	$10,949,976
10	As-Built Drawings, Updated Schematics, and Parts Lists (SR 2043, SR-2116, SR-2117, SR-2118)	No Cost	No Cost
N/A	Special Tools	N/A	$250,000 (fixed allowance)
N/A	Spare Parts	N/A	$250,000 (fixed allowance)
N/A	Unforeseeable Work and Exterior Body Work	Labor & Supplies	$5,000,000
		Total	**$95,443,128**

Source: Proposed Draft Contract

One unit price reflects the labor, materials, facilities, and equipment costs to rehabilitate one vehicle. As shown above, unit prices range from $360,308 for a 40-foot Allison Hybrid Coach with new ISL engine[8] to $532,008 for a 60-foot Allison Hybrid Coach with new ISL engine, rebuilt drive unit with Stator A replacement.[9] The unit prices are from the vendor's proposal in response to the RFP. As previously mentioned, the unit prices were within five percent of the independent cost estimate from STV for the cost of the Phase II mid-life overhaul services.

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[7] The description column indicates the sales release (batch) number, model year, the size/length of the coach, the type of coach, and whether it needs engine work.

[8] The ISL engine is a line of 8.9-liter, inline 6-cylinder engines from Cummins (the engine manufacturer), commonly used in medium-duty and heavy-duty trucks, buses, and motorhomes.

[9] The stator (which is a stationary part that creates a magnetic field and makes the rotor turn) will be replaced in the rebuilt drive unit (traction motor)

Up to $250,000 is reserved for the purchase of spare parts and special tools each[10], and $5 million is reserved for unforeseeable and exterior body work to be paid out based on labor and supplies.[11] In addition, if any systems were modified or upgraded during the overhaul, the vendor is required to provide updated schematics drawings for future maintenance purposes and at no cost.

The MTA will pay Complete Coach Works 60 percent of the cost of each coach repair upon the certification, by an MTA inspector, that the coach has been shipped from Complete Coach Works. The MTA will then pay 35 percent of the cost of each coach upon certifying that the repairs have been completed satisfactorily. The MTA will retain 5 percent of the cost of all items (e.g., coach repair, special tools, spare parts) until all the contract deliverables are satisfied and upon the satisfactory inspection of all coaches at the end of the contract.

MTA is expecting the rehabilitation services to start in Quarter 1 of 2026 with completion of all coaches by early 2028.

Buy America Requirements

Because federal funding will be used to fund the proposed contract, the contract requires Buy America compliance. Pre-delivery and post-delivery audits will confirm domestic content thresholds and final assembly requirements under Federal Transit Administration regulations.

Small Business Enterprise Requirements

Under the proposed contract, Complete Coach Works has committed to achieving 10 percent Small Business Enterprise (SBE) subcontracting participation for the contract.

Performance and Warranty

The proposed contract contains a liquidated damages provision that allows the MTA to fine Complete Coach Works for each day it is late in (1) delivering coaches[12], (2) other project deliverables (special tools, spare parts, drawings)[13], and (3) a plan for correction for any fleet defects or resolution of any specific declared defects.[14] The proposed contract also includes a one-year or 50,000 miles (whichever comes first) workmanship warranty requirement. In addition, the coaches are subject to City inspection prior to payment. Finally, the proposed contract includes a minimum $4 million performance and payment (labor and materials) bond to guarantee the vendor's performance of all contractual obligations, including payment and warranty terms.

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[10] In the RFP, these items were allocated a fixed allowance of one million each but were reduced to $250,000 during negotiations.

[11] According to MTA, based on the existing Phase I mid-life overhaul contract, the average unforeseeable work is roughly averaging $25,000 per coach. Using this as the general guideline, MTA deemed the $5 million amount for unforeseeable work should be reasonable for Phase II's proposed 221 coaches.

[12] $500 per Coach per day

[13] $500 per day per deliverable

[14] $200 per Coach per day

MTA states that the agency will also host weekly production meetings to review the status of the project and monitor the performance of the vendor.

FISCAL IMPACT

The proposed resolution would approve a contract between the MTA and Complete Coach Works for a total not-to-exceed amount of $95,443,128. The total budget for the entire Phase II of the mid-life overhaul program is $120,573,287, or $545,580 per bus. Exhibit 3 below details the sources and uses of the total Phase II budget.

Exhibit 3: Sources and Uses of Funds for Phase II Mid-Life Overhaul Program

Sources	**Amount**
Federal and State	
Federal Transit Administration Section 5307 Urbanized Area Formula Grant Funds	$91,008,083
CA Transportation Commission State Transportation Improvement Program Funds	7,952,000
Subtotal, Federal and State	*$98,960,083*
Local	
CCSF Low Carbon Fuel Sales	561,331
Mission Rock Developer Fees	5,267,431
General Fund Population Baseline Transfer	3,144,442
SFCTA Sales Tax (Prop L - formerly Prop K)	12,640,000
Subtotal, Local	*$21,613,204*
Phase II Total Sources	**$120,573,287**
Expenditures	
Complete Coach Works Contract (221 coaches)	$95,443,128
Other Associated Contract Costs	
Sales Tax (8.625%, paid by City)	8,231,970
Soft Costs - Planning, Design, Project Administration, Inspection and Consultant Support	11,750,344
In-house Materials Purchases	5,147,845
Subtotal, Other Contract Costs	*$25,130,159*
Phase II Total Expenditures (221 Coaches)	**$120,573,287**

Source: MTA

As shown above, the total Phase II cost of $120,573,287 includes the proposed contract's cost of $95,443,128 (79 percent) other associated costs to the MTA of $16,898,189 (14 percent), and sales tax of $8,231,970 (7 percent). According to MTA, the in-house materials purchases ($5,147,845) reflect the cost of procurement for 40 drive units (traction motors[15]) and 10 engines to be used by the agency's in-house machine shop to rehabilitate forty 60-foot Allison Hybrid coaches.

MTA states that the agency does not have sufficient dedicated maintenance staff, overhaul facilities, and material logistics to complete any of the Phase II overhaul in-house while the vehicles are still halfway through their useful life.

In addition, according to MTA, the 221 coaches will eventually need to be replaced; however, because of the agency's anticipated financial constraints in future years, the coaches may need to stay in service beyond their useful life. MTA plans to replace coaches as they reach the end of their useful life and funding becomes available.

Sources of Funds

As shown in Exhibit 3 above, approximately 82 percent of expenditures for the entire Phase II of the mid-life overhaul program are funded by federal and state funds, and approximately 18 percent are funded by local funds.

RECOMMENDATIONS

1. Amend the proposed resolution to correctly state that the term is five years with two one-year options to extend for a maximum term of seven years.
2. Approve the proposed resolution, as amended.

[15] A traction motor is an electric motor used for propulsion of a vehicle

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

Agreement between the City and County of San Francisco and

Complete Coach Works

Contract No. SFMTA-2024-74-FTA

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

Agreement between the City and County of San Francisco and Complete Coach Works Contract No. SFMTA-2024-74-FTA

This Agreement is made as of _________________, in the City and County of San Francisco (City), State of California, by and between Complete Coach Works, a California corporation (Contractor), and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA wishes to obtain the services of a qualified firm to perform system replacement and overhaul/rehabilitation for up to 152 standard (40') Hybrid Electric New Flyer Coaches, and 69 articulated (60') Hybrid Electric New Flyer Coaches, as described in the Request for Proposals (RFP), Volume 1, and in the Technical Specifications, Volume 2.

B. This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on August 30, 2024, pursuant to which City selected Contractor as the highest-qualified scorer.

C. The Small Business Enterprise (SBE) subcontracting participation requirement for this Agreement is 10%.

D. Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.

E. The City's Civil Service Commission approved Contract number DHRPSC0005375 for this Agreement on July 7, 2025.

F. The City's Board of Supervisors approved this Agreement by [insert resolution number] on [insert date of Commission or Board action].

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement.

1.1 "**Acceptance**" means the formal written acceptance by the City that all Work, or a specific portion thereof, under the Contract has been satisfactorily completed.

1.2 “**Agreement**” or “**Contract**” means this contract document covering the performance of the Work and furnishing of labor, materials, equipment, tools, and services, including Work incidental to the procurement, to include the Technical Specifications, all Conformed Contract Documents, the Contract bonds or other security all attached appendices, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference as provided herein.

1.3 “**Award**” means notification from the City to Contractor of acceptance of Contractor’s Proposal, subject to the execution and approval of a satisfactory Contract and bond to secure the performance of the Contract, and to such other conditions as may be specified or otherwise required by law.

1.4 “**Buses**” or “**Coaches**” or “**Vehicles**” means the vehicles rehabilitated under this Contract.

1.5 “**CCO**” means the SFMTA Contract Compliance Office.

1.6 “**City**” or “**the City**” means the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency.

1.7 “**City Data**” means that data as described in Article 13 of this Agreement, which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.8 “**CMD**” means the Contract Monitoring Division of the City.

1.9 “**Conditional Acceptance**” means the circumstance in which a Vehicle has been delivered to the SFMTA and placed in revenue service despite not having met all requirements for Acceptance.

1.10 “**Confidential Information**” means confidential City information including, but not limited to, personal-identifiable information (PII), protected health information (PHI), or individual financial information that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M) Confidential Information includes, without limitation, City Data.

1.11 “**Conformed Contract Documents**” Contract documents revised to incorporate all addenda, and information included in the Contractor's Proposal and accepted by the City.

1.12 “**Contract Administrator**” means the contract administrator assigned to the Contract by the SFMTA, or his or her designated agent.

1.13 “**Contract Modification**” means a written amendment to the Contract, agreed to by the City and Contractor, covering changes in the Conformed Contract Documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the Work affected by the changes.

1.14 “**Contractor**” means Complete Coach Works, 1863 Service Court, Riverside, CA 92507.

1.15 “**Controller**” means the Controller of the City.

1.16 “**Correction**” means the elimination of a Defect.

1.17 “**Day**” (whether or not capitalized) means a calendar day, unless otherwise designated.

1.18 “**Defect**” means any patent or latent malfunctions or failure in manufacture or design of any component or subsystem.

1.19 “**Deliverables**” means Contractor’s work product resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Technical Specifications” attached as Appendix A.

1.20 “**Director**” means the Director of Transportation of the SFMTA or his or her designee.

1.21 “**Disadvantage Business Enterprise**” or “**DBE**” means a for-profit, small business concern owned and controlled by a socially and economically disadvantaged person(s) as defined in 49 Code of Federal Regulations (CFR) Section 26.5.

1.22 “**Effective Date**” means the date the SFMTA notifies Contractor through a Purchase Order that the Controller has certified the availability of funds for this Agreement (as provided in Section 3.1) and the SFMTA directs Contractor to commence performing the Services.

1.23 “**Exterior Body Work**” or “**Body Work**” means the repair of miscellaneous damage to the exterior of the Coaches.

1.24 “**Final Acceptance**” means the formal written Acceptance by the Director of Transportation or his or her designee that all Contract Deliverables for the Contract have been satisfactorily completed and accepted.

1.25 “**First Article Coach**” means the first Coach on each Sales Release (SR) order completed with the Overhaul Work.

1.26 “**Force Account**” refers to Unforeseeable Work or Exterior Body Work performed on a time-and-materials basis when there is no existing agreement on cost (see the Force Account provisions in Appendix C.

1.27 “**Mandatory City Requirements**” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.28 “**Notice to Proceed**” means written notice to the Contractor of the date on which it shall begin prosecution of the Work to be done under the Contract.

1.29 “**Party**” and “**Parties**” mean the City and Contractor either collectively or individually.

1.30 “**Project Manager**” means the project manager assigned to the Contract for the SFMTA, or his or her designated agent.

1.31 “**Proposal**” means the technical and management information and prices submitted by Contractor in response to the RFP.

1.32 “**Purchase Order**” means the written order issued by the City to the Contractor, authorizing the Effective Date as provided in Section 2.1.

1.33 “**Request for Proposals**” or “**RFP**” means the Request for Proposals (Volumes 1 and 2) issued by the SFMTA on August 30, 2024 for the system replacement and overhaul/rehabilitation for up to 152 standard (40’) Hybrid Electric New Flyer Coaches, and 69 articulated (60’) Hybrid Electric New Flyer Coaches, as amended by addenda.

1.34 “**San Francisco Municipal Transportation Agency**” or “**SFMTA**” means the agency of City with jurisdiction over all surface transportation in San Francisco, as provided under Article VIIIA of the City’s Charter.

1.35 “**Small Business Enterprise**” or “**SBE**” means a for-profit, small business concern with a three-year average gross revenue that do not exceed the thresholds set forth in RFP Appendix A, Section III.B and either: 1) is certified under any of the following programs: the State of California's Small Business Program with the Department of General Services (State Program), the City and County of San Francisco's LBE Program (City Program), or the California Unified Certification Program (Federal DBE program), or 2) has received written confirmation from CCO that it meets the SFMTA’s program eligibility requirements.

1.36 “**Subcontractor**” or “**Supplier**” means any individual, partnership, firm, or corporation that, under an agreement with Contractor, undertakes integrally on the Project the partial or total design, manufacture, performance of, or furnishes one or more items of work under the terms of the Contract. As used in this Agreement, the terms Subcontractor and Supplier are synonymous.

1.37 "**Technical Specifications**" means the portion of the Conformed Contract Documents found in Volume 2 that contain the specifications, provisions, and requirements that detail the Work and the materials, products (including the assembly and testing), and other requirements relative to the performance of the Work.

1.38 "**Unavoidable Delay**" means an interruption of the work beyond the control of the Contractor, which the Contractor could not have avoided by the exercise of care, prudence, foresight, and diligence. Such delays include and are limited to acts of God; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes and lockouts; freight embargoes; acts of a governmental agency; 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; changes in the work ordered by the City insofar as they necessarily require additional time in which to complete the entire work; the prevention by the City of the Contractor's commencing or prosecuting the work. The duration of said Unavoidable Delay shall be limited to the extent that the commencement, prosecution, and completion of the work are delayed thereby, as determined by the City.

1.39 "**Unforeseeable Work**" means any work performed by the Contractor that is not reasonably able to be anticipated or expected upon the delivery of the Coaches and that is not included in the Scope of Work found in the Technical Specifications.

1.40 "**Work**" or "**Services**" means the furnishing of all design, engineering, manufacturing, labor, supervision, services, products, materials, machinery, equipment, tools, supplies, and facilities and the performance of all requirements called for by the Contract and necessary to the completion and warranty of the Vehicles, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.41 "**Working Days**" means those Days during which regular business is conducted, excluding Saturdays, Sundays, and all Federal, State, and municipal holidays that are observed by the SFMTA during the duration of the Contract.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the Effective Date and expire five years thereafter, unless earlier terminated as otherwise provided herein.

2.2 The City has two options to renew the Agreement for a period of 12 months each. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5 (Modification of this Agreement).

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions

3.1.1 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 in the form of a Purchase Order, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

3.1.2 Maximum Costs. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5 (Modification of this Agreement).

3.2 Authorization to Commence Work. Contractor shall not commence any work under this Agreement until City has issued formal written authorization to proceed, such as a Purchase Order, or Notice to Proceed. Such authorization may be for a partial or full scope of work.

3.3 Compensation

3.3.1 Calculation of Charges and Contract Not to Exceed Amount . Contractor shall provide an invoice to the SFMTA pursuant to the Schedule set out in Appendix B.5 (Payment Milestones). Compensation shall be made for goods and/or Services identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes have been satisfactorily performed. In no event shall the amount of this Agreement exceed Ninety five million four hundred forty-three thousand one hundred twenty eight dollars ($95,443,128). The breakdown of charges associated with this Agreement appears in Appendix B.1, (Schedule of Prices). Compensation for Unforeseeable Work and Exterior Body Work shall be negotiated as a lump sum or, if the parties are unable to agree on an amount, on a Force Account basis with a maximum not-to-exceed amount, according to the provisions of Appendix C, (Force Account Provisions). As described in Appendix B.5, (Payment Milestones), the City may withhold 5% of payment as retention until the conclusion of the Agreement if agreed to by both Parties. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

3.3.2 Payment Limited to Satisfactory Services and Delivery of Goods. Contractor is not entitled to any payments from City until the SFMTA approves the goods and/or Services, including any furnished Deliverables delivered under this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials or other goods and/or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, goods or Services was apparent or could have been detected at the time such payment was made. Non-conforming Services may be rejected by the City and in such case, must be replaced by Contractor without delay at no cost to the City.

3.3.3 Withhold Payments. If Contractor fails to provide Deliverables, equipment, components, materials, other goods and/or Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and the SFMTA, and include a unique invoice number and a specific invoice date. City will make payment as specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing. Each Contractor invoice shall contain the following information:

(a) Contract Number
(b) Purchase Order Number
(c) PeopleSoft Supplier Name and ID
(d) Relevant milestones
(e) Description of the Services performed and/or goods delivered
(f) Quantity of items
(g) Unit price
(h) Sales/use tax (if applicable)
(i) Total contract price/invoice amount
(j) Supporting documentation and/or documentation referencing submittal or delivery.

Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.5 Payment Terms

(a) Payment Due Date: Unless the SFMTA notifies the Contractor that a dispute exists, Payment will be made within 30 Days, measured from (1) the delivery of goods and/or the rendering of services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted the electronic payment to Contractor.

(b) Reserved. (Payment Discount Terms)

(c) No Late Fees: No additional charge shall accrue against City in the event City does not make payment within any time specified by Contractor.

3.3.6 Progress Payment Form. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of the SFMTA Progress Payment Form (SFMTA Form No. 6). 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.

3.3.7 SBE/DBE Payment and Utilization Tracking System. Contractor shall pay SBE/DBE subcontractors within three business days as required by Appendix D, Section XXXI, Prompt Payment. Within ten business days of the SFMTA's payment of an invoice, Contractor shall confirm that all subcontractors have been paid via the B2GNow System (https://sfmta.diversitycompliance.com/). Failure to submit all required payment information to the City's Financial System with each payment request may result in the withholding of 20% of the payment due.

3.3.8 Getting Paid by the City for Goods and/or Services

(a) The City utilizes a commercial product through its banking partner to pay City contractors electronically. Contractor shall sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit SF City Partner at sfgov.org.

(b) At the option of City, Contractor may be required to submit invoices directly in the City's financial and procurement system. Refer to https://sfcitypartner.sfgov.org/pages/training.aspx for more information.

3.3.9 Grant-Funded Contracts

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

(b) Grant Terms. The funding for this Agreement is provided to the SFMTA in full or in part by a Federal or State grant. As part of the terms of receiving the funds, the SFMTA must incorporate some of the terms into this Agreement (Grant Terms). The incorporated Grant Terms may be found in Appendix D (Federal Contract Requirement). To the extent that any Grant Term is inconsistent with any other provisions of this Agreement such that Contractor is unable to comply with both the Grant Terms and the other provision(s), the Grant Terms shall apply.

(c) Subcontractors. As required by the Grant Terms, Contractor shall insert applicable provisions into each lower-tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor, or service provider.

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

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section.

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform system replacement and Overhaul/Rehabilitation for up to 152 standard (40') Hybrid Electric New Flyer Coaches, and 69 articulated (60') Hybrid Electric New Flyer Coaches as described in the RFP, according to the Project Delivery Schedule set forth in Appendix B.4. Contractor agrees to perform the Work provided for in the Conformed Contract Documents. Officers and employees of the City are not authorized to request, and the City is not required to compensate for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5 (Modification of this Agreement).

4.2 Changes. The SFMTA may at any time, by a written order, make changes within the general scope of this Agreement. Such change shall serve to modify this Agreement to the extent necessary to execute the change as directed. If any such change causes an increase or decrease in the cost of, or the time required for, the performance of any part of the Services under this Agreement, whether changed or not changed by the order, the SFMTA shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the Agreement accordingly. The Contractor must assert its right to an adjustment under this article within three Working Days from the date of receipt of the written order. Failure by Contractor to give timely notice of the change could constitute waiver of a claim for an equitable adjustment. However, if the SFMTA decides that the facts justify it, the SFMTA may receive and act upon a proposal submitted at any time before final payment of the Agreement. If the Contractor's proposal includes the cost of equipment or materials made obsolete or excess by the change, the SFMTA shall have the right to prescribe the manner of the disposition of such equipment or materials. Failure to agree to any adjustment shall be a dispute under Section 11.6, Dispute Resolution Procedure. However, nothing in this provision shall excuse the Contractor from proceeding with the Agreement as changed.

4.3 Qualified Personnel. Contractor represents and warrants that it is qualified to perform the Services required by City, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule.

4.4 Subcontracting

4.4.1 Subcontracts. Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its Subcontractors throughout the course of the work required to perform the Services. All subcontracts must incorporate the terms of Article 10 (Additional Requirements Incorporated by Reference) of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.4.2 Prompt Payment to Subcontractors

(a) Payments to subcontractors are governed by Appendix D, Section XXXI, Prompt Payment.

(b) Contractor shall include the prompt payment requirements in its subcontracts and shall require every Subcontractor of every tier to include these payment requirements in its subcontracts with lower tier Subcontractors.

4.4.3 Reserved. (List of Subcontractors)

4.5 Independent Contractor; Payment of Employment Taxes and Other Expenses

4.5.1 Independent Contractor. For the purposes of this Section, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor is an independent contractor and is wholly responsible for the manner in which it performs the Services and work required under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor is liable for its acts and omissions. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing Services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any of its agents or employees. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this Section. Should City determine that Contractor, is not performing in accordance with the requirements of this Section, City shall provide Contractor with written notice of such failure. Within five business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.5.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past Services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this Section.

4.6 Assignment. The Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred, unless first approved by the SFMTA by written instrument executed and approved in the same manner as this Agreement. Any purported Assignment made in violation of this provision shall be null and void.

4.7 Warranty. Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement. See Article 10 of the Technical Specifications for specific warranty provisions.

4.8 Liquidated Damages. By entering into this Agreement, Contractor agrees that Contractor agrees that in the event deliveries are not completed within the number of Days indicated in Appendix B.4 and the Technical Specifications, Article 12, or if Contractor fails to correct fleet defects in accordance with the Technical Specifications, Section 10.4, as may be revised by Contract Modifications, City will suffer damages that will be impracticable or extremely difficult to determine; further, Contractor agrees that the amounts listed below for each day of delay beyond scheduled milestones and timelines are not a penalty, but are a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. Except where the delay is the result of an Unavoidable Delay, 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. Liquidated damages imposed under this Agreement shall be in addition to any other damages that are recoverable by the City specified elsewhere in the Contract.

Item	**Cost**
Failure to deliver the Coaches by the times stated in Exhibit B.4	$500 per Coach per Day
Failure to deliver all other Project Deliverables (special tools, spare parts, drawings)	$500 per Day per Deliverable
Warranty Fleet Defect Correction (see Technical Specifications, Section 10.4.1)	$200 per Coach per Day

4.9 Performance and Payment Security. The following provisions set forth financial guarantees that must be met by Contractor. Contractor may choose to meet the requirements of this Section 4.9 by obtaining either the required bonds or an irrevocable letter of credit (Letter of Credit) in an equivalent amount, or another form of security equivalent to the required bonds and acceptable to the City at its sole discretion.

4.9.1 Bonds. Within 20 days following the receipt of a notice of tentative Award of Contract, and until completion of all Contract obligations and Acceptance by City of the final vehicle, the Contractor shall furnish to City a performance and a payment (labor and materials) bond in a form acceptable to City in an amount not less than $4,000,000 to guarantee Contractor's faithful performance of all obligations of the Contract, including warranty obligations in existence until the last Vehicle is accepted, and to guarantee Contractor 's payment to all suppliers of labor and materials under this Contract.

4.9.2 Requirements for Bonds

(a) Bonding entities on the above bonds must be legally authorized to engage in the business of furnishing performance bonds in the State of California. All bonding entities must be satisfactory to the SFMTA and to the Controller and Risk Manager of the City.

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

4.10 Spare Parts and Special Tools. The contract amount shall include an allowance of $250,000 for spare parts and $250,000 for special tools to service the vehicles overhauled under this Agreement. The Contractor shall provide to SFMTA lists of recommended spare parts and special tools, along with prices for each item listed. The SFMTA may apply these allowances toward listed parts or tools, but may also use the allowance to purchase other parts or tools that are needed but not listed on the recommended lists. Prices shall remain firm for 24 months after Notice to Proceed.

4.11 Emergency - Priority 1 Service. . In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded Agreement.

Article 5 Insurance and Indemnity

5.1 Insurance

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

(a) Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

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

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

(d) Professional liability insurance, applicable to Contractor's profession, with limits not less than $1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Reserved. (Technology Errors and Omissions Liability coverage)

(f) Reserved. (Cyber and Privacy Insurance)

(g) Reserved. (Pollution Liability Insurance)

(h) Bailee's insurance in a form appropriate for the nature of City property in the care, custody, or control of Contractor, on an all-risk form including earthquake and flood, for 100% of the replacement value.

(i) Cargo insurance in a form appropriate for the nature of City property while in transit, on an all-risk form including earthquake and flood for 100% of the replacement value.

(j) Inland Marine insurance approved by the City Risk Manager, in a form appropriate for the nature of City property in the care, custody, or control of Contractor including while in transit, on an all-risk form including earthquake and flood, in the amount not less than $10 million.

5.1.2 Additional Insured

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) Reserved. (Pollution Auto Liability Insurance Additional Insured Endorsement)

5.1.3 Waiver of Subrogation

(a) The Workers' Compensation Liability Insurance policy(ies) shall include a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

5.1.4 Primary Insurance

(a) The Commercial General Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Reserved. (Pollution Auto Liability Insurance Additional Insured Endorsement)

5.1.5 Other Insurance Requirements

(a) Thirty days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment, for which no less than 10 Days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

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

(c) 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.

(d) 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.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance including additional insured and waiver of subrogation status, as required, with insurers with ratings comparable to A-, VIII or higher that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any Subcontractor(s) to provide Services, Contractor shall require the Subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds and waiver of subrogation in favor of the City, where required.

5.2 Indemnification

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personal identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to Subcontractors, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its Subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, Contractors and experts and related costs and City's costs of investigating any claims against the City.

5.2.2 In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

5.2.3 Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

5.2.4 Under no circumstances will City indemnify or hold harmless Contactor

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1 (CALCULATION OF CHARGES AND CONTRACT NOT TO EXCEED AMOUNT) 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.

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its Subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 Liability for Incidental and Consequential Damages. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

Article 7 Payment of Taxes

7.1 Contractor to Pay All Taxes. Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Possessory Interest Taxes. Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 Withholding. Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience

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

8.1.2 Contractor Actions. Upon receipt of the Notice of Termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the Termination Date and to minimize the liability of Contractor and City to third parties as a result of the termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

(a) Completing performance of any Services that the SFMTA requires Contractor to complete prior to the Termination Date.

(b) Halting the performance of all Services on and after the Termination Date.

(c) Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

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

(e) Subject to the SFMTA's approval, settling all outstanding liabilities and all claims arising out of the cancelled of orders and subcontracts.

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

8.1.3 Contractor Invoice. Within 30 Days after the Termination Date, Contractor shall submit to the SFMTA an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services provided prior to the Termination Date, for which the SFMTA has not already made payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

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

(c) The reasonable cost to Contractor of handling and returning material or equipment, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.

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

8.1.4 Nonrecoverable Costs. In no event shall the City be liable for costs incurred by Contractor or any of its Subcontractors after the Termination Date, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under 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 Section 8.1.3.

8.1.5 Deductions. In arriving at the amount due to Contractor under this Section, the SFMTA may deduct: (i) all payments previously made by the SFMTA for Services covered by Contractor's final invoice; (ii) any claim which the SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and the SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

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

8.2 Termination for Default; Remedies

8.2.1 Event of Default. Each of the following shall constitute an immediate event of default under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims
4.6	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws
Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within 10 days after written notice thereof from the SFMTA to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, the SFMTA may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

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

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

8.2.2 Default 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, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.2.3 No Waiver. 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. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Notice of Default. Any notice of default must be sent in accordance with Article 11.

8.3 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.

8.4 Rights and Duties upon Termination or Expiration

8.4.1 Survival of Sections. This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services and Delivery of Goods
3.3.9(a)	Grant Funded Contracts - Disallowance
3.4	Audit and Inspection of Records

3.5	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
8.2.2	Default Remedies
9.1	Ownership of Results
9.2	Works for Hire
11.6.3	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability
Article 13	Data and Security

8.4.2 Contractor Duties. Subject to the survival of the Sections identified in Section 8.4.1 above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights In Deliverables

9.1 Ownership of Results. Any interest of Contractor or its Subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its Subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 Works for Hire. If, in connection with Services, Contractor or its Subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, 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 shall be the property of the City. If any Deliverables created by Contractor or its Subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon Subcontractor(s). With City's prior written approval, Contractor and its Subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (Mandatory City Requirements) are available at http://www.amlegal.com/codes/client/san-francisco_ca.

10.2 Conflict of Interest. By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Labor and Employment Code Article 141, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Article 141. Information about and the text of Article 141 is available on the web at https://sfgov.org/olse/consideration-salary-history. Contractor is required to comply with all of the applicable provisions of Article 141, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements

10.5.1 Nondiscrimination in Contracts. Contractor shall comply with the provisions of San Francisco Labor and Employment Code Article 131 and 132. Contractor shall incorporate by reference in all subcontracts the provisions of Sections Articles 131.2 (a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all Subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Labor and Employment Code Article 131.2.

10.6 Small Business Enterprise Program

10.6.1 General. The SFMTA is committed to a Small Business Enterprise Program (SBE Program) for the participation of SBEs in contracting opportunities. In addition, the Contractor must comply with all applicable federal regulations regarding Small Business Enterprise (SBE) participation, as set out in Title 49, Part 26 of the Code of Federal Regulations, with respect to SBEs performing work under this Agreement. More information on federal SBE requirements can be found on the internet at: http://www.fta.dot.gov/civilrights/12326.html**.**

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

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

10.7 Minimum Compensation Ordinance. If San Francisco Labor and Employment Code Article 111 applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at http://sfgov.org/olse/mco. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

10.8 Reserved. (Health Care Accountability Ordinance)

10.9 First Source Hiring Program. Contractor must comply with all of the applicable provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or Subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701).

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. 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 10% in Contractor; any Subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Reserved. (Slavery Era Disclosure)

10.13 Reserved. (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Article 142 (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Labor and Employment Code (Article 142), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Article 142 is available on the web at http://sfgov.org/olse/fco. Contractor is required to comply with all of the applicable provisions of Article 142, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Article 142.

10.14.2 The requirements of Article 142 shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Article 142 shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 Reserved. (Public Access to Nonprofit Records and Meetings)

10.16 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 Reserved. (Distribution of Beverages and Water)

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

10.19 Reserved. (Preservative-Treated Wood Products)

Article 11 General Provisions

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

To City: San Francisco Municipal Transportation Agency
Fleet Engineering,
700 Pennsylvania Avenue,
Building B, 2nd Floor,
San Francisco CA 94107
Attention: Mr. Gary Chang
Email: Gary.Chang@sfmta.com

To Contractor: Complete Coach Works
1863 Service Court
Riverside, CA 92507
Attention: Ms. Amber Lindsey
Email: contracts@completecoach.com

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by e-mail, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least 10 Days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Laws Requiring Access for People with Disabilities

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

11.3 Incorporation of Recitals. The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §7920 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1 (Notices to Parties) regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor must submit the Contract Modification Form (CMD Form 10) along with the required supporting documentation to the CCO and obtain prior CCO approval for any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%, and then for any subsequent amendment, modification, supplement, or change order that would result in a cumulative increase of the last CCO approved value by more than 20%.

11.6 Authority of Project Manager; Claims; Disputes. The Project Manager shall decide all questions that may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions, which may arise as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. In discharging the responsibilities outlined above, the Project Manager shall at all times act fairly and reasonably. Any appeal of the Project Manager's decisions shall be in accordance with the provisions of Section 11.6.3 of this Agreement. As with any claim, change, extra or additional work, Contractor shall be paid in accordance with the payment provisions set out in Section 3 of this Contract when the dispute is finally resolved.

Should any questions arise as to the meaning and intent of the Contract, the matter shall be referred to the Project Manager, who, in consultation with other City representatives, as applicable, and with input the Contractor, shall decide the true meaning and intent of the Contract. The Project Manager's decision in this regard shall be administratively final and conclusive.

11.6.1 Claims for Additional Compensation

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

(b) The written notice of potential claim shall set forth the reasons for which Contractor believes additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the Project Manager prior to the time that Contractor shall have performed the work giving rise to the potential claim for additional compensation, or in all other cases, within 30 Days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.

(c) It is the intention of this Section 11.6.1 that differences between the Parties arising under and by virtue of the Contract be brought to the attention of the SFMTA at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly be taken. Contractor agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written notice of potential claim as herein required was filed.

11.6.2 Other Claims. For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within 15 Days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with 15 Days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position.

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

11.6.4 Alternative Dispute Resolution. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.5 Disputes Among Contractor's Partners. The resolution of any contractual disputes related to Contractor's Joint Venture or Association partners (if any) shall be the sole responsibility of the Contractor. Each party of the Joint Venture or Association shall resolve all such disputes within 30 calendar days of when the dispute first surfaced so as not to impact the performance of the contract with the City. Any such disputes 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 Contractor's Joint Venture or Association firms until the dispute is resolved.

11.6.6 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

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

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

11.9 Entire Agreement. This Contract sets forth the entire agreement between the Parties, and supersedes all other oral or written provisions. All appendices to this Agreement are incorporated by reference as though fully set forth. This Agreement may be modified only as provided in Section 11.5 (Modification of this Agreement).

11.10 Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules 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.

11.11 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.

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

11.13 Order of Precedence. The Parties agree that this Agreement, including all appendices, sets forth the Parties' complete agreement. Should there be a conflict of terms or conditions, this Agreement, and any amendments shall control over the RFP and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms in this Agreement shall take precedence, followed by the procurement issued by the department (if any), Contractor's proposal, and Contractor's printed terms, respectively. Any hyperlinked terms included in Contractor's terms shall have no legal effect

11.14 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests, and other legal requests (Legal Requests) related to any City Data under this Agreement, and in no event later than 24 hours after Contractor receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

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

11.16 Time of Essence. Time is of the essence in this Agreement.

11.17 Federal Requirements. Contractor shall comply with all applicable federal contracting requirements, including but not limited to those set out in Appendix D to this Agreement, which are incorporated by reference as if fully set out here. If there is any conflict between any federal contracting requirement and any provision of this Equipment Contract, the federal requirement shall prevail. The SFMTA has not adopted the contract requirements of the Federal Acquisition Regulations (FAR). As a department of the City and County of San Francisco, exercising its home rule authority granted by the California constitution, the SFMTA shall not be bound by any provision of the FAR.

Article 12 SFMTA Specific Terms

12.1 Large Vehicle Driver Safety Training Requirements

12.1.1 Contractor agrees that before any of its employees and Subcontractors drive large vehicles within the City and County of San Francisco, those employees and Subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at www.SFMTA.com/largevehicletrainingstandards. This requirement does not apply to drivers providing delivery services who are not employees or Subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

12.1.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars ($1,000) per employee or Subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, 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 comply.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information

13.1.1 Protection of Private Information . If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and Subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 Confidential Information . In the performance of Services, Contractor may have access to, or collect on City's behalf, City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City's behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

13.2 Reserved. (Payment Card Industry (PCI) Requirements)

13.3 Reserved. (Business Associate Agreement)

13.4 Management of City Data and Confidential Information

13.4.1 Access to City Data. City shall at all times have access to and control of City Data, and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

13.4.2 Use of City Data and Confidential Information. Contractor agrees to hold City Data received from, or collected on behalf of the City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by the City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, Subcontractors, or other third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

13.4.3 Disposition of Confidential Information. Upon request of City or termination or expiration of this Agreement, Contractor shall promptly, but in no event later than 30 Days, return all Data given to or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that the City Data has been successfully transferred to City, Contractor shall within 10 Days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors' environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five Days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88, or the most current industry standard.

13.5 Ownership of City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

13.6 Loss or Unauthorized Access to City's Data; Security Breach Notification. Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any "Leak") within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. Contractor shall pay for the provision to the affected individuals of twenty-four (24) months of free credit monitoring services, if the Leak involved information of a nature reasonably necessitating such credit monitoring. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

Article 14 MacBride and Signature

14.1 MacBride Principles - Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

Article 15 Included Appendices

The documents listed below are attached to this Agreement as Appendices and are incorporated into this Agreement by reference.

Appendix A: Technical Specifications
Appendix B.1: Schedule of Prices
Appendix B.2: Spare Parts List
Appendix B.3: Special Tools List
Appendix B.4: Project Delivery Schedule
Appendix B.5: Payment Milestones
Appendix C: Force Account Provisions
Appendix D: Federal Contract Requirements
Appendix E: SBE Requirements

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

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CITY

San Francisco
Municipal Transportation Agency

____
Julie B. Kirschbaum
Director of Transportation

Authorized By:

Municipal Transportation Agency Board of Directors

Resolution No: ______________________

Adopted: ______________________

Attest: ______________________
Secretary, to the Board

Board of Supervisors

Resolution No: ______________________

Adopted: ______________________

Attest: ______________________
Clerk of the Board

Approved as to Form:

David Chiu
City Attorney

By: ______________________
David F. Innis
Deputy City Attorney

</td>
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CONTRACTOR

Complete Coach Works

____
Michael Dominici
Chief Financial Officer
1863 Service Court
Riverside, CA 92507

<u>Acknowledgement of Large Vehicle Driver Safety Training Requirements</u>:

By signing this Agreement, Contractor acknowledges that it has read and understands Section 13.1: Large Vehicle Driver Safety Training Requirements.

City Supplier Number: 0000022435

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Appendix A
Technical Specifications

Attached as a separate document.

Appendix B.1

Schedule of Prices

City is exempt from federal excise taxes. State, local sales, and use taxes are not to be included in these prices.

No.	Qty.	Description	Unit Price	Total Price
1	54	SR-2043 – 40-ft Allison Hybrid with New ISL Engine	$ 360,308.16	$ 19,456,640.40
2	30	SR-2116 – 60-ft Allison Hybrid with New ISL engine and SFMTA Rebuilt Drive Unit	$ 460,147.82	$ 13,804,434.70
3	10	SR-2116 – 60-ft Allison Hybrid with SFMTA Rebuilt Engine and SFMTA Rebuilt Drive Unit	$ 381,383.29	$3,813,832.93
4	29	SR-2116 – 60-ft Allison Hybrid with New ISL engine, Rebuilt Drive Unit with Stator A replaced	$ 532,007.89	$ 15,428,228.91
5	68	SR-2117 – 40-ft BAE Hybrid with New ISL engine	$ 389,559.04	$ 26,490,014.98
6	30	SR-2118 – 40-ft BAE Hybrid	$ 364,999.20	$ 10,949,975.94
7	10	As-Built Drawings, Updated Schematics, and Parts Lists (SR-2043, SR-2116, SR-2117, SR-2118)	Included	Included
8	1	Special Tools	NA	$ 250,000 (fixed allowance)
9	1	Spare Parts	NA	$ 250,000 (fixed allowance)
10	1	Unforeseeable Work and Exterior Body Work	LS	$ 5,000,000
		Basis of Award (Items 1 through 10)	**Grand Total**	**$ 95,443,127.86**

Appendix B.2

Spare Parts List

The contractor shall submit a recommended spare parts list with prices for SFMTA's approval. SFMTA reserves the right to add or remove items from the spare parts list.

Appendix B.3

Special Tools List

The contractor shall submit a recommended special tools list with prices for SFMTA's approval. SFMTA reserves the right to add or remove items from the special tools list.

Appendix B.4

Project Delivery Schedule

Item	Calendar Days after Notice to Proceed
Pre-Production Meeting	30
Pick Up of First Article Coach	180
Delivery of Completed First Article Coach	270
Conditional Acceptance and Approval of First Article Coach	285
Begin overhaul of remaining coaches	290
Delivery of the last coach	1095
Submittal of final As-Built Drawings, Updated Schematics, and Parts Lists	1155

Item	Calendar Days after Notice to Proceed
Submittal of draft recommended spare parts and special tools lists	365
Delivery of spare parts and special tools	1095

Deliveries:

Note 1: Actual item due dates will be determined after the First Article Coaches have been presented and changes to the scope of work have been finalized and negotiated.

Note 2: All deliveries to the SFMTA shall be to SFMTA's Marin facility during weekday working hours, Monday through Friday, 7 a.m. – 3 p.m., except SFMTA holidays, or as otherwise specified in writing by the SFMTA. Contractor shall provide at least 48 hours' notice to the SFMTA prior to delivery.

Note 3: Due to service demands, the SFMTA can only allow up to 16 Coaches at the Contractor's site at any one time. Contractor shall not deliver more than three Coaches to the SFMTA at any one time.

Note 4: The Coach will have to pass inspection and Acceptance testing by the SFMTA before being put back into revenue service. The SFMTA reserves the right to not release scheduled Coaches for rehabilitation if one or more rehabilitated Coaches fails to meet SFMTA requirements.

Appendix B.5

Payment Milestones

The City will make progress payments for the Buses upon satisfactory completion of each milestone in accordance with the percentage allocation below.

Item 1 – Rehabilitation of one First Article Coach for each SR*

(a) Authorization by SFMTA to ship one First Article Coach for SR-2043	60% of Unit Price for Item 1 on Appendix B.1
(b) Authorization by SFMTA to ship one First Article Coach for SR-2116	60% of Unit Price for Item 2 on Appendix B.1
(c) Authorization by SFMTA to ship one First Article Coach for SR-2117	60% of Unit Price for Item 5 on Appendix B.1
(d) Authorization by SFMTA to ship one First Article Coach for SR-2118	60% of Unit Price for Item 6 on Appendix B.1

Item 2 – Conditional Acceptance of each First Article Coach for each SR*

(a) Conditional Acceptance of one First Article Coach for SR-2043	35% of Unit Price for Item 1 on Appendix B.1
(b) Conditional Acceptance of one First Article Coach for SR-2116	35% of Unit Price for Item 2 on Appendix B.1
(c) Conditional Acceptance of one First Article Coach for SR-2117	35% of Unit Price for Item 5 on Appendix B.1
(d) Conditional Acceptance of one First Article Coach for SR-2118	35% of Unit Price for Item 6 on Appendix B.1

Item 3 – Rehabilitation of Coaches following the First Article Coach for each SR*

(a) Authorization by SFMTA to ship each Coach for SR-2043	60% of Unit Price for Item 1 on Appendix B.1
(b) Authorization by SFMTA to ship each Coach for SR-2116	60% of Unit Price for Item 2, 3, and 4 on Appendix B.1
(c) Authorization by SFMTA to ship each Coach for SR-2117	60% of Unit Price for Item 5 on Appendix B.1
(d) Authorization by SFMTA to ship each Coach for SR-2118	60% of Unit Price for Item 6 on Appendix B.1

Item 4 – Conditional Acceptance of Coaches following the First Article Coach for each SR*

(a) Conditional Acceptance of each Coach for SR-2043	35% of Unit Price for Item 1 on Appendix B.1
(b) Conditional Acceptance of each Coach for SR-2116	35% of Unit Price for Item 2, 3, and 4 on Appendix B.1
(c) Conditional Acceptance of each Coach for SR-2117	35% of Unit Price for Item 5 on Appendix B.1
(d) Conditional Acceptance of each Coach for SR-2118	35% of Unit Price for Item 6 on Appendix B.1

* Includes any amounts under Item 10 on Appendix B.1

Item 5 – Delivery of Special Tools, Spare Parts, and As-Built Drawings

The City will pay 95% of the line item price for each Deliverable following Acceptance of each Deliverable.

Item 6 – Final Acceptance of all Coaches

Final Acceptance of all Coaches and Deliverables	5% of Total Price of all Items

Item 7 – Unforeseeable Work and Exterior Body Work

The City will make payments for Unforeseeable Work and Exterior Body Work following the completion and Acceptance of the agreed-upon work by the SFMTA.

Appendix C

Force Account Provisions

A. General: When Unforeseeable Work and Body Work are to be paid for on a Force Account basis, compensation will be determined as set forth herein.

1. The City will direct Contractor to proceed with the work on a Force Account basis, and the City will establish a "not to exceed" budget. To the extent feasible, the City and Contractor shall agree on the total number of hours to perform the Unforeseeable Work or Body Work.

2. All requirements regarding direct costs and markup for overhead and profit provided below shall apply to Force Account Work. However, the City will pay only the actual necessary costs substantiated by the Contractor and verified by the City.

3. Contractor shall be responsible for all costs related to the documentation, data preparation, and administration of Force Account Work.

B. Direct Costs:

1. Labor: Labor rates shall be paid at $150.00 an hour. This is a fully burdened rate (including fringe benefits, Federal Insurance Contributions Act payments, Federal and State Unemployment taxes, and net actual premium paid for public liability, worker's compensation, property damage, and other forms of insurance required by the City); and includes all costs for overhead and profit.

2. Materials: The City will pay Contractor only for those materials furnished by Contractor and directly required for performing the Unforeseeable Work or Body Work. The cost of such materials shall be the direct cost, including sales tax, to the purchaser, and may include the cost of transportation, but delivery charges will not be allowed unless the delivery is specifically required for the Unforeseeable Work or Body Work. If a trade discount by an actual supplier is available to Contractor, it shall be credited to the City. If the materials are obtained from a supplier or source owned wholly or in part by Contractor, payment for the materials shall not exceed the current wholesale price for the materials as determined by the City. The term "trade discount" includes the concept of cash discounting.

C. Contractor's Markup on Materials: The following limitations shall apply to Contractor's markup on all materials:

1. The total markup shall equal a maximum of 10 percent of Contractor's direct costs, as defined in B.2 above. No extra markup may be taken for the costs of subcontractors or suppliers.

2. Decreases in Work: For Unforeseeable Work or Body Work that results in a net decrease in direct costs for work performed by Contractor, the City shall receive a credit based on (a) the actual net decrease in labor costs and materials and (b) 10 percent of the direct cost credit amount attributable to materials.

3. When both additions and credits are involved, Contractor's markup shall be computed on the basis of its direct costs and labor productivity for the net change in the quantity of the Unforeseeable Work or Body Work.

D. Records: Contractor shall maintain detailed records of all Unforeseeable Work or Body Work done on a Force Account basis and supply a summary to City of all Force Account work performed on a weekly basis.

Appendix D

FEDERAL CONTRACT REQUIREMENTS

I. DEFINITIONS

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

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

C. **Cooperative Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.

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

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

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

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

H. **Project** means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.

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

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

K. **Third Party Contract** means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

L. Third Party Subcontract means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.

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

II. FEDERAL CHANGES

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

III. ACCESS TO RECORDS

A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

IV. DEBARMENT AND SUSPENSION

A. The Contractor shall comply and facilitate compliance with U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, which adopts and supplements the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. These provisions apply to each contract at any tier of $25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount), and to each contract at any tier that must be approved by an FTA official irrespective of the contract amount. As such, the Contractor shall verify that its principals, affiliates, and subcontractors are eligible to participate in this federally funded contract and are not presently declared by any Federal department or agency to be:

a) Debarred from participation in any federally assisted Award;

b) Suspended from participation in any federally assisted Award;

c) Proposed for debarment from participation in any federally assisted Award;

d) Declared ineligible to participate in any federally assisted Award;
e) Voluntarily excluded from participation in any federally assisted Award; or
f) Disqualified from participation in any federally assisted Award.

See RFP Appendix D, Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

B. The Contractor agrees to include a provision in its lower-tier covered transactions requiring lower-tier participants to comply with the requirements of 2 CFR Part 180, Subpart C, and Part 1200, Subpart C.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

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

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

VI. CIVIL RIGHTS

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

B. Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

1. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with

any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

VII. DBE/SBE ASSURANCES

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

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

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

A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of

America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

B. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

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

IX. RIGHTS IN DATA AND COPYRIGHTS *(Applicable to contracts for planning, research, or development financed by FTA)*

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

B. Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of this Agreement.

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

2. **Federal License.** The Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, "for Federal Government purposes," any subject data or copyright described below. As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:

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

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

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

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

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

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

7. **Application to Subcontractors**. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for

experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

C. **Flow Down**. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

D. **Provision of Rights to Government**. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

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

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

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

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

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

XI. 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.

XII. 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.

XIII. 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.

XIV. PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the

Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

XV. DRUG AND ALCOHOL TESTING

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

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

XVIII. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, manufactured products, and construction materials (*excluding* cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives) used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. "Construction materials" include an article, material, or supply that is or consists primarily of:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Lumber; or
- Drywall.

General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases ($150,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a domestic content in accordance with Section 3011 of the FAST Act (49 U.S.C 5323(j)(2)(C)) and FTA policy.

XIX. PROHIBITION AGAINST USE OF CONTRACT FUNDS FOR COVERED TELECOMMUNICATIONS EQUIPMENT

Under 2 CFR Section 216, Contractors and Subcontractors are prohibited from using Contract funds to:

A. Procure or obtain;

B. Extend or renew a contract to procure or obtain; or

C. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Section 889 of Public Law 115-232, covered telecommunications equipment is:

1. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
2. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
3. Telecommunications or video surveillance services provided by such entities or using such equipment.
4. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

XX. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

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

XXI. RECYCLED PRODUCTS

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

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

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

A. **Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.

B. **Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting **the** bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.

C. **Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker **information** that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XXIII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

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

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal

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

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

XXIV. 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.

XXV. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

XXVI. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS *(applicable to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator)*

A. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

1. **General Transit Employee Protective Requirements** - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this

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

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

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

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

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

If providing Intelligent Transportation Systems (ITS) property or services, Contactor shall comply with the National ITS Architecture and standards to the extent required by 23 U.S.C. § 512, FTA Notice, "FTA National ITS Architecture Policy on Transit

Projects," 66 FR 1455, et seq., January 8, 2001, and later published policies or implementing directives FTA may issue.

XXVIII. TEXTING WHILE DRIVING; DISTRACTED DRIVING

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

XXIX. SEAT BELT USE

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

XXX. LOBBYING *(To be submitted with each bid or offer exceeding $100,000)*

See RFP Appendix E, Certification Regarding Lobbying.

XXXI. PROMPT PAYMENT

A. In accordance with SFMTA's SBE/DBE Program, no later than three days from the date of Contractor's receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said 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 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. Consultant may withhold retention from subconsultants if City withholds retention from Consultant. Should retention be withheld from Consultant, within 30 days of City's payment of retention to Consultant for satisfactory completion of all work required of a subconsultant, Contractor shall release any retention withheld to the subconsultant. Satisfactory completion shall mean when all the tasks called for in the subcontract with subconsultant have been accomplished and documented as required by City. If the Consultant does not pay its subconsultant as required under the above paragraph, it shall pay interest to the subconsultant at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

XXXII. VETERANS EMPLOYMENT (*applicable to Capital Projects)*

As provided by 49 U.S.C. § 5325(k):

A. To the extent practicable, Contractor agrees that it:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee, and

B. Contractor also assures that its subcontractor will:

1. Will give a hiring preference to veterans (as defined in 5 U.S.C. § 2108), who have the skills and abilities required to perform construction work required under a third party contract in connection with a capital project supported with funds made available or appropriated for 49 U.S.C. chapter 53, to the extent practicable, and
2. Will not require an employer to give a preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or a former employee.

Appendix E

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

SBE/DBE REQUIREMENTS

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

I. POLICY

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

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

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

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

A. Applicability

Under 49 CFR Sections 26.3 and 26.51, and in response to the Federal Transit Administration's (FTA) March 23, 2006, publication of the Department of Transportation's (DOT) guidance concerning the federal DBE program that applies to grant recipients within the Ninth Circuit, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement race-neutral means of facilitating DBE participation in instances where the SFMTA lacks evidence of discrimination or its effects on DBEs. Per DOT requirements, the SFMTA conducted a disparity study to determine if substantial disparities exist in the utilization of DBEs in the SFMTA's federally existed contracts. The results of the study concluded that for the SFMTA's professional services contracts, DBEs owned by women are underutilized, and DOT has authorized the SFMTA to establish contract goals for women-owned DBEs. The Regulations are incorporated into this Program as though fully set forth herein. This Program applies to all SFMTA contracts that are funded, in whole or in part, by DOT federal financial assistance.

B. Objectives

The objectives of this program are to:

1. Remove barriers to SBE and DBE participation in the bidding, award and administration of SFMTA contracts;

2. Assist SBEs and DBEs to develop and compete successfully outside of the Program;

3. Ensure that the Program is narrowly tailored in accordance with 49 C.F.R. Part 26;

4. Ensure that only SBEs and DBEs meeting the eligibility requirements are allowed to participate as SBEs and DBEs;

5. Identify business enterprises that are qualified as SBEs and DBEs and are qualified to provide SFMTA with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;

6. Develop communications programs and procedures which will acquaint prospective SBEs and DBEs with SFMTA's contract procedures, activities and requirements and allow SBEs and DBEs to provide SFMTA with feedback on existing barriers to participation and effective procedures to eliminate those barriers; and

7. Administer the Program in close coordination with the various divisions within SFMTA so as to facilitate the successful implementation of this Program.

C. Administration of Program

The Director of Transportation is responsible for adherence to this policy. The DBE Liaison Officer (DBELO) shall be responsible for the development, implementation and monitoring of this program. It is the expectation of the Municipal Transportation Board of Directors and the Director of Transportation that all SFMTA personnel shall adhere to the provisions and the spirit of this program.

D. Prohibited Discrimination

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

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

F. SFMTA has signed the federal assurances regarding nondiscrimination required under 49 C.F.R. Section 26.13. See III.D (Contract Assurances) for requirements of Contractor and Subconsultants.

II. DEFINITIONS

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

A. Disadvantaged Business Enterprise (DBE): A DBE is a for-profit, small business concern (1) that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged, or, in the case of a corporation, in which 51% of the stock is owned by one or more socially and economically disadvantaged individuals; (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and (3) that is certified under the California Unified Certification Program.

B. Small Business Enterprise (SBE): An SBE is a for-profit, small business concern with a three-year average gross revenue not exceeding current SBA size standards appropriate for its type of work and is either verified eligible by the SFMTA or the State of California's Small Business Program with the Department of General Services, the California Unified Certification Program with a U.S. Department of Transportation recipient, or the City and County of San Francisco's LBE program with the Contract Monitoring Division.

To be eligible to participate as a DBE or SBE on this contract, the total average gross revenue thresholds for the past five years must not exceed the current SBA business size standard appropriate to the type(s) of work the firm seeks to perform. Even if it meets the appropriate SBA size standard, a firm is not eligible if it (including its affiliates) has had average annual gross receipts over the firm's previous three fiscal years, in excess of $30.40 million. These figures may be updated periodically by the DBE/SBE program.

III. SBE/DBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

SBE and DBE Participation Goals

Contractor has committed to achieving 10 percent SBE participation for this contract.

B. Determining the Amount of SBE and DBE Participation

The SFMTA strongly encourages the prime contractor to make every good faith effort to include SBEs and DBEs to perform meaningful work in all aspects of the projects. To accomplish this goal, the following guidance is provided:

1. SBE and DBE Participation

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

2. Function

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

3. Determining the amount of SBE and DBE Participation

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

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

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

SBE or DBE Prime Contractor

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

SBE or DBE Subcontractor

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

SBE or DBE Joint Venture Partner

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

SBE or DBE Regular Dealer

Count 60 percent of the costs of materials and supplies obtained from an SBE or DBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly bought, kept in stock and sold or leased to the public in the usual course of business (except regular dealers of bulk items such as petroleum, cement and gravel who own and operate distribution equipment in lieu of maintaining a place of business). This applies whether an SBE or DBE is a prime contractor or subcontractor.

Other SBEs or DBEs

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

C. Submission of Certification for SBEs and DBEs

All firms wishing to receive credit for participation under the SFMTA's SBE/DBE Program must be certified as bona fide SBEs or DBEs with the SFMTA. This requires either submission of: (1) the completed certification applications for either SBEs, DBEs, or LBEs, or (2) submission of the SFMTA's small business verification application. For information regarding where to obtain applications for these certifications, please contact the SFMTA Contract Compliance Office at:

San Francisco Municipal Transportation Agency
Contract Compliance Office
One South Van Ness Avenue, 6th floor
San Francisco, California 94103
todd.senigar@sfmta.com

D. Contract Assurances

The Contractor and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of the contract. The Contractor and its subcontractors shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to: (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.

E. Use of SBE and DBE Firms

The Consultant shall use the specific SBEs and DBEs listed to perform the work and supply the materials for which each is listed unless the Consultant obtains CCO's prior written consent. Unless prior written consent by CCO is provided, the Consultant shall not be entitled to any payment for work or material unless it is performed or supplied by the listed SBE or DBE.

F. Substitution of Subconsultants and Suppliers

The Consultant shall not terminate an SBE or DBE subconsultant or supplier for convenience and then perform the work with its own forces. Before requesting the termination and/or substitution of an SBE or DBE subconsultant, the Consultant must give notice in writing to the SBE or DBE subconsultant, with a copy to CCO, of its intent to request to terminate and/or substitute, and the reason for the request. The Consultant must give the SBE or DBE five days to respond to the notice and advise CCO and the Consultant of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Consultant's request should not be approved. 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.

When an SBE or DBE subconsultant is terminated as provided in this section, or fails to complete its work on the contract for any reason, the Consultant shall make good faith efforts to find another SBE or DBE subconsultant to substitute for the original SBE or DBE. These good faith efforts shall be directed at finding another SBE or DBE to perform at least the same amount of work under the contract as the SBE or DBE that was terminated, to the extent needed to meet the established SBE or DBE contract goal.

G. Addition of Subconsultants and Suppliers

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

H. Prompt Payment to Subcontractors

In accordance with SFMTA's SBE/DBE Program, no later than three days from the date of Contractor's receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said 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 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.

The CCO has implemented an online contract compliance monitoring system, B2GNow. If this contract is awarded after implementation of B2GNow, rather than completing and submitting SBE/DBE Form No. 7, the Consultant shall enter its subconsultant payment information into the B2GNow system. Subconsultants are then required to acknowledge payment from the Consultant online using the B2GNow system. B2GNow system training will be made available to the Consultant and its subconsultants.

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

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

IV. MONITORING AND COMPLIANCE

A. SBE and DBE Records; Reporting Requirements

The Contractor shall maintain records of all SBE and DBE participation in the performance of the contract including subcontracts entered into with certified SBEs and DBEs and all materials purchased from certified SBEs and DBEs.

The Contractor shall submit SBE and DBE participation reports to SFMTA on a monthly basis, or as otherwise directed by the CCO. The reports shall identify the name and address of each SBE and DBE performing work on the project, and show the total dollar amount requested for payment and the total dollar amount actually paid to each SBE and DBE. Within thirty (30) days of completion of the contract, or as otherwise directed by the CCO, the Contractor shall submit a final summary SBE/DBE report to the CCO.

B. Noncompliance; Administrative Remedies

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

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

Rubber Tire Mid-Life Overhaul Program

SFMTA

Transit Program Delivery | Fleet Engineering

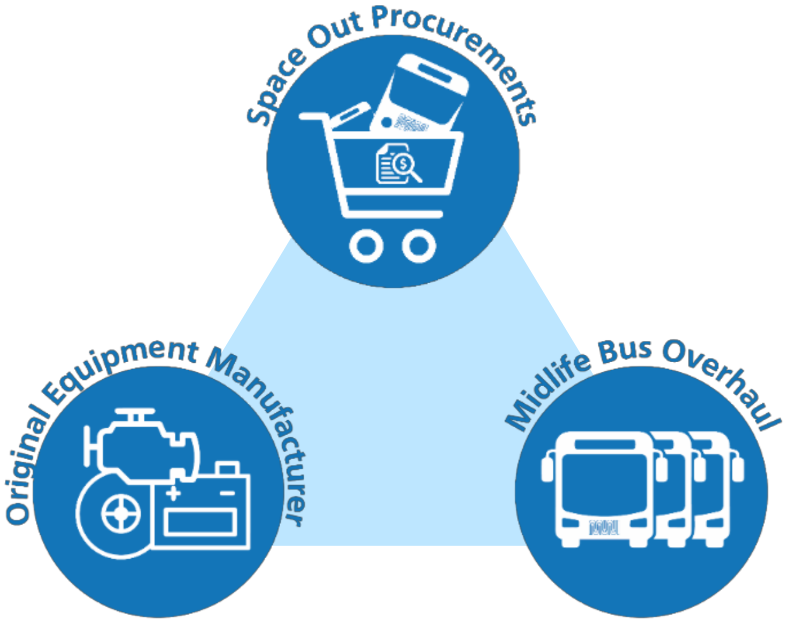
Budget & Finance Committee

10.29.2025

Fleet Management Plan

Guiding Principles

- Maintain consistent fleet average age
- Performance-based procurements
- Develop robust maintenance standards
- Keep quality service on the streets
- Align with City’s sustainability goals



Major Fleet Transition

Between 2013-2019 the SFMTA has successfully replaced 800+ motor coach and trolley coaches

- Lowered fleet age to improve reliability
- Deployed new technology and products to enhance rider experiences (i.e. Air Conditioning, Surveillance Cameras, Stroller parking, ADA Accessibility, etc)

SFMTA Midlife Overhaul Program

- Mandated by TA in Grant Agreement
- Overhaul – to sustain coaches' current maintainability and serviceability to reach the end of useful life

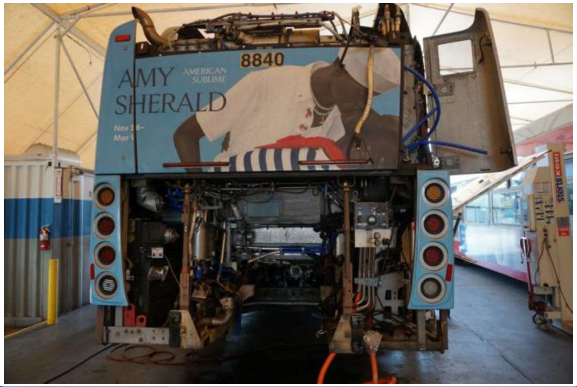
		SR #	Type	QTY	Propulsion	Phase
Phase 1 Qty = 112	In-House	SR-1707	40ft	23	Allison	1
		SR-1709	40ft	39	BAE	1
		SR-1794	40ft	50	BAE	1
Phase 1 Qty = 203	In-Contract CCW	SR-1907	60ft	55	Allison	1
		SR-1955	60ft	6	BAE	1
		SR-1961	60ft	25	Allison	1
		SR-1962	60ft	25	BAE	1
		SR-1963	40ft	24	Allison	1
		SR-1964	40ft	24	BAE	1
		SR-2044	60ft	44	Allison	1
Phase 2 Qty = 221	RFP now	SR-2043	40ft	54	Allison	2
		SR-2116	60ft	69	Allison	2
		SR-2117	40ft	68	BAE	2
		SR-2118	40ft	30	BAE	2
Phase 3 Qty = 278	DD 2025	SR-1849	60ft	60	Trolley	3
		SR-2129	60ft	33	Trolley	3
		SR-2180	40ft	185	Trolley	3
		Total # of Coaches		814		

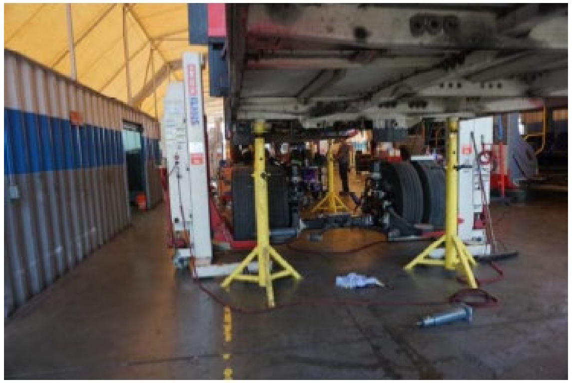
Mid-Life Overhaul Program
Scope of Work

- Propulsion system
- HVAC system
- Operator area
- Suspension system
- Fluids & pneumatics lines
- Fire suppression
- Steering system
- Surveillance system
- Articulated joint
- Bike rack
- Unforeseen work
    - Chassis repairs, roof seals, leveling valves, etc.

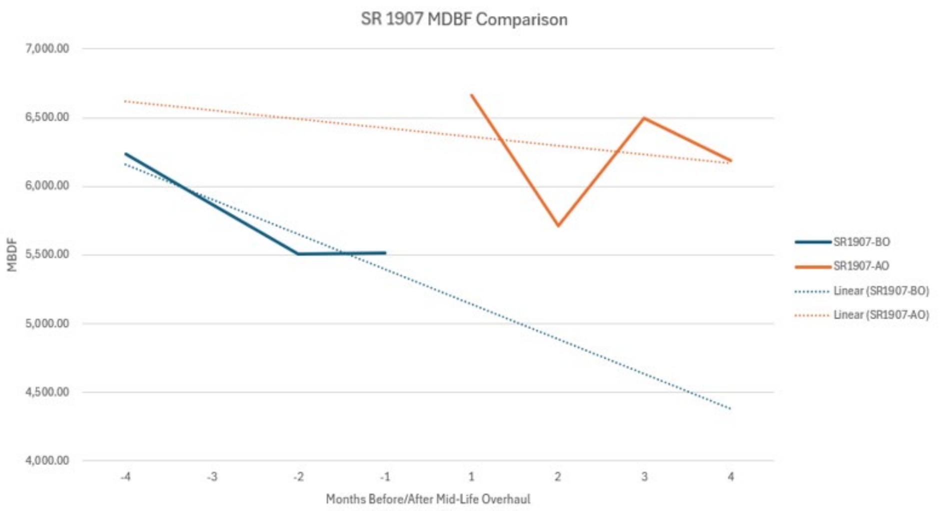
Midlife Overhaul Phase I - Project Status

- 112 Hybrid coaches in-house overhaul
  - Propulsion System only
  - Started 8/2021, Completed 12/2023
- 203 Hybrid coaches - Complete Coach Works (CCW)
  - NTP July 2022, 6-8 completed/month
  - 91% Completed, completion by Q1 2026
- CCW meets quality expectation, project schedule and within approved budget
- Contract PO = $93,871,600






Midlife Overhaul Phase I - Project Status



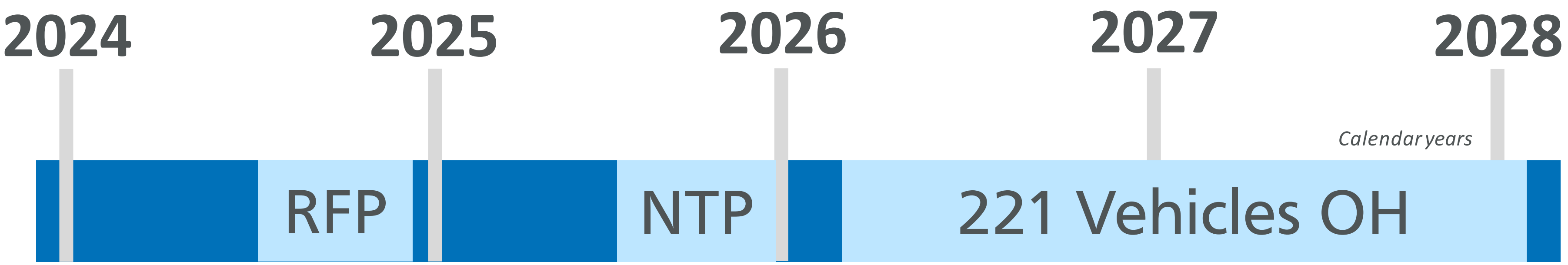
- Vehicle performances were declining at a fast rate before overhaul due to age of the fleet

- After overhauled, vehicles performances demonstrating improvements

Midlife Overhaul Phase 2 – Contractor Selection

- Aug 2024, issued RFP (Request for Proposals)
- Nov 2024, received one responsive proposal from Complete Coach Works (CCW)
- Reviewed proposal and held multiple negotiation meetings with CCW to refine Scope of Work and pricings
- Third-party conducted Cost Analysis to ensure price was fair and reasonable.
- CCW (Riverside, CA)
  - specializes in overhaul work
  - 35 years of experience
  - experiences with SFMTA since mid-2000

Mid-Life Overhaul Phase 2 - Schedule



- Notice-To-Proceed (NTP) in 4th quarter of 2025
- Requires Board of Supervisors Approval
- Estimated completion in 2028

Mid-Life Overhaul Phase 2 – Approval

- Requests approval for SFMTA to enter into a Contract with CCW in the amount of $95,443,128 to overhaul 221 coaches (152 40’ & 69 60’ Hybrid Electric Coaches)

- Contract terms of 5 years with 2 one-year options.

Ensuring Fleet Reliability and Safety

Mid-Life Overhaul Contract Execution

The San Francisco Municipal Transportation Agency (SFMTA) proposes to authorize the Director of Transportation to execute a contract with Complete Coach Works to perform Mid-Life Overhaul services to replace and rehabilitate systems for up to 152 standard (40ft) Hybrid Electric New Flyer Coaches and 69 articulated (60ft) Hybrid Electric New Flyer Coaches, in an amount not to exceed $95,443,127.86, and for a term not to exceed five years.

Approval Action:
San Francisco Board of Supervisors

Not a "project" under CEQA pursuant to CEQA Guidelines Sections 15060(c) and 15378(b) because the action would not result in a direct or a reasonably foreseeable indirect physical change to the environment.

Forrest Chamberlain 6/17/25

Forrest Chamberlain Date
San Francisco Municipal Transportation Agency

Sherie George 6/17/25

Sherie George Date
San Francisco Planning Department

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 251007-094

WHEREAS, The current rubber tire fleet consistently maintains a mean distance between service interruptions (MDBSI) that meets the daily coach availability demand and is the best performance the fleet has achieved in several decades; and,

WHEREAS, A midlife overhaul program is needed to sustain the current MDBSI until the end of the asset life of each coach (12 years for 40-ft and 60-ft hybrid coaches); and,

WHEREAS, The Transportation Authority Proposition K and Proposition L Transportation Sales Tax grant agreements require the SFMTA to perform mid-life overhauls on all vehicles; and,

WHEREAS, This overhaul program will include substantial work to 221 coaches that have reached their mid-life period; and,

WHEREAS, On July 16, 2024, in Resolution No. 240618-083 the MTA Board approved a Request for Proposals (RFP), under the San Francisco Municipal Transportation Agency (SFMTA) Board policy that it approve all RFPs for contracts requiring Board of Supervisors approval, and San Francisco Charter Section 9.118 requires the Board of Supervisors to approve all non-construction contracts estimated to be over $10 million; and,

WHEREAS, On August 30, 2024, SFMTA Fleet Engineering issued an RFP for the Mid-Life Overhaul Phase II to replace or rehabilitate systems for up to 152 standard (40-ft) Hybrid Electric New Flyer coaches and 69 articulated (60-ft) Hybrid Electric New Flyer coaches; and,

WHEREAS, On November 8, 2024, the SFMTA received one proposal from Complete Coach Works (CCW); and,

WHEREAS, Per Admin Code Section 21.4(b), the SFMTA project team entered negotiations with CCW; and,

WHEREAS, SFMTA staff has negotiated an agreement with Complete Coach Works (CCW), to perform Mid-Life Overhaul Phase II to replace or rehabilitate systems for up to 152 standard (40-ft) Hybrid Electric New Flyer coaches and 69 articulated (60-ft) Hybrid Electric New Flyer coaches; and,

WHEREAS, On June 17, 2025, the SFMTA, under authority delegated by the Planning Department, determined that Contract No. SFMTA-2024-74-FTA is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the

SFMTA Board of Directors and is incorporated herein by reference; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute, in a form substantially similar to that provided to this body, Contract No. SFMTA-2024-74-FTA: Mid-Life Overhaul of the 40-ft & 60-ft Hybrid Electric coaches with Complete Coach Works, to perform mid-life overhaul services to replace and rehabilitate systems for up to 152 standard (40-ft) Hybrid Electric New Flyer coaches and 69 articulated (60-ft) Hybrid Electric New Flyer coaches, in an amount not to exceed $95,443,127.86, and for a term not to exceed five years; and, be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors recommends this matter to the Board of Supervisors for its approval of Contract No. SFMTA-2024-74-FTA.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of October 7, 2025.

____

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

President, District 8
BOARD of SUPERVISORS

City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Tel. No. 554-6968
Fax No. 554-5163
TDD/TTY No. 544-5227

RAFAEL MANDELMAN

PRESIDENTIAL ACTION

Date: 10/24/25

To: Angela Calvillo, Clerk of the Board of Supervisors

Madam Clerk,
Pursuant to Board Rules, I am hereby:

☐ Waiving 30-Day Rule (Board Rule No. 3.23)

File No. ______________ ______________
(Primary Sponsor)

Title.

☐ Transferring (Board Rule No 3.3)

File No. ______________ ______________
(Primary Sponsor)

Title.

From: ______________ Committee

To: ______________ Committee

☒ Assigning Temporary Committee Appointment (Board Rule No. 3.1)

Supervisor: Chen Replacing Supervisor: ______________

For: 10/29/25 (Date) Budget & Finance (Committee) Meeting

Start Time: ________ End Time: ________

Temporary Assignment: ○ Partial ◉ Full Meeting

Rafael Mandelman, President
Board of Supervisors

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220, San Francisco, CA 94102
Phone: 415.252.3100 . Fax: 415.252.3112
ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 251005

Bid/RFP #: SFMTA-2024-74-FTA

Notification of Contract Approval

SFEC Form 126(f)4
(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)
A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of $100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: https://sfethics.org/compliance/city-officers/contract-approval-city-officers

1. FILING INFORMATION

TYPE OF FILING	DATE OF ORIGINAL FILING (*for amendment only*)
Original	

AMENDMENT DESCRIPTION – Explain reason for amendment

2. CITY ELECTIVE OFFICE OR BOARD

OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT

NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	**EMAIL**
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT

NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Gary Chang	(415) 401-3173
FULL DEPARTMENT NAME	**DEPARTMENT CONTACT EMAIL**
MTA Municipal Transportation Agency	Gary.Chang@sfmta.com

5. CONTRACTOR	
NAME OF CONTRACTOR Complete Coach Works	**TELEPHONE NUMBER** (951) 684-9585
STREET ADDRESS (including City, State and Zip Code) 1863 Service Court, Riverside, CA 92507	**EMAIL**

6. CONTRACT		
DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	**ORIGINAL BID/RFP NUMBER** SFMTA-2024-74-FTA	**FILE NUMBER (*If applicable*)** 251005
DESCRIPTION OF AMOUNT OF CONTRACT $95,443,127.86		
NATURE OF THE CONTRACT *(Please describe)* Authorizing the Director of Transportation to execute a contract with Complete Coach Works, to perform Mid-Life Overhaul services to replace and rehabilitate systems for up to 152 standard (40ft) Hybrid Electric New Flyer Coaches and 69 articulated (60ft) Hybrid Electric New Flyer Coaches, in an amount not to exceed $95,443,127.86, and for a term not to exceed five years. This project is Phase II of the overhaul program and will address 221 coaches that have reached their midlife point. The SFMTA developed the overhaul program to streamline the process and, most importantly, ensure minimal impact to the service provided for our patrons. Also, the overhaul program is an effort to comply with the San Francisco County Transportation Authority (SFCTA) funding mandate to maintain these coaches in a state of good repair.		

7. COMMENTS

8. CONTRACT APPROVAL	
This contract was approved by:	
☐	**THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM**
☒	**A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES** Board of Supervisors
☐	**THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS**

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Carson	Dale	CEO
2	Dominici	Michael	CFO
3	Carson	Brad	COO
4	Scully	Patrick	COO
5	Fera	Allan	Board of Directors
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9. AFFILIATES AND SUBCONTRACTORS

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#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
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☐ Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK	DATE SIGNED
BOS Clerk of the Board	

OFFICE OF THE MAYOR
SAN FRANCISCO

DANIEL LURIE
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Adam Thongsavat, Liaison to the Board of Supervisors
RE: Agreement – Complete Coach Works – Perform Mid-Life Overhaul Services for 221 Coaches – Not to Exceed $95,443,127.86
DATE: October 7, 2025

Resolution approving an agreement with Complete Coach Works to perform Mid-Life Overhaul services to replace and rehabilitate systems for up to 152 standard (40ft) Hybrid Electric New Flyer Coaches and 69 articulated (60ft) Hybrid Electric New Flyer Coaches, in an amount not to exceed $95,443,127.86, and for a term not to exceed five years.

Should you have any questions, please contact Adam Thongsavat at adam.thongsavat@sfgov.org