

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF SOUTH SAN FRANCISCO AND
MIDWEST TAPE, LLC**

THIS AGREEMENT for consulting services is made by and between the City of South San Francisco (“City”) and Midwest Tape, LLC (“Consultant”) (together sometimes referred to as the “Parties”) as of June 1, 2023 (the “Effective Date”).

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as **Exhibit A**, attached hereto and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and **Exhibit A**, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 1, 2026, the date of completion specified in **Exhibit A**, and Consultant shall complete the work described in **Exhibit A** prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant’s profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Sections 1.1 and 1.2 above and to satisfy Consultant’s obligations hereunder.

Section 2. COMPENSATION. City hereby agrees to pay Consultant a sum not to exceed \$500,000, notwithstanding any contrary indications that may be contained in Consultant’s proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant’s proposal, attached as **Exhibit A**, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from

City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once per month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills (i.e., Progress Bill No. 1 for the first invoice, etc.);
- The beginning and ending dates of the billing period;
- A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- The Consultant's signature.

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant. City shall have no obligation to pay invoices submitted ninety (90) days past the performance of work or incurrence of cost.

2.3 Total Payment. City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.4 Reimbursable Expenses. Reimbursable expenses are included in the total amount of compensation provided under Section 2 of this Agreement that shall not be exceeded, and no additional reimbursements are available.

- 2.5 Payment of Taxes, Tax Withholding.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes. To be exempt from tax withholding, Consultant must provide City with a valid California Franchise Tax Board form 590 ("Form 590"), as may be amended and such Form 590 shall be attached hereto and incorporated herein as Exhibit [REDACTED]. Unless Consultant provides City with a valid Form 590 or other valid, written evidence of an exemption or waiver from withholding, City may withhold California taxes from payments to Consultant as required by law. Consultant shall obtain, and maintain on file for three (3) years after the termination of this Agreement, Form 590s (or other written evidence of exemptions or waivers) from all subcontractors. Consultant accepts sole responsibility for withholding taxes from any non-California resident subcontractor and shall submit written documentation of compliance with Consultant's withholding duty to City upon request. .
- 2.6 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date.
- 2.7 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide Certificates of Insurance, attached hereto and incorporated herein as **Exhibit C**, indicating that Consultant has obtained or currently maintains insurance that meets the requirements of this section and under forms of insurance satisfactory, in all respects, to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s).

- 4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000) per accident. In the alternative,

Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator (as defined in Section 10.9). The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 or GL 0002 (most recent editions) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. Any failure of Consultant to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.

4.4 All Policies Requirements.

- 4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.
- 4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with complete copies of all policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.
- 4.4.3 Notice of Reduction in or Cancellation of Coverage.** A certified endorsement shall be attached to all insurance obtained pursuant to this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. In the event that any coverage required by this section is reduced, limited, cancelled, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than ten (10) working days after Consultant is notified of the change in coverage.
- 4.4.4 Additional insured; primary insurance.** City and its officers, employees, agents, and volunteers shall be covered as additional insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant, as applicable; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant in the course of providing services pursuant to this Agreement. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, or volunteers.

A certified endorsement must be attached to all policies stating that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.

- 4.4.5 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. Further, if the Consultant's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by

others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible.

During the period covered by this Agreement, only upon the prior express written authorization of Contract Administrator, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, and volunteers. The Contract Administrator may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to each of them.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.4.7 Wasting Policy. No insurance policy required by Section 4 shall include a "wasting" policy limit.

4.4.8 Variation. The City may approve a variation in the foregoing insurance requirements, upon a determination that the coverage, scope, limits, and forms of such insurance are either not commercially available, or that the City's interests are otherwise fully protected.

4.5 Remedies. In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- b. Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- c. Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES. To the fullest extent permitted by law, Consultant shall indemnify, defend with counsel selected by the City, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the gross negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONSULTANT.

6.1 Independent Contractor. At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent or to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals, including from City, of what-so-ever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement for cause upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the date of notice of termination; City, however, may condition payment of such compensation upon Consultant delivering to City all materials described in Section 9.1.

- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not assign or subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.
- 8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 8.6.1** Immediately terminate the Agreement;
 - 8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

- 8.6.3 Retain a different consultant to complete the work described in **Exhibit A** not finished by Consultant; or
- 8.6.4 Charge Consultant the difference between the cost to complete the work described in **Exhibit A** that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties unless required by law.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.
- 9.4 **Records Submitted in Response to an Invitation to Bid or Request for Proposals.** All responses to a Request for Proposals (RFP) or invitation to bid issued by the City become the exclusive property of the City. At such time as the City selects a bid, all proposals received become a matter of public record, and shall be regarded as public records, with the exception of those elements in each proposal that are defined by Consultant and plainly marked as "Confidential," "Business Secret" or "Trade Secret."

The City shall not be liable or in any way responsible for the disclosure of any such proposal or portions thereof, if Consultant has not plainly marked it as a "Trade Secret" or "Business Secret," or if disclosure is required under the Public Records Act.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a prospective bidder submits is a trade secret. If a request is made for information marked "Trade Secret" or "Business Secret," and the requester takes legal action seeking release of the materials it believes does not constitute trade secret information, by submitting a proposal, Consultant agrees to indemnify, defend and hold harmless the City, its agents and employees, from any judgment, fines, penalties, and award of attorneys fees awarded against the City in favor of the party requesting the information, and any and all costs connected with that defense. This obligation to indemnify survives the City's award of the contract. Consultant agrees that this indemnification survives as long as the trade secret information is in the City's possession, which includes a minimum retention period for such documents.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including arbitration or an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County San Mateo or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve (12) months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 Contract Administration.** This Agreement shall be administered by Adam Elsholz, Assistant Library Director (“Contract Administrator”). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 Notices.** All notices and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given (i) when received if personally delivered; (ii) when received if transmitted by telecopy, if received during normal business hours on a business day (or if not, the next business day after delivery) provided that such facsimile is legible and that at the time such facsimile is sent the sending Party receives written confirmation of receipt; (iii) if sent for next day delivery to a domestic address by recognized overnight delivery service (e.g., Federal Express); and (iv) upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to the respective Parties as follows:

Consultant
Midwest Tape, LLC

1417 Timberwolf Drive
Holland, OH 43528

City:

City Clerk
City of South San Francisco
400 Grand Avenue
South San Francisco, CA 94080

- 10.12 Integration.** This Agreement, including all Exhibits attached hereto, and incorporated herein, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral pertaining to the matters herein.
- 10.13 Counterparts.** This Agreement may be executed in counterparts and/or by facsimile or other electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterpart, shall constitute one Agreement, which shall be binding upon and effective as to all Parties..
- 10.14 Construction.** The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Agreement. The parties have had an equal opportunity to participate in the drafting of this Agreement; therefore any construction as against the drafting party shall not apply to this Agreement.

The Parties have executed this Agreement as of the Effective Date.

CITY OF SOUTH SAN FRANCISCO

Consultants

City Manager

NAME:

TITLE:

Attest:

City Clerk

Approved as to Form:

City Attorney

2729962.1

EXHIBIT A

SCOPE OF SERVICES

Materials Discount

- Midwest Tape, LLC (“Consultant”) offers to the City of South San Francisco (“City”) the following discounts, off MSRP (Manufacturer’s Suggested Retail Price) for audiovisual materials (English and non-English):
 - DVDs (including Blu-Rays) – 25%
 - Music CDs – 25%
 - Audiobooks - sold at retail price; repackaged into the SoundSafe™ case at no charge.
 - Shipping – Free regardless of order size.
- Invoicing. Payment terms are Net 30 days ARO (after receipt of order).
- All audiovisual materials will receive the same discount structure as outlined above.

Opening Day Collections

- Selection Lists - Carts will be created by Consultant and available at www.midwesttape.com, and can be sorted by format, genre, or any other criteria. There is no charge for Consultant to prepare selection lists.
- Free Storage - Project product is stored, at no additional charge, at Consultant’s fully insured distribution center in Holland, Ohio until approval to ship to the new branch (es) has been authorized. Once approval is given, the opening day collection is shipped in full to the desired location. The City will be provided with complete title lists that can be sorted by genre, call number and alphabetic to aid in shelving the new items.
- Shelf-Ready Shipping - The Opening Day Collection will be organized according to the City’s specifications. It will be ready to go from the box straight onto the shelf. The product can be shipped shelf-ready to the renovated or new branches when requested. This would include fully processed items with spine labels and full OCLC custom MARC records with links to holdings. All material is boxed in genre or custom created categories.

Shipping & Fulfillment

- The City will receive their AV material free from freight charges with inside delivery service from Consultant’s single warehouse location in Holland, Ohio.
- Provide multiple accounts based on service specifications to be determined by the City. The City will be provided as many accounts as needed to serve the City’s needs at no additional cost (i.e. processing only, Cataloging/Processing, Adult, Juvenile, etc.).
- All accounts will be designed with the same discount structure, but the value added services, including services pricing, can be uniquely designed to each account.
- Vendor ability to accept electronically transmitted orders. We work with all major ILS programs. Consultant accepts electronic orders and can assist in setup at no additional charge.

- Ship complete orders per City instruction, partial shipments accepted. The City can order as many copies of a title as needed, whether that be a single copy or multiple copies. An average turnaround time for processed/cataloged, in-stock audiovisual materials, from date of order to completion and delivery, is approximately 7-14 days. An average turnaround time for back catalog processed/cataloged audiovisual materials, from date of order to completion and delivery, is approximately 14 – 21 days.
- Backorder fulfillment policy and fill rate for all backordered titles. Approximately 91 - 100% of the City's hot-new audiovisual orders are filled on the first shipment and in advance (7-14 days) prior to the title's release date with full processing and full level MARC cataloging services. Consultant steadfastly maintains a consistent 98% fill rate of our product offerings. Items that Consultant does not have in stock are immediately ordered and generally obtained from the studios/music labels/publishers within 5-15 business days from receipt of order. An average turnaround time for processed/cataloged, in-stock audiovisual materials, from date of order to completion and delivery, is approximately 7-14 days. An average turnaround time for back catalog processed/cataloged audiovisual materials, from date of order to completion and delivery, is approximately 14 – 21 days.
- Vendor fulfillment rate. Consultant stocks over 150,000 unique audiovisual titles in the Holland, OH warehouse and has a 99% fill rate within 7-10 business days of order for all new release titles.
- Separation of invoices corresponding to single accounts (will not mix accounts on an invoice). Itemized list of services provided. The City can have invoices separated by account along with cataloging and/or processing fees broke out on invoices.
- Provide one original invoice and a packing list with shipment. Electronic invoices available upon request. When the product ships one packing slip and one invoice will be included in the shipment. Electronic invoicing is available when the City has been set up for electronic ordering services.
- Ability for City to determine cancellation cycle with guaranteed return for credit of titles shipped after cancellation. Cancellation policies, specific to the City's requirements, can be implemented within our standing order plans along with standard orders. Orders remain active until the order is fulfilled. With the City's specific cancellation policy request, that request can be implemented for a timeframe (following street release) of 60, 90, 120 or 180 days after release date for audiovisual materials. The Customer Service Representative will initiate this policy and provide follow up to the City. If the City receives a title canceled in their system they can return for full credit.
- A support representative and/or sales executive will be assigned to the City's account to oversee all aspects of customer care.
- Acceptance of returns, including but not limited to vendor error and defective material. Every audiovisual product we sell is guaranteed for one year against manufacturer's defect or shipping damage. If the City notifies Customer Service Representatives within 60 days of invoice of a problem, a pre-paid UPS call tag is provided for the return of the product. The City will be provided this return label by email along with a Return Merchandise Authorization document to help expedite the no-charge replacement of product. If a credit memo is required to satisfy the situation, a printed credit memo will be provided siting the account number, purchase order number, title and UPC.
- Vendor pays return shipping on all accepted returns. The City will be provided a return label by email along with a Return Merchandise Authorization document to help expedite

the no-charge replacement of product. If a credit memo is required to satisfy the situation, a printed credit memo will be provided citing the account number, purchase order number, title and UPC. There are no restocking fees.

- Added Value Service charges will not be incurred for cancellations or returns. Every audiovisual product we sell is guaranteed for one year against manufacturer's defect or shipping damage. If the City notifies Customer Service Representatives within 60 days of invoice of a problem, a pre-paid UPS call tag is provided for the return of the product. The City will be provided this return label by email along with a Return Merchandise Authorization document to help expedite the no-charge replacement of product. If a credit memo is required to satisfy the situation, a printed credit memo will be provided citing the account number, purchase order number, title and UPC. The credit memo will reflect the cost of the product and any value-added service charges.
- Ability to provide credits for processing and or cataloging mistakes associated with shelf-ready service. If a title is processed or cataloged wrong, MWT will make it right at no additional cost or provide full credit if the City so chooses.
- Ensure shelf-ready materials delivered before the item release date to be placed in circulation on the release/street date. Consultant Guarantees Delivery by Release Date for popular DVD & Blu-Ray titles. Music and Audiobook product provided on or near street date. Popular items are shipped processed and cataloged so that the City can put the items on the shelves the same day as a retail store.
- Credit procedures, i.e. procedure for accounting for credit on returned books. Every audiovisual product we sell is guaranteed for one year against manufacturer's defect or shipping damage. If the City notifies Customer Service Representatives within 60 days of invoice of a problem, a pre-paid UPS call tag is provided for the return of the product. The City will be provided this return label by email along with a Return Merchandise Authorization document to help expedite the no-charge replacement of product. If a credit memo is required to satisfy the situation, a printed credit memo will be provided citing the account number, purchase order number, title and UPC.

Collection Development

- Include online collection development software with sufficient logins (minimum of 15) for City needs at no extra cost. The website, provides free, unlimited logins for City selectors and other designated staff. There are no costs associated with the use of our website (no annual fees and no hourly charges).
- Ability to create a cart or a list of titles and for City staff to add notes to specific titles on the lists for internal City use (for example, to indicate title was requested by patron xyz). The user does have the ability to add notes either at the title level or at the cart level in the internal notes field. Any notes entered in the internal notes field will then show up on the packing slip and the invoice.
- Ability to create shared carts. Consultant does offer the ability to share carts with a single user or multiple users on the City's account.
- Include collection development services at no extra cost. Describe levels of collection development services. Collection development is provided by our in-house content experts specializing in Video, Music and Audiobook categories. All collection lists are formulated

with the City to meet their needs and uploaded as website carts for ease of adjusting titles and quantities and for ordering. Lists are provided free of charge for as many as are needed to complete the project.

- Vendor website that provides electronic real-time web-based interface to its inventory and warehouse availability: including the ability to show quantities of items in stock; on order by warehouse location; pre-pub; out-of-stock; out of print and “apply direct” titles; on order or in other carts by other staff.
- Provide Standing Order options. myCARTS are a free service provided by Consultant. These plans will save the City time in collection development. With our myCARTS program, the City has complete control over this process. All DVD high demand, popular, feature films, children’s, fiction, non-fiction titles are strategically monitored from 3-5 months prior to release date by our Purchasing Department. CD Music notifications occur 2 – 3 months prior to release and Audio Book notifications occur bi-weekly as much as 9 months before release date. This enables us to continually increase “on order” quantities with the studios and publisher.

Cataloging

- Provide full MARC 21, Level K or higher records for all items, including pre-pub materials, brief MARC not accepted, from OCLC.
 - Consultant provides MARC records through a unique relationship with OCLC. Our relationship has been ongoing for nearly two decades, supporting the creation of efficient cataloging workflows and sharing of data. We have been the originator of nearly all-new DVD and Music CD records for the past fifteen years. We provide these different levels of cataloging services to more than 2,800 individual libraries. All New Release titles are cataloged no later than four to six weeks prior to street date, ensuring an appropriate time to have MARC records completed, and product processed and delivered to the City by street date. This type of daily communication between partners encourages an open platform to discuss priority of work. New records comply with today’s RDA standards. However, back catalog titles may either be AACR2 designed or a hybrid of both. We will provide to the South San Francisco City a Full Record for all audiovisual titles.
- Ability to catalog materials to City specifications; including customized MARC 21, Level K, records with item level 949 fields.
 - Consultant can provide customized fields within our Full Record with item level 949 fields.
- Ability to fulfill customized spine label cutting instructions in an electronic order that override standard spine label cutting instructions.
 - City can transmit any customized spine label information within the electronic ordering option. The City initially creates a cart within our eCommerce website, downloads our free vendor records so that the order can be placed within their ILS program. The electronic order is then transmitted from their ILS into our FTP program. The specialized instructions can be transmitted within the initial order and follows through to our processing and cataloging team to apply within those services. However, our team will work with the City to outline most customized

spine labeling requirements to allow the flow of ordering to be much easier on the City staff.

- Ability to assign Dewey call numbers according to City specifications/ customizations
 - Our full marc record can contain the City's specified Dewey call numbers.
- Ability to overlay catalog full MARC 21, Level K, records over brief acquisition records in ILS
 - Using vendor records for the items in a website shopping carts eliminates hand-creating orders in a City's ILS system. Using information the City provides, the Consultant team can program the additional order record tags attached to the downloaded vendor records. These order record tags vary by ILS, but the tag itself is usually found in the 900s. This 9xx tag will carry whatever fund (budget), location, collection code, pricing information, and note fields you need. Additionally, the list price of the title can be placed within our vendor records which are located usually with the 020 tag or can be customized within any other tag required by the City. When product ships, the City is sent a MARC file with 9xx information to assist with overlaying the brief record with the Full Level record in their ILS.
- Ability to send item records only
 - 949 Tag linking services can be provided for both new and updated bibliographic records which will be constructed to allow item creation from this field when processed by the City's automated system, often an additional barcode linked to an existing record. Please note that these item records are charged on a per unit basis of \$0.25 per 949 tag linked.

Processing

The following pricing is for the processing services only, cataloging is charged separately:

Audiobook materials processing

- Audiobooks = \$3.59
 - Services include VIP digital artwork inclusive of the following labels: Branch Label, Spine Label, 'Look for' Label (where applicable), Genre Label, 'New' label (where applicable) and Scannable Barcode. Hand applied labels include Property Label (applied to the case), RFID Tag (s) with Activation services. Artwork and discs moved into a Midwest Tape patented SoundSafe™ Case appropriate to the number of discs within the title.
- Encoded RFID Tag, Attach on inside of back cover, \$3.19
- Property label, Placed on inside left bottom of case cover, \$0.40
- Repackaging, Repackage into standard DMP cases, \$0.00
 - All Audiobooks are repackaged at no cost to the City in our SoundSafe Cases
- Barcode, Front of graphic, top banner, upper right corner, \$0.00
 - Barcodes would be digitally integrated into the title's artwork in the location requested by the City.
- Branch Label, Front of graphic bottom right of barcode label., \$0.00

- Branch labels would be digitally integrated into the title's artwork in the location requested by the City.
- Spine label, Spine of graphics, flush with the bottom edge, \$0.00
 - 1. Omit punctuation 2. Spell out numbers and exponents 3. Cutter with 1 letter for fiction, and Dewey Decimal plus one letter for author for non-fiction. Exception: Biographies should have 3 letters of the last name for the subject of the biography.
 - Spine labels would be digitally integrated into the title's artwork in the location requested by the City.
- Look for Label (2 or more discs), Top banner, front graphics, lower left corner, Only for 2+ disc sets, \$0.00
 - Look For labels would be digitally integrated into the title's artwork in the location requested by the City for titles contain 2 or more discs.
- Additional spine labels (Genre, New, etc.), Apply on the outside of case above the spine label/genre., \$0.00
 - Additional spine labels can be accommodated within our digital processing services as needed for specific titles. There is no additional cost for this service.

DVD Processing

- DVDs = \$2.54 (for Single and Double Disc titles). \$3.00 (for multi-disc titles – larger capacity case)
 - Services include VIP digital artwork inclusive of the following labels: Branch Label, Spine Label and Scannable Barcode. Hand applied labels include Round Property Label (Consultant provided) applied to discs. Artwork and discs placed within DVD AVD Case appropriate to the number of discs within the title.
- Round property tag on disc, Center of disc; for multi discs item, place tag on middle number discs, \$0.38
- If it is a double-sided disc, use the donut HUB, Center of disc, \$0.00
- Repackaging, Repackage into standard cases for DVD, \$2.17
 - Midwest Tape's VIP (Variable Integrated Processing) services include digitally integrating the City's labels within the artwork. Please note this Repackaging price is for Single & Double Disc processing. Multi-Disc processing Repackaging service = \$2.62 due to higher cost of larger capacity case.
- Barcode, Front right top, \$0.00
 - All digital labels are included in processing services at no cost.
- Spine label, Place on spine of the DVD, top centered, 1 x 1½ white label, \$0.00
- Look For! Label, Apply to front left lower corner, Only for 2+ disc sets, \$0.00
- Branch label, Three letter owning branch code placed right side bottom of art cover, Size 3/4" x 1/2", \$0.00

Music CD processing

- Music CDs = \$3.89 (for Single and Double Disc titles) \$5.69 (for multi-disc titles – larger capacity case)
 - Services include VIP digital artwork inclusive of the following labels: Branch Label, Spine Label and Scannable Barcode. Hand applied labels include RFID Tag with

activation (within the artwork) & Stingray Overlay, Round Property Label (Consultant provided) applied to discs. Artwork and discs placed within CD P-Line Case appropriate to the number of discs within the title. Please note that multi-disc Music titles are placed within a CD Unikeep Case.

- Encoded square RFID Tag * Stingray tag, Inside back of cover Stingray tag – placed on single disc. Multiple discs, - place on middle numbered disc, \$3.89
 - This price includes the 2x2 RFID Tag, Stingray Disc Overlay and Activation services.
- If it is a double-sided disc, use the donut HUB, Center of disc, \$0.00
- Repackaging, Repackage into standard DMP cases, \$0.00
 - No charge for the case for single and double disc titles. Multi-disc cases are charged \$1.80.
- Barcode, Front upper right, \$0.00
 - All digital labels are included in our processing services at no cost
- Spine label, Front, upper left, Size $\frac{3}{4}$ x 1, \$0.00
 - All digital labels are included in our processing services at no cost.
- Look For! Label, Apply to lower left corner, Only for 2+ disc sets, \$0.00
- Branch label, Three letter owning branch code placed right bottom of case, Size $\frac{3}{4}$ " x $\frac{1}{2}$ ", \$0.00

EXHIBIT B
COMPENSATION SCHEDULE

EXHIBIT C
INSURANCE CERTIFICATES

[OPTIONAL] EXHIBIT D

FORM 590