

THIS PRINT COVERS CALENDAR ITEM NO.: _____

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Parking and Traffic Division

BRIEF DESCRIPTION:

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

SUMMARY:

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

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO _____ Maxine Louie

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

To approve various routine traffic and parking modifications.

Benefit to the SFMTA 2008 – 2012 Strategic Plan:

- Goal 1 - To provide safe, accessible, reliable, clean and environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy
Objective - 1.1 - Improve safety and security across all modes of transportation

- Goal 2 - To get customers where they want to go, when they want to be there
Objective - 2.4 - Reduce congestion through major corridors
Objective - 2.5 - Manage parking supply to align with SFMTA and community goals

ITEMS:

- A. ESTABLISH - STOP SIGNS - 3rd Avenue at Hugo Street, making this intersection an All-Way STOP; Beach Street and Larkin Street, all directions, making this intersection an all-way STOP; Beach Street and Polk Street, eastbound and westbound, making this an all-way STOP; and Donner Avenue, at Bayshore Boulevard, stopping Donner Avenue.
PH: 9/5/08; PH 9/19/08 Requested by Residents
- B. ESTABLISH - LEFT LANE MUST TURN LEFT – Jamestown Avenue, eastbound, at 3rd Street. **PH: 9/5/08 Requested by Resident**
- C. ESTABLISH - NO U-TURN - Marina Boulevard, westbound, at Lyon Street/Yacht Road.
PH: 9/5/08 Requested by Resident
- D. RESCIND - BUS ZONE - McAllister Street, north side, from 7th Street North to 96-foot easterly. **PH: 9/5/08 Requested by SFMTA**
- E. ESTABLISH - BUS ZONE - McAllister Street, north side, from Jones Street to 125-foot westerly. **PH: 9/5/08 Requested by SFMTA**
- F. EXTEND - BUS ZONE - Mission Street, north side, from 125-foot west of 11th Street to 39-foot westerly, (extends bus stop from 125-foot to 164-foot long and eliminates parking metered spaces # 1514 and # 1516). **PH: 9/5/08 Requested by SFMTA**
- G. REVOKE - BLUE ZONE - 250 Valencia Street, west side, from 136 feet to 156 feet south of Clinton Park (20-foot long). **PH: 9/5/08 Requested by School**
- H. ESTABLISH - BLUE ZONE - 250 Valencia Street, west side, from 117 feet to 139 feet south of Clinton Park (22-foot long). **PH: 9/5/08 Requested by School**
- I. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "D" (4-HOUR TIME LIMIT, 9 AM - 5 PM, MONDAY THROUGH FRIDAY) - Laidley Street, both sides, between Roanoke and Mateo Streets (400 block). **PH: 9/5/08 Requested by Resident**

- J. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "O" (2-HOUR TIME LIMIT, 8 AM - 6 PM, MONDAY THROUGH FRIDAY) - 16th Avenue, both sides, between Rivera and Santiago Streets (2200 block); and 20th Avenue, west side, between Vicente and Wawona Streets (2600 block). **PH: 9/5/08; PH 9/19/08 Requested by Residents**
- K. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "V" (2-HOUR TIME LIMIT, 8 AM - 6 PM, MONDAY THROUGH FRIDAY) - Faxon Avenue, island side, from Elmwood Way to 46' southerly; Southwood Drive, island side, from Elmwood Way to 48' southerly; 600 Block of Faxon Avenue, both sides, between Ocean Avenue and Elmwood Way (establishes eligibility to purchase permits only; the current No Parking signage will remain). **PH: 9/5/08 Requested by Resident**
- L. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "Z" (2-HOUR TIME LIMIT, 8 AM - 6 PM, MONDAY THROUGH FRIDAY) - 21st Street, both sides, between Dolores and Chattanooga Streets (3500 block). **PH: 9/5/08 Requested by Resident**
- M. RESCIND - TOW-AWAY, NO PARKING ANYTIME - Davis Street, west side, between Washington and Clay Streets. **PH: 9/5/08 Requested by Port**
- N. ESTABLISH - TOW-AWAY NO STOPPING EXCEPT BUSES BETWEEN 3 PM AND 6 PM, MONDAY THROUGH FRIDAY - Davis Street, west side, between Washington and Clay Streets. **PH: 9/5/08 Requested by Port**
- O. ESTABLISH - GENERAL METERED PARKING AREA 1 (2-HOUR PARKING TIME LIMIT, 7 AM - 3 PM, MONDAY THROUGH FRIDAY AND 7 AM – 6 PM SATURDAY) - Davis Street, west side, between Washington and Clay Streets. (This would yield to 11 metered parking spaces). **PH: 9/5/08 Requested by Port**
- P. ESTABLISH - TOW-AWAY, NO PARKING ANYTIME - Alabama Street, west side, between Ripley and Waltham Streets; and Esmeralda Avenue, south side, between Bradford and Waltham Streets. **PH: 9/19/08 Requested by Resident; Requested by SFMTA**
- Q. ESTABLISH - NO PARKING ANYTIME - Funston Avenue, west side, from Balboa Street to approximately 32-feet northerly (to accommodate new pedestrian island); and Dublin Street, 200 block on the dead-end terminus, between the driveways for 263 and 260 Dublin Street. **PH: 9/19/08 Requested by SFMTA; Resident**
- R. ESTABLISH - RED ZONE - Holloway Avenue, north side, from crosswalk at Cardenas Avenue to 20 feet easterly; Newcomb Avenue, north side, from 123 feet to 135 feet westerly from Newhall Street; Newcomb Avenue, north side, from 371 feet to 382 feet westerly from Newhall Street; Newcomb Avenue, south side, from 215 feet to 237 feet easterly from Phelps Street; and Newcomb Avenue, south side, from 467 feet to 479 feet easterly from Phelps Street. **PH: 9/19/08 Requested by SFSTATE; Requested by Residents**
- S. ESTABLISH - PERPENDICULAR (90-DEGREE ANGLE) PARKING - Newcomb Avenue, south side, from Newhall Street to 122 feet westerly; and Newcomb Avenue, south side, from Phelps Street to 215 feet easterly. **PH: 9/19/08 Requested by Residents**
- T. REVOKE - PERPENDICULAR (90-DEGREE ANGLE) PARKING - Newcomb Avenue, north side, from Newhall Street to 123 feet westerly; and Newcomb Avenue, north side, from Phelps Street to 218 feet easterly. **PH: 9/19/08 Requested by Residents**
- U. ESTABLISH - TRAFFIC SIGNALS - Phelan Avenue at Lee Avenue (new roadway extension near Riordan HS); and Phelan Avenue at Cloud Circle (southerly intersection). **PH: 9/19/08 Requested by CITY COLLEGE SF**

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

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

- A. ESTABLISH - STOP SIGNS - 3rd Avenue at Hugo Street, making this intersection an All-Way STOP; Beach Street and Larkin Street, all directions, making this intersection an all-way STOP; Beach Street and Polk Street, eastbound and westbound, making this an all-way STOP; and Donner Avenue, at Bayshore Boulevard, stopping Donner Avenue.
- B. ESTABLISH - LEFT LANE MUST TURN LEFT - Jamestown Avenue, eastbound, at 3rd Street.
- C. ESTABLISH - NO U-TURN - Marina Boulevard, westbound, at Lyon Street/Yacht Road.
- D. RESCIND - BUS ZONE - McAllister Street, north side, from 7th Street North to 96-feet easterly.
- E. ESTABLISH - BUS ZONE - McAllister Street, north side, from Jones Street to 125-feet westerly.
- F. EXTEND - BUS ZONE - Mission Street, north side, from 125-feet west of 11th Street to 39-feet westerly, (extends bus stop from 125-feet to 164-feet long and eliminates parking metered spaces # 1514 and # 1516).
- G. REVOKE - BLUE ZONE - 250 Valencia Street, west side, from 136 feet to 156 feet south of Clinton Park.
- H. ESTABLISH - BLUE ZONE - 250 Valencia Street, west side, from 117 feet to 139 feet south of Clinton Park.
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LIMIT, 7 AM - 3 PM, MONDAY THROUGH FRIDAY AND 7 AM – 6 PM SATURDAY) - Davis Street, west side, between Washington and Clay Streets. (This would yield to 11 metered parking spaces).

- P. ESTABLISH - TOW-AWAY, NO PARKING ANYTIME - Alabama Street, west side, between Ripley and Waltham Streets; and Esmeralda Avenue, south side, between Bradford and Waltham Streets.
- Q. ESTABLISH - NO PARKING ANYTIME - Funston Avenue, west side, from Balboa Street to approximately 32-feet northerly (to accommodate new pedestrian island); and Dublin Street, 200 block on the dead-end terminus, between the driveways for 263 and 260 Dublin Street.
- R. ESTABLISH - RED ZONE - Holloway Avenue, north side, from crosswalk at Cardenas Avenue to 20 feet easterly; Newcomb Avenue, north side, from 123 feet to 135 feet westerly from Newhall Street; Newcomb Avenue, north side, from 371 feet to 382 feet westerly from Newhall Street; Newcomb Avenue, south side, from 215 feet to 237 feet easterly from Phelps Street; and Newcomb Avenue, south side, from 467 feet to 479 feet easterly from Phelps Street.
- S. ESTABLISH - PERPENDICULAR (90-DEGREE ANGLE) PARKING - Newcomb Avenue, south side, from Newhall Street to 122 feet westerly; and Newcomb Avenue, south side, from Phelps Street to 215 feet easterly.
- T. REVOKE - PERPENDICULAR (90-DEGREE ANGLE) PARKING - Newcomb Avenue, north side, from Newhall Street to 123 feet westerly; and Newcomb Avenue, north side, from Phelps Street to 218 feet easterly.
- U. ESTABLISH - TRAFFIC SIGNALS - Phelan Avenue at Lee Avenue (new roadway extension near Riordan HS); and Phelan Avenue at Cloud Circle (southerly intersection).

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

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

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Resolution authorizing the San Francisco Municipal Transportation Agency, through its Executive Director/CEO, to accept and expend \$5,110,000 of the Federal Highway Administration's High Priority Project funds for SFgo Van Ness Corridor Improvements.

SUMMARY:

- The San Francisco Municipal Transportation Agency (SFMTA) must apply to the Federal Transit Administration (FTA) to have funds included in a federal grant once the Metropolitan Transportation Commission (MTC) programs the project in the region's Transportation Improvement Program (TIP).
- The project planned is consistent with the priorities established by the SFMTA Board, as affirmed in Muni's Short Range Transit Plan, and are embodied in the Regional TIP and the San Francisco County Transportation Authority's Congestion Management and Strategic Plan.
- The SFgo Van Ness Corridor Improvements project has a Congressional earmark for funding in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).
- SFMTA seeks authority to accept and expend \$5,110,000 of Federal Highway Administration's (FHWA) High Priority Project earmark funds to be administered by FTA under its Section 5309 program for SFgo Van Ness Corridor Improvements.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Bob Hom, 1 South Van Ness Avenue, 7th Floor

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

SFMTA requests SFMTA Board action to accept and expend \$5,110,000 administered through the Federal Transit Administration (FTA) Section 5309 bus and related program for the SFgo Van Ness Corridor Improvements Project. The Project will provide transit signal priority along the Van Ness Corridor to improve travel times.

GOAL

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

- Goal 1 - To provide safe, accessible, reliable, clean and environmentally sustainable service.
Objective 1.3 - Reduce emissions as required by the SFMTA Clean Air Plan
Objective 1.4 - Improve accessibility across transit service
- Goal 5 – To ensure financial stability and effective resource utilization.
Objective 5.2 – Improve facilities in which people are working
- Goal 6 – To improve service and efficiency, the SFMTA must leverage technology.
Objective 6.1 – Information and technology leadership: Identify, develop and deliver the new and enhanced systems and technologies required to support SFMTA’s 2012 goals.

DESCRIPTION

Each year, the Metropolitan Transportation Commission (MTC), in its role as the region’s designated metropolitan planning organization, develops a regional Program of Projects (POP) for various federal funding programs authorized for mass transportation projects under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). These funding programs include the federal earmarks.

The established POP incorporates and is consistent with SFMTA's priorities as established in the adopted Short Range Transit Plan (SRTP) and Capital Investment Plan adopted by the SFMTA Board. MTC recently amended the region’s TIP to program FHWA High Priority Project (HPP) funds to include the SFgo Van Ness Corridor Improvements earmark. SFgo Van Ness Corridor Improvements is a Congressional earmark project apportioned evenly across the five year life of SAFETEA-LU. FHWA HPP funds can be transferred to FTA for its administration when the funds are intended for a transit project. Because SFgo’s other federal grants will be administered by FTA, it is more effective for SFMTA to request these HPP earmarks to be transferred to FTA. Accordingly, SFMTA has requested cumulative Congressional appropriations totaling \$3,990,000 to be transferred to FTA for administration in its Section 5309 program and will request transfer of the final year’s authorization once Congress takes action to appropriate up to \$1,120,000 for Fiscal Year 2009.

This action would authorize the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend \$5,110,000 of HPP funds to be administered in FTA’s Section 5309 program for the SFgo Van Ness Corridor Improvements project.

ALTERNATIVES CONSIDERED

Failure to accept these funds would result in down-scoping SFGo by a like amount, finding alternative funding, or a combination of the two.

FUNDING IMPACT

The SFMTA will apply for these funds under FTA Grant No. CA-55-0002. The required non-federal matching funds of \$1,277,500 will be secured separately. Various state, regional and local fund sources will be tapped to provide matching funds for this project, which may include State transportation funds, bridge toll funds, Transit Impact Development Fees, San Francisco Municipal Railway fare revenue, San Francisco Municipal Railway Improvement Corporation funds and or sales tax revenues administered by the San Francisco County Transportation Authority.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

MTC recently amended the region's TIP to program HPP funds to include the SFgo Van Ness Corridor Improvements project.

RECOMMENDATION

SFMTA recommends the SFMTAB adopt a resolution authorizing SFMTA, through its Executive Director/CEO, to accept and expend \$5,110,000 of HPP funds for SFgo Van Ness Corridor Improvements project.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The U.S. Secretary of Transportation is authorized to make monies available for mass transportation projects under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU); and

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) is an eligible claimant for High Priority Project (HPP) funds under the Federal Highway Administration program of SAFETEA-LU; and

WHEREAS, HPP funds used for a transit project can be transferred to the Federal Transit Administration (FTA) for administration; and

WHEREAS, From Fiscal Years 2005-2009, \$5,110,000 HPP funding has been apportioned to the SFgo Van Ness Corridor Improvements project; and

WHEREAS, The contract for financial assistance will impose certain obligations on the applicant, including providing the local share of project costs; and

WHEREAS, SFMTA'S non-federal share of project costs of \$1,277,500 will be funded through a variety of sources, which may include State transportation funds, bridge toll funds, transit impact development fees, San Francisco Municipal Railway fare revenue, San Francisco Municipal Railway Improvement Corporation funds and/or sales tax revenue administered by the San Francisco County Transportation Authority; and

WHEREAS, The U.S. Department of Transportation (DOT) requires that in connection with the filing of an application for federal assistance, the applicant give an assurance that it will comply with Title VI of the Civil Rights Act of 1964 and the DOT requirements implementing that Act; and

WHEREAS, It is the goal of the applicant that disadvantaged business enterprises (DBEs) be utilized to the fullest extent possible in connection with this project, and that definitive procedures shall be established and administered, consistent with federal law, to ensure that DBEs be utilized to the fullest extent possible and shall have the maximum possible opportunity to compete for contracts, supplies, equipment contracts, or consultant and other services; and

WHEREAS, The Executive Director/CEO or his designee must execute agreements with FTA and other agencies to complete transfer of the funds; now, therefore, be it

RESOLVED, That the SFMTA Board authorizes the SFMTA, through its Executive Director/CEO, to accept and expend \$5,110,000 administered through FTA Section 5309 capital assistance for the SFgo Van Ness Corridor Improvements project; and, be it

FURTHER RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO to furnish whatever additional information or assurances that might be requested by the funding agencies in connection with this request; and, be it

FURTHER RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO or his designee to execute any and all agreements necessary to complete transfer of the funds; and, be it

FURTHER RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO to seek \$1,277,500 in non-federal matching funds.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 10.4

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the San Francisco Municipal Transportation Agency, through its Executive Director/CEO (or his designee), to accept and expend \$194,700 of California Department of Transportation's Safe Routes to School grant funds for the Clarendon Elementary School Project.

SUMMARY:

- The San Francisco Municipal Transportation Agency requests authority to accept and expend \$194,700 of California Department of Transportation's Safe Routes to School grant funds with a 10% local match.
- The SFMTA was awarded funds for the Clarendon Elementary School Project by the California Department of Transportation ("Caltrans") on March 21, 2008 as part of the State-legislated Safe Routes to School (SR2S) Program.
- This project will provide a safe route for students crossing Clarendon Avenue through installing traffic and pedestrian signals, a yellow ladder crosswalk, ADA-compliant curb ramps, and a flashing beacon; replacing the existing median island; and conducting education and encouragement activities to increase awareness about the benefits of walking and traffic safety.
- This proposal supports Objectives 1.1, 1.5, 2.3, and 4.2 of the SF Municipal Transportation Agency *2008-2012 Strategic Plan*.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR /CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

Eileen Ross, MTA Finance, 1 South Van Ness Avenue, 7th Floor

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

The San Francisco Municipal Transportation Agency requests SFMTA Board action to accept and expend \$194,700 of California Department of Transportation's Safe Routes to School grant funds with a 10% local match for the Clarendon Elementary School Project.

GOAL

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

- Goal 1 – To provide safe, accessible, reliable, clean and environmentally sustainable service.
Objective 1.1 - Improve safety and security across all modes of transportation,
Objective 1.5 - Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare),
- Goal 2 – To get customers where they want to go, when they want to be there
Objective 2.3 - Fulfill bicycle and pedestrian network connectivity, and
- Goal 4 – To ensure financial stability and effective resource utilization
Objective 4.2 - Ensure efficient and effective use of resources.

DESCRIPTION

The Clarendon Elementary School Project will provide a safe route for students crossing Clarendon Avenue through the installing traffic and pedestrian signals, a yellow ladder crosswalk, ADA-compliant curb ramps, and a flashing beacon; replacing the existing median island; and conducting education and encouragement activities to increase awareness about the benefits of walking and traffic safety.

The project is located at Panorama Drive and Clarendon Avenue in the center of San Francisco, south of Mount Sutro. Clarendon Avenue is a wide, four-lane minor arterial with a significant downhill grade (8%) in the southbound direction in front of the school. The total project cost is \$194,700, including a local match of \$19,470.

This action would authorize the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend \$194,700 of California Department of Transportation's Safe Routes to School grant funds with a 10% local match for the Clarendon Elementary School Project.

ALTERNATIVES CONSIDERED

Not applicable.

FUNDING IMPACT

The required 10% local match will likely be from Proposition K (sales tax) funds distributed by the San Francisco County Transportation Authority.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

RECOMMENDATION

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

Staff recommends that the SFMTA Board approve the attached resolution authorizing the Municipal Transportation Agency, through its Executive Director/CEO or his designee, to accept and expend \$194,700, in state Safe Routes to School funds for the Clarendon Elementary School Project.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, In 1999, the State Legislature passed Assembly Bill 1475, which created the Safe Routes to School Program ; the program was subsequently extended by Senate Bill 10 in 2001 and Senate Bill 1087 in 2004; and

WHEREAS, The goals of the Safe Routes to School Program are to reduce injuries and fatalities to school children in grades K-12 and encourage increased walking and bicycling to school through improved safety; and

WHEREAS, The California Department of Transportation (Caltrans) makes funds available to local governmental agencies, based on the results of a statewide competition that requires the submission of proposals for funding, and rates those proposals on demonstration of need, potential to reduce child injuries and fatalities, and potential to encourage increased walking and bicycling among students; and

WHEREAS, SFMTA Parking and Traffic submitted proposals to Caltrans for Safe Routes to School grant funds; and

WHEREAS, Caltrans approved a grant to SFMTA in the amount of \$194,700 for the Clarendon Elementary School Project with a local match requirement of 10 %; and

WHEREAS, The Clarendon Elementary School Project will provide a safe route for

students crossing Clarendon Avenue through the installing traffic and pedestrian signals, a yellow ladder crosswalk, ADA-compliant curb ramps, and a flashing beacon; replacing the existing median island; and conducting education and encouragement activities to increase awareness about the benefits of walking and traffic safety; and

WHEREAS, School officials, parents, and the local community are collaborative supporters of this project, and specific safety improvements and countermeasures have been identified in concept for implementation; and now, therefore, be it

RESOLVED, That the SFMTA Board authorizes the SFMTA, through the Executive Director/CEO (or his designee), to accept and expend \$194,700, in state Safe Routes to School Program funds for the Clarendon Elementary School Project; and be it

FURTHER RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO (or his designee) to execute agreements and other documents required for receipt of these funds.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 10.5

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Muni Operations

BRIEF DESCRIPTION:

Approve an agreement between the City and County of San Francisco and Saint Louis County to transfer ownership of Municipal Railways Presidents' Conference Committee Streetcar #1164 to Saint Louis County.

SUMMARY:

- Presidents' Conference Committee (PCC) Streetcar #1164 has been on loan to the Museum of Transportation in Saint Louis County since 1990.
- Recently the Saint Louis County offered to purchase PCC car #1164.
- The SFMTA is willing to transfer ownership because of its' great historical significance to Saint Louis as it would be the only original Saint Louis PCC car in their fleet.
- If the SFMTA were to decline the offer and ship the vehicle back to San Francisco, the cost to rehabilitate the vehicle would be approximately \$1.2 million.
- In exchange, the SFMTA would gain two #1220 traction motors which can be used for our current fleet.
- Charter Section 8A102 (b) gives the authority to the SFMTA Board of Directors to approve the transfer of ownership vintage transit equipment.

ENCLOSURES:

1. SFMTAB Resolution
2. Agreement

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO Trinh Nguyen

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

Approve an agreement between the City and County of San Francisco and Saint Louis County to transfer ownership of Municipal Railways Presidents' Conference Committee Streetcar #1164 to Saint Louis County.

GOAL

This item supports:

Strategic Plan Goal 4: To ensure financial stability and effective resource utilization.

Objective 4.2: Ensure efficient and effective use of resources.

DESCRIPTION

The SFMTA has loaned several of our retired historic vehicles to other entities including the Western Railway Museum in Suisun City, CA; Orange Empire Railway Museum in Perris, CA and the Sydney Transport Museum in Loftus, Australia.

Presidents' Conference Committee (PCC) Streetcar #1164 has been on loan to the Museum of Transportation in Saint Louis County since 1990. PCC #1164 was originally owned by Saint Louis, but was acquired by San Francisco in 1957. In the early 1980's, the Public Utilities Commission, which, at the time, oversaw the Municipal Railway, decided to liquidate some of the PCC fleet.

A few years later, based on the success of the Market Street Railway's "Historic Trolley Festival", efforts were made to acquire a fleet of historic vehicles and use them in revenue service. This vehicle remained on loan because PCC Car 1164 was in poor condition due to years of storage out of doors prior to shipment to Saint Louis. An evaluation of the streetcar has revealed some structural deterioration and extensive mechanical and electrical deficiencies. In addition cosmetic upgrades would have been necessary to restore the streetcar to full operating condition and preserve its historical character.

Currently, we have approximately 16 PCC's in our revenue fleet and in 2002 we purchased 11 additional PCCs from New Jersey Transit which we are in the process of rehabilitating, along with five additional PCCs originally owned by Muni. Including a group of 25 more unrehabilitated PCCs on Muni property, the SFMTA has a total of 57 vehicles of this type in its physical possession.

Recently the Saint Louis County Counsel's office sent a letter to the SFMTA with an offer to purchase PCC car #1164. Saint Louis County recently began operating a short streetcar line and has restored several of its cars to service. This line has proven to be as popular in Saint Louis as the F-line has been in San Francisco and the County Museum of Transportation would like to restore the streetcar for use in revenue service.

PAGE 3

The SFMTA is willing to transfer ownership of this vehicle to Saint Louis County because of its' great historical significance to Saint Louis as it would be the only original Saint Louis PCC car in their fleet. In addition, we already have several Saint Louis Cars and PCC vehicles from other cities in our fleet.

ALTERNATIVES CONSIDERED

If the SFMTA were to decline the offer and ship the vehicle back to San Francisco, the cost to rehabilitate the vehicle would be approximately \$1.2 million.

Saint Louis County offered to purchase the streetcar "as is" for \$1,850 or alternatively, they proposed providing the SFMTA with two General Electric #1220 traction motors suitable for use in one of our PCC cars (including the cost to ship and insure the motors to San Francisco). SFMTA staff has determined that the two traction motors are more advantageous to the SFMTA because parts for PCC streetcars are no longer made and are becoming increasingly scarce. In addition, if the vehicle were to be returned, the SFMTA would have to bear the cost to ship the vehicle back to San Francisco in its' current state of disrepair.

FUNDING IMPACT

There is no impact to the operating budget. The SFMTA gains two #1220 traction motors which can be used for our current fleet.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City's Administrative Code Section 10.84 states that no City department may sell, loan for a period in excess of one year or otherwise dispose of any vintage transit equipment without approval by the Board of Supervisors after a public hearing. For purposes of this paragraph "vintage transit equipment" means any Municipal Railway rolling stock or component thereof which is more than twenty-five years old. "Vintage transit equipment" does not include any of the following:

- (1) Components which are worn out, broken or otherwise unusable which will be replaced by components of a like kind designed to serve the same function.
- (2) Usable surplus components which will be traded for other components in short supply.

Under Charter Section 8A102(b), however, the SFMTA Board of Directors has succeeded to the authority of the Board of Supervisors with respect to this approval.

The City Attorney has reviewed this report.

RECOMMENDATION

Approve the execution of an Agreement with Saint Louis County for the transfer of ownership of PCC Car No. 1164 in exchange for two #1220 traction motors.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, President's Conference Committee (PCC) Streetcar #1164 has been on loan to the Museum of Transportation in Saint Louis County since 1990; and,

WHEREAS, Saint Louis County has offered to purchase PCC car #1164 so they could restore the vehicle and return it to revenue service; and,

WHEREAS, The SFMTA is willing to transfer ownership of this vehicle to Saint Louis because of its' great historical significance to Saint Louis as it would be the only original Saint Louis PCC car in the County's fleet; and,

WHEREAS, In exchange for the PCC Streetcar #1164, Saint Louis County has offered the SFMTA two General Electric traction motors suitable for use in a PCC car; and,

WHEREAS, Administrative Code Section 10.84 states that no City department may sell, loan for a period in excess of one year or otherwise dispose of any vintage transit equipment without approval by the Board of Supervisors after a public hearing; and,

WHEREAS, Charter Section 8A102 (b) states that the SFMTA Board of Directors has succeeded to the authority of the Board of Supervisors with respect to this approval; and,

WHEREAS, Charter Section 8A.102 (b) states that the San Francisco Municipal Transportation Agency has exclusive control of all property under its' jurisdiction and therefore the authority to transfer property requires approval by the SFMTA Board of Directors rather than approval by the Board of Supervisors; now, therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute an agreement with Saint Louis County to transfer ownership of Presidential Conference Committee Streetcar #1164 to Saint Louis County in exchange for two General Electric #1220 traction motors.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

AGREEMENT FOR TRANSFER OF PCC STREETCAR

This Agreement ("Agreement") is dated for convenience this 16th day of September, 2008, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation of the State of California ("San Francisco"), by and through its Municipal Transportation Agency ("SFMTA"), with its principal offices at One South Van Ness Avenue, San Francisco, California 94103, and SAINT LOUIS COUNTY ("County"), a municipal corporation of the State of Missouri, with its principal offices at 41 South Central Avenue, Clayton, Missouri 63105.

RECITALS

- A.** SFMTA owns a certain vintage streetcar designated and identified as PCC Streetcar No. 1164 ("Car No. 1164").
- B.** In 1990, the San Francisco Public Utilities Commission, predecessor to the SFMTA, entered into an indefinite loan agreement with County for the loan of Car No. 1164 to County.
- C.** Car No. 1164 is not in operating condition, and will require substantial amount of structural and mechanical restoration to be returned to operating condition.
- D.** County desires to acquire ownership of Car No. 1164 because it is of great historical significance as the only original St. Louis PCC at the St. Louis County Museum of Transportation, and County seeks to restore it and return it to service as an operating streetcar.
- E.** In exchange for Car No. 1164, County has offered SFMTA two General Electric traction motors suitable for use in a PCC car designed to accommodate General Electric equipment.

F. These electric motors are desirable to SFMTA as they will be useful in maintaining the historic streetcars operated by SFMTA.

G. The Director of the Saint Louis County Parks Department is authorized to execute contracts on behalf of County relating to accession items pursuant to Saint Louis County Revised Ordinance 21341 § 616.257.

H. Subject to approval by the SFMTA Board of Directors, the Executive Director/CEO of the SFMTA is authorized to enter into contracts for the transfer of SFMTA vintage transit equipment pursuant to San Francisco Charter Sec. 8A.102 and San Francisco Administrative Code Section 10.84.

NOW, THEREFORE, in consideration of the promises and mutual covenants and agreements contained in this Agreement, including the above recitals, the Parties covenant, promise and agree as follows:

1. Effective Date.

This Agreement shall become effective upon its execution by both parties.

2. Consideration.

County agrees to ship and insure, at its expense, two General Electric #1220 traction motors to San Francisco within 30 days of execution of this Agreement.

SFMTA agrees to transfer title to Car No. 1164 upon receipt and acceptance of the traction motors from County. Upon transfer of title to Car No. 1164 to County, the Indefinite Loan Agreement entered into on February 1, 1990 between St. Louis County and San Francisco Public Utilities Commission, predecessor to SFMTA, shall be terminated.

3. Pick-Up and Delivery; Insurance.

(a) Delivery of Car No. 1164: County is already in possession of Car No. 1164.

- (b) Delivery of Traction Motors to SFMTA: County shall cause to be delivered to SFMTA, at an address to be provided by SFMTA, the two traction motors described above. County shall be responsible for all costs related to transport of the traction motors, expected or unexpected, including shipping, freight forwarding, removal and loading, and insurance. County shall assume all risk of loss until such time as the traction motors are delivered to SFMTA. County shall notify SFMTA by facsimile and telephone of the date of shipment and expected delivery of the traction motors. Upon receipt and acceptance of the traction motors by SFMTA, SFMTA shall notify County in writing of its acceptance of the traction motors. The parties agree that title to Car No. 1164 shall transfer to County upon its receipt of SFMTA's notice of acceptance.
- (c) Insurance. County shall insure the traction motors in the amount of \$2,000 each, to insure the traction motors during shipment to SFMTA.

4. Maintenance; Acknowledgement of "As Is" Condition.

- (a) Responsibility for Maintenance. Upon transfer of title of Car No. 1164 from SFMTA to County, County shall be exclusively responsible for all necessary rehabilitation, renovation and maintenance of Car No. 1164.
- (b) "As-Is" Condition.
- (1) County accepts Car No. 1164 on an "as is" basis with the full understanding that Car No. 1164 is over sixty years old and is not currently considered roadworthy for regular passenger service. County acknowledges that SFMTA makes no representation of any kind whatsoever and no explicit or implied warranties or guarantees of any kind about the condition, safety or roadworthiness of Car No. 1164. County accepts Car No.

1164 with the full knowledge, based on technical experience, that Car No. 1164 requires major and significant overhaul and repairs in order to render such equipment safe and roadworthy for passenger service. County also acknowledges that it will not be obtaining spare parts for Car No. 1164 as part of this Agreement.

(2) SFMTA accepts the two General Electric #1220 traction motors on an “as is” basis. County warrants that these motors are complete, but SFMTA acknowledges that County makes no representation of any kind whatsoever and no explicit or implied warranties or guarantees of any kind about the condition or operability of the traction motors. County makes no warranties with respect to any equipment attached to the motors not considered part of the motors themselves.

5. Liability Insurance

(a) In accordance with the term of the Indefinite Loan Agreement, County agrees to continue to maintain a program of self-insurance for any claims or liability arising by reason of the operation, maintenance or control of Car No. 1164 until such time as title has transferred to the County.

(b) County agrees that, in the event a legal claim of any kind is asserted by a third party against County, The Museum of Transportation, or any of its officers, agents and employees, due to the possession or operation of Car No. 1164, County will not seek to join San Francisco, SFMTA, their officers, agents and employees, as parties to such claim. County further agrees that, upon transfer of title to Car No. 1164 to the County, County will not pursue a legal claim against San Francisco, SFMTA, their officers, agents and employees, relating to the possession or operation of Car No. 1164.

6. Modification of Agreement.

This Agreement may not be modified, nor any compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

7. Execution in Counterparts.

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; all such counterparts, or as many of them as County and SFMTA shall preserve undestroyed, shall together constitute but one and the same instrument. This Agreement may be delivered by executed facsimile transmission or PDF delivered by email, which shall be deemed an original. This Agreement will not be binding on any party until signed by all parties or their representatives.

8. Notices.

Notices shall be in writing and served by depositing them in the United States Postal Service, postage prepaid to the addresses below. Notices shall also be sent by facsimile at the time of mailing.

To SFMTA: San Francisco Municipal Transportation Agency
 425 Geneva Ave.
 San Francisco, CA 94112
 Attn: Anthony Tufo
 Fax: (415) 337-2369

To County: Saint Louis County
 Museum of Transportation
 3015 Barrett Station Road
 St. Louis, MO 63122

9. Entire Agreement.

This contract sets forth the entire agreement between the Parties, and supersedes all other

oral or written provisions. This Agreement may be modified only as provided in Section 6.

10. Governing Law; Forum.

This Agreement shall be governed by the procedural and substantive laws of the State of Missouri as to all matters, including, but not limited to, matters of validity, construction, effect and performance of the Agreement as between the parties to the Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first written above,

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

By _____
Nathaniel P. Ford, Sr.
Executive Director/CEO

APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney

Municipal Transportation Agency Board
Resolution No. _____
Dated: _____

By _____
Deputy City Attorney

Attest:

Secretary, SFMTAB

SAINT LOUIS COUNTY

By _____
Lindsey Swanick
Director, Saint Louis County Parks Department

St. Louis County Risk Management

Approved as to Legal Form

Patricia Redington
County Counselor

THIS PRINT COVERS CALENDAR ITEM NO. : 10.6

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Safety, Security, and Enforcement/Substance Abuse Program

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute the Third Amendment to the Agreement with Howger Services, for on-site mobile urine and breath collection services, to extend the agreement through November 30, 2008.

SUMMARY:

- Collection of urine and breath samples must be executed by qualified persons who meet the requirements for such collections as defined in 49 CFR Parts 40 and 655.
- The current contract with Howger Services is due to expire on October 15, 2008.
- Approval of the resolution will authorize the Executive Director /CEO to extend the current contract with Howger Services to November 30, 2008 to allow for completion of the Request for Proposals (RFP) process for both off-site and on-site collection services.

ENCLOSURES:

1. SFMTAB Resolution
2. Third Amendment

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO: Reggie Smith

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2

PURPOSE

The purpose of this amendment is to extend the current agreement with Howger Services for urine and breath collection for federally mandated drug and alcohol testing to November 30, 2008. This extension will enable staff to complete the RFP process to get a new contractor on board by December 1, 2008.

GOAL

Benefit to the SFMTA 2008-2012 Strategic Plan:

The SFMTA will further the following goals of the Strategic Plan through continuation of the on-site collections contract:

- Goal 1- To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy
 - 1.1- Improve safety and security across all modes of transportation
- Goal 3 – To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry.
 - 3.3- Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life
- Goal 5- To provide a flexible, supportive work environment and develop a workforce that takes pride and ownership of the agency’s mission and vision and leads the agency into an evolving, technology-driven future
 - 5.5- Improve SFMTA’s ability to grow and retain strong leadership
 - 5.8- Improve work/life balance of employees

DESCRIPTION

The San Francisco Municipal Transportation Agency (SFMTA) has been using qualified urine drug collectors (UDC) and breath alcohol technicians (BAT) to collect urine and breath samples according to procedures set forth in 49 CFR Part 40 since 1995. The testing program also complies with 49 CFR Part 655, which mandates the collection of breath specimens to determine alcohol levels and urine specimens for testing for the common drugs of abuse: Marijuana, Cocaine, Opiates, Phencyclidine and Amphetamines.

The SFMTA has been contracting with Howger Services to perform mobile UDC and BAT services for random, reasonable suspicion and post-accident testing. The current three-year contract with Howger commenced on July 1, 2005. Under the authority of the Executive Director/CEO, the contract was amended on July 1, 2008 to extend it to September 30, 2008.

On August 5, 2008, the SFMTA Board approved a resolution to authorize the Executive Director/CEO to issue an RFP to select a new vendor to conduct breath and urine collections.

PAGE 3

The SFMTA received proposals on September 13, 2008. The Manager of the Substance Abuse Program will appoint a Selection Committee to evaluate proposals submitted and select the best qualified and experienced firms for the interviews and final selection. Following selection, the SFMTA will negotiate a three-year contract with the highest rated firm and bring the contract to the SFMTA Board for approval. We expect that contract to be in effect by December 1, 2008.

In order to allow more time to complete the RFP process, the Executive Director/CEO approved a second amendment to the contract to extend the term to October 15, 2008 and increase the contract amount by \$40,000. The Executive Director/CEO's 10 percent authority has been reached; therefore, in order to extend the Howger contract further, approval from this Board is needed. The Third Amendment will provide sufficient time to complete the RFP process for both on-site and off-site collection services.

The SFMTA requests that the SFMTA Board authorize the Executive Director/CEO to execute the Third Amendment to the Agreement with Howger Services for urine and breath alcohol collection services, to extend the Agreement through November 30, 2008.

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

ALTERNATIVES CONSIDERED

Staff considered soliciting proposals for a new short-term contract to bridge the gap to selection of a new vendor. SFMTA management, however, determined that the better approach is to extend the current contract to ensure that these federally mandated services are uninterrupted.

FUNDING IMPACT

Operating funds required for the services are budgeted in the SFMTA's current year budget. No additional funds are required.

The LBE sub-consulting participation goals have been waived for this project.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

This agreement previously received authorization from the Civil Services Commission Notice 4092-04/05 on May 19, 2005.

RECOMMENDATION

Authorize the Executive Director/CEO to execute the Third Amendment to the Agreement with Howger Services, for on-site mobile urine and breath collection services to extend the agreement through November 30, 2008.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Since February 15, 1994, the Department of Transportation has required recipients of federal assistance to have a drug and alcohol testing and employee training program in place for employees performing safety-sensitive functions; and,

WHEREAS, Failure by the San Francisco Municipal Transportation Agency to comply with this ruling will jeopardize receipt of federal assistance; and,

WHEREAS, Federal regulations require urine specimen collection for prohibited drugs and breath analysis for alcohol; and

WHEREAS, The contract with the current on-site collection vendor is due to expire on October 15, 2008; and

WHEREAS, The San Francisco Municipal Transportation Agency wishes to extend the Agreement through November 30, 2008 in order to complete the Request for Proposals process currently underway; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/Chief Executive Officer to execute the Third Amendment to the Agreement with Howger Services for on-site mobile urine and breath collection services, to extend the Agreement through November 30, 2008.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**Municipal Transportation Agency
One South Van Ness Ave. 7th floor
San Francisco, CA 94103**

Third Amendment

THIS AMENDMENT (this "Amendment") is made as of October 15, 2008, in San Francisco, California, by and between Howger Services Inc., 2425 Church Lane, San Pablo, California 94806 ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

RECITALS

A. City and Contractor have entered into the Agreement (as defined below).

B. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period to November 30, 2008.

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

a. Agreement. The term "Agreement" shall mean the Agreement dated July 1, 2005 between Contractor and City, as amended by the First Amendment, dated July 1, 2008, and the Second Amendment, dated October 1, 2008.

b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is modified as follows:

a. Section 2. Section 2 (Compensation) of the Agreement currently reads as follows:

Subject to Section 1, the term of this Agreement shall be from July 1, 2005 to October 15, 2008.

Such section is amended in its entirety to read as follows:

Subject to Section 1, the term of this Agreement shall be from July 1, 2005 to November 30, 2008.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after October 16, 2008.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY	CONTRACTOR
<p data-bbox="181 415 690 493">MUNICIPAL TRANSPORTATION AGENCY</p> <hr data-bbox="181 667 748 672"/> <p data-bbox="181 676 511 751">Nathaniel P. Ford Sr. Executive Director/CEO</p> <p data-bbox="181 825 472 863">Approved as to Form:</p> <p data-bbox="181 898 418 974">Dennis J. Herrera City Attorney</p> <p data-bbox="181 1087 776 1192">By: _____ Robin M. Reitzes Deputy City Attorney</p> <p data-bbox="181 1268 641 1415">Municipal Transportation Agency Board of Directors Resolution No. _____ Dated: _____</p> <p data-bbox="181 1493 277 1530">Attest:</p> <hr data-bbox="181 1629 636 1633"/> <p data-bbox="181 1638 418 1675">Secretary, MTAB</p>	<p data-bbox="815 415 1117 453">Howger Services Inc.</p> <hr data-bbox="815 554 1414 558"/> <p data-bbox="815 562 1104 751">Ralph F. Gerken President Howger Services Inc. 2425 Church Lane San Pablo, CA 94806</p> <p data-bbox="815 785 1182 823">City vendor number: 39540</p>

THIS PRINT COVERS CALENDAR ITEM NO. : _____

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Traffic Engineering

BRIEF DESCRIPTION:

Authorizing the Department of Public Works (“DPW”) to award DPW Contract No. 1499J: Contract 59 New Traffic Signals, to Phoenix Electric Company, 1300 Van Dyke Avenue, San Francisco, California 94124, for a total contract amount not to exceed \$1,493,301.

SUMMARY:

- On April 1, 2008, the San Francisco Municipal Transportation Agency (“SFMTA”) Board approved Resolution No. 08-061 to issue a bid call for DPW Contract No. 1499J: Contract 59 New Traffic Signals, for installation of new traffic signals at nine intersections in San Francisco.
- The engineer’s detailed cost estimate for the work was \$1,454,460.
- On July 16, 2008, the City received one bid from Phoenix Electric Company in the amount of \$1,493,301 (2.67% below the engineer’s estimate) and another bid from Manuel Brothers, Incorporated in the amount of \$1,996,800 (37.29% above the engineer’s estimate)
- The contract work will be funded through private developer fees, a Board of Supervisors fund allocation, and Proposition B and K Sales Tax revenues.
- DPW has determined that Phoenix Electric Company is the lowest responsive and responsible bidder.
- The Contract Compliance Officer from the Human Rights Commission has reviewed this calendar item and has confirmed that Phoenix Electric Company will meet the 20% Local Business Enterprise subcontracting participation goal for this project.
- The City Attorney’s Office has reviewed this report.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Geraldine de Leon

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

SFMTA staff requests this Board to authorize the Department of Public Works (“DPW”) to award DPW Contract No. 1499J: Contract 59 New Traffic Signals, to Phoenix Electric Company, 1300 Van Dyke Avenue, San Francisco, California 94124, for a total contract amount not to exceed \$1,493,301.

GOAL

The SFMTA will further the following goals of the Strategic Plan through the award of this contract:

- Goal 1 – To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy
 - 1.1 Improve safety and security across all modes of transportation
 - 1.3 Reduce emissions as required by the SFMTA Clean Air Plan
 - 1.5 Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, and rideshare)
- Goal 2 – To get customers where they want to go, when they want to be there
 - 2.1 Transit reliability: Improve on-time performance to 85%
 - 2.3 Fulfill bicycle and pedestrian network connectivity
 - 2.4 Reduce congestion through major corridors

DESCRIPTION

Scope of Work

On April 1, 2008, the SFMTA Board approved Resolution No. 08-061 to issue a bid call for DPW Contract No. 1499J: Contract 59 New Traffic Signals for installation of new traffic signals at nine intersections in San Francisco.

SFMTA Parking and Traffic (“DPT”), utilizing DPW Contract No. 1499J: Contract 59 New Traffic Signals, will install new traffic signals at nine designated intersections located in San Francisco (“the Work”). These intersections are as follows: Filbert and Mason Streets; 16th and De Haro Streets; Mission and Santa Rosa Streets; 999 Brotherhood Way; Lake Merced Boulevard and Lake Merced Hill; 30th Avenue and Lincoln Way; 15th Avenue and Geary Boulevard; Blake Street and Geary Boulevard; and Divisadero and Ellis Streets.

DPT selected these locations to improve vehicle and pedestrian safety based on the presence of public transit vehicles and heavy vehicle and pedestrian traffic.

PAGE 3.

The Work is designed to improve safety by seeking to reduce the frequency of right angle collisions, improving right of way assignment for vehicles and pedestrians, and allowing minor side street vehicle and pedestrian traffic to enter or cross the major street with less difficulty.

The Work involves the installation of new wiring, conduits, poles, traffic signal controllers, vehicle signals, pedestrian signals with countdown timers, and curb ramps. The Work is more specifically described in the "Contract 59 New Traffic Signals Contract No. 1499J Project Manual" and the accompanying contract plans and miscellaneous reference drawings (which are voluminous documents and are available for inspection at DPW's Bureau of Engineering, 30 Van Ness Avenue, 5th Floor, San Francisco, California).

The project is categorically exempt under the California Environmental Quality Act.

DPT staff performed the initial conceptual design and most of the detailed electrical design for this contract. DPW staff performed the detailed electrical design review, contract preparation, and contract advertising. DPW staff will also provide construction management services.

The time allotted for substantial completion of the Work is 270 calendar days from the written Notice to Proceed. Liquidated damages are \$3,000 per day for contractor's delay that results in failure to complete the Work on time.

Solicitation for Bids and Bid Opening

On June 24, 2008, the City solicited for said Contract through public advertisements in the San Francisco Chronicle and the Small Business Exchange. In addition, the public advertisement was listed until the day of the bid opening on the City's internet website at <http://www.sfgov.org/oca/purchasing>.

On July 16, 2008, the Department of Public Works received and publicly opened the following two bids for DPW Contract No. 1499J:

- Phoenix Electric Company
1300 Van Dyke Avenue
San Francisco, California 94124
Bid Amount: \$1,493,301
- Manuel Brothers, Incorporated
908 Taylorville Road, Suite 104
Grass Valley, California 95949
Bid Amount: \$1,996, 800

As the lowest responsive and responsible bidder, staff recommends award to Phoenix Electric Company in the amount of \$1,493,301. This bid is 2.67% below the engineer's estimate.

PAGE 4.

Phoenix Electric Company is a responsible contractor with extensive experience in traffic signal installations in the City. Phoenix Electric Company has completed or is in the process of completing the following recent Sales Tax funded traffic signal contracts: DPW Contract No. 0481J: Columbus Avenue Traffic Signal Upgrade (completed February 2005), DPW Contract No. 0872J: Contract 31 Traffic Signal Modifications (completed April 2007), and DPW Contract No. 1387J: Contract 58 New Traffic Signals (currently under construction).

In its bid for DPW Contract No. 1499J, Phoenix Electric Company listed the following subcontractors:

- North Tipp Construction (San Francisco, California)
- Vargas & Equivel Construction Incorporated (San Francisco, California)
- Lavina Trucking (San Francisco, California)
- Bay Area Lightworks Incorporated (San Francisco, California)
- Herning Underground Supply (Livermore, California)
- JAM Services (Livermore, California)

The City Attorney's Office has reviewed this report.

ALTERNATIVES CONSIDERED

Instead of contracting out using the competitive bid process for the construction of DPW Contract No. 1499J: Contract 59 New Traffic Signals, the following alternatives were also considered but not selected:

- Replacement and/or refurbishment - Replacement and/or refurbishment of existing equipment was not a viable option since the new signal installations require new equipment such as poles, signal heads, conduits, wiring, and signal controllers. Some existing poles such as streetlight poles are reused when possible.
- No build option – this option was not chosen because the installation of traffic signals at key intersections has been found to enhance safety.
- Rebidding and/or renewing an existing contract – this option does not apply to Contract No. 1499J.
- Use of SFMTA in-house staff - Construction of the new signals through the use of in-house staff was found to not be feasible. SFMTA in-house staff such as the DPT Traffic Signal Shop Division are primarily staffed and equipped to perform maintenance of existing traffic signals rather than the construction of new traffic signals.

PAGE 5.

Staff concluded that contracting out through the use of the competitive bidding process was the best alternative to proceed with the construction of DPW Contract No. 1499J. Historically, contracting out via competitive bidding has been the primary way that most signals have been constructed in the City; DPT has found this method to be a cost effective and efficient way to construct new traffic signal installations.

FUNDING IMPACT

The Work is funded through private developer fees, a Board of Supervisors fund allocation, and Proposition B and K Sales Tax revenues, a half-cent sales tax approved by San Francisco voters in 1989 and 2003, respectively. Please refer to attached enclosure 2 for details.

For the design phase of this project, the San Francisco County Transportation Authority (“SFCTA”) approved \$372,000 from Proposition K.

For the construction phase of this project, the SFCTA has also already approved \$1,865,596 in Proposition K funds and \$198,355 in Proposition B funds. As a mitigation measure for a private property development, a private developer has provided \$350,000 in funds to design and construct a new signal at 16th and De Haro Streets. The Board of Supervisors approved \$150,000 to help fund construction costs for a new signal at 999 Brotherhood Way.

DPT will request and expects SFCTA approval for additional Proposition K funds in the amount of \$377,773 to cover additional DPW Bureau of Construction Management labor costs and costs due to the installation of long PG&E service conduits required for the intersections of 999 Brotherhood Way; Lake Merced Boulevard and Lake Merced Hill; and 30th Avenue and Lincoln Way.

Operating funds required for the maintenance of traffic signals to be constructed as part of DPW Contract No. 1499J: Contract 59 New Traffic Signals are included in the DPT budget for FY 08-09.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Contract Compliance Officer from the Human Rights Commission has reviewed this calendar item and has confirmed that Phoenix Electric Company will meet the 20% Local Business Enterprise subcontractor participation goal for this project.

The Department of Public Works will proceed with award of Department of Public Works Contract No. 1499J: Contract 59 New Traffic Signals after the SFMTA’s approval of this calendar item.

PAGE 6.

RECOMMENDATION

Staff recommends that the SFMTA Board authorize DPW to award DPW Contract No. 1499J: Contract 59 New Traffic Signals, to Phoenix Electric Company, 1300 Van Dyke Avenue, San Francisco, California 94124, for a total contract amount not to exceed \$1,493,301.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, SFMTA Parking and Traffic ("DPT") identifies intersections for new traffic signal installations to be funded by Propositions B and K Sales Tax revenues, a half-cent sales tax approved by the voters of the City and County of San Francisco in 1989 and 2003, respectively; and,

WHEREAS, DPT has identified the following nine intersections as appropriate locations for new traffic signal installations to improve vehicle and pedestrian safety based on the presence of public transit vehicles, and heavy vehicle and pedestrian traffic: Filbert and Mason Streets; 16th and De Haro Streets; Mission and Santa Rosa Streets; 999 Brotherhood Way; Lake Merced Boulevard and Lake Merced Hill; 30th Avenue and Lincoln Way; 15th Avenue and Geary Boulevard; Blake Street and Geary Boulevard; and Divisadero and Ellis Streets ("the Work"); and,

WHEREAS, DPT proposes to perform the Work under Department of Public Works ("DPW") Contract No. 1499J: Contract 59 New Traffic Signals; and,

WHEREAS, The Work involves the installation of new wiring, conduits, poles, traffic signal controllers, vehicle signals, pedestrian signals with countdown timers, and curb ramps; and,

WHEREAS, The Work will be funded with Propositions B and K sales tax revenues; private developer fees; and funds allocated by the Board of Supervisors; and,

WHEREAS, On April 1, 2008, the SFMTA Board approved Resolution No. 08-061 to issue a bid call for DPW Contract No. 1499J: Contract 59 New Traffic Signals; and

WHEREAS, The City advertised for bids for DPW Contract No. 1499J and received two bids, which were opened publicly on July 16, 2008; and

WHEREAS, DPW has determined that Phoenix Electric Company is the lowest responsive and responsible bidder, with a bid of \$1,493,301; and

WHEREAS, The Contract Compliance Officer from the Human Rights Commission has confirmed that Phoenix Electric Company will meet the established Local Business Enterprise subcontractor participation goal of 20% for this contract; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Department of Public Works to award DPW Contract No. 1499J: Contract 59 New Traffic Signals, to Phoenix Electric Company, 1300 Van Dyke Avenue, San

Francisco, California 94124, for a total contract amount not to exceed \$1,493,301.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Enclosure 2

**Department of Public Works Contract No. 1499J: Contract 59 New Traffic Signals
Project Budget and Financial Plan**

PROJECT BUDGET

Category	Budget Amount
DPT Traffic Engineering & DPW Bureau of Engineering (Design, Planning Coordination, & Detailed Electrical Design)	\$371,471
Detailed Engineering Estimate for Construction Contract Cost, 10% Construction Cost Contingency, Other Direct Costs (Electrical Service, 911 Call Boxes, & Cable Car Switches), and Intersection Traffic Signal Controllers and Cabinets	\$1,563,740
DPW Bureau of Construction Management (BCM) & Bureau of Engineering (BOE) (Contract Preparation, Public Affairs, Materials Testing Lab, Wage Check & Construction Engineering)	\$343,150
DPT Traffic Engineering & Signal Shop (Construction Support)	\$285,060
Pending Additional Funds from the SFCTA to Cover Additional DPW BCM Costs and Installation of PG&E service conduits Required for the Intersections of 999 Brotherhood Way; Lake Merced Boulevard and Lake Merced Hill; and 30 th Avenue and Lincoln Way	\$377,773
TOTAL (DESIGN AND CONSTRUCTION PHASES)	\$2,941,194

FINANCIAL PLAN

Funding Source	Amount	Percentage
Private Developer Fees	\$350,000	12%
Board of Supervisors Fund Allocation	\$150,000	5%
Local Half Cent Sales Tax – Proposition B	\$198,355	7%
Local Half Cent Sales Tax - Proposition K	\$2,242,839	76%
TOTAL	\$2,941,194	100%

THIS PRINT COVERS CALENDAR ITEM NO. : _____

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Traffic Engineering

BRIEF DESCRIPTION:

Authorizing a bid for the Department of Public Works (“DPW”) Contract No. 1099J: SFgo Various Location Contract 1, to install conduits, new variable message signs (“VMS”), closed circuit television cameras (“CCTV”) and miscellaneous electrical work.

SUMMARY:

- This contract will install seven VMS displays and 11 CCTVs at various locations in the BayView, Hunter’s Point, Panhandle, Inner Sunset, South of Market and Civic Center areas.
- DPT staff performed the initial conceptual design and some of the detailed design for this contract. DPW staff completed the detailed design and prepared the contract documents. DPW staff will also provide contract advertising and construction management services.
- The contract work will be funded through Proposition K Sales Tax revenues.
- The Engineer’s detailed cost estimate is in excess of \$900,000.
- The completion date for this project is 250 calendar days after written Notice to Proceed.
- DPT staff will request authority from the SFMTA Board to award the contract after bids have been opened and the lowest responsible bidder has been identified.
- The Contract Compliance Officer from the Human Rights Commission has established a 20% Local Business Enterprise (“LBE”) participation goal for this project.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO Cathal Hennessy

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

SFMTA staff requests that the SFMTA Board authorize the Department of Public Works (“DPW”) to award DPW Contract No. 1099J: SFgo Various Locations Contract 1, to install conduits, variable message signs, closed circuit television cameras and miscellaneous electrical work.

GOAL

The SFMTA will further the following goals of the Strategic Plan through the award and execution of this contract:

- Goal 1 – To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy.
 - 1.1 Improve safety and security across all modes of transportation
 - 1.3 Reduce emissions as required by the SFMTA Clean Air Plan
 - 1.5 Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, and rideshare)

- Goal 2 – To get customers where they want to go, when they want to be there.
 - 2.1 Transit reliability: Improve on-time performance to 85%
 - 2.3 Fulfill bicycle and pedestrian network connectivity
 - 2.4 Reduce congestion through major corridors

- Goal 3 – To improve the customers experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry.
 - 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits.
 - 3.4 Enhance proactive participation and cooperatively strive for improved regional transportation.

- Goal 6– To improve service and efficiency, the SFMTA must leverage technology
 - 6.1 Information and Technology Leadership: Identify, develop, and deliver the enhanced systems and technologies required to support SFMTA’s 2012 goals.

DESCRIPTION

Scope of Work

SFMTA Parking and Traffic, utilizing DPW Contract No. 1099J: SFgo Various Locations Contract 1, proposes to install seven variable message signs and 11 closed circuit television cameras in San Francisco (“the Work”). The VMS displays will be located at 3rd/Mariposa Streets, 3rd/Marin Streets, 3rd Street/Paul/Gilman Avenue, 4th/Minna Streets, 5th/Harrison Streets, Fell/Divisadero Streets, and Oak/Baker Streets. In addition, 11 CCTV’s will be installed

PAGE 3

at 3rd/16th Streets, 3rd/Cesar Chavez Streets, 3rd Street/Evans Avenue, 3rd Street/Revere Avenue, 3rd Street/Paul/US 101 On-Ramp, Lincoln Way/7th Avenue, JFK/Stanyan Streets, Masonic/Oak Street, Oak Street/Octavia Boulevard, Market Street/Octavia Boulevard, and Gough/Fell Streets.

DPT selected these locations to allow SFgo, to monitor traffic conditions from their Transportation Management Center (“TMC”) and verify incidents on these corridors via the CCTV cameras. The VMS displays would subsequently be used to display traveler information regarding traffic conditions, roadway incidents, or any other important messages to the public.

DPT staff performed the initial conceptual design and some of the detailed design for this contract. DPW staff completed the detailed design and prepared the contract documents. DPW staff will also provide contract advertising and construction management services.

The Human Rights Commission has established a 20% Local Business Enterprise (“LBE”) subcontractor participation goal for this project.

The City Attorney’s Office has reviewed this report.

ALTERNATIVES CONSIDERED

Instead of contracting out using the competitive bid process for the construction of DPW Contract No. 1099J: SFgo Various Locations Contract 1, the following alternatives were also considered, but not selected:

- Replacement and/or Refurbishment – This option does not apply since there is no existing equipment. New equipment, including conduits, VMS displays, CCTV cameras and all related cabling and wiring need to be installed, although the CCTV cameras will typically be mounted onto existing equipment such as streetlight or traffic signal poles.
- No-Build Option – This option was not chosen because this contract was found to promote several of SFMTA’s goals; in particular, the customer focus goal of improving safety across all modes of transportation.
- Rebidding and/or Renewing an Existing Contract – This option does not apply to Contract No. 1099J since there is no existing contract.
- Use of SFMTA In-House Staff – Construction of the new VMS and CCTV installations through in-house staff is not feasible because SFMTA does not have the resources to perform such work. SFMTA facilities such as the Municipal Railway Maintenance Division and DPT Traffic Signal Shop are primarily staffed and equipped to maintain and repair existing systems and equipment, and are not prepared for larger-scale construction projects.

PAGE 4.

Staff concluded that contracting out through the use of the competitive bidding process is the best alternative for the execution of DPW Contract No. 1099J. Historically, competitive bidding has been the City's primary means of awarding transportation infrastructure construction contracts, and DPT has found this method to be the most efficient and cost-effective.

FUNDING IMPACTS

Contract 1 is funded through Proposition K Sales Tax revenues, a half-cent sales tax approved by the San Francisco voters in 2003.

The San Francisco Transportation Authority ("SFCTA") has already approved \$136,000 from Proposition K funds for the design of this project, and will release the funds after the contract is advertised.

DPT has requested and expects the SFCTA to approve the use of Proposition K funds in excess of \$900,000 for this construction contract.

The Engineer's detailed cost estimate for this contract is in excess of \$900,000. The time allotted for substantial completion of the Work is 250 calendar days from the written Notice to Proceed. Liquidated damages are \$3,000 per day for contractor's delays that result in failure to complete the Work on time.

DPT staff will request authority from the SFMTA Board to award the contract after bids have been opened and the lowest responsible bidder has been identified.

The project is categorically exempt under the California Environmental Quality Act.

Operating funds required for the maintenance of transportation infrastructure being constructed as part of DPW Contract No. 1099J: Various Locations Contract 1 are included in the DPT budget for FY 08-09.

See Attachment A to this item for funding details.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Human Rights Commission has established a 20% LBE subcontractor participation goal for this project.

The City Attorney's Office has reviewed this report.

The Department of Public Works will proceed with advertising and awarding Department of Public Works Contract No. 1099J: SFgo Various Locations Contract 1, after the SFMTA Board's approval of this item.

PAGE 5.

RECOMMENDATION

Staff requests authorization to issue a bid call for Department of Public Works Contract No. 1099J: *SFgo* Various Locations Contract 1, to solicit bids from contractors qualified to install conduits, seven variable message signs, 11 closed circuit television cameras and related miscellaneous electrical work in the Bay View, Hunter's Point, Panhandle, Inner Sunset, South of Market and Civic Center areas.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, SFMTA Parking and Traffic (“DPT”) has been seeking appropriate locations for new variable message signs and closed circuit television cameras to be funded by Propositions K Sales Tax revenues, a half-cent sales tax approved by the voters of the City and County of San Francisco in 2003; and,

WHEREAS, DPT has identified seven locations for new variable message sign (“VMS”) installations (3rd/Mariposa Streets, 3rd/Marin Streets, 3rd Street/Paul/Gilman Avenue, 4th/Minna Streets, 5th/Harrison Streets, Fell/Divisadero Streets, and Oak/Baker Streets); and 11 locations for new closed circuit television (“CCTV”) camera installations (3rd/16th Streets, 3rd/Cesar Chavez Streets, 3rd Street/Evans Avenue, 3rd Street/Revere Avenue, 3rd Street/Paul/US 101 On-Ramp, Lincoln Way/7th Avenue, JFK/Stanyan Streets, Masonic/Oak Street, Oak Street/Octavia Boulevard, Market Street/Octavia Boulevard, and Gough/Fell Streets); and,

WHEREAS, DPT proposes to install VMS displays and CCTV cameras at these locations (“the Work”) under Department of Public Works (“DPW”) Contract No. 1099J: SFgo Various Locations Contract 1; and,

WHEREAS, The Work involves the installation of conduits, VMS displays, CCTV cameras and related miscellaneous electrical work; and,

WHEREAS, Funding for the Work will be provided through Proposition K sales tax revenues once the contract is advertised; and,

WHEREAS, The Human Rights Commission has established a Local Business Enterprise subcontractor participation goal of 20% for this project; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to authorize the Department of Public Works to issue a bid call for the Department of Public Works Contract No. 1099J: SFgo Various Location Contract 1 for the installation of seven variable message sign displays and 11 closed circuit television cameras at various locations in the BayView, Hunter’s Point, Panhandle, Inner Sunset, South of Market and Civic Center areas.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Attachment A

**Department of Public Works Contract No. 1099J: SFgo Various Location Contract 1
Project Budget and Financial Plan**

PROJECT BUDGET

Category	Budget Amount
DPT Traffic Engineering & DPW Bureau of Engineering (Design, Planning Coordination, & Detailed Electrical Design)	\$136,000
Detailed Engineering Estimate for Construction Contract Cost, 10% Construction Cost Contingency, Other Direct Costs (Electrical Service, 911 Call Boxes, & Cable Car Switches), and variable message signs and closed circuit television cameras. DPW Bureau of Construction Management (BCM) & Bureau of Engineering (BOE) (Contract Preparation, Public Affairs, Materials Testing Lab, Wage Check & Construction Engineering)	\$1,187,581
DPT Traffic Engineering & Signal Shop (Construction Support)	\$90,229
TOTAL (DESIGN AND CONSTRUCTION PHASES)	\$1,413,810

FINANCIAL PLAN

Funding Source	Amount	Percentage
Local Half Cent Sales Tax - Proposition K	\$1,413,810	100%
TOTAL	\$1,413,810	100%

THIS PRINT COVERS CALENDAR ITEM NO. 10.9

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

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Approving the plans and specifications, and authorizing bid call for San Francisco Municipal Transportation Agency Contract No.1231, John M. Woods Motor Coach Facility – Vehicle Lifts Replacement, Phase I, and Potrero and Presidio Trolley Coach Facilities – Fall Protection Systems Project.

SUMMARY:

- San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1231, John M. Woods Motor Coach Facility – Vehicle Lifts Replacement, Phase I, and Potrero and Presidio Trolley Coach Facilities – Fall Protection Systems Project, is part of the SFMTA’s Facilities Program, maintaining a complex infrastructure of operational, maintenance, and administrative facilities.
- The scope of work under Contract No. 1231 consists of: replacing the 18 existing in-ground lifts with nine new portable lifts for the Light Maintenance Shop and 12 new portable lifts for the Heavy Maintenance Shop in the John M. Woods Motor Coach Facility; and installing six new Fall Protection Systems in meeting codes and regulations for employee safety: three at Potrero Trolley Coach Maintenance Facility, and three at Presidio Trolley Coach Maintenance Facility.
- The Engineer’s total estimated cost for the construction contract is \$2,554,000. Construction, from the Notice to Proceed, is to be substantially completed within 252 calendar days for the Vehicle Lifts Replacement and 132 calendar days for the Fall Protection Systems from the time that SFMTA exercises a bid option(s).

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

SENIOR DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

_____ Gigi Pabros _____

ASSIGNED MTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

San Francisco Municipal Transportation Agency (SFMTA) Contract No.1231, John M. Woods Motor Coach Facility – Vehicle Lifts Replacement, Phase I, and Potrero and Presidio Trolley Coach Facilities – Fall Protection Systems Project, is identified in the latest San Francisco Municipal Railway Short Range Transit Plan under the Facilities Program. The SFMTA Facilities Program develops, manages, and maintains space for the maintenance, administration, and storage needs required to support Muni operations. The emphasis is on maintenance and preservation projects, with the major goals of enabling all facilities to operate in the most effective and efficient manner possible, while preserving older facilities until rehabilitated or replaced.

GOAL

Contract No. 1231 would assist in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

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

- 5.1 Increase resources available for employees in performing their jobs (tools, staff hours, etc); and
- 5.2 Improve facilities in which people are working.

DESCRIPTION

The John M. Woods Motor Coach Facility Vehicle Lifts Replacement, Phase I, consists of replacing the 18 existing in-ground lifts with nine new portable lifts for the Light Maintenance Shop and 12 new portable lifts for the Heavy Maintenance Shop.

The Potrero and Presidio Trolley Coach Facilities Fall Protection Systems consist of optional bid items for designing, furnishing, and installing of six new Fall Protection Systems in meeting codes and regulations for employee safety: three at Potrero Trolley Coach Maintenance Facility for tracks 20, 23 and 27, and three at Presidio Trolley Coach Maintenance Facility for pits Numbers 1, 2, and hoist Number 1.

The time allotted, from the Notice to Proceed, to complete substantially the construction of the Vehicle Lifts Replacement is 252 calendar days. Contractor must substantially complete the construction of the Fall Protection Systems within 132 calendar days from the time that SFMTA exercises a bid option(s).

Liquidated damages are at \$2,000 per day for failure to complete the work on time.

The plans and specifications are not included as enclosures to this Calendar Item. They are available for review at 1 South Van Ness Avenue, 3rd floor, SFMTA Transportation Planning and Development Division.

ALTERNATIVES CONSIDERED

The project team held discussions with operations staff concerning their equipment needs for the Woods Facility. Preference to replace the existing in-ground lifts with portable lifts rather than refurbishment of the in-ground lifts was predicated on operations staff needs for flexibility of use of the portable lifts at this facility.

The Potrero and Presidio Trolley Coach Facilities are currently in need of new Fall Protection Systems in meeting codes and regulations for employee safety. The Potrero Facility currently has no Fall Protection Systems in place and the Presidio has only one Fall Protection System to safeguard personnel while working on SFMTA vehicles. Since in-house personnel lack the expertise to install these systems, staff determined that contracting out to contractors with systems installation expertise is the practical alternative.

FUNDING IMPACT

The engineer’s total estimate for the construction contract is \$2,554,000. Funding for the Fall Protection Systems has not been secured, pending the results of grant applications. Therefore, the Fall Protection Systems are identified as optional bid items in the project specifications, allowing SFMTA the discretion to award an option based on available funding. Funding for the entire project will be from a combination of programmed Federal Transit Administration funds and local funds as detailed in the Project Budget and Financial Plan tables below.

PROJECT BUDGET

Category	Budget
Conceptual Engineering	\$436,000
Detail Design	\$450,000
Construction Contract 1231:	
Vehicle Lifts Replacement Phase I	\$1,720,000
Fall Protection Systems*	\$834,000
Contingency	\$460,000
Total	\$3,900,000

FINANCIAL PLAN

Project Funding Source	Amount
Federal Grants: FTA	\$2,640,000
Local Grants:	
Proposition K	\$660,000

SFMRIC*	\$600,000
Total	\$3,900,000

*** Pending Grant Applications from San Francisco Municipal Railway Improvement Corporation (SFMRIC)**

PAGE 4.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Contract Compliance Office has reviewed this calendar item and established a 15% SBE participation goal for this contract.

San Francisco Municipal Railway Improvement Corporation (SFMRIC) is considering a grant application to fund the Fall Protection Systems for both the Potrero and Presidio Trolley Coach Facilities.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve the plans and specifications, and authorize a bid call for Contract No.1231, John M. Woods Motor Coach Facility – Vehicle Lifts Replacement, Phase I, and Potrero and Presidio Trolley Coach Facilities – Fall Protection Systems Project.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION NO. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) Contract No.1231, John M. Woods Motor Coach Facility – Vehicle Lifts Replacement, Phase I, and Potrero and Presidio Trolley Coach Facilities – Fall Protection Systems Project, is identified in the latest San Francisco Municipal Railway Short Range Transit Plan under the Facilities Program; and,

WHEREAS, The work to be performed under this project will replace the 18 existing in-ground lifts with nine new portable lifts for the Light Maintenance Shop and 12 new portable lifts for the Heavy Maintenance Shop in the John M. Woods Motor Coach Facility, and install six new Fall Protection Systems at Potrero and Presidio Trolley Coach Maintenance Facilities in meeting codes and regulations for employee safety; and,

WHEREAS, The time allotted, from the Notice to Proceed, to complete substantially the construction of the Vehicle Lifts Replacement is 252 calendar days, and of the Fall Protection Systems is 132 calendar days from the time that SFMTA exercises a bid option(s), with liquidated damages of \$2,000 per day for failure to complete the work on time; and,

WHEREAS, The engineer’s estimate for this construction contract is \$2,554,000; and,

WHEREAS, Federal and local grants are funding the project; and,

WHEREAS, The John M. Woods Motor Coach Facility – Vehicle Lifts Replacement, Phase I, and Potrero and Presidio Trolley Coach Facilities Fall Protection Systems Project will assist the SFMTA in meeting Strategic Plan Goal 5 by increasing resources available for employees in performing their jobs; and improving facilities in which people are working; and,

WHEREAS, The Contract Compliance Office has established a 15% SBE participation goal for this contract; now, therefore, be it,

RESOLVED, That the SFMTA Board of Directors approves the plans and specifications and authorizes bid call for Contract No.1231, John M. Woods Motor Coach Facility – Vehicle Lifts Replacement, Phase I, and Potrero and Presidio Trolley Coach Facilities – Fall Protection Systems Project.

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

Secretary to the Board of Directors

San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. 10.10

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Parking and Traffic

BRIEF DESCRIPTION:

Ratifying an agreement between the San Francisco Bay Area Rapid Transit District ("BART"), and the City and County of San Francisco, executed on April 17, 2008, for recovery of costs for supporting BART's Earthquake Safety Program (ESP Project).

SUMMARY:

- This Agreement, executed on behalf of the City by the Executive Director/CEO of the SFMTA, the Director of the Department of Public Works, and the General Manager of the Recreation and Parks Department, sets forth the responsibilities of the parties regarding BART's ESP Project within the City, including the process for recovery of costs incurred by the City for providing support during design and construction the ESP Project.
- When the contract was executed in April 2008, it was estimated that the costs to be incurred by the SFMTA would not exceed \$100,000.
- Staff now estimates that the SFMTA's costs for review, inspection, and support services will be approximately \$620,000; therefore, the agreement requires ratification by the SFMTA Board.

ENCLOSURES:

1. SFMTAB Resolution
2. Location Map
3. Agreement

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO _____ Dan Arellano _____

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

Staff requests that the SFMTA Board ratify the attached Agreement between the City and BART, for the SFMTA to recover costs for support of BART's Earthquake Safety Program (ESP Project). When the contract was executed in April 2008, it was estimated that the costs to be incurred by the SFMTA would not exceed \$100,000. The original estimate did not include costs for support of the retrofit of the columns at the Church Street Station. Staff now estimates that the SFMTA's costs for review, inspection, and support services will be approximately \$620,000; therefore, the agreement requires ratification by the SFMTA Board.

GOAL

Approval of this agreement furthers the following goals of the Strategic Plan:

- Goal 1 – Customer Focus. To provide safe, reliable and environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy during construction.
 - Objective 1.1 Improve the safety and security across all modes of transportation
- Goal 2 – System Performance. To get customers where they want to go , when they want to get there
 - Objective 2.4 Reduce congestion through major corridors.
- Goal 4 – Financial Capacity. This agreement provides for reimbursement to the SFMTA for its costs to review plans, inspect reconstruction of SFMTA facilities damaged by construction and ensure the safety of the work.
 - Objective 4.2 Ensure efficient and effective use of resources

DESCRIPTION

The Agreement sets forth various responsibilities of the parties relating to BART's ESP Project, including the process for recovery of costs incurred by the City for providing support services for the BART's ESP within the City. Staff estimates that the SFMTA's costs for review and inspection will be approximately \$620,000.

The ESP Project will seismically retrofit BART aerial structures within the City. The ESP Project affects structures under the jurisdiction of the SFMTA, the Department of Public Works (DPW), the Recreation and Park Department (Rec and Park), and the Port. This Agreement concerns seismic retrofit of structures affecting the SFMTA, DPW and Rec and Park. There is a separate agreement between BART and the Port for retrofit work in areas under Port jurisdiction.

Under this Agreement, SFMTA will provide support services in conjunction with BART's seismic retrofit of the aerial structures. This work affecting the City streets will take place in the areas from near Naglee Avenue in the central portion of the City parallel to the I280 Freeway and ends west of Crystal Street in near Daly City. The traffic impacts will be mainly lane closures around the BART piers. BART expects to complete the design of the aerial portion in fall of 2008, advertise in June 2009, start construction in December 2009, and complete construction in December 2011. SFMTA's reimbursed costs for this portion will be

approximately \$100,000.

PAGE 3.

Under the Agreement, SFMTA will also provide support services in conjunction with BART's seismic retrofit of the of Church Street Subway Station columns. The construction work is anticipated to be performed during very late evening and during no-revenue service. SFMTA staff will provide access coordination, safety training and support, station agency communication, access to start and end workdays, and communication with Central Control for BART's contractor to perform the seismic retrofit work at each column within the Church Street Station. The work is anticipated to last up to 200 days. In addition, SFMTA Community Relations will provide public information about BART's work and coordinate with BART to perform outreach and communication about this project with SFMTA passengers and adjacent residents and businesses. SFMTA's reimbursed costs for this portion will be approximately \$520,000.

The Department of Public Works and the Recreation and Park Department will submit their work plans and cost estimates to SFMTA for transmittal to BART.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

BART is responsible for the safety of its system. It is in the City's interests to assist BART in making these safety improvements.

FUNDING IMPACT

The Agreement provides for reimbursement of approximately \$620,000 to the SFMTA. Under the Agreement, BART will reimburse SFMTA within 30 days of invoice.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Agreement has been executed by the Director of DPW and the General Manager of Recreation and Park.

RECOMMENDATION

Staff requests that the Municipal Transportation Agency Board of Directors ratify the Agreement between the San Francisco Bay Area Rapid Transit District and the City and County of San Francisco, dated April 17, 2008.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Bay Area Rapid Transit District (BART) desires to retrofit its aerial and other facilities in the City as part of its Earthquake Safety Program (ESP Project), and,

WHEREAS, BART requests that the City and County of San Francisco (City) provide support during preliminary and final design, as well as during construction of the ESP Project for work affecting City property; and,

WHEREAS, On April 17, 2008, BART and the City, through its Department of Public Works (DPW), its San Francisco Municipal Transportation Agency (SFMTA), and its Recreation and Park Department (Rec and Park), executed an agreement setting forth the responsibilities of the parties for implementation of the ESP Project, including the process for recovery of costs by the City for providing support for the ESP Project in the City; and,

WHEREAS, When the Agreement was signed, it was estimated that the costs to be incurred by the SFMTA would not exceed \$100,000; however, the original estimate did not include costs for support of the retrofit of the columns at the Church Street Station; and,

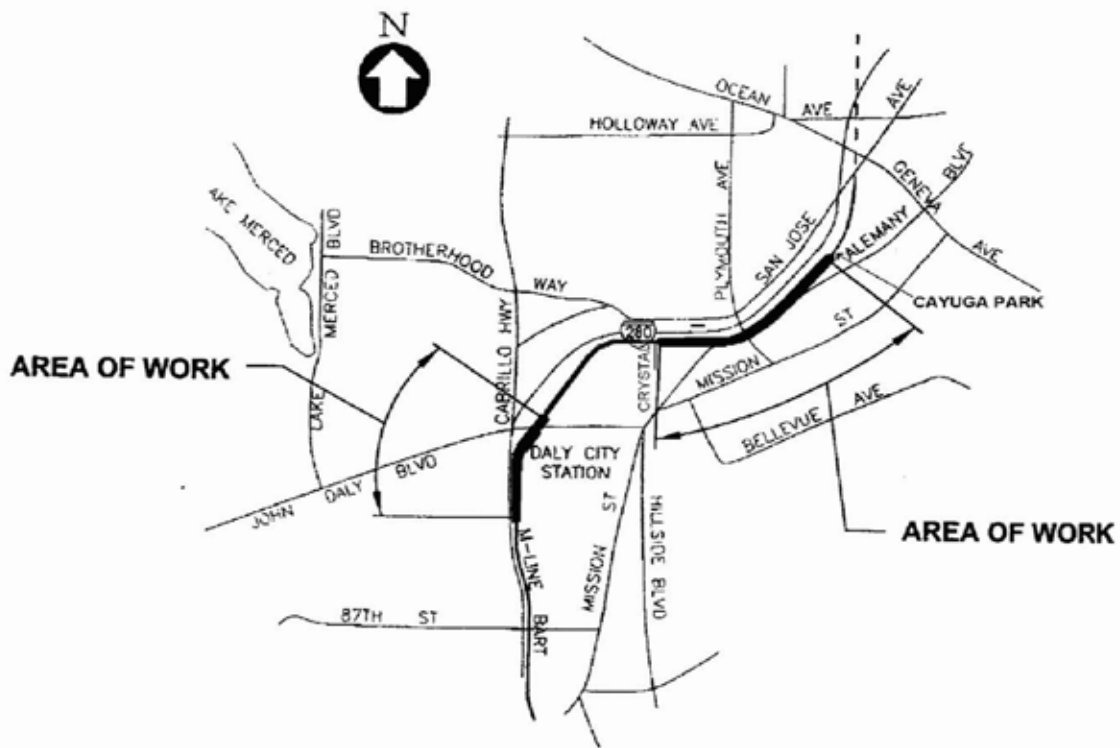
WHEREAS, Staff now estimates that the SFMTA's costs for review, inspection, and support services will be approximately \$620,000; and,

WHEREAS, Pursuant to Resolution No. 02-110, the SFMTA Board must approve any contract in excess of \$100,000; therefore, the SFMTA Board must ratify the Agreement; therefore, be it

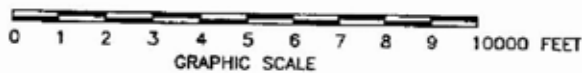
RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors ratifies the agreement between the San Francisco Bay Area Rapid Transit District and the City and County of San Francisco, executed on April 17, 2008, for recovery of costs for supporting BART's Earthquake Safety Program.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency



LOCATION MAP



CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

APPROVED

for the EXECUTIVE DIRECTOR / CED

BART EARTQUAKE SAFETY PROGRAM
AERIAL STRUCTURES

**AGREEMENT
BETWEEN THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
AND THE CITY AND COUNTY OF SAN FRANCISCO
FOR SUPPORT OF THE EARTHQUAKE SAFETY PROGRAM**

This Agreement is entered into this ____ day of _____, 2008, in the City and County of San Francisco, by and between the San Francisco Bay Area Rapid Transit District ("BART"), and the City and County of San Francisco, through its Department of Public Works ("DPW"), its Municipal Transportation Agency ("SFMTA"), and its Recreation and Park Department ("RPD") (collectively, "City").

RECITALS

A. BART has completed environmental review of an Earthquake Safety Program (ESP "Project"), which, as implemented, will involve seismic retrofit of BART aerial and other facilities in the City and County of San Francisco.

B. BART requests that the City provide support during preliminary and final design, as well as during construction of the ESP Project.

C. This Agreement will set forth various responsibilities of the parties, including the process for recovery of costs by the City for providing support for the ESP Project in the City.

D. BART has entered into a separate agreement with the Port of San Francisco regarding work in locations under Port jurisdiction.

AGREEMENT

1. SCOPE OF WORK

1.1. ESP Project in San Francisco. The ESP will seismically retrofit BART aerial structures within the City. Beginning in the northeast section of the City, a portion of the retrofits will be located at the San Francisco Ferry Plaza where BART's transition structure is located. The next sections expected to be retrofitted are located at the Glen Park BART Station, followed by a section of aerial structures that begins north of Naglee Avenue in the central southern area of the City. This section of aerial structures continues southwest parallel to I-280 and ends west of Crystal Street north of the San Francisco and Daly City border. An additional retrofit is expected to be conducted at the Church Street MUNI Station. The portion of the work at the Ferry Plaza is being executed under BART's agreement with the Port, described in Recital D above, and is therefore not covered by this Agreement. (See Attachment 1 - City and County of San Francisco, Retrofit Work Locations.)

1.2. ESP Work. The work addressed by this Agreement includes preliminary design activities for the ESP Project, including, but not limited to, utility exploration (potholing) in City streets along the BART alignment within the limits described above, geotechnical investigations in or near City streets along the BART aerial trackway within the City, and hazardous material investigations, as necessary, as well as construction of earthquake safety retrofits. The ESP work will involve construction of the seismic retrofits at the Retrofit Work Locations in the City, with permitting and inspection services provided by the City. BART will restore affected City infrastructure following completion of BART preliminary design and construction activities.

2. BART RESPONSIBILITIES

2.1. Work Plans. Prior to applying for any permits or commencing any construction activities, BART will provide DPW, SFMTA, and RPD with copies of work plans for their respective infrastructure for review and approval. The work plans will include contract drawings showing any necessary relocations or modifications of City infrastructure (including but not limited to facilities, utilities, landscaping and appurtenances). City review and approval of the work plans, including contract drawings, shall be limited to elements of the ESP Project directly affecting City infrastructure. The City shall respond in writing to BART with approval or disapproval of the work plans, and with comments, no later than 20 working days from the City's receipt of such work plans. In the event the City does not provide said written approval or disapproval with written comments within the prescribed time, it will be deemed to have approved the work plans in the form delivered to the City. BART will provide ongoing and timely notice of progress to the City on the design elements subject to City review, and will provide opportunities to include City staff in discussions regarding the respective infrastructure, as appropriate.

2.2. Construction Activities; Permits. BART will be responsible for all construction management, inspection, and testing associated with the activities of its contractors, including ensuring that all work affecting City infrastructure is performed in accordance with City Standards and Specifications. BART or its contractors shall apply to the City for all required permits for work identified above.

2.3. Construction Mitigation Activities. BART shall perform the mitigation measures set forth in the RPD letter of June 18, 2007 (see Attachment 2 – BART Seismic Retrofit Activities Within Cayuga Park), with respect to its activities in Cayuga Park.

2.4. Liaison. BART shall provide a community relations liaison for the Project who will serve as the information point of contact. The liaison will inform the public about the status of the Project, using a variety of methods and techniques. Outreach to the community will include, but not be limited to, local agencies, regional city staff, the media, and neighboring residential, commercial, and industrial neighbors, as well as to the broader general public regionally. BART shall be responsible for notifying all affected businesses and residences within 300 feet of the property involved prior to the commencement of construction activities.

2.5. Inspection; Correction of Defects. BART will notify the City once the work or a portion of the work affecting City infrastructure will begin in accordance with the permit conditions, and once work is completed, request City's inspection and acceptance. BART or its contractors will promptly correct any deficiencies identified by the City prior to City's acceptance of the work.

2.6. Restoration of City Infrastructure. BART will be solely responsible for the restoration of any City infrastructure found to be damaged by BART's work to a condition satisfying current applicable Federal, State and City regulations, codes and standards.

2.7. Reimbursement for Costs; Work Authorization. Once BART has concurred with the City's cost estimate for a work plan (as provided in Section 3.1 below), BART will issue a Work Authorization to the City for the amount approved (see Attachment 3). BART shall reimburse the City for its actual costs incurred for review of work plans and inspection and approval of the work affecting City infrastructure in accordance with the terms of the Work Authorization. City shall provide to BART a written notification when the City has incurred costs exceeding 75% of the estimated cost set forth in the Work Authorization. Any change in scope or amounts to be included in the City costs, which would cause the estimated amount to be exceeded must be negotiated in advance. Payments under this Agreement shall meet all

applicable Federal and State funding guidelines, and shall be subject to audit pursuant to the provisions of Section 8, below.

3. CITY RESPONSIBILITIES

3.1. Review of Work Plans; Cost Estimate. The City will review BART's work plans within 20 working days after receipt of the plans. Prior to review of the work plans, the City will provide an estimate of its costs for review and inspection to BART for approval. The City's costs for review of work plans and inspection of work performed will be based on the actual costs of City staff, including overhead, on a time and materials basis, or the actual costs paid to any consultant that the City elects to perform such work.

3.2. Services to be Provided. Subject to approval of plans and specifications, the City will issue BART required permits for the proposed work on City infrastructure, at actual costs for plan review and inspection. After notification by BART, the City will schedule a pre-construction site meeting, and provide inspection services as required to meet BART's construction schedule. The City will provide inspection services during and through completion of work affecting City infrastructure and either approve the work performed under the permit or notify BART of any claimed deficiency in the work, as provided in Section 3.3 below. In addition, City may perform services related to the District's ESP Project on the District's behalf which will be detailed in an appropriate Work Authorization.

3.3. Acceptance of City Infrastructure. Upon completion by BART of restoration of City infrastructure, BART will notify the City that its work on said City infrastructure has been completed. After notification from BART, the City will inspect such completed City infrastructure or any useable portion thereof within five working days and in accordance with the City's usual and customary practices for inspecting such infrastructure. If, after inspection by the City, it is determined that the work has been performed in accordance with the City Standards and Specifications, the City shall accept such work. If, after inspection by the City, it is determined that the work has not been so performed, the City shall notify BART of any claimed deficiency within five working days of such determination, and BART will correct the work prior to City's acceptance. If the City is unable to inspect the work within the time frame specified above, the City will notify BART of the delay and the approximate time inspection will be made and will complete the inspection as promptly as possible.

3.4. Betterments. If the City requires that any City infrastructure should be improved beyond that which is required to restore it to a condition at least equal to that which existed prior to construction, such work shall constitute a betterment; provided, however, that improvements that are required to be made to comply with current applicable Federal, State or City regulations, codes or standards, including, but not limited to, replacement of the Cayuga Park Playground structures after temporary relocation of playground structures as permitted and completion of the work under this Agreement, shall not be considered betterments. The City shall reimburse or credit BART for the value of any such work or betterment. In such event, BART and the City shall agree on the nature and extent of any betterment, including related plans and specifications, and on the amount of credit due to BART prior to commencement of construction of any such betterment. Credit for salvage value of any facilities which were either removed or retained by the City during repair, relocation, reconstruction or replacement shall be based on the resale value of such facilities, less selling expenses.

3.5. Invoices to BART. The City will provide BART with invoice(s) detailing its costs incurred for plan review and inspection of City infrastructure. A final invoice for all costs incurred should be submitted for reimbursement no later than three months after completion of work set forth in each Work Authorization.

4. REIMBURSEMENT OF COSTS

4.1. Payment of Invoices. BART shall pay any undisputed portions of each invoice received from the City within 30 days of the date of the invoice. If BART disputes any part of the invoice, its representatives shall review the invoice with affected City representatives within five business days of the invoice to attempt to resolve the dispute. If the parties are able to resolve the dispute, BART shall pay the remainder of the invoice within 30 days of the date of resolution of the dispute. Any invoice items that remain in dispute shall be decided according to the procedure in Section 4.2, below.

4.2. Dispute Procedure. Any dispute regarding reimbursement of costs that cannot be resolved by the administrative staff of BART and the City shall be resolved by a meeting between the General Manager of BART or his or her designee and the Executive Director/CEO of the SFMTA (or designee), and/or the Director of DPW (or designee), and/or General Manager of RPD (or designee), as applicable.

5. NOTICES

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

To City:

DPW Department of Public Works
875 Stevenson Street, Room 460
San Francisco, CA 94103
Attn: John Kwong
Phone: (415) 554-6209
Fax: (415) 554-6161
john.kwong@sfdpw.org

SFMTA San Francisco Municipal Transportation Agency
Department of Parking and Traffic
One South Van Ness Ave. 7th floor
San Francisco, CA 94103
Attn: Dan Arellano
Phone: (415) 701-4637
Fax: (415) 701-4737
Dan.Arellano@sfmta.com

RPD Recreation and Park Department
McLaren Lodge in Golden Gate Park
501 Stanyan Street
San Francisco, CA 94117
Attn: Daniel Laforte
Phone: (415) 831-2700
Fax: (415) 831-2096
Daniel.Laforte@sfgov.org

To BART: San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, P. O. Box 12688
Oakland, CA 94604-2688
Attn: Tom Horton
Phone: (510) 287-4978
Fax: (510) 287-4821
thorton@bart.gov

6. INDEMNIFICATION

6.1. Neither the City nor any officer, agent or employee of the City is responsible for any damages or liability occurring by reason of anything done or omitted to be done by BART, its directors, officers, agents and employees, under or in connection with any work, authority or jurisdiction delegated to BART under this Agreement. Pursuant to California Government Code Section 895.4, BART will fully indemnify, hold harmless and defend in any claim or litigation, the City, its officers, agents and employees from any damage or liability occurring by reason of anything done or omitted to be done by BART, its directors, officers, agents and employees under or in connection with any work, authority or jurisdiction delegated to BART under this Agreement. The duty of BART to indemnify and hold harmless, as set forth above, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require BART to indemnify the City, its officers, agents and employees against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

6.2. Neither BART nor any director, officer, agent or employee of BART is responsible for any damages or liability occurring by reason of anything done or omitted to be done by the City, its officers, agents and employees, under or in connection with any work, authority or jurisdiction delegated to the City under this Agreement. Pursuant to California Government Code Section 895.4, the City will fully indemnify, hold harmless and defend in any claim or litigation, BART, its directors, officers, agents and employees from any damage or liability occurring by reason of anything done or omitted to be done by the City, its officers, agents and employees under or in connection with any work, authority or jurisdiction delegated to the City under this Agreement. The duty of the City to indemnify and hold harmless, as set forth above, shall include the duty to defend as set forth in Section 2778 of the California Civil Code, provided, however, that nothing herein shall be construed to require the City to indemnify BART, its directors, officers, agents and employees against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

7. INSURANCE

7.1. Owner Controlled Insurance Program. BART shall include the City and County of San Francisco, its officers, directors, employees and agents as additional insureds in the master insurance program obtained during construction of the Project, also known as the Owner Controlled Insurance Program (“OCIP”). Coverage for the City will include general liability and builders’ risk (course of construction) insurance. BART shall provide the relevant certificates of insurance and endorsements on all such policies to the City. The OCIP will be maintained in full force and effect during construction of the Project.

7.2. Primary Insurance. The insurance afforded to the City shall be considered primary insurance to the full limit of the OCIP and any insurance against a loss covered by policies held by the City shall be considered excess insurance only. Any policy obtained under the OCIP shall contain a severability-of-interests clause.

7.3. Tender of Defense. The City shall be accorded the same protections with respect to liability and indemnity as is accorded BART under such insurance policies. The City reserves the right to tender to BART the defense of any claims asserted against the City in connection with or arising out of the Project.

8. STATE AUDITOR

Pursuant to California Government Code Section 8546.7, the Parties shall be subject to the examination and audit of the State Auditor, at the request of BART or as part of any audit of BART by the State Auditor, for a period of three years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.

9. TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN

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

10. FOOD SERVICE WASTE REDUCTION REQUIREMENTS

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

11. FURTHER ASSURANCES

11.1. Additional Instruments. Each party shall execute and deliver to the other all such additional instruments or documents as may be necessary to carry out the purposes of this Agreements or to assure and secure to the other party the full and complete enjoyment of its rights and privileges under this Agreement, subject to appropriate approvals of each party's governing body.

11.2. Records. The City agrees to establish and maintain records pertaining to the fiscal activities of the Project, which records shall show the actual time devoted and the costs incurred by the City with respect to any work performed under this Agreement. The accounting systems of the City shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged to the Project, including properly executed payrolls, time records, invoices and vouchers. Upon written request the City shall, at a mutually convenient time, permit BART to inspect, examine, re-examine, and copy the City's books, records, accounts, and any and all data relevant to this Agreement for the purpose of auditing and verifying statements, invoices or bills submitted by the City pursuant to this Agreement, and shall provide such assistance as may be reasonably required in the course of such inspection. The City shall, at BART's request, provide a letter of representation concerning its usual and

ordinary charges for work similar to the work to be performed under this Agreement, as well as the accounting systems utilized by the City for work to be performed under this Agreement.

11.3. Applicable Law. This Agreement shall be interpreted under and pursuant to the laws of the State of California, without reference to conflicts of law principles. The parties agree that the jurisdiction and venue of any dispute between the Parties to this Agreement shall be the Superior Court of Alameda County.

11.4. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.






12. MODIFICATION TO AGREEMENT

This Agreement may be modified or amended at any time by the mutual written consent of the parties herein.

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

CITY	BART
Municipal Transportation Agency	
_____	By: _____
Nathaniel P. Ford, Sr. Executive Director/CEO	Kathleen K. Mayo Deputy Executive Manager Transit System Development
Department of Public Works	Approved as to Form:
_____	Office of the General Counsel
Edward D. Reiskin Director of Public Works	
Recreation and Park Department	By: _____
_____	Jose Ramiro Salazar BART Attorney
Yomi Agunbiade General Manager	
Approved as to Form:	
Dennis J. Herrera City Attorney	
By: _____	
Robin M. Reitzes Deputy City Attorney	

LEGEND

- AREA OF WORK 
- AREA OF WORK 
- CITY LIMITS 
- BART SERVICE LINE 
- CALTRAIN SERVICE LINE 

ATTACHMENT 1
APRIL 2006



CITY & COUNTY OF SAN FRANCISCO
RETROFIT WORK LOCATIONS



EARTHQUAKE
SAFETY PROGRAM
BUILDING A STRONGER SYSTEM

June 18, 2007

Mr. Cameron Bauer
Earthquake Safety Program
San Francisco Bay Area Rapid Transit District
P.O. Box 12688 (LKS-17)
Oakland, CA 94604-2688

Subject: BART Seismic Retrofit Activities Within Cayuga Park

Dear Mr. Bauer:

The San Francisco Bay Area Rapid Transit District (BART) has proposed to implement seismic retrofit activities on the BART aerial structures within Cayuga Playground, which is under the jurisdiction of San Francisco Recreation and Parks (Parks). BART has requested Parks' concurrence that the work will provide a net benefit, as set forth in the programmatic net benefit evaluation for effects of transportation projects on parks and recreation areas covered by Section 4(f) of the U.S. Department of Transportation Act (70 Fed. Reg. 20618 (April 20, 2005)). This letter provides Parks' concurrence with BART's conclusion that the seismic retrofit work in Cayuga Playground qualifies for the net benefit evaluation, because retrofitting the aerial structures that pass over the playground will reduce the risk of physical damage to both BART and playground facilities and the risk of injury or death to the public in the event of a serious earthquake.

Benefits to Cayuga Playground

BART's seismic vulnerability studies have indicated that substantial damage to BART facilities would occur from a major earthquake. The proposed project will reduce the risk to, and improve the safety of, BART passengers and personnel during an earthquake, by retrofitting the original BART system structures to current seismic safety standards. In addition, retrofitting the aerial BART structures that pass over Cayuga Playground will reduce the risk of physical damage to the Playground and the risk of injury or death to Playground users in the event of a serious earthquake.

Impacts to Cayuga Playground

Based on communications with BART staff, Parks understands that the project work that may impact the Playground involves retrofitting aerial guideways that are adjacent to or above the Playground's facilities. This work will include thickening and enlarging the existing foundations of the concrete columns that support the aerial guideways. The scope and potential impacts of this work are as follows:

The portion of Cayuga Playground that lies beneath the BART aerial structures includes an undeveloped sloping area in the northern portion of the Playground that separates Playground facilities from Interstate Highway 280 to the west. South of this, the area flattens out and the BART facilities are in a grassy area that serves as the outfield for the baseball diamond. The

southern area also includes a number of carved statues and tree plantings. BART will excavate a total of nine foundations for enlargement and thickening. Equipment access to the area will be via Naglee Avenue, which also acts as the vehicular entrance to the Playground. Project equipment would use Naglee to enter a temporary road adjacent to the BART foundations, then proceed south along the work area. After moving south along the BART structures, BART proposes to have the trucks leave Cayuga Playground via another temporary road cut into the southern slope of the Playground, running eastward from the work area to Alemany Boulevard.

Retrofitting the columns to accommodate improvements will result in temporary closure of the areas described above for six months to one year.

Measures to Minimize Harm and Mitigation

There will be no permanent impacts or alterations to Cayuga Playground. All project-related impacts to the property will be temporary and detours will be provided to minimize disruption of use of the facilities. All existing pavement, curbs, signage, striping, vegetation or other facilities will be fully restored to pre-project conditions.

In order to minimize the impact to Playground activities, BART will strictly limit its activities to the areas described. BART will also minimize the retrofit period to the extent feasible. Parks and BART have discussed the possibility that BART may be allowed access to the playground equipment area and tennis courts in addition to the areas specified. Doing so would reduce the time needed to complete the work. If BART occupies the play equipment area, it will temporarily relocate the equipment to another site within the Playground, and restore the area to current code requirements after construction.

As noted above, project equipment would use Naglee to enter a temporary road adjacent to the BART foundations, then proceed south along the work area. The road is placed such that it will not affect the play equipment, tennis courts or the main portion of the baseball field. After moving south along the BART structures, the trucks will leave Cayuga Playground via another temporary road cut into the southern slope of the Playground, running eastward from the work area to Alemany Boulevard. This will avoid impact to the main portion of the playground, including the ball diamond backstop and many of the carved statues.

As mitigation, BART will restore the existing irrigation system and provide additional irrigation as required for replanted trees and vegetation. BART will also protect the wooden statues by relocating them to a temporary site, temporarily placing them in storage, or establishing a positive barrier. If safety due to the construction activities becomes a concern, BART will temporarily relocate the Playground equipment to another site within the Park.

At least one of the BART foundations that currently lie close to the ground surface will be exposed once it is expanded. BART will slope the top of these exposed footings to prevent homeless people from sheltering there.

Net Benefit Concurrence

For the reasons discussed above, Parks concurs with BART's determination that the proposed seismic retrofit work, together with the proposed mitigation and measures to minimize harm, will result in a net benefit to Cayuga Playground.

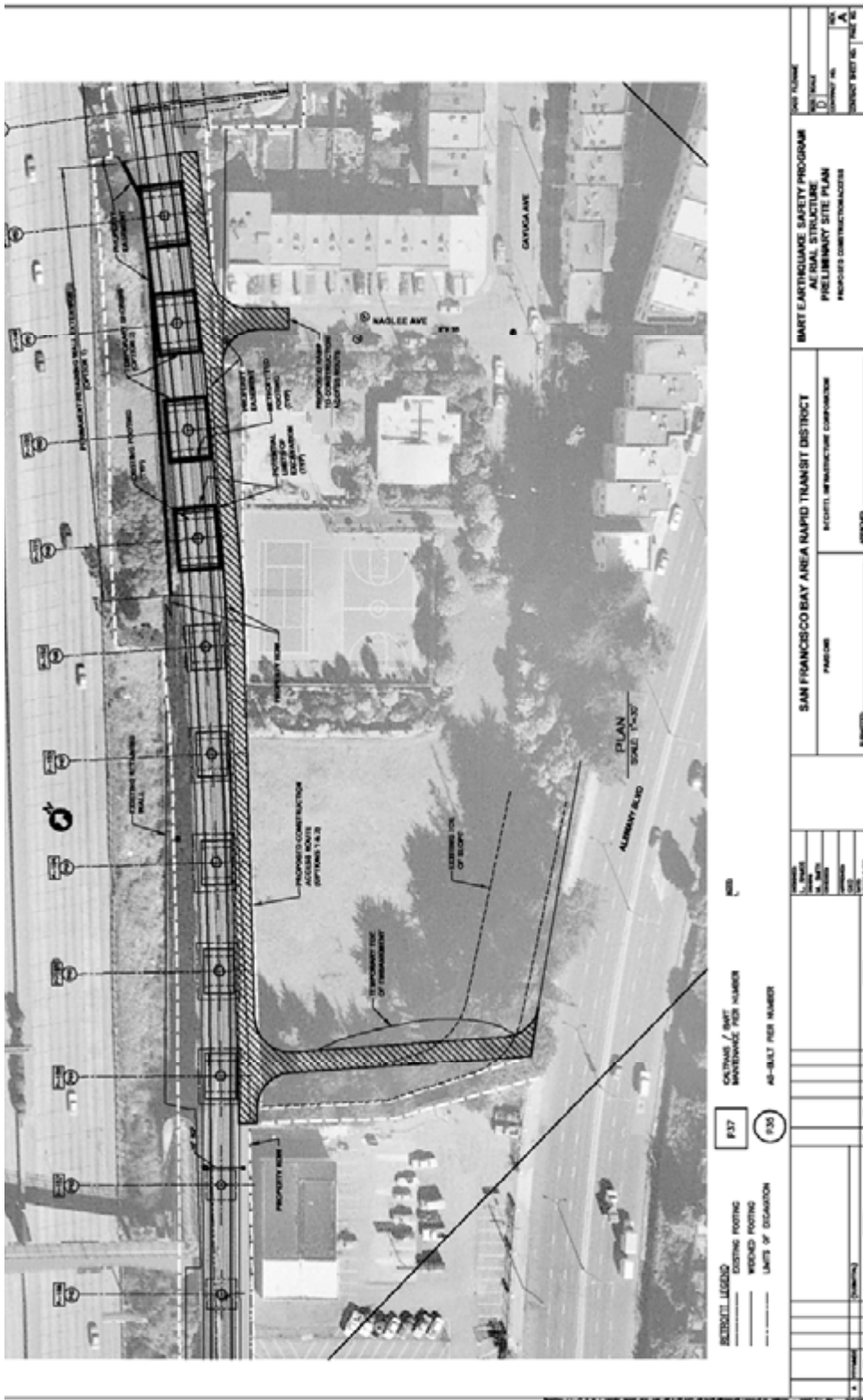
Sincerely yours,

Yomi Agunbiade

Date: _____

General Manager
Recreation and Park Department

Figure 1: Cayuga Playground and Proposed Work Area





WORK AUTHORIZATION SAMPLE FORMAT

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT
300 Lakeside Drive
P. O. Box 12688
Oakland, California 94604-2688

WORK AUTHORIZATION

ISSUED TO: _____
DATE ISSUED: _____ WORK AUTHORIZATION NO.: _____
DATE REVISED: _____ REVISION NO.: _____
AUTHORIZING AGREEMENT _____ DATED: _____

“CHARGES”

Charges Incurred During Period _____
Require Written Approval of the DISTRICT if They Are to Exceed \$ _____

PROJECT:

SCOPE OF WORK:

ANTICIPATED COMPLETION:

REFERENCES:

ADDITIONAL REMARKS:

BART's Liability to reimbursement is limited to the above scope of work under this Work Authorization. Any cost incurred prior to this Work Authorization requires a written request to be submitted to BART. The recipient will notify BART in writing when the Not To Exceed (NTE) amount reaches 75%. In addition, all costs incurred should be invoiced for reimbursement no later than three months after completion of work set forth herein.

Approval _____ Date _____
Transit System Development Deputy Executive Manager

In the absence of a further written Work Authorization issued by the DISTRICT, the DISTRICT shall not be obligated to pay for the described work whenever performed in excess of the amount set forth in the item above headed "charges" and the party to whom this authorization is issued shall not be obligated to perform work not paid for by said amount.

THIS PRINT COVERS CALENDAR ITEM NO. : 10.11

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute two agreements that involve a modification to an existing easement in exchange for fee interest in a portion of the original easement area and rail transit improvements for the J-Church line at 21st Street and Chattanooga Street.

SUMMARY:

- The City currently holds an easement for the Municipal Railway ("Muni Easement") on a portion of real property located adjacent to the outbound J-line tracks at 3563 21st Street.
- The owner of the property at 3563 21st Street proposes to build a condominium development, which would require a reduction and modification of the Muni Easement to allow the remaining easement area to be used as a private driveway.
- In exchange for the modification and reduction of the Muni Easement, the property owner would construct and transfer to the City a curb-height sidewalk for use by Muni passengers boarding and alighting from J-line LRVs traveling in the outbound direction, allowing Muni to discontinue the current practice of J-cars stopping in the 21st Street right-of-way.
- The proposed easement modification would reduce the existing Muni Easement area (through property owner deeding back a portion of the area to City and City removing the easement from a portion of the existing Muni Easement area), limit City's use of the remaining Muni Easement area to the use and maintenance of two existing Muni overhead support poles, and allow the property owner to use the remaining Muni Easement area for a driveway.
- The attached Resolution authorizes the Executive Director/CEO to execute a new Easement Agreement and an Agreement for the Exchange and Conveyance of Real Estate to permit this project to move forward.

ENCLOSURES:

1. SFMTAB Resolution
2. Site Plan
3. Map of proposed Real Estate Transactions at 3563-3567 21st Street
4. Memorandum from John Updike, Real Estate Division, to Jim Nelson, SFMTA, dated 11/19/07
5. Agreement for the Exchange and Conveyance of Real Estate
6. Easement Agreement

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION _____

BE RETURNED TO

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

The proposed project, which includes modifications to an existing Muni Easement Agreement and the return to the City of a portion of the easement area by the adjacent property owner through an Exchange Agreement, will result in the creation, at no cost to the City, of a new, safer boarding area for J-line passengers, and allow the property owner to construct a driveway, retaining wall and fence within the easement area, for his private use.

GOAL

Execution of these agreements will improve passenger safety by discontinuing the practice of stopping outbound J-cars in the middle of 21st Street, improve accessibility by providing a curb-height boarding area for access to and egress from J-cars at this stop, and ensure efficient and effective use of resources by obtaining a new sidewalk stop at this J-line stop. As such, it will further the following goals and objectives of the Strategic Plan:

- Goal 1 – Customer Focus: To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy
 - Objective 1.1 – Improve safety and security across all modes of transportation
 - Objective 1.4 – Improve accessibility across transit services
- Goal 4 – Financial Capacity: To ensure financial stability and effective resource utilization
 - Objective 4.2 – Insure efficient and effective use of resources

DESCRIPTION

Where the J-line occupies an exclusive right-of-way in the area south of Dolores Park, there are several odd-shaped parcels of vacant land adjacent to the trackway. These parcels have, since the J-line was constructed in 1917, been City property under the jurisdiction of the Municipal Railway. In 1985, the City sold one of these parcels (3563 21st Street) to the owner of the adjacent parcel at 3567 21st Street. As a condition of that sale, the City retained a 10-foot wide easement (“Muni Easement”) along the property boundary adjacent to the tracks “for overhead power line supports and any other uses necessary to provide passenger transit service, as may be determined by the General Manager of the San Francisco Municipal Railway.” SFMTA currently uses the Muni Easement to operate three overhead power support poles (each, a "Pole").

In December, 2005, the owner of these two parcels ("Owner") submitted final plans to the San Francisco Building Department for construction of a four-unit condominium development at 3563-3567 21st Street. The plans proposed using most of the current Muni Easement (the "Original Easement Area") as a driveway for access to a parking garage for the new units. When this proposed use came to the attention of the SFMTA, real estate staff realized that it would preclude any future construction of an off-street boarding area for J-line passengers and limit City's use of the Muni Easement, and was thus in violation of City's existing Muni Easement rights.

Currently, outbound J-cars stop in the middle of 21st Street at Chattanooga Street, and passengers must board and alight in the street. (Inbound J-cars at this point stop at a sidewalk adjacent to the trackway before crossing 21st Street.) SFMTA staff worked with the Owner and his architect to design a curb-height sidewalk stop, 5 feet wide and approximately 95 feet long, separated from the adjacent new development by a retaining wall and wood fence, which would be located partially on a portion of the Original Easement Area and partially on adjacent City property.

The Owner proposes to, at its sole cost, build these new improvements and transfer the constructed sidewalk stop to the City in fee if the City reduces the Original Easement Area, limits its use of the remaining Muni Easement area, and allows the Owner to use the remaining easement area as a driveway (the "Remaining Easement Area"). The Original Easement Area would be reduced by the Owner deeding back to City a 2-foot-wide strip comprised of approximately 211 square feet (the "Returned City Portion"), in which the southernmost Pole is located, and the City removing the Muni Easement from an approximately 223-square foot portion of the Original Easement Area (the "Returned Owner Portion").

Under the proposed transaction, SFMTA's easement rights in the Remaining Easement Area would be limited to the access, use, maintenance, repair and replacement of the two Poles in that area. The northernmost Pole will be relocated, at the Owner's sole expense, approximately 4 feet to the northeast from its current location to minimize its interference with entry to the new driveway. It will be directly adjacent to the public sidewalk along 21st Street, and thus more easily accessible to maintenance crews. The City will have the right to relocate the remaining Pole within the easement area by moving it up to 4 feet to the southwest from its current location, at City's sole election and cost.

The main elements of the transaction are summarized as follows:

- The Original Easement Area is currently 10 feet wide and contains three Poles;
- The Owner will convey to City fee title to the Returned City Portion, comprised of a 2-foot strip of land (211 square feet), in the most easterly portion of the Original Easement Area, including the southernmost of the three Poles;
- The SFMTA will agree to a revised description of the Muni Easement that will only describe the Remaining Easement Area and exclude the Returned Owner Portion;
- On the Remaining Easement Area, which will consist of an 8-foot strip, the SFMTA will modify its easement rights on the northern 2/3 (477 square feet) of the Remaining Easement Area to limit access just for the use, repair and maintenance of the two Poles in that area;
- The Owner will construct a sidewalk J-Line stop partially on the existing Muni property

and partially on the Returned City Portion, relocate one of the Poles, reconstruct the retaining wall and fence, and replace the electrical conduit system for the Poles – valued at \$75,755; and

- The Owner will also pay City administrative costs, valued at \$7,768.

Essentially, the SFMTA is giving up certain flexibility in its use, and reducing the size, of the Muni Easement area in exchange for a new sidewalk stop, built at no cost to the City, and fee ownership in the Returned City Portion. Enclosure 2 shows the proposed new sidewalk stop, Owner's new fence and retaining wall, the Poles, the Returned City Portion, and the Returned Owner Portion, all in relation to the new condominium development. Enclosure 3 shows the real estate transactions that are needed to make this project a reality. Enclosure 4 is a memorandum from the City's Real Estate Division confirming that the value to City for the new sidewalk stop and the City Returned Portion exceeds the reduced value of modifying the existing Muni Easement to reduce the Original Easement Area and the City's rights to the Remaining Easement Area.

An explanation of the areas noted in Enclosure 3 is in order. The new sidewalk stop will be 5 feet wide, with approximately 2 feet of the width to be located on the City Returned Portion and approximately 3 feet of the width being constructed within the existing Muni right-of-way adjacent to the Property, as shown in Enclosure 3. The construction and transfer of the new sidewalk stop, the transfer of the City Returned Portion, the release of the Owner Returned Portion and the delivery of the agreement further modifying the Muni Easement would be pursuant to the enclosed Agreement for the Exchange and Conveyance of Real Estate (Enclosure 5). The revised easement terms for the Remaining Easement Area would be governed under the enclosed Easement Agreement (Enclosure 6). As shown in Enclosure 3, the Remaining Easement Area will be approximately 477 square feet in size, most of which will comprise the driveway that will provide access to the new condominium development parking garage. The Returned Owner Portion will no longer be subject to the Muni Easement and will instead be the condominium development rear yard.

The enclosed Agreement for the Exchange and Conveyance of Real Estate (Enclosure 5) requires the Owner to construct the new sidewalk stop, to notify City as its construction schedule progresses, and to work closely with Muni Rail Operations to insure safety and minimize service disruption during construction. It also requires that, once the Owner is prepared to transfer the new sidewalk stop to City and City is prepared to accept it, City execute and record the enclosed Easement Agreement (Enclosure 6). The Easement Agreement reduces the Original Easement Area and specifies City's rights in the Remaining Easement Area, requires the Owner, and its successors, to paint the trackway side of the new fence on an annual basis and allows the Remaining Easement Area to be used as the condominium development driveway area subject to SFMTA's specified easement rights. The accompanying Resolution authorizes the Executive Director/CEO to execute these two agreements.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

Since the proposed project, including the easement modification and property exchange, results in a net benefit for Muni operations at no cost to the SFMTA, no alternatives were considered.

FUNDING IMPACT

The project to build a new boarding area, partially on land deeded back to the City from a private land owner, will be executed at no cost to the SFMTA or the City and County of San Francisco.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

Since this involves substantial changes in an easement held by the City, a reduction in the area covered by that easement, and the ceding back to the City of a portion of the property covered by the easement, the agreements that are the subject of this Calendar Item and Resolution must also be approved by the San Francisco Board of Supervisors.

RECOMMENDATION

The SFMTA Board of Directors should authorize the Executive Director/CEO to execute an Agreement for the Exchange and Conveyance of Real Estate and an Easement Agreement between 3563 TWENTY FIRST, a California limited liability company, and the City and County of San Francisco, acting by and through the SFMTA, and should recommend these agreements to the Board of Supervisors for its approval.

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. _____

WHEREAS, The City, under the jurisdiction of the San Francisco Municipal Transportation Agency (SFMTA), holds an easement (Muni Easement) on a portion of Block 3629, Lot 102 (Property), commonly known as 3563-3567 21st Street, directly adjacent to the outbound trackway of the Municipal Railway (Muni) J-line; and

WHEREAS, The owner of the Property (Owner) wishes to construct condominium units on that portion of the Property not included in the Existing Easement, and to use a portion of the Muni Easement area as a driveway for access to the new condominium parking garage; and,

WHEREAS, SFMTA staff have worked with the Owner and its representatives to develop a plan whereby the Owner will construct a new curb-height sidewalk stop for use as an off-street boarding area for Muni passengers, which sidewalk stop would be located on a 2-foot wide strip of the original Muni Easement area (City Return Portion) and a portion of the adjacent Muni right-of-way; and,

WHEREAS, In conjunction with the construction of the new sidewalk stop, the Owner, at its sole expense, will (1) construct a new fence and retaining wall that will separate the Owner's development project from the new sidewalk stop; and (2) relocate a Muni overhead lines support pole currently located in the original Muni Easement area; and,

WHEREAS, The Owner will deed back to the City the City Return Portion once the new sidewalk stop is constructed and transferred to the City; and,

WHEREAS, The City will modify its easement rights in approximately two-thirds of the remaining Muni Easement area, to limit access just for the use, maintenance and repair of the two remaining support poles within that area; and

WHEREAS, An Agreement for the Exchange and Conveyance of Real Estate has been drafted which addresses the Owner's agreement to safely construct the new sidewalk stop, fence and retaining wall and transfer the new sidewalk stop to City with the City Return Portion, as well as City's agreement to modify the Muni Easement; and,

WHEREAS, A new Easement Agreement has been drafted to reduce the size of the original Muni Easement Area, limit City's use of the remaining Muni Easement area, and to further address both the Owner's and City's rights and responsibilities on the remaining Muni Easement area; and,

WHEREAS, On August 11, 2008, the Planning Department found the proposed Muni project and alteration to the Muni Easement to be in conformity with the San Francisco General

Plan; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute an Agreement for the Exchange and Conveyance of Real Estate and an Easement Agreement between 3563 TWENTY FIRST, a California limited liability company, and the City and County of San Francisco, acting by and through the SFMTA, that involve a modification to an existing easement in exchange for fee interest in a portion of the original easement area and rail transit improvements for the J-Church line at 21st Street and Chattanooga Street; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors recommends this matter to the Board of Supervisors for its approval.

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

Secretary, Municipal Transportation Agency Board

ENCLOSURE 2

Site Plan

ENCLOSURE 3

Map of Proposed Real Estate Transactions

ENCLOSURE 4

Date: November 19, 2007

To: Jim Nelson
Facilities Planning
Municipal Transportation Agency

From: John Updike
Assistant Director of Real Estate
Real Estate Division

Subject: Proposed Municipal Railway Easement Modification

A Private Property Owner adjacent to existing Municipal Railway right of way and railway stop, 21st Street and Chattanooga Streets, is proposing that MUNI modify (reduction in rights) its existing easement, and in exchange the owner will

provide certain improvements and convey certain property rights to MUNI. See the attached map.

Presently, MUNI railway improvements at this location consist of rail right of way, and a pedestrian stop with shelter on one side of the rail right of way, the southeast. Northwest of MUNI's right of way is a privately owned pie-shaped parcel that is encumbered with a ten (10) foot wide easement for MUNI's overhead power line supports and any other use necessary to provide passenger transit service. At this time, this easement is improved with three (3) light standards. This easement is separated from the railway right of way by a retaining wall and fence.

Owner's Proposal

The adjacent property owner is proposing a modification of MUNI's existing easement rights. The proposal is for the adjacent owner to convey fee title to a two (2) foot strip of land which is the most easterly portion of MUNI's existing easement (adjacent to the railway right of way); this strip is approximately 211 square feet in area. In addition, the owner is proposing to construct a new pedestrian platform on MUNI property, relocate one of the existing light standards (most northerly pole), reconstruct the retaining wall and fence and replace the entire existing electrical conduit system for the power and light standard.

The estimated cost for the construction of the proposed MUNI stop to be constructed to MUNI's specifications is \$75,755.00.

In addition, owner/applicant shall provide to City, at no cost, legal descriptions for all property rights to be conveyed by City to applicant as part of this proposed transaction.

Municipal Transportation Authority (MTA)'s Proposed Involvement

Under this proposal, MUNI will modify its existing easement rights on the remaining eight foot wide existing easement, reducing rights on the northern two-thirds of the existing easement strip, approximately 477 square feet, and quitclaiming all of its interest in the remaining one-third portion of the existing easement (most southerly portion), approximately 223 square feet.

On the northerly two-thirds of the proposed eight foot wide easement, MUNI will reduce its existing rights to access only for access, installation, maintenance, and repair purposes requiring 72 hour written notice to the owner of record. On the remaining one-third portion of the eight foot easement strip, the most southerly portion, MUNI will quitclaim its entire easement interest.

Real Estate Division believes this proposal is reasonable in concept and will need concurrence from MUNI Maintenance and Operations Department. In addition, the proponent will need to reimburse the City for all administrative costs

associated with this proposed transaction.

Easement Modification Process

The process for easement modification will require input from multiple City Departments, the MTA Board, and the Board of Supervisors, if required. City will need to be reimbursed for all administrative costs involved in this proposed transaction. The fee schedule for this proposed transaction is listed below.

\$2,768.00 plus time and materials - Planning General Plan Referral
\$2,500.00 - Real Estate Administrative Fee
\$2,500.00 - City Attorney's Administrative Fee

Total Costs - \$7,768.00

All costs involving publicly initiated projects are paid in advance. Per City Planning, the applicant's proposed development supports the development of four (4) residential units, before the easement modification as well as after; therefore, the nominal increase in square footage to the applicant's property, twenty-two (22) square feet after easement modification, has no impact on the value of applicant's proposed development.

With receipt of the fees referenced above Real Estate Division recommends proceeding to secure approval for an easement granted at no additional cost to the applicant. This course of action is supported by the fact that the rights granted to the City and the improvements provided by the owner/applicant exceed the value of the easement rights proposed to be modified by the City on the applicant's behalf.

ENCLOSURE 5

MEMORANDUM

November 19, 2007

To: Jim Nelson
Facilities Planning
Municipal Transportation Agency

From: John Updike
Assistant Director of Real Estate
Real Estate Division

Subject: **Proposed Municipal Railway Easement Modification**

A Private Property Owner adjacent to existing Municipal Railway right of way and railway stop, 21st Street and Chattanooga Streets, is proposing that MUNI modify (reduction in rights) its existing easement, and in exchange the owner will provide certain improvements and convey certain property rights to MUNI. See the attached map.

Presently, MUNI railway improvements at this location consist of rail right of way, and a pedestrian stop with shelter on one side of the rail right of way, the southeast. Northwest of MUNI's right of way is a privately owned pie-shaped parcel that is encumbered with a ten (10) foot wide easement for MUNI's overhead power line supports and any other use necessary to provide passenger transit service. At this time, this easement is improved with three (3) light standards. This easement is separated from the railway right of way by a retaining wall and fence.

Owner's Proposal

The adjacent property owner is proposing a modification of MUNI's existing easement rights. The proposal is for the adjacent owner to convey fee title to a two (2) foot strip of land which is the most easterly portion of MUNI's existing easement (adjacent to the railway right of way); this strip is approximately 211 square feet in area. In addition, the owner is proposing to construct a new pedestrian platform on MUNI property, relocate one of the existing light standards (most northerly pole), reconstruct the retaining wall and fence and replace the entire existing electrical conduit system for the power and light standard.

The estimated cost for the construction of the proposed MUNI stop to be constructed to MUNI's specifications is \$75,755.00.

In addition, owner/applicant shall provide to City, at no cost, legal descriptions for all property rights to be conveyed by City to applicant as part of this proposed transaction.

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Under this proposal, MUNI will modify its existing easement rights on the remaining eight foot wide existing easement, reducing rights on the northern two-thirds of the existing easement strip, approximately 477 square feet, and quitclaiming all of its interest in the remaining one-third portion of the existing easement (most southerly portion), approximately 223 square feet.

On the northerly two-thirds of the proposed eight foot wide easement, MUNI will reduce its existing rights to access only for access, installation, maintenance, and repair purposes requiring 72 hour written notice to the owner of record. On the remaining one-third portion of the eight foot easement strip, the most southerly portion, MUNI will quitclaim its entire easement interest.

Real Estate Division believes this proposal is reasonable in concept and will need

concurrence from MUNI Maintenance and Operations Department. In addition, the proponent will need to reimburse the City for all administrative costs associated with this proposed transaction.

Easement Modification Process

The process for easement modification will require input from multiple City Departments, the MTA Board, and the Board of Supervisors, if required. City will need to be reimbursed for all administrative costs involved in this proposed transaction. The fee schedule for this proposed transaction is listed below.

\$2,768.00 plus time and materials - Planning General Plan Referral
\$2,500.00 - Real Estate Administrative Fee
\$2,500.00 - City Attorney's Administrative Fee

Total Costs - \$7,768.00

All costs involving publicly initiated projects are paid in advance

Per City Planning, the applicant's proposed development supports the development of four (4) residential units, before the easement modification as well as after; therefore, the nominal increase in square footage to the applicant's property, twenty-two (22)

square feet after easement modification, has no impact on the value of applicant's proposed development.

With receipt of the fees referenced above Real Estate Division recommends proceeding to secure approval for an easement granted at no additional cost to the applicant. This course of action is supported by the fact that the rights granted to the City and the improvements provided by the owner/applicant exceed the value of the easement rights proposed to be modified by the City on the applicant's behalf.

ENCLOSURE 5

AGREEMENT FOR THE EXCHANGE AND CONVEYANCE OF REAL ESTATE

This Agreement for the Exchange and Conveyance of Real Estate (this "**Agreement**"), dated for reference purposes only as of _____, 2008 (the "**Agreement Date**"), is by and between the City and County of San Francisco, a municipal corporation (the "**City**"), and 3563 Twenty First LLC, a California limited liability company (the "**Owner**"). City and the Owner may each be referred to herein as a "**Party**" and together referred to herein as the

"Parties".

RECITALS

A. The Owner owns certain real property commonly known as 3563-3567 21st Street, San Francisco, California, as more particularly described in the attached Exhibit A (the "**Owner Property**").

B. Pursuant to a deed recorded in the Official Records of San Francisco on May 28, 1985, in Book D847, Page 166 (the "**Deed**"), City holds an easement (the "**Easement**") that encumbers the portion of the Owner Property described in such Deed, as further depicted in the attached Exhibit B (the "**Existing Easement Area**").

C. The Owner wishes to transfer fee interest in the portion of the Existing Easement Area described in the attached Exhibit C (the "**Transfer Portion**"), reducing the portion of the Owner Property encumbered by the Easement to the remaining portion of the Existing Easement Area described in the attached Exhibit D (the "**Remaining Easement Area**"), and to reduce City's easement rights with respect to the Easement to facilitate the Owner's development of the Owner Property. The "**Remainder Property**" shall mean the Owner Property less the Transfer Portion.

D. City is willing to accept fee interest in the Transfer Portion and reduce its rights under the Easement on the terms and conditions set forth in this Agreement.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, City and the Owner hereby agree as follows:

ARTICLE 1: PROPERTY EXCHANGE AND ESCROW

1.1. Exchange of Property. Subject to the terms and conditions in this Agreement, at Closing (as defined in Section 6.1), the Owner agrees to convey the Transfer Portion to City and to enter in the Easement Agreement attached hereto as Exhibit E (the "**Amended Easement Agreement**"), and City agrees to accept the Transfer Portion from the Owner and to enter in the Amended Easement Agreement.

1.2. Consideration. In consideration of City's agreement to modify the Easement and reduce the Existing Easement Area pursuant to this Agreement (the "**Easement Modification**"), which the Parties believe will increase the value of the Remainder Property, the Owner agrees to transfer fee interest in the Transfer Portion to City and to construct and transfer to City the Muni Improvements (as defined in Section 2.1) at the Closing. The Parties have each concluded that the collective value of such fee interest in the Transfer Portion and in the construction of the Muni Improvements exceeds the increased value the Remainder Property that will result from the Easement Modification.

1.3. Escrow. Within fifteen (15) days following the Effective Date, the parties shall open an escrow for the Exchange ("**Escrow**") with Chicago Title Company in San Francisco (the "**Title Company**") and deposit a fully executed copy of this Agreement with Title Company. This Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the Exchange. The Owner and City agree to execute such additional or supplementary

instructions as may be reasonably appropriate to enable the Title Company to comply with the terms of this Agreement and effect Closing; provided, however, that if there is any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

ARTICLE 2: CONSTRUCTION OF MUNI IMPROVEMENTS

2.1. Muni Improvements. On or before October 10, 2009, the Owner agrees to construct a Muni stop (the "**Muni Stop**"), a new retaining wall and fence and install a new electrical conduit system (collectively, the "**Muni Improvements**"), all of which shall conform to Sheets A0.4, A1.0, A2.2, A2.3, A3.1, A3.2, S2.1, S3.1, S5.1, C-3, C-4 and C-5 of the plans and specifications prepared by Baum Thornley Architects LLP for Job No. 02039, dated July 26, 2007 (the "**Plans**"), and shall provide for sufficient drainage to prevent the flow of water from the Owner Property onto the City property abutting the Remaining Easement Area. The Owner shall not make any material change to the Plans nor consent to any change order thereto during the course of construction of the Muni Improvements without first obtaining City's written approval, which shall not be unreasonably withheld, conditioned or delayed. The Muni Improvements will be partially located on the Transfer Portion and partially located on the portion of City property that abuts the Transfer Portion, as further depicted on the attached Exhibit B (the "**Right of Way**").

2.2. Construction of Muni Improvements. The Owner, at its sole cost, shall secure and pay for any building and other permits and approvals, government fees, licenses and inspections necessary to construct the Muni Improvements (the "**Work**") in substantial compliance with the Plans and all Applicable Laws (as defined in Section 8.8). The Owner acknowledges and agrees that the Owner's construction and transfer of the Muni Improvements to City pursuant to this Agreement shall be partial consideration for City's agreement to the Easement Modification. The City will subsequently be inspecting the Work and, if Closing occurs, accepting the Muni Improvements from the Owner pursuant to this Agreement in its proprietary capacity, not its regulatory capacity. City makes no representations or warranties as to whether the Owner will be required to acquire any permits or approvals (from City or any other regulatory agency with jurisdiction) to construct the Muni Improvements in compliance with the Plans and all Applicable Laws and City shall have no obligation to effect or issue, or assist in effecting or issuing, any such necessary permits or approvals; provided, however, that City, acting in its proprietary capacity as the holder of the Easement, shall take good faith efforts to deliver any documents reasonably required by Owner to acquire any such permits or approvals.

The Owner, at its sole cost, shall (a) cause the Muni Improvements to be constructed by a licensed contractor approved by City, which approval shall not be unreasonably withheld, conditioned or delayed, and in a good and professional manner in accordance with sound building practice and in compliance with this Agreement, (b) comply with and give notices required by all Applicable Laws in constructing the Muni Improvements, (c) ensure that the performance of the Work does not obstruct City's use of the Right of Way nor unreasonably interfere with City's use of the Easement Area pursuant to the Deed, and (d) provide City with at least twenty-one (21) days' prior written notice of the date that concrete is poured to construct the Muni Stop, which pouring shall occur during normal working hours or at a time otherwise mutually acceptable to City and the Owner. The Owner acknowledges and agrees that City shall have the right to have a City employee, agent or contractor present to observe the performance of the Work. In addition to the foregoing obligations, prior to commencing any of the Work, the Owner shall ensure that any employee or contractor of the Owner performing such Work attends the City's required Tracksides Safety Class for all contractors working within the general location

of City rail rights-of-ways and complies with any other standard requirements City requires of all such contractors.

The Owner shall deliver a copy of the final as-built plans and specifications for the Muni Improvements to City once the Work is substantially completed. The Work shall be deemed to be "substantially completed" for purposes of this Agreement when the Muni Improvements are completed in accordance with the Plans and this Agreement and City, acting in its proprietary capacity hereunder, has approved the Muni Improvements. No approval by City or any of its Agents (as defined in Section 8.14) of the Plans or completion of the Work for purposes of this Agreement shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over thereto, and nothing herein shall limit the Owner's obligations to obtain all such approvals.

The Owner shall keep City apprised on a regular basis of the progress of the Work. When construction progress so permits, but not less than fifteen (15) days in advance of completion, the Owner shall notify City of the approximate date on which the Muni Improvements will be substantially completed in accordance with the Plans. The Owner shall revise such notice of the approximate substantial completion date as appropriate from time to time and shall immediately notify City when the Muni Improvements are in fact substantially completed. City and its authorized representatives shall have the right to enter the Transfer Portion and the Right of Way to review and inspect the Muni Improvements and the construction thereof at any time, provided that City shall do so in a manner that does not unreasonably interfere with the Muni Improvements construction work and the City shall be solely responsible for any damages or injuries to the extent caused by such entry and inspection.

2.3. Prevailing Wages. The Owner agrees that any person performing the labor for the Work shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the City and County of San Francisco Administrative Code, and shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. The Owner shall include, in any contract for construction of the Muni Improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. The Owner shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of the Muni Improvements.

2.4. Entry on Right of Way. The Owner intends to enter the Right of Way to perform the Work, and City acknowledges such entry will be necessary to perform the Work. The Owner acknowledges that the Right of Way is part of the City's municipal railway system and is used for transportation and right-of-way purposes. Accordingly, the Owner recognizes and agrees that notwithstanding anything to the contrary in this Agreement, any and all of the Owner's rights to enter and use the Right of Way to perform the Work shall be subject and subordinate at all times to such public easement and railway system the uses related thereto, including, but not limited to, public use as a street, utility uses, and City's uses for other purposes.

The Owner and its Agents shall work closely with City personnel to avoid disruption (even if temporary) of City property in, under, on or about the Right of Way and City uses of the Right of Way. The Owner shall further use, and shall cause its Agents to use, due care at all times to avoid any damage or harm to the Right of Way or to City's property, and shall do everything reasonably within its power, both independently and upon request by City, to prevent and suppress fires on and adjacent to the Right of Way attributable to the Work. The Owner shall minimize its use of and impact on the Right of Way in performing the Work to the extent reasonably possible.

No less than twenty-one (21) days prior to entering the Right of Way to perform the Work, the Owner shall submit a construction schedule with respect to its entry on and use of the

Right of Way, including the scheduled dates for grading, installation of rebar and forms, and concrete pouring, that is approved by the City (the "**Right of Way Schedule**"), which approval shall not be unreasonably withheld, conditioned or delayed. The Owner shall notify Kerstin Magary (telephone number: 415-701-4323), or such other person designated by City in writing (the "**City Contact Person**"), of the date such Work shall commence. The Owner shall use good faith efforts to comply with the dates specified in the Right of Way Schedule and to complete the Work within the completion date specified in the Right of Way Schedule, subject to unavoidable delays. For purposes hereof, "unavoidable delays" shall mean any delays by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain labor, materials, or permits, enemy action, civil commotion, protests, riots, demonstrations, federal or state governmental restrictions, or by any other reason beyond the reasonable control of the Owner. If the Owner anticipates the need to modify the Right of Way Schedule for any reason, the Owner shall promptly notify the City Contact Person.

2.5. Restoration of Construction Area. Immediately following completion of Work, the Owner shall remove all debris and any excess dirt and restore any portion of the Right of Way and the Existing Easement Area (collectively, the "**Construction Area**") affected by the Work to the condition its was in immediately prior to the commencement of the Work, subject to the Improvements (as defined in the Amended Easement Agreement). In addition, immediately following completion of the Work, the Owner shall remove all debris and any excess dirt and restore the affected portion of the Right of Way to its condition immediately prior to the commencement of the Work (subject to the completed Muni Improvements, provided that the completed Muni Improvements conform to the requirements specified in this Agreement).

If any portion of the Construction Area or any property of City located on or about the Construction Area is damaged by the performance of any of the Work, the Owner shall promptly, at its sole cost, repair any and all such damage and restore such affected portion of the Construction Area or City property to its condition immediately prior to such damage. If this Agreement is terminated prior to Closing for any reason, including for failure of any City Condition Precedent (as defined in Section 5.1) or any Owner Condition Precedent (as defined in Section 5.3), the Owner shall promptly restore the Construction Area to the condition in which it was in immediately prior to the commencement of any of the Work. If this Agreement is terminated due to City's default of its obligations hereunder, the Owner shall have all remedies available to it under law and equity.

2.6. Hazardous Materials. The Owner shall not cause, nor shall the Owner allow any of its Agents or Invitees (as defined in Section 8.14) to cause, any Hazardous Material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Construction Area, or to be transported to or from the Construction Area, in the performance of the Work, except for construction materials that are typically used in similar projects and are used in a manner that complies with all Applicable Laws. The Owner shall immediately notify City when the Owner learns of, or has reason to believe that, a release of Hazardous Material has occurred in, on or about the Construction Area. The Owner shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination.

If the Owner or its Agents or Invitees cause a release of Hazardous Material on or about the Construction Area, the Owner shall, without cost to City and in accordance with all laws and regulations, return the affected Construction Area to the condition immediately prior to the release. In connection therewith, the Owner shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree or other compromise proceeding involving Hazardous Material.

For purposes hereof, "**Hazardous Material**" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by

any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Construction Area or are naturally occurring substances in the Construction Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "**release**" or "**threatened release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Construction Area.

2.7. Insurance; Bonds; Construction Warranty.

(a) The Owner, at its sole expense, shall procure and keep in effect at all times during the performance of the Work, and cause its contractors and subcontractors to maintain at all times during any construction activities on the Construction Area, insurance on an occurrence basis as follows:

(i) General Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Permittees, Explosion, Collapse and Underground (XCU), Broadform Property Damage, [Sudden and Accidental Pollution,] Products Liability and Completed Operations;

(ii) Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable, and sudden and accidental pollution; and

(iii) Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than One Million Dollars (\$1,000,000) each accident.

(b) All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Sudden and accidental pollution coverage in the liability policies required hereunder shall be limited to losses resulting from the activities of the Owner and its Agents and Invitees with respect to the Work (excluding non-negligent aggravation of existing conditions with respect to Hazardous Materials).

(c) All policies shall be endorsed to provide at least ten (10) business days' prior written notice of cancellation, non-renewal or reduction in coverage to City.

(d) Prior to commencing any of the Work, the Owner shall deliver to City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. If the Owner fails to procure such insurance, or to deliver such policies or

certificates, City may procure, at its option, the same for the account of the Owner, and the cost thereof shall be paid to City within ten (10) days after delivery to the Owner of bills therefor.

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

(f) Prior to commencing any of the Work, the Owner shall deliver to City evidence that the contractor constructing the Muni Improvements will issue a warranty that guaranties in full the contractor's performance of such work, is effective for at least two (2) years following Owner's acceptance of the Muni Improvements, and is assignable from the Owner to City if City accepts the Muni Improvements (the "**Construction Warranty**").

(g) The Owner's compliance with the provisions of this Section shall in no way relieve or decrease its obligations under this Agreement, including but not limited to the Owner's indemnification obligations. The Owner's obligations under this Section shall survive any termination of this Agreement.

2.8. Utilities. City has no responsibility or liability of any kind with respect to any utilities that may be on, in or under the Construction Area. The Owner has the sole responsibility to locate such utilities and protect them from damage and shall arrange and pay for any necessary temporary relocation of City and public utility company facilities, subject to the prior written approval by City and any such utility companies of any such relocation. The Owner shall be solely responsible for arranging and paying directly for any utilities or services necessary for its activities hereunder.

2.9. City's Right to Restore or Repair. If the Owner fails to perform any of its obligations under this Agreement to restore or repair damage to the Construction Area, or otherwise defaults in the performance of any of its other obligations hereunder with respect to the performance of the Work, then City may, at its sole option, remedy such failure for the Owner's account and at the Owner's expense by providing the Owner with at least three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City, where City shall use reasonable efforts to notify Owner). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Agreement or under law or equity, and nothing herein shall imply any duty of City to do any act that the Owner is obligated to perform. The Owner shall pay to City upon demand, all costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. The Owner's obligations under this Section shall survive the termination of this Agreement.

2.10. As-Is Condition. The Owner acknowledges that it accepts the Right of Way in its "AS IS" condition, without representation or warranty of any kind by City, its officers, agents or employees, including, without limitation, the suitability, safety, or duration of availability of the Right of Way for the Work. Without limiting the foregoing, the Owner's rights to enter the Right of Way in performing the Work is subject to all Applicable Laws governing the use of the Right of Way, and to any and all covenants, conditions, restrictions, easements, encumbrances, claims of title and other title matters affecting the Right of Way, whether foreseen or unforeseen, and whether such matters are of record or would be disclosed by an accurate inspection or survey. It is the Owner's sole obligation to conduct an independent investigation of the Right of Way and all matters relating to its performance of the Work in the Right of Way, including, without limitation, the suitability of the Right of Way for such uses. The Owner, at its own expense, shall obtain such permission or other approvals from any third parties with existing rights as may be necessary for the Owner to perform the Work in the Right of Way in the manner

contemplated hereby.

ARTICLE 3: TITLE

3.1 Permitted Title Exceptions to the Transfer Portion. At the Closing, the Owner shall convey its right, title and interest in and to the Transfer Portion to City by using the form of deed attached hereto as Exhibit F (the "**Deed**"). Title to the Transfer Portion shall be subject to (i) pro rated liens of local real estate taxes and assessments that are not yet payable, and (ii) any other exceptions approved in writing by City in its sole discretion. All of the foregoing permitted exceptions to title shall be referred to collectively as the "**Permitted Title Exceptions**" and shall be reflected in a CLTA owner's title insurance policy issued by the Title Company to City, with such coinsurance or reinsurance and direct access agreements as City may reasonably request, in an amount of not less than \$110,705, insuring City's interest in the Transfer Portion, subject only to the Permitted Title Exceptions, all at the sole cost and expense of the Owner.

3.2. Legal Description; Legal Status. The Transfer Portion and the Remaining Property are not separate legal parcels and the Parties agree to use the legal description for the Transfer Portion attached to this Agreement as Exhibit C and Exhibit D (the "**Legal Descriptions**") to effect the Easement Modification. If the Owner wishes to cause the Remaining Property to be either a separate legal parcel or part of a larger legal parcel owned by the Owner (a "**Parcel Action**"), the Owner shall do so at its sole cost and responsibility. Owner acknowledges and agrees that City is accepting the Transfer Portion from Owner pursuant to this Agreement in its proprietary capacity, not its regulatory capacity, and that City (a) makes no representations or warranties as to whether the Owner will be required to effect a Parcel Action or as to any costs or liabilities that the Owner may incur if the Owner does not effect a Parcel Action, and (b) shall have no obligation to assist in, effect, or approve of a Parcel Action. City further acknowledges that Transfer Portion is not a separate legal parcel and City, acting in its proprietary capacity, is willing to accept the Transfer Portion in such condition.

3.3. Record of Survey. The Transfer Portion is a portion of the Owner Property and neither the Transfer Portion nor the Remainder Property will be separate legal parcels as of the Closing. The City, acting in its regulatory capacity, is accordingly requiring that record of survey of the Transfer Portion (a "**Record Survey**") be recorded in the Official Records of San Francisco County prior to Closing if the Closing occurs (the "**Record Survey Condition**"). The Owner acknowledges and agrees that City is accepting the Transfer Portion from the Owner pursuant to this Agreement in its proprietary capacity, not its regulatory capacity, and that (a) City makes no representations or warranties that the Remainder Property will satisfy the provisions of California Government Code Sections 44610 *et seq.* (the "**Subdivision Map Act**") or whether City, acting in its regulatory capacity, or any other party will require that the Remainder Property comply with the Subdivision Map Act (a "**Compliance Action**"), or as to any costs or liabilities that the Owner may incur as a result of any Compliance Action or of the Remainder Property not being in compliance with the Subdivision Map Act, (b) City shall have no obligation to assist in, effect, or approve of any applications or documents submitted by the Owner in connection with a Compliance Action, (c) any City department reviewing any application or documents submitted by the Owner for a Compliance Action shall do so in its sole discretion without any obligation to provide special consideration thereto, and (d) City's Board of Supervisors and Mayor shall have no obligation to approve of any ordinance or resolution (as applicable) submitted for a Compliance Action, which shall be subject to their sole discretion.

3.4. Property Agreements; No New Improvements. From the Agreement Date until the Closing or earlier termination of this Agreement, the Owner shall not enter into any binding lease or contract with respect to the Transfer Portion or construct any improvements on the Transfer Portion without first obtaining the City's prior written consent to such action, which consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 4: REPRESENTATIONS AND WARRANTIES

4.1. Representations and Warranties of Owner. The Owner represents and warrants to and covenants with City as of the Agreement Date and as of the Closing Date:

(a) To the Owner's knowledge, there are no easements or rights of way which have been acquired by prescription or which are otherwise not of record with respect to the Transfer Portion, and there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Transfer Portion to gain access to other real property.

(b) There is no litigation pending or, to the best of Owner's knowledge, threatened, against Owner or any basis therefor that arises out of the ownership of the Transfer Portion or that might detrimentally affect the use or operation thereof, the value of the Owner Property or the Owner's ability to perform its obligations under this Agreement.

(c) The Owner has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Transfer Portion.

(d) The Owner is a duly organized and validly existing limited liability company under the laws of the State of California, Nancy Zeng is its sole manager and is authorized to cause the Owner to enter into this Agreement and perform its obligations hereunder, and no other approval is necessary to authorize the Owner to enter into this Agreement or perform its obligations hereunder.

(e) This Agreement and all documents executed by Owner that are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by the Owner, are, or at the Closing will be, legal, valid and binding obligations of the Owner, enforceable against the Owner in accordance with their respective terms, subject to applicable laws and principles of equity, are, and at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which the Owner is a party or to which the Owner or the Transfer Portion is subject.

(f) The Owner represents and warrants to City that it has not been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. If the Owner has been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, debarment, discipline or prohibition may result in the termination or suspension of this Agreement.

(g) Owner hereby represents and warrants to and covenants with City that it has not

received any notice that (i) the Transfer Portion is in violation of any Environmental Laws, (ii) there has been any release or any threatened release of any Hazardous Material in, on, under or about the Trust Property, (iii) there are, or have been, any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under the Transfer Portion, (iv) the Transfer Portion is subject to any claim by any governmental regulatory agency or third party related to the release or threatened release of any Hazardous Material, or subject to any inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Transfer Portion or the migration of Hazardous Material from or to other property. As used in this Agreement, the following terms shall have the meanings below:

(1) **"Environmental Laws"** shall mean any present or future federal, state or local laws, ordinances, regulations or policies relating to Hazardous Material (including, without limitation, their use, handling, transportation, production, disposal, discharge or storage) or to health and safety, industrial hygiene or environmental conditions in, on, under or about the Transfer Portion, including, without limitation, soil, air and groundwater conditions.

(2) **"Hazardous Material Laws"** shall mean any present or future federal, state or local laws, rules, regulations or policies relating to Hazardous Material (including, without limitation, its handling, transportation or release) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Property and any other property, including, without limitation, soil, air, air quality, water, water quality and groundwater conditions. "Hazardous Materials Laws" includes, without limitation, CERCLA, as amended by SARA, the RCRA, the Clean Water Act, TSCA, the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 *et seq.*), the California Superfund law, the Hazardous Waste Control Act (California Health and Safety Code Section 25100 *et seq.*), the Business Plan Law, Porter-Cologne Water Quality Control Act (California Water Code Section 13000 *et seq.*), Proposition 65, City's Pesticide Ordinance (Chapter 39 of the San Francisco Administrative Code), and Article 20 of the San Francisco Public Works Code ("Analyzing Soils for Hazardous Waste").

(h) There are now, and at the time of Closing will be, no leases or other occupancy agreements affecting any of the Transfer Portion. At the time of Closing there will be no outstanding written or oral contracts made by the Owner for any improvements located on the Transfer Portion that have not been fully paid for and the Owner shall cause to be discharged all mechanics' or materialmen's liens arising from any labor or materials furnished to the Transfer Portion prior to the time of Closing. There are no obligations in connection with the Transfer Portion which will be binding upon City after Closing.

The term **"Owner's knowledge"** shall mean the actual knowledge of each of Paul Kollerer, Nancy Zeng, Kelvin Zeng and Greg Fulford as of the Agreement Date and as of the Closing Date.

4.2. **Indemnity.** The Owner, on behalf of itself and its successors and assigns, hereby agrees to indemnify, protect, defend and hold harmless City, including, but not limited to, all of its boards, commissions, departments, agencies and other subdivisions, all of the Agents of City, and their respective heirs, legal representatives, successors and assigns (collectively, with the

City, the "**City Indemnified Parties**"), from and against any Losses (defined as follows) resulting from any material misrepresentation or breach of warranty or breach of covenant made by the Owner in this Agreement or in any document, certificate, or exhibit given or delivered to City pursuant to or in connection with this Agreement or arising out of or relating to the Work or the conduct of Owner or its Agents, as applicable, or its or their activities during any entry on, under or about the Construction Area in performing any inspections, testings or inquiries thereof, whether prior to the date of this Agreement or during the term hereof, including, without limitation, any injuries or deaths to any party (including, without limitation, the Owner's Agents) and damage to any property, from any cause whatsoever, except to the extent caused by the negligence or willful misconduct of City.

Owner acknowledges that the foregoing indemnity includes any claims, demands, losses, damages, costs, expenses, and legal liability that arise out of, result from, or are in any way connected with the release or spill of any legally designated hazardous material or waste or contaminated material as a result of the Work, the costs, expenses, and legal liability for environmental investigations, monitoring, containment, removal, repair, cleanup, restoration, remedial work, penalties, and fines arising from the violation of any local, state, or federal law or regulation, attorney's fees, disbursements, and other response costs are expressly within the scope of this indemnity and the costs that may be incurred by any of the City Indemnified Parties in connection with the foregoing indemnity, including reasonable attorney's fees; provided, however, that the foregoing indemnity shall not include any claims resulting from the discovery or disclosure of pre-existing environmental conditions or the non-negligent aggravation of pre-existing environmental conditions on, in, under or about the Right of Way. On request, Owner shall defend any action, claim or suit asserting a claim covered by this indemnity. Contractor shall pay all. Contractor's liability shall not be limited to the amount of insurance coverages required under this Agreement. This indemnity shall survive the termination of this Agreement or the Closing, as applicable.

"**Loss**" or "**Losses**" shall mean any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and reasonable costs and expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, or contingent or otherwise, including, without limitation, any and all reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal (collectively, "**Attorneys' Fees and Costs**").

4.3. As-Is Condition of Construction Area; Release. The Owner represents and warrants to City that the Owner has performed an independent, diligent and thorough inspection and investigation of each and every aspect of the Construction Area with respect to the performance of the Work. As part of its consideration to City for City's agreement to the Easement Modification, the Owner, on behalf of itself and its successors and assigns, waives any right to recover from, and forever releases and discharges, the City or its respective Agents, officers, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with

(i) City's and its Agents and customer's past, present and future use of the Construction Area, (ii) the fact that the portion of the Owner Property that will remain after the Closing is not a separate legal parcel, or (ii) the physical, geological or environmental condition of the Right of Way, including, without limitation, any Hazardous Material in, on, under, above or about the Right of Way and any federal, state, local or administrative law, rule, regulation, order or requirement applicable thereto, including, without limitation, all Environmental Laws.

In connection with the foregoing release, the Owner expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The Owner acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. The Owner realizes and acknowledges that it has agreed upon these releases in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Agreement.

4.4. As-Is Condition of Transfer Portion; Release. The City represents and warrants to the Owner that the City has performed an independent, diligent and thorough inspection and investigation of each and every aspect of the Transfer Portion. The City waives any right to recover from, and forever releases and discharges, the Owner or its respective Agents, employees, agents, contractors and representatives, and their respective heirs, successors, legal representatives and assigns, from any and all Losses, whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) the fact that the Transfer Portion is not a separate legal parcel, or (ii) the physical, geological or environmental condition of the Transfer Portion, except to the extent that such condition results from any Work that fails to comply with the terms of this Agreement or otherwise is caused by the release of Hazardous Material in, on, under, above or about the Transfer Portion by the Owner or its Agents or by the C & T Kollerer Family Trust, the previous owner of the Owner Property, or its Agents, or any negligent or willful act by Owner or its Agents (a "**Surviving Condition**").

In connection with the foregoing release, the City expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

The City acknowledges that, except to the extent arising from a Surviving Condition, the foregoing release includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. The City realizes and acknowledges that it has agreed upon these releases in light of this realization and, being fully aware of this situation, it nevertheless intends

to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Agreement.

ARTICLE 5: CONDITIONS PRECEDENT TO CLOSING

5.1. City's Conditions Precedent. The following are conditions precedent to City's obligations under this Agreement to accept fee interest in the Transfer Portion from the Owner and to enter into the Amended Easement Agreement (each, a "**City Condition Precedent**", and collectively, the "**City's Conditions Precedent**"):

(a) No event of default (or event which upon the giving of notice or the passage of time or both shall constitute an event of default) shall exist on the part of the Owner under this Agreement, and each of the Owner's representations and warranties under this Agreement shall be true and correct.

(b) The Owner shall have performed all of the obligations under this Agreement it is required to perform on or before the Closing, including depositing into Escrow any sums required to be paid by Owner under this Agreement.

(c) The Owner shall have substantially completed the Muni Improvements in substantial compliance with the Plans. The City acknowledges that the Owner shall not be obligated to perform the Muni Improvements unless and until the City Approval Condition (as defined in Section 5.1(h)) has been satisfied, and the Owner acknowledges that it shall not commence to perform the Muni Improvements prior to the satisfaction of the City Approval Condition.

(d) The Title Company shall have issued to City (or shall be irrevocably committed to issue on payment by City of all required premiums) a CLTA owner's title insurance policy with such coinsurance or reinsurance and direct access agreements as the City may reasonably request, insuring City's fee title interest in the Transfer Portion in an amount not less than \$110,705 subject only to the Owner Property Permitted Title Exceptions and with any endorsements set forth therein, all at Owner's sole cost and expense.

(e) There shall be no pending or threatened (i) condemnation, environmental or other pending governmental proceedings in respect of Transfer Portion that would materially and adversely affect City's intended use thereof or (ii) litigation affecting the Transfer Portion.

(f) There shall be no material adverse change in the condition of the Transfer Portion from the Agreement Date to the Closing Date.

(f) The Owner shall have removed all of its equipment and personal property from the Transfer Portion.

(g) The Easement Modification shall have been approved by the Board of Directors of the City's Municipal Transportation Agency (the "**MTA Board**").

(h) City's Board of Supervisors shall have passed, and the Mayor shall have approved of, in their sole discretion, an ordinance or resolution (as applicable) approving of the Easement Modification in accordance with and subject to City's Charter, and all applicable appeal periods

for the filing of any administrative or judicial challenge of such passage shall have expired without any such challenge having been filed, or if such challenge is filed, such ordinance or resolution shall have been upheld by a final decision in the final such challenge that is timely filed without any adverse effect on such ordinance or such resolution (the "**City Approval Condition**").

(i) The Record Survey shall have been recorded in the Official Records of San Francisco County.

5.2. Failure of City's Conditions Precedent; Cooperation of Owner. Each City Condition Precedent is intended solely for the benefit of City. If any City Condition Precedent is not satisfied by the scheduled date of Closing or by the date otherwise provided above, City may, at its sole election and by written notice to the Owner, extend the date for satisfaction of the condition, waive the condition in whole or part, conditionally waive the condition in whole or in part, or terminate this Agreement. Notwithstanding anything to the contrary in the foregoing, if any such conditional waiver is not acceptable to the Owner in its sole discretion, the Owner may reject such conditional waiver, in which event the original City Condition Precedent shall remain effective, and if not satisfied, shall entitle City to terminate this Agreement. If City elects to so terminate this Agreement, then upon any such termination, neither Party shall have any further rights nor obligations hereunder except for those that expressly survive termination of this Agreement.

The Owner shall cooperate with City and do all acts as may be reasonably requested by City to fulfill any City Condition Precedent, including, without limitation, execution of any documents, applications or permits. Owner's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any City Condition Precedent.

5.3. Owner Conditions Precedent. The following are conditions precedent to the Owner's obligations under this Agreement to construct the Muni Improvements, to convey the Transfer Portion to City, and to deliver the Amended Easement Agreement (each, a "**Owner Condition Precedent**", and collectively, the "**Owner Conditions Precedent**"):

(a) No event of default (or event which upon the giving of notice or the passage of time or both shall constitute an event of default) shall exist on the part of City under this Agreement and each of City's representations and warranties under this Agreement shall be true and correct.

(b) City shall have performed all of the obligations under this Agreement it is required to perform on or before the Closing.

(c) The City Approval Condition shall have been satisfied.

5.4. Failure of Any Owner Conditions Precedent. Each Owner Condition Precedent is intended solely for the benefit of the Owner. If any Owner Condition Precedent is not satisfied on or before the required completion date specified therefor (or by the date otherwise provided above or as such date may be extended as permitted hereby), the Owner may, at its option and by written notice to City, extend the date for satisfaction of the condition, waive the condition in whole or in part or conditionally waive in whole or in part, in writing the condition precedent or terminate this Agreement. Notwithstanding anything to the contrary in the foregoing; if any such

conditional waiver is not acceptable to City in its sole discretion, City may reject such conditional waiver, in which event the original Owner Condition Precedent shall remain effective, and if not satisfied, shall entitle the Owner to terminate this Agreement. If Owner elects to so terminate this Agreement, neither Party shall have any further rights or obligations hereunder except for those that expressly survive the termination of this Agreement.

5.5. Notification Obligation. From and after the Agreement Date through to the Closing Date, the Owner shall promptly deliver written notice to City if the Owner becomes aware of or receives notice of any actual or threatened litigation with respect to the Transfer Portion, any violation of Applicable Law affecting or related to the Transfer Portion, or any other material adverse change in the condition of the Transfer Portion. Such notification shall include all material facts known by the Owner relative to such matter.

ARTICLE 6: CLOSING

6.1. Closing Date. "**Closing**" shall mean the consummation of the Easement Modification pursuant to the terms and conditions of this Agreement. The date on which the Closing shall occur shall be the forty-fifth 45th day (the "**Closing Date**") following the later to occur of (a) the satisfaction of the City Approval Condition and (b) the substantial completion of the Muni Improvements. The Closing Date may not be extended without the prior written approval of the Parties, except as otherwise expressly provided in this Agreement. If the Closing does not occur on or before the Closing Date, Title Company shall, unless it is notified by both Parties to the contrary within five (5) days after the Closing Date, return each item deposited in Escrow to the Party that deposited such item. Any such return shall not, however, limit the provisions hereof or otherwise relieve either Party of any liability it may have for its wrongful failure to perform its obligations under this Agreement.

6.2. Deposit of Documents for Closing.

(a) At or before the Closing, City shall deposit the following items into Escrow: (i) an acceptance of the Deed, duly executed by the City; and (ii) the Amended Easement Agreement, duly executed and acknowledged by City.

(b) At or before the Closing, the Owner shall deposit or cause to be deposited the following items into Escrow: (i) the Deed, duly executed and acknowledged by Owner and conveying the Transfer Portion to City subject to the Permitted Title Exceptions; (ii) the Amended Easement Agreement, duly executed and acknowledged by the Owner; (iii) if not previously delivered to City, the final as-built plans for the Muni Improvements; (iv) an assignment of guaranties and warranties in the form attached hereto as Exhibit G, duly executed by the Owner, which shall assign to City the Construction Warranty and any other guaranties or warranties that the Owner obtains with respect to the Muni Improvements; (v) a bill of sale transferring ownership of the Muni Improvements to City in the form attached hereto as Exhibit H, duly executed by the Owner; and (vi) any funds Owner is required to deposit into Escrow in accordance with this Agreement.

(c) City and the Owner shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to close the Escrow and consummate the Easement Modification in accordance with the terms hereof, and the Title Company shall issue the title policies as required herein.

(d) As of Closing, the Title Company shall record the Deed and the Amended Easement Agreement in the Official Records of the City and County of San Francisco.

(e) As of Closing, the Title Company shall issue to City, at City's expense, the CLTA Owner's Policy of Title Insurance as set forth in Section 3.1(b).

6.3. Expenses. Any transfer taxes assessed on the conveyance of the Transfer Portion to City pursuant to this Agreement, any fees related to recording the Deed or the Amended Easement Agreement, and any escrow fees or costs with respect to the Easement Modification shall be paid by the Owner. Any real property taxes or assessments for the Transfer Portion shall be prorated as of the Closing Date.

ARTICLE 7: DEFAULT AND REMEDIES

If either Party fails to perform any of its material obligations under this Agreement (except as excused by the other Party's default), the Party claiming default may, at its sole election, make written demand for performance. If the Party receiving such demand for performance fails to comply with such written demand within thirty (30) days after such notice is delivered, the Party claiming default will have the option to (i) waive such default, (ii) demand specific performance or (iii) terminate this Agreement, in each case by delivering written notice thereof to the defaulting Party. If any Party terminates this Agreement pursuant to this Article, such Party shall have the right to seek all legal remedies available to such Party.

ARTICLE 8: GENERAL PROVISIONS

8.1. Notices. Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to be delivered upon (i) personal delivery, or the day the addressee refuses to accept such delivery, (ii) one (1) business day after being deposited with a reliable overnight courier service, subject to verified receipt by the addressee, or (iii) two (2) days after being deposited in the United States mail, registered or certified mail, subject to verified receipt by the addressee, postage prepaid, return receipt required, and addressed as follows:

If to the Owner: _____

If to City: Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Attn: Kerstin Magary, Senior Project Manager

With a copy to: Director of Property
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

and: Office of the City Attorney

Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Carol Wong

For the convenience of the Parties, copies of notice may also be given by facsimile, but a Party may not give official or binding notice by facsimile and the effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a facsimile copy of the notice.

Every notice given to a Party pursuant to this Agreement must state (or must be accompanied by a cover letter that states) substantially the following: (A) the Section of this Agreement under which the notice is given and the action or response required, if any; (B) if applicable, the period of time within which the recipient of the notice must respond thereto; (C) if approval is being requested, shall be clearly marked "Request for Approval"; and (D) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

Any mailing address or facsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. If delivery of any notice given pursuant to this Agreement is rejected, such notice shall be deemed to have been made on the attempted delivery date.

8.2. Amendments. Except as otherwise provided in this Agreement, this Agreement may be amended or modified only by a written instrument executed by City and the Owner. The Executive Director/Chief Executive Officer of the City's Municipal Transportation Agency (or any successor City officer as designated by law) shall have the authority to consent to any non-material amendments or other modifications to this Agreement. For purposes hereof, "non-material change" shall mean any change that does not materially reduce the consideration to City under this Agreement or otherwise materially increase the liabilities or obligations of City under this Agreement. Material amendments to this Agreement shall require the approval of the MTA Board and the City's Board of Supervisors and Mayor.

8.3. Severability. If any provision of this Agreement, or its application to any party or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other party or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this Agreement.

8.4. Non-Waiver. Except as expressly set forth herein to the contrary, a Party's delay or failure to exercise any right under this Agreement shall not be deemed a waiver of that or any other right contained in this Agreement.

8.5. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their respective successors, heirs, legal representatives, administrators and assigns. Neither Party's rights or obligations hereunder shall be assignable without the prior written consent of the other Party; provided, however, even if the other Party approves any such proposed assignment, in no event shall the assigning Party be released of any of its obligations

hereunder. City hereby consents to the Owner's assignment of its rights and obligations hereunder to any party that acquires fee interest in the Owner Property prior to the Closing Date, provided that such party shall assume all of the Owner's obligations hereunder and such assignment shall be pursuant to a writing, a copy of which shall be delivered to City.

8.6. Consents and Approvals. Any approvals or consents of City required under this Agreement may be given by the Executive Director/Chief Executive Officer of the City's Municipal Transportation Agency, unless otherwise provided in the City Charter or applicable City ordinances. Any approvals or consents of the Owner required under this Agreement may be given by _____.

8.7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

8.8. Applicable Laws. "**Applicable Laws**" shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, statutes, permits, authorizations, orders and requirements, whether or not in the contemplation of the parties hereto, that may affect or be applicable to the Construction Area or any part (including, without limitation, any subsurface area) or the use thereof. "Applicable Laws" shall include, without limitation, any environmental, earthquake, life safety and disability laws, and all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the subject property. The term "Applicable Law" shall be construed to mean the same as the above in the singular as well as the plural.

8.9. No Brokers or Finders. Each Party warrants to the other Party that no broker or finder was instrumental in arranging or bringing about this transaction and that there are no claims or rights for brokerage commissions or finder's fees in connection with the transactions contemplated by this Agreement. If any party brings a claim for a commission or finder's fee based on any contact, dealings, or communication with Owner or City, then the Party through whom such party makes a claim shall defend the other Party(ies) from such claim, and shall indemnify, protect, defend and hold harmless the indemnified Party from any Losses that the indemnified Party incurs in defending against the claim. The provisions of this Section shall survive the Closing, or, if the conveyance is not consummated for any reason, any termination of this Agreement.

8.10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

8.11. Interpretation of Agreement. (a) Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated herein by reference. (b) Whenever a section, article or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement. (c) The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to

the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter. (d) Wherever reference is made to any provision, term or matter "in this Agreement," "herein" or "hereof " or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Agreement or any specific subdivision thereof. (e) If there is any conflict or inconsistency between the recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail. The Recitals in this Agreement are included for convenience of reference only and are not intended to create or imply covenants under this Agreement.

8.12. Entire Agreement. This Agreement (including the exhibits) contains all the representations and the entire agreement between the Parties with respect to the subject matter herein. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement (and such other agreements to the extent referenced herein). No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either Party or any other party and no court or other body shall consider those drafts in interpreting this Agreement.

8.13. Survival. Any and all other representations, warranties and indemnities of the Parties contained herein (including the Exhibits), shall survive the Closing or termination of this Agreement.

8.14. Parties and Their Agents and Invitees. As used herein, the term "**Agents**" when used with respect to either Party shall include the agents, employees, officers, contractors and representatives of such Party, and the term "**Invitees**" shall include the Owner's clients, customers, invitees, guests, licensees, assignees or tenants.

8.15. Attorneys' Fees. If either Party hereto fails to perform any of its respective obligations under this Agreement or if any dispute arises between the Parties hereto concerning the meaning or interpretation of any provision of this Agreement, then the defaulting Party or the Party not prevailing in such dispute, as the case may be, shall pay any and all reasonable Attorneys' Fees and Costs incurred by the other Party on account of such default or in enforcing or establishing its rights hereunder, including without limitation, court costs. Any such Attorneys' Fees and Costs incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys of the Office of City Attorney of the City and County of San Francisco shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which such services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

8.16. Time of Essence. Time is of the essence with respect to the performance of the Parties' respective obligations contained herein.

8.17. Non-Liability. Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to the Owner or its successors and assigns, if there is any default or breach by City or for any amount which may become due hereunder, or for any obligation of City under this Agreement.

8.18. Tropical Hardwoods and Virgin Redwoods. The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code. The Owner agrees that it shall not use any such materials in the Work.

8.19. Sunshine Ordinance. The Owner understands and agrees that under City's Sunshine Ordinance (San Francisco Administrative Code, Chapter 67) and the State Public Records Law (California Government Code Section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to City hereunder public records subject to public disclosure. The Owner hereby acknowledges that City may disclose any records, information and materials submitted to City in connection with this Agreement.

8.20. MacBride Principles - Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* and to do business with corporations that abide by the MacBride Principles. The Owner acknowledges that it has read and understands the above statement of City concerning doing business in Northern Ireland.

8.21. Relationship of the Parties. The City is not, and none of the provisions in this Agreement shall be deemed to render City, a partner in the Owner's business or a joint venturer or member in any joint enterprise with the Owner. Neither party shall act as the agent of the other party in any respect hereunder. This Agreement is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

8.22. Prohibition Against Making Contributions to City. The Owner acknowledges that no party that contracts with City for the rendition of personal services, or the furnishing of any material, supplies or equipment to City, or for selling any land or building to City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer or candidate at any time between commencement of negotiations and either the completion of, or the termination of, negotiations for such contract.

8.23. Proprietary Capacity. The Owner understands and acknowledges that City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City of any plans and specifications or other materials submitted by the Owner to City for City's approval pursuant to this Agreement nor any other approvals by City hereunder shall be deemed to constitute approval of City acting in its regulatory capacity or any governmental or regulatory authority with jurisdiction over the Construction Area. City makes no representations or warranties that City, acting in its regulatory capacity and under its police powers, will ultimately approve of the Plans

(or any other draft plans, specifications or other materials with respect to the Work) nor issue any necessary permits.

8.24. Effective Date. This Agreement shall become effective upon the first day ("**Effective Date**") on which each of the following events has occurred: (i) the Parties have duly executed and delivered this Agreement, and (ii) the City Approval Condition has been satisfied. The Parties shall confirm in writing the Effective Date of this Agreement once such date has been established pursuant to this Section; provided, however, the failure of the Parties to confirm such date in writing shall not have any effect on the validity of this Agreement. Where used in this Agreement or in any of its attachments, references to the "Effective Date" will mean the Effective Date as established and confirmed by the Parties pursuant to this Section.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, OWNER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL A RESOLUTION OF CITY'S BOARD OF SUPERVISORS THAT APPROVES OF THIS AGREEMENT AND AUTHORIZES THE TRANSACTIONS CONTEMPLATED HEREBY HAS BEEN DULY ENACTED. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH A RESOLUTION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF CITY'S BOARD OF SUPERVISORS AND MAYOR DO NOT APPROVE THIS AGREEMENT IN THEIR RESPECTIVE SOLE DISCRETION. APPROVAL OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY EMPLOYEES, DEPARTMENTS OR COMMISSIONS OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

The parties have duly executed this Agreement as of the respective dates written below.

OWNER: 3563 TWENTY FIRST LLC, a California limited liability company

Date: _____

By: _____,
_____, Manager

CITY: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation acting by and through the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

Date: _____

By: _____
Nathaniel P. Ford, Sr.
Executive Director/CEO

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF OWNER PROPERTY

EXHIBIT B

**DEPICTION OF EXISTING EASEMENT AREA, TRANSFER PORTION,
REMAINING EASEMENT AREA, AND RIGHT OF WAY**

EXHIBIT C

LEGAL DESCRIPTION OF TRANSFER PORTION

EXHIBIT D

LEGAL DESCRIPTION OF REMAINING EASEMENT AREA

EXHIBIT E

AMENDED EASEMENT AGREEMENT

EXHIBIT F

FORM OF DEED

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Director of Property
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Documentary Transfer Tax of \$0 based on
full value of the property conveyed

(Space above this line reserved for Recorder's use only)

GRANT DEED

(Assessor's Parcel No. _____)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, 3563 Twenty First LLC, a California limited liability company ("Grantor"), hereby grants to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the real property located in the City and County of San Francisco, State of California, described on the attached Exhibit A (the "Property").

TOGETHER WITH any and all rights, privileges and easements incidental or appurtenant to the Property, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Property, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Property, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Property and all of Grantor's right, title and interest in and to any and all roads and alleys adjoining or servicing the Property, and subject to all matters of record or that would otherwise be disclosed by a visual inspection.

Executed as of _____.

3563 TWENTY FIRST LLC, a California limited liability company

Dated: _____

By: _____,
_____, Manager

This is to certify that the interest in real property conveyed by this deed dated _____ from 3563 Twenty First LLC, a California limited liability company, to the City and County of San Francisco, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____

By: _____
Amy L. Brown, Director of Property

State of California)
) ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT G

**ASSIGNMENT OF WARRANTIES, GUARANTIES
AND OTHER INTANGIBLE PROPERTY**

THIS ASSIGNMENT is entered into as of this ___ day of _____, 2008, by and between 3563 Twenty First LLC, a California limited liability company (the "Owner"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), and is made pursuant to that certain Agreement for the Exchange and Conveyance of Real Estate dated as of _____, 200_, between the Owner and City (the "Transfer Agreement").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, effective as of the Effective Date (as defined below), the Owner hereby assigns and transfers to the City's all of the Owner's right, title, claim and interest in and under the following:

A. all warranties and guaranties made by or received from any third party with respect to the Muni Improvements (as defined in the Transfer Agreement, including, but not limited to that certain _____). **[describe warranty/guaranties given to Assignor for the Muni improvements]**.

B. any other any intangible personal property now or hereafter owned by the Owner and reasonably necessary for the ownership, use or operation of the Muni Improvements.

THE OWNER AND CITY FURTHER HEREBY AGREE AND COVENANT AS FOLLOWS:

1. In the event of any litigation between the Owner and City arising out of this Assignment, the losing party shall pay the prevailing party's costs and expenses of such litigation, including, without limitation, attorneys' fees.

2. This Assignment shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors in interest and assigns.

3. This Assignment shall be governed by and construed in accordance with the laws of the State of California.

4. For purposes of this Assignment, the "Effective Date" shall be the Closing Date (as defined in the Transfer Agreement).

5. This Assignment may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first written above.

OWNER:

3563 TWENTY FIRST LLC, a California limited liability company

By: _____
_____, Manager

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation acting by and through the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

By: _____
Nathaniel P. Ford, Sr.
Executive Director/CEO

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

EXHIBIT H

BILL OF SALE

For good and valuable consideration the receipt of which is hereby acknowledged, 3563 TWENTY FIRST LLC, a California limited liability company ("Owner"), does hereby sell, transfer and convey to the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), all personal property owned by the Owner and located on or in or used in connection with the Transfer Portion or the Muni Improvements (as such terms are defined in that certain Agreement for the Exchange and Conveyance of Real Estate dated as of _____, 200_, between the Owner and City, including the following items:
[describe Muni stop and its components]

The Owner does hereby represent to City that the Owner is the lawful owner of such personal property, that such personal property is free and clear of all encumbrances, and that the Owner has good right to sell the same as aforesaid and will warrant and defend the title thereto to City, its successors and assigns, against the claims and demands of all persons whomsoever. Except as otherwise expressly set forth herein, the Owner makes no representations or warranties with regard to the construction or condition of such personal property.

DATED this _____ day of _____, 200_.

OWNER:

3563 TWENTY FIRST LLC, a California limited liability company

By: _____
_____, Manager

ENCLOSURE 6

Free Recording Requested Pursuant to
Government Code Section 27383

Recording requested by and
when recorded mail to:

City and County of San Francisco
Municipal Transportation Agency
Real Estate Section
1 South Van Ness, 7th Floor
San Francisco, CA 94103
Attn: Kerstin Magary, Senior Project Manager

with a copy to:

Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

(Space above this line reserved for Recorder's use only)

EASEMENT AGREEMENT
(Portion of Assessor's Parcel No. 102, Block 3619)

This Easement Agreement (this "**Agreement**"), by and between the City and County of San Francisco, a municipal corporation ("**City**"), acting by and through the San Francisco Municipal Transportation Agency ("**MTA**"), and 3563 Twenty First LLC, a California limited liability company ("**Owner**"), is executed as of _____, 2008 (the "**Effective Date**").

RECITALS

A. Owner owns that certain real property described on the attached Exhibit A (the "**Encumbered Property**").

B. City reserved an easement (the "**Easement**") over the Encumbered Property at the time that it transferred the Encumbered Property to Charles A. Kollerer and Theresa W. Kollerer, Owner's predecessors in interest, as further set forth in that certain Deed recorded in the Official Records of San Francisco on May 28, 1985, in Book D847, Page 166 (the "**Deed**").

C. Owner wishes to amend, restate and clarify the configuration and terms of the easement to facilitate Owner's development of the Encumbered Property and City agrees to such amendment and clarification subject to the terms of this Agreement, and the terms and conditions of the Easement set forth in the Deed shall accordingly be fully amended and restated by this Agreement.

AGREEMENT

NOW, THEREFORE, Owner and City agree as follows:

1. Revised Easement Area. The description of the Easement area set forth in Deed is hereby replaced with the legal description attached to this Agreement as Exhibit B (the "**Easement Area**"). A general depiction of the revised Easement Area for reference purposes only is attached to this Agreement as Exhibit C. If there is any conflict between such depiction and such legal description in specifying the Easement Area, the legal description shall control.

2. Easement Uses. City shall have the right to use the Easement Area to access, use, maintain, service, operate, repair and replace the Pole Facilities (defined as follows) and to exercise its rights and obligations under this Agreement (collectively, the "**Permitted Uses**"). The Easement Area shall not be used for any purpose other than the Permitted Uses, nor shall City take any actions in the Easement Area that block access over the Easement Area to the Encumbered Property except to the extent that such actions are temporary, are reasonably necessary for City's exercise of the Permitted Uses, are performed in a manner that reasonably minimizes interference with access to the Easement Area, and occur during customary working hours (except to the extent otherwise necessary to respond to an emergency situation). City shall not leave any City equipment or material that temporarily blocks access to the Easement Area unattended at any time.

The "**Pole Facilities**" shall mean two (2) poles (each, a "**Pole**") used as a part of City's passenger transportation services, each of which may be constructed of any material and improved with lighting structures, and all related foundations, bollards, conduits, wires (including overhead wires and guy wires), electrical fixtures and all appurtenances commonly related to poles used for similar purposes (collectively, the "**Appurtenances**"). The Pole Facilities shall remain City's property at all times and City shall have the right to remove any or all of the Pole Facilities or take all or any portions of the Pole Facilities out of active service at any time and for any length of time.

3. Relocation of Poles. As of the Effective Date, the Pole designated as Pole #1 and the Pole designated as Pole #2 are situated in the general locations depicted on the attached Exhibit C. Except as expressly set forth in this Section, neither party shall have the right to relocate the Poles.

(a) Owner shall have the right to relocate existing Pole #1 ("**Original Pole #1**") to the location depicted on the attached Exhibit C by installing, at its sole cost, a replacement pole ("**Relocated Pole #1**") and related Appurtenances, and dismantling and removing, at its sole cost, Original Pole #1 and its related Appurtenances (collectively, the "**Relocation Work**"), in compliance with Sheets A0.4, A1.0, A2.2, C-4 and C-5, all dated January 2, 2008, and Sheet A7.3, dated January 2, 2008, of the plans and specifications prepared by Baum Thornley Architects LLP for Job No. 02039 (the "**Relocation Plans**"), and the construction requirements specified in Section 4.

Owner shall deliver written notice (the "**Commencement Notice**") to Kerstin Magary, MTA's Senior Project Manager, or any other person designated by MTA in writing ("**City Contact Person**"), once Owner is prepared to commence the Relocation Work pursuant to the Relocation Plans and Owner has reimbursed City for its costs in preparing the Relocation Plans. Owner shall coordinate the schedule for the Relocation Work with the City Contact Person; provided, however, that the Relocation Work shall commence within the thirty (30) calendar day period immediately following City's receipt of the Commencement Notice and shall occur at the times mutually acceptable to Owner and City, each acting in its reasonable discretion. Owner shall transport Relocated Pole #1 and its related Appurtenances from the location specified by the City Contact Person (the "**City's Pole Yard**") to the Amended Easement Area and transport the dismantled and removed Original Pole #1 and its Appurtenances from the Amended Easement Area to City's Pole Yard pursuant to such schedule.

Owner shall deliver written notice (the "**Completion Notice**") to City when Owner completes the Relocation Work and shall certify therein that (i) Relocated Pole #1 and its Appurtenances have been installed, and Original Pole #1 and its Appurtenances have been dismantled, removed and transported to the City Pole Yard in compliance with the Relocation Plans and this Agreement, (ii) the period for filing any liens related to the Relocation Work has lapsed and no such liens have been filed, and (iii) neither Relocated Pole #1 nor any of its Appurtenances are subject to any liens or third party interests granted or created through Owner's acts or omissions. If City approves of the completed Relocation Work, which approval shall not be unreasonably withheld, conditioned or delayed, City shall provide written notice of such approval to Owner (the "**Pole Approval Notice**"); provided, however, that if City does not deliver the Pole Approval Notice or its written objection to the Completion Notice within the thirty (30) calendar day period immediately following its receipt of the Completion Notice, City shall be deemed to have approved of the Relocation Work. Relocated Pole #1 and its Appurtenances shall remain City property at all times and shall become part of the Pole Facilities as of the date that City delivers the Pole Approval Notice to Owner (or is deemed to have made such approval pursuant to this paragraph), provided that Owner, at City's request, shall deliver to City any documents reasonably requested by City to transfer any existing warranties or guaranties related to the Relocation Work to City.

(b) City shall have the right, at its sole cost and its sole election, to relocate Pole #2 at any time to a new location in the Easement Area that is to the southwest, and within four feet (4'), of the location in which Pole #2 is located as of the Effective Date, as further depicted on the attached Exhibit C. Notwithstanding anything to the contrary in the foregoing, City shall not relocate Pole #2 to any location that is closer to the edge of the residential building to be constructed on the Encumbered Property, as depicted on the attached Exhibit C, as long as such building is actually constructed at such depicted location. Such relocation shall be performed in compliance with the terms of this Agreement and in a lien-free manner. City shall provide plans and specifications for such relocation of Pole #2 to Owner for its review and approval, which shall not be unreasonably withheld, conditioned or delayed.

4. Construction Activities and Uses. Each party shall deliver at least seventy-two (72) hours' prior written notice to the other party before commencing any construction or maintenance activities in the Easement Area, except in the event of any immediate danger to health or property, in which case such party shall verbally notify the other party as soon as reasonably possible. Either party may restrict access within the Easement Area if reasonably necessary for such party's permitted construction or maintenance activities in the Easement Area, provided that such performing party shall take commercially reasonable efforts to minimize interference with the other party's permitted uses of the Easement Area. Each party shall conduct its construction or maintenance activities in compliance with all applicable laws, through sound construction practices and in a lien-free manner, and each party shall diligently pursue its construction or maintenance activities to completion. Except as otherwise expressly set forth in this Agreement, a performing party shall secure and pay for any building and other permits and approvals, government fees, licenses and inspections necessary for the proper performance and completion of its construction or maintenance activities in the Easement Area, including, but not limited to any required City (acting in its regulatory capacity) approvals. In addition to the foregoing obligations, prior to performing any construction work within the Easement Area, Owner shall ensure that any Owner employee or contractor performing such construction work attends the City's required Tracksides Safety Class for all contractors working within the general location of City rail rights-of-ways and complies with any other standard requirements City requires of all such contractors.

5. Owner Use of the Easement Area.

(a) Owner shall not take, nor permit any other party to take, any action in, on, under

or about the Easement Area that could damage, endanger or interfere with the Pole Facilities or could unreasonably interfere with the Permitted Uses. City agrees and acknowledges that Owner's use of the portions of the Easement Area that are not covered by any Pole Facilities situated on the surface of the Easement Area (to the extent permitted under this Agreement) as a driveway to service the residential use of the building located on the Encumbered Property shall not be deemed to damage, endanger or interfere with the Pole Facilities or unreasonably interfere with the Pole Facilities, so long as such use complies with the terms of this Agreement and the building has no more than four (4) residential units.

(b) Without limiting the foregoing, except for the Improvements (defined as follows), Owner shall not construct or place any structures or improvements of any kind or character on, or that protrude into, the Easement Area other than the Improvements (defined as follows) without first obtaining the City's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. The "**Improvements**" shall mean the following: (i) a retaining wall and fence (the "**Fence**") along the southeastern boundary of the Easement Area, as depicted on the attached Exhibit C, provided that Owner constructs the retaining wall and Fence in conformity with Sheets A0.4, A1.0, A2.2, A2.3, A3.1, A3.2, S2.1, S3.1, S5.1, C-3, C-4 and C-5 of the plans and specifications prepared by Baum Thornley Architects LLP for Job No. 02039, dated July 26, 2007, and provides sufficient drainage to prevent the flow of water from the Property onto the City property abutting the Easement Area, (ii) a cover surface (the "**Driveway**"), provided that the Driveway can bear a load sufficient to support a 30,000 pound truck and has sufficient drainage that prevents the drainage of surface water from the Driveway onto the City property abutting the Easement Area, and (iii) a gate located within the portion of the Easement Area depicted in the attached Exhibit C, provided that Owner prepares plans and specifications for such gate, obtains City's prior written consent thereto (which shall not be unreasonably withheld, conditioned or delayed), subsequently constructs the gate in conformity with such approved plans and specifications, and provide City with a key or other equipment that allows City to open and close such gate once it is constructed. If City opens such gate to ingress or egress the Easement Area, City shall close the gate after making such ingress or egress.

6. Maintenance and Repair.

(a) City will install, operate, maintain, repair and, at its sole election, replace or remove, the Pole Facilities at its sole cost and in a safe, secure and sanitary condition; provided, however, that if any repair or replacement work arises from the actions of Owner or any Agents (defined as follows) of Owner, Owner shall reimburse City for the cost of such repair or replacement work within thirty (30) days following City's written demand therefor. "**Agents**" shall mean a party's officers, agents, employees, representatives, trustees, managers, members, contractors or invitees. City shall keep the Easement Area free from any liens arising out of any work performed, material furnished, or obligations incurred by or for City therein, and City shall maintain the Pole Facilities in a safe, secure, and sanitary condition.

(b) Owner will install, operate, maintain, repair and, at its sole election, replace or remove, the Improvements at its sole cost; provided, however, that if any repair or replacement work arises from the actions of City or any Agents of City, City shall immediately reimburse Owner for the cost of such repair or replacement work within thirty (30) days following Owner's written demand therefor. Owner shall maintain the Improvements in a safe, secure, and sanitary condition and shall repaint or reface the outer face of the Fence on an annual basis; provided, however, that Owner shall not be responsible for graffiti removal or vandalism to the Fence other than such annual repainting and repair obligation. Notwithstanding anything to the contrary in the foregoing sentence, such limitation on graffiti removal or vandalism repair is made by City hereunder in its proprietary capacity and shall not affect City's right, acting in its regulatory capacity, to require that Owner perform additional graffiti removal or vandalism repair activities.

(c) Each party, at its sole expense, shall comply with all applicable laws, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force with respect to such party's activities in the Easement Area. Each party shall conduct, or shall cause its Agents to conduct, all activities in the Easement Area in a safe and reasonable manner. After any entry by City in the Easement Area, City shall restore any affected portion of the Easement Area to substantially the same condition it was in immediately prior to such entry (to the extent that such condition complies with the conditions set forth in this Agreement).

7. Hazardous Materials. Neither party shall use, store, locate, handle or cause or permit the dumping or other disposal or release on or about the Easement Area of any Hazardous Material, provided that the parties shall have the right for such activities to the extent the Hazardous Material is reasonably necessary for the Permitted Uses or Owner's use of the Easement Area in compliance with this Agreement, is used in a quantity customarily used for such use and is used in compliance with applicable laws. If there is a leakage or spill of Hazardous Materials on the Easement Area, the responsible party shall bear the cost and expense to clean the contaminated property in compliance with applicable laws.

"Hazardous Material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 *et seq.*, or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Easement Area or are naturally occurring substances in the Easement Area, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "**release**" or "**threatened release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Easement Area.

8. Insurance.

(a) Each party shall procure at its expense and keep in effect at all time, in form and from an insurer reasonably accept to the other party, as follows:

(i) Commercial general liability insurance with limits not less than \$1,000,000 each occurrence, combined single limit for bodily injury and property damage, including coverage for contractual liability, personal injury, broad form property damage, products and completed operations. Such policy shall include endorsements for (1) false arrest, detention or imprisonment or malicious prosecution; (2) libel, slander or defamation of character; (3) wrongful entry or eviction or invasion of the right of privacy. Any deductible under such policy shall not exceed \$10,000 for each occurrence.

(ii) Automobile liability insurance with limits not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles, as applicable. Any deductible under such policy shall not exceed \$10,000 for each occurrence.

(iii) If using any employees to perform work within the Easement Area, or if using any contractors using such employees, Workers' Compensation Insurance, including

Employers' Liability, with limits not less than \$1,000,000 for each accident, covering all employees employed in or about the Easement Area to provide statutory benefits as required by the laws of the State of California.

(b) All insurance policies required hereunder shall (i) be written on an occurrence basis, (ii) name the other party, together with its officers, agents and employees, as additional insureds, (iii) specify that such policies are primary insurance to any other insurance available to the additional insureds with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought, (iv) provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, (v) afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period, and (vi) be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage to the other party.

(c) If requested, a party shall deliver to the other party certificates of insurance in form and with insurers satisfactory to the requesting party, evidencing the coverages required hereunder, together with complete copies of the policies at such requesting party's request. If a party fails to procure such insurance or to deliver such policies or certificates, after five (5) business days prior written notice, the other party may procure, at its option, such insurance on such defaulting party's behalf, and the defaulting party shall pay the acting party for the cost thereof within five (5) business days of the acting party's delivery of bills therefor.

(d) 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 aggregate limit shall be double the occurrence or claims limits specified above.

(e) A party's compliance with the provisions of this Section shall in no way relieve or decrease such party's indemnification obligations or other obligations under this Agreement. Each party shall be responsible, at its expense, for separately insuring its personal property.

(f) Notwithstanding anything to the contrary contained herein, each party hereby waives any right of recovery against the other party for any loss or damage sustained by such damaged party with respect to the Easement Area, whether or not such loss is caused by the fault or negligence of the other party, to the extent such loss or damage is covered by insurance that the damaged party is required to purchase under this Agreement (or to self-insure, with respect to the City) or is otherwise actually recovered from valid and collectible insurance covering such damaged party. Each party agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Easement Area; provided, however, that failure to do so shall not affect the above waiver.

(g) Owner acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Agreement; provided, however, that if any of City's successors or assigns under this Agreement is not a public entity, such non-public successor or assign shall carry the insurance specified in this Section. City assumes the risk of damage to any of its personal property, except for damage caused by Owner or its Agents.

9. Notices. All notices, demand, consents or approvals given hereunder shall be in writing and shall be personally delivered, or sent by a nationally-recognized overnight courier service that provides next business day delivery services, provided that next business day service is requested, or by United States first-class mail, postage prepaid, to the following addresses (or

any other address that a party designates by written notice delivered to the other party pursuant to the provisions of this Section):

If to City: City and County of San Francisco
Municipal Transportation Agency
Real Estate Section
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Attn: Senior Project Manager
Fax No.: (415) 701-4341

with a copy to: City and County of San Francisco
Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property
Fax No.: (415) 552-9216

If to Owner: Nancy Zeng
236 West Portal Avenue, #48
San Francisco, CA 94127
Fax No.: (415) 681-3358

10. Indemnity. City shall indemnify, defend, reimburse and hold harmless Owner from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind arising out of or relating to the activities of City or any City Agent in the Easement Area, except to the extent caused by the intentional acts or negligence of Owner or any Owner Agents.

Owner shall indemnify, defend, reimburse and hold harmless City and City's Agents and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind arising out of or relating to the use of the Easement Area by Owner or any Owner Agents, except to the extent caused by the intentional acts or negligence of City or any City Agents.

The foregoing indemnities shall include, without limitation, reasonable attorneys', experts' and consultants' fees and costs, and shall survive any termination or extinguishment of the Easement or this Agreement.

11. Waiver of Claims. Each party covenants and agrees that the other party shall not be responsible or liable for, and each party hereby waives all rights against the other party and its Agents and releases the other party and its Agents from, any and all claims relating to any injury, accident or death of any person or loss or damage to any property in or about the Easement Area from any cause whatsoever, except as expressly otherwise set forth in this Section. Nothing herein shall relieve either party from liability to the extent caused by the negligence or willful misconduct of such party or its Agents of its obligations hereunder or under law, but such party shall not be liable under any circumstances for any consequential, special or punitive damages. Neither party would be willing to enter into this Agreement without such a waiver of liability for consequential, special or punitive damages due to the acts or omissions of the other party or its Agents, and each party expressly assumes the risk with respect thereto. Accordingly, as a material part of the consideration for this Agreement, each party fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action, and covenants not to sue, the other party or its Agents for any matters arising out of this Agreement or the Easement Area, except to the extent such claims result from the negligence and willful

misconduct of such other party or its Agents or such party's breach of its obligations hereunder or under law.

In connection with the foregoing release, each party acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

Each party acknowledges that the releases contained herein include all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Each party realizes and acknowledges that it has agreed to this Agreement in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The releases contained herein shall survive any termination of this Agreement.

12. Run with the Land; Exclusive Benefit of Parties. The rights and obligations set forth herein shall run with the land and shall bind and inure to the benefit of the successors and assigns of the parties hereto; provided, however, that if Owner develops a condominium project on the Encumbered Property and a homeowners' association is duly formed and has sole responsibility for maintenance and operation of the Easement Area (an "**HOA**"), Owner shall have the right to assign to HOA, and HOA shall have the right to assume from Owner, Owner's rights and obligations hereunder pursuant to a written assignment and assumption agreement between Owner and such HOA and, upon delivering fully executed copy of such signed agreement to City, Owner shall be released from the terms and conditions of this Agreement as of such assignment and assumption. This Agreement is for the exclusive benefit of Owner and City and their respective successors and assigns and not for the benefit of, nor give rise to any claim or cause of action by, any other party. This Agreement shall not be deemed a dedication of any portion of the Easement Area to or for the benefit of the general public.

13. Proprietary Capacity. Owner understands and acknowledges that City is entering into this Agreement in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City of any plans and specifications or other materials submitted by Owner to City for City's approval pursuant to this Agreement nor any other approvals by City hereunder shall be deemed to constitute approval of City acting in its regulatory capacity or any governmental or regulatory authority with jurisdiction over the Easement Area. City makes no representations or warranties that City, acting in its regulatory capacity and under its police powers, will ultimately approve of any draft plans, specifications or other materials nor issue any necessary permits.

14. Prevailing Wages. City and Owner agree that the provisions of Section 6.22(E) of the San Francisco Administrative Code, as such provisions may be amended from time to time, shall be incorporated by this reference in this Agreement to the extent applicable. Any person performing labor for the construction of Replacement Pole #1 or its Appurtenances or the dismantling or removal of Original Pole #1 or its Appurtenances shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Each party shall include, in any contract for such work, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Each party shall further require that any contractor performing any of such work shall provide, and shall deliver to City upon request, certified

payroll reports with respect to all persons performing labor in the construction of Replacement Pole #1 or its Appurtenances or in the dismantling or removal of Original Pole #1 or its Appurtenances.

15. MacBride Principles – Northern Ireland. City urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.* City also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Owner acknowledges that it has read and understands the above statement of the City concerning doing business in Northern Ireland.

16. Tropical Hardwood and Virgin Redwood Ban. City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product, except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code.

17. General Provisions. (a) This Agreement may be amended or modified only by a writing signed by City and Owner and recorded in the Official Records of the City and County of San Francisco. (b) No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer or other authorized representative, and only to the extent expressly provided in such written waiver. (c) This Agreement contains the entire agreement between the parties with respect to the Easement and all prior negotiations, discussions, understandings and agreements are merged herein. (d) This Agreement shall be governed by California law and City's Charter. (e) If either party commences an action against the other or a dispute arises under this Agreement, the prevailing party shall be entitled to recover from the other reasonable attorneys' fees and costs. For purposes hereof, reasonable attorneys' fees shall be based on the fees regularly charged by private attorneys in City with comparable experience, notwithstanding City's or Owner's use of its own attorneys. (f) This Agreement does not create a partnership or joint venture between City and Owner as to any activity conducted by Owner on, in or relating to the Easement Area. (g) City's obligations hereunder are contingent upon approval of this instrument by Board of Directors of City's Municipal Transportation Agency and the City's Board of Supervisors and Mayor, each in their respective sole discretion, this Agreement shall be null and void if such approval is not obtained. (h) Time is of the essence of this Agreement and each party's performance of its obligations hereunder. (i) All representations, warranties, waivers, releases, indemnities and surrender obligations given or made in this Agreement shall survive the termination of this Agreement or the extinguishment of the Easement. (j) If any provision of this Agreement is deemed invalid by a judgment or court order, such invalid provision shall not affect any other provision of this Agreement, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as partially invalidated would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the purpose of this Agreement. (k) All section and subsection titles are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

OWNER: 3563 TWENTY FIRST LLC, a California limited liability company

By: _____, Manager

Date: _____

CITY: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
Its: _____

Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

Exhibit A

Legal Description of Encumbered Property

Exhibit B

Legal Description of Easement Area

Exhibit C

**Depiction of Easement Area, Existing Location of Poles and
Proposed Locations for Improvements and Relocation Pole #1**

THIS PRINT COVERS CALENDAR ITEM NO. : 10.12

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Office of the SFMTA Board of Directors

BRIEF DESCRIPTION:

Approving a request from the San Francisco Arts Commission to designate street-artist selling places at Harvey Milk Plaza at the Castro Street MUNI Metro Station from November 15th through January 15th in perpetuity subject to the removal of one or more of these spaces by the Executive Director/CEO in the event of repair work, reconstruction, an emergency situation, or security-related concern.

SUMMARY:

- At the request of the San Francisco Arts Commission, the City approved the designation of street-artist selling places at Harvey Milk Plaza, located at Market and Castro Streets, during the winter Holiday Season for the past 13 years and in 1992.
- Because this property is now under the jurisdiction of the Municipal Transportation Agency, the Arts Commission requests approval by the SFMTA to designate seven street-artist selling spaces at Harvey Milk Plaza from November 15, 2008 through January 15, 2009.
- Approval of this resolution by the SFMTA Board of Directors would designate seven street-artist temporary selling spaces at Harvey Milk Plaza from November 15th through January 15th in perpetuity subject to the removal of one or more of these spaces by the Executive Director/CEO in the event of repair work, reconstruction, an emergency situation, or security-related concern.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Howard Lazar, Arts Commission

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

Each year, the Arts Commission allows certified street-artists to partake in the busiest selling season of the year which stimulates commerce in the Upper Market and Castro area. The Merchants of Upper Market & Castro have always endorsed the presence of street artists at Harvey Milk Plaza during the winter holiday season.

GOAL

Approval of this calendar item will support the following SFMTA Strategic Goal:

Strategic Goal #3: To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry.

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

DESCRIPTION

At the request of the San Francisco Arts Commission, the City has approved the designation of street-artist selling places at Harvey Milk Plaza, located at Market and Castro Streets, during the winter Holiday Season for the past 13 years and in 1992.

Because this property is now under the jurisdiction of the SFMTA, the Arts Commission requests approval by the SFMTA to designate seven street-artist selling spaces at Harvey Milk Plaza from November 15, 2008 through January 15, 2009. The Arts Commission is also requesting that the SFMTA Board designate these temporary selling spaces at Harvey Milk Plaza from November 15th through January 15th in perpetuity subject to the removal of one or more of these spaces by the Executive Director/CEO in the event of repair work, reconstruction, an emergency situation, or security-related concern.

As in years past, the Arts Commission has agreed to verify that the Harvey Milk Plaza area will be kept clean while the street artists certified by the Commission are using the spaces.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

None.

FUNDING IMPACT

None.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

On March 3, 2008, the San Francisco Arts Commission authorized Arts Commission staff to request the Board of Supervisors to approve a resolution designating temporary selling spaces in the Downtown area for street artists certified by the Arts Commission between November 15th through January 15th in perpetuity. Resolution No. 196-08, approved by the Board of Supervisors, designated these temporary selling spaces in perpetuity.

RECOMMENDATION

Approve the staff recommendation.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Arts Commission requested the San Francisco Municipal Transportation Agency (SFMTA) to designate seven street-artist selling spaces at Harvey Milk Plaza located at the Castro Street MUNI Metro Station from November 15, 2008 through January 15, 2009; and

WHEREAS, Harvey Milk Plaza at the Castro Street MUNI Metro Station is property under the exclusive jurisdiction of the SFMTA; and

WHEREAS, The designation of seven street-artist selling spaces at Harvey Milk Plaza is subject to approval by the SFMTA Board of Directors which oversees the SFMTA; and

WHEREAS, The San Francisco Arts Commission agrees to verify that the Harvey Milk Plaza area will be kept clean while street artists certified by the Arts Commission are using the spaces; now, therefore, be it

RESOLVED, That the SFMTA Board approves the designation of seven street-artist selling spaces at Harvey Milk Plaza from November 15th through January 15th in perpetuity subject to the removal of one or more of these spaces by the Executive Director/CEO in the event of repair work, reconstruction, an emergency situation, or security-related concern.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 10.13

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Muni Service Delivery and Operations

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO or his Designee to execute an agreement with PB Americas, Inc. for Implementation Consulting Services for the Transit Effectiveness Project (TEP).

SUMMARY:

- On August 6, 2008, the TEP reached a critical milestone with the release of staff recommendations to the SFMTA Board and other stakeholders. The recommendations aim to strengthen Muni's ability to respond to current travel needs, provide a blueprint for future service, apply best practices and promote the system's long-term financial stability.
- On September 16, 2008, the SFMTA Board heard public comment on the TEP staff recommendations and will deliberate further on October 21, 2008.
- To support the implementation of the TEP recommendations, PB Americas, Inc. was selected as the highest scoring proposer to provide implementation consulting services through a competitive mini-RFP process, after pre-qualifying through an RFQ process.
- PB Americas, Inc. will help ensure implementation success by working with the TEP project team and senior management to create a comprehensive work plan and provide as-needed consulting services.
- The contract is for an amount not to exceed \$1,200,000 and a term of two years from November 5, 2008, to November 4, 2010, with an option of a one-year extension at the discretion of the Executive Director/CEO.
- The funds required for the contract are jointly provided by the Controller's City Services Auditor (Proposition C) and the SFMTA's current fiscal year operating budget for professional services.
- The City Attorney has reviewed this calendar item.

ENCLOSURES:

1. SFMTA Board Resolution
2. Agreement between SFMTA and PB Americas, Inc.

APPROVALS:

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Julie Kirschbaum _____

DATE

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2

PURPOSE

SFMTA staff request that the Board of Directors authorize the Executive Director/CEO to execute an agreement with PB Americas, Inc. for implementation consulting services for the Transit Effectiveness Project (TEP).

GOAL

By supporting the expedited and successful implementation of the TEP, the consulting services provided by PB Americas, Inc. will specifically address the following SFMTA Strategic Plan goals and their relevant objectives:

- Goal 1: To provide safe, accessible, clean and environmentally sustainable service, and encourage the use of auto-alternative modes through the Transit First Policy;
Objective: 1.1 Improve accessibility across transit services
- Goal 2: To get customers where they want to go, when they want to get there;
Objectives: 2.1 Improve transit reliability to meet the 85% on-time performance standard
2.2 Ensure efficient transit connectivity and span of service
2.4 Reduce congestion on major corridors
- Goal 3: To improve the customer experience and community value, and enhance the image of the SFMTA, as well as ensure that the SFMTA is a leader in its industry;
Objective: 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits
- Goal 4: To ensure financial stability and effective resource utilization.
Objective: 4.2 Ensure efficient and effective use of resources

DESCRIPTION

Two years after its inception, the TEP has completed a comprehensive review of the Muni system, which included rigorous technical analysis, extensive stakeholder input, and research of best practices from other transit agencies. The TEP is a joint effort of the SFMTA and the City Services Auditor (CSA) of the Controller's Office¹ and aims to strengthen Muni's ability to respond to current travel needs, provide a blueprint for future service, apply best practices to service delivery, and promote the system's long-term financial stability.

On August 6, 2008, the TEP reached a critical milestone with the release of staff recommendations to the SFMTA Board and other stakeholders. On September 16, 2008, the SFMTA Board heard public comment on the TEP staff recommendations and will deliberate further on October 21, 2008. The staff recommendations focus on three key initiatives that will transform Muni so people

¹ The Controller's City Services Auditor (CSA) was created by a November 2003 ballot measure (Proposition C). CSA is funded by roughly two-tenths of one percent (0.2%) of the City's overall budget (including SFMTA's) to conduct Audits, City Projects, and Performance Management functions.

PAGE 3

can get where they want to go, when they want to get there, reliably and safely. These areas of focus are: (1) reliability initiatives, (2) travel time improvement initiatives, and (3) Muni route updates. The recommendations are intended to be phased in over a five-year period.

Critical next steps in the TEP process include developing an implementation plan that maps out a master schedule, a phasing strategy and a risk mitigation plan. To support this work, SFMTA staff requests that the Board of Directors authorize the Executive Director/CEO or his Designee to execute an agreement with PB Americas, Inc. for implementation consulting services for the TEP. Other next steps include an environmental assessment and the development of a marketing plan, which will be addressed outside of this contract.

1. Consultant Selection

On December 12, 2007, the Controller's Office issued a Request for Qualifications (RFQ) to solicit responses from which to create a pre-qualified list of firms to provide transit service planning and implementation consulting services. On March 17, 2008, the Civil Service Commission approved the personal services contract request for this service. PB Americas, Inc. was one of the consulting firms on the Controller's pre-qualified list.

On July 24, 2008, SFMTA issued a mini-Request for Proposals (RFP) to the pre-qualified consultant pool. The mini-RFP was subject to a 15 percent Local Business Enterprise (LBE) subcontracting requirement established by the SFMTA Contract Compliance Office. Five pre-qualified firms submitted proposals, which were evaluated by a diverse selection panel that included staff from the TEP, Muni operations management, finance and the Controller's Office. Based on the panel's review, the top three firms were interviewed on August 28, 2008.

PB Americas, Inc. was selected as the highest scoring proposer by the proposal review panel. SFMTA and PB Americas, Inc. have completed the contract negotiations and the contractor is prepared to begin work.

2. Contracted Tasks and Deliverables

According to the agreement, PB Americas, Inc. will work collaboratively with the SFMTA management team, the TEP Program Manager, and other relevant entities to develop a comprehensive work plan to guide implementation of the TEP. The comprehensive work plan will identify and assess all components of TEP implementation, including key areas such as service planning, service scheduling, capital infrastructure development, vehicle procurement, facility needs or expansion, and workforce planning. Other vital areas will include the SFMTA's financial planning, revenue cycles, and communication activities, including branding and marketing.

Specific contracted tasks and deliverables will include, but are not limited to, the following:

Task 1: Project Planning and Administration

Within the first month of the contract, PB Americas, Inc. will provide a plan for management coordination and quality control to ensure successful and timely completion of all deliverables. Contract administration and management functions also fall under Task 1.

Deliverables:

- Detailed project management plan (including overall strategy, task plan resources, anticipated outcomes and measures of success)
- Monthly progress reports
- Project Solve intranet website (ftp site to store shared documents)
- Presentation materials (as directed)
- Meeting agendas, minutes and materials (on-going)

Task 2: 5-Year Implementation Work Plan / Master Plan

PB Americas, Inc. will create a comprehensive five-year work plan and a master schedule for TEP implementation. This plan will serve as a guiding document to enable the TEP program manager and the SFMTA management team to plan for and oversee the timely implementation of major TEP recommendations.

Deliverables:

- Work plan approach
- Comprehensive five-year work plan with major goals/milestones, measurable objectives/metrics, designated roles and responsibilities to achieve each objective and:
 - Phasing plan with master schedule
 - Risk identification and mitigation plan
 - Stakeholder communication approach
- Implementation action plans
- Recommendations for managerial efficiencies and/or service effectiveness for seamless integration of TEP
- Review of capital and operating cost estimates

Task 3: Ongoing Consultation Services for Project Management

PB Americas, Inc. will conduct ongoing consulting services in collaboration with the TEP Program Manager to oversee and monitor the implementation of the comprehensive work plan defined in Task 2. The services may include coordinating regular meetings and providing on-site consultation support to ensure progress is being made according to schedule. The Task 3 work and deliverables will be negotiated on a task order basis.

Subcontractors

CHS Consulting Group and P H Adams & Associates will work with PB Americas, Inc. as subcontractors on this contract in order to fulfill the 15 percent LBE subcontracting requirement:

CHS Consulting Group (LBE)

CHS Consulting Group staff members have extensive service planning, scheduling and operations experience. Additionally, some staff members have been involved in the development of the TEP recommendations. PB Americas, Inc. plans to utilize the services of CHS Consulting Group during Tasks 2 and 3.

P H Adams & Associates (LBE)

Having once served as General Manager of Muni, Philip H. Adams from P H Adams & Associates possesses strong expertise in Muni implementation issues, and recently prepared a baseline review of Muni disciplines. He will provide consultation to address readiness issues such as vehicle availability and facility needs.

ALTERNATIVES CONSIDERED

The decision of SFMTA to hire an independent contractor to develop a five-year comprehensive work plan for the TEP was based on analysis of the following factors:

- At current staffing levels, the TEP project team is unable to absorb the increase in work capacity needed to complete the five-year comprehensive work plan. To meet the staffing requirements of the work plan, SFMTA must either increase TEP staffing levels or hire an independent contractor.
- The initial planning phases of the five-year work plan (see “Description,” above) will require full-time, dedicated commitments from workers. After the completion of the initial planning phases, only part-time worker commitments will be required.
- Consulting firms with specialized expertise in implementing systemwide transit changes were available through the Controller’s Office’s pre-qualified consultant list which was developed through a competitive RFQ process. This list enabled SFMTA to select the contractor most qualified to provide implementation consulting services during the specified contract term and for the specified contract amount.
- Increasing SFMTA staffing levels to complete the five-year work plan would result in excessive staffing after the completion of the initial planning phases.

Considering these factors, SFMTA concluded that hiring an independent contractor is more practical and cost effective than increasing TEP staffing levels because it allows the TEP to obtain the expertise and absorb the necessary increase in work capacity, while avoiding long-term excess staffing.

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FUNDING IMPACT

The operating funds required for TEP implementation consulting services are provided jointly by the Controller's City Services Auditor (Proposition C) in the amount of \$600,000 and the SFMTA's current year operating budget for professional services in the amount of \$600,000.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Civil Service Commission approved the Controller's personal services contract request for establishing a pre-qualified consultant pool for the implementation phase of the TEP on March 17, 2008.

RECOMMENDATION

SFMTA staff recommends authorization of the Executive Director/CEO to execute the agreement with PB Americas, Inc. for implementation consulting services for the Transit Effectiveness Project for an amount not to exceed \$1,200,000 and a contract term of two years with an option of a one-year extension at the discretion of the Executive Director/CEO.

The City Attorney's Office has reviewed this report.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The recent completion of the Transit Effectiveness Project's (TEP) staff recommendations marks a critical milestone in the project's history, and over the next five years the TEP will be working to implement the staff recommendations endorsed by the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors, which will transform Muni so people can get where they want to go, when they want to get there, reliably and safely; and,

WHEREAS, The implementation consulting services are essential to the creation of the comprehensive work plan that will guide the successful implementation of the TEP over the next five years; and,

WHEREAS, PB Americas, Inc., a consulting firm on the Office of the Controller's list of pre-qualified firms established by a competitive Request for Qualifications, was selected as the highest scoring proposer in the subsequent mini-Request for Proposals process; and,

WHEREAS, SFMTA and PB Americas, Inc have reached an agreement under which the contractor will work collaboratively with the SFMTA management team, the TEP Program Manager, and other relevant entities to develop a comprehensive five-year work plan with a master schedule and capital and operating cost estimates, and provide as-needed implementation support for the TEP; and,

WHEREAS, The total contract amount shall not exceed \$1,200,000 and the contract term shall be two years with an option of a one-year extension at the discretion of the Executive Director/CEO; and,

WHEREAS, The operating funds required for the implementation consulting services for the TEP are provided jointly by the Controller's City Services Auditor (Proposition C) in the amount of \$600,000 and the SFMTA's current year operating budget for professional services in the amount of \$600,000; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO or his Designee to execute an agreement with PB Americas, Inc. to conduct implementation consulting services for the Transit Effectiveness Project for an amount not to exceed \$1,200,000 and a contract term of two years from November 5, 2008, through November 4, 2010, with an option of a one-year extension, said option to be exercised by and at the discretion of the Executive Director/CEO.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**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
PB Americas, Inc.
for Implementation Consulting Services for Transit Effectiveness Project**

This Agreement is made this 5th day of November, 2008, in the City and County of San Francisco, State of California, by and between PB Americas, Inc. (dba Parsons Brinckerhoff), located at 303 Second Street, Suite 700 North, San Francisco, CA 94107, a New York corporation, ("Contractor" or "Consultant"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

- A. The SFMTA wishes to hire a consultant to assist with implementation of the Transit Effectiveness Project (TEP).
- B. A mini-Request for Proposals ("mini-RFP") was issued on July 24, 2008 to firms pre-qualified through the Controller's Request for Qualifications (RFQ#CON2007-6) titled Transit Service Planning and Implementation Services issued on December 20, 2007; City selected Contractor as the highest qualified proposer pursuant to the mini-RFP.
- C. Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract.
- D. Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4114-07/08 on March 17, 2008.

Now, THEREFORE, the parties agree as follows:

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

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

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

funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

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

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

1A. Definitions

- A. Agreement shall mean the Agreement between the City and Contractor for implementation services for the TEP.
- B. Contractor shall mean PB Americas Inc.
- C. Contractor's Project Manager shall mean James L. O'Sullivan.
- D. Contractor Team shall mean Contractor and its subconsultants, PB Consult, CHS Consulting Group, and P H Adams & Associates, and their respective staff.
- E. Cross-Functional Team shall mean the interdisciplinary group of SFMTA managers and staff, charged with the development of Task 2 deliverables
- F. Muni shall mean the San Francisco Municipal Railway, the public transit system under the jurisdiction of the SFMTA.
- G. Project Management Plan or "PMP" shall mean the document that will guide the delivery of all Tasks (1-3).
- H. SFMTA shall mean the San Francisco Municipal Transportation Agency.
- I. SFMTA Board shall mean the San Francisco Municipal Transportation Agency Board of Directors.
- J. SFMTA Management Team shall mean the Executive Director/CEO and those individuals who report directly to the Executive Director/CEO.
- K. Subtask shall mean a subset of a Task.
- L. Task shall mean a major Task as described in Appendix A and Appendix B, including as-needed tasks (Task 3) negotiated under this Agreement.
- M. TEP shall mean the Transit Effectiveness Project.
- N. TEP Program Manager shall mean Julie Kirschbaum.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from November 5, 2008 to November 4, 2010. At the option of the Executive Director/CEO of the SFMTA, the Agreement may be extended for an additional year.

3. Effective Date of Agreement

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

4. Services Contractor Agrees to Perform

a. **Scope.** The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," according to the schedule provided in Appendix D, which appendices are attached hereto and incorporated by reference as though fully set forth herein.

b. **Contractor Deliverables** The Contractor shall adhere to the highest quality standard for all Tasks and deliverables, and communicate in clear and concise language. The Contractor shall submit working and final drafts of all deliverables in a timely manner to allow for adequate review and revision prior to final submittal schedules.

c. **Presentations.** In the performance of assigned Tasks, the Contractor, if requested by SFMTA, shall prepare graphic and written presentations, and participate in presentations of said material to various City departments, boards or commissions, and interested community groups.

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

e. **Transmittal of Products.** At a time when requested by the SFMTA's Contracting Section ("Contracting Section"), and at the completion of each Task, the Contractor shall transmit to the Contracting Section all documents and work products (duplicates and originals) produced or accumulated in the course of its and its subcontractors' work on this Agreement. Documents and work products include, but are not limited to, all reports, studies, data, drawings, specifications, graphs, tape recordings, pictures, memoranda, letters, computer-generated data, calculations, estimates, summaries and such other information and materials as may have been accumulated or generated by the Contractor or its subcontractors, in connection with the services performed under this Agreement, whether completed or in process. The Contractor may retain at its own expense a copy of the documents and work products for record keeping purposes.

5. Compensation

a. **Amount.** Compensation under this Agreement shall be based on a fixed amount for Tasks 1 and 2 and, for as-needed tasks, either a negotiated lump sum price per Task or Subtask, or actual direct costs plus a negotiated fixed profit per Subtask and Task. In no event shall the amount of this Agreement exceed One Million Two Hundred Thousand Dollars (\$1,200,000).

b. **Payment.** Compensation shall be made in monthly payments on or before the 30th day of each month for the percentage of work on each Task, as set forth in Section 4 of this Agreement, that the TEP Program Manager, SFMTA, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. The breakdown of costs

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

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

Except as otherwise agreed to for Task 3 (as-needed Tasks), payments for completed Tasks will be made on a "not-to-exceed" fixed price basis. "Not-to-exceed" means that Contractor shall perform its obligations under the Agreement for the amounts listed in Appendix B, regardless of the number of hours that Contractor has expended on the Task.

Contractor shall provide back-up documents with its invoices to SFMTA at the level of detail requested by the Department Liaison identified in Appendix A of the Agreement to allow the Department Liaison to effectively track the level of services provided by Contractor and Contractor's subcontractors.

In no event shall City be liable for interest or late charges for any late payments.

c. As-needed Tasks (Task 3). The SFMTA will define Task 3 requirements. The cost and estimated time to perform the Task fully will be agreed upon in advance of the start of work on the Task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below.

- (i) Scope of Work.** SFMTA will prepare the scope of work and expected time of completion, using the Task Order form (Appendix C) and transmit the Task Order form to the Contractor with a request for a proposal for the performance of the Task.
- (ii) Information and Data.** The Contractor shall request in writing any information and data it will require to perform Task Orders. The Contractor shall identify the timing and priority for which this information and data will be required. The Contractor and SFMTA shall reach agreement as to the availability and delivery time for this data and information during initial Task negotiations.
- (iii) Contractor Proposal.** The Contractor shall prepare and submit a proposal for the Task to the Contracting Section showing:
 - (a)** A detailed description by Subtask of the work to be performed and the means and methods that will be used to perform it;
 - (b)** Milestones for completion for each Subtask and deliverables at each milestone;
 - (c)** Personnel and the subcontractors assigned to each part of the work along with a justification as to why such personnel are qualified to perform the work; and prior experience in performing work of this nature;
 - (d)** A detailed cost estimate for each Task or Subtask showing:

- (1) Hourly rates inclusive of overhead and profit (hourly rates by position as listed in Appendix B for both Contractor and subcontractor personnel). Upon request, the Contractor shall provide SFMTA with a breakdown of the overhead and profit rates that form the estimate for a particular task or subtask;
 - (2) Estimated reasonable out-of-pocket expenses;
 - (3) The proposed profit that forms the basis of the estimate shall comply with the following:
 - Proposed profit of Contractor's work effort as fixed fee amount not to exceed ten percent (10%) of Contractor's estimated direct salaries and overhead costs; and
 - For work performed by all subcontractors, proposed total profit for Contractor and subcontractor on subcontractor's work effort as fixed fee not to exceed twelve percent (12%) of subcontractor's estimated direct salaries and overhead costs.
- (iv) **Negotiation of Cost and Profit.** The SFMTA will review the proposal and negotiate either a lump sum price to perform the work of each Task and Subtask or a fixed profit with a not to exceed total cost for the Task or Subtask.
 - (v) **Record of Negotiations.** If agreement is reached, the SFMTA will document the negotiations and agreement in a Record of Negotiations and obtain the approval from the TEP Program Manager of the agreement as defined in the Record of Negotiations.
 - (vi) **Controller Certification.** Upon approval of the TEP Program Manager, the SFMTA will request certification from the Controller that adequate funds are available to proceed with the Task as agreed.
 - (vii) **Notice to Proceed (NTP).** After certification, the TEP Program Manager will send to the Contractor a written NTP and Task Number. The Contractor is required to use the Task number when submitting invoices to the Contracting Section for payment. The Contractor shall not commence work on any Task until it receives a written NTP for the Task.
 - (viii) **Changes.** Agreed lump sum prices and fixed profit for Subtasks and tasks above cannot be modified unless there is a material change in the scope of work of the Task. If there is a material change in the scope of work of a Task, then a proposal, negotiations, Record of Negotiations and approval of the Record of Negotiations by the TEP Program Manager shall be required before changes to agreed lump sum prices and fixed profits can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a Task.
 - (ix) **Failure to Agree on Terms of Task.** In the event that City and Contractor cannot reach agreement on the terms of the Task Order, City may either cancel the Task Order and have the work accomplished through other available sources, or City may direct the Contractor to proceed with the Task under such conditions as City may require to assure quality and timeliness of the

Task performance. **Under no circumstances may the Contractor refuse to undertake a City-ordered Task.**

d. Subcontractor Payments. The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If 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 HRC 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 HRC Progress Payment Form is provided.

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

e. Key Team Members. The Contractor agrees that the following key team members shall be committed and assigned to work on the Project to the level required by SFMTA for the term of the Agreement and shall also be staffed at the local Contractor offices within the San Francisco Bay Area if required by SFMTA:

James O'Sullivan`
Eric Roecks
Alan Danaher
Jack Gonsalves
Tony Schill
Ken Lin
Debra Jones
Philip H. Adams
Angelo Figone
John Pappas

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

f. Current Workload and Available Resources. The Contractor covenants that its current workload and the workload of its subcontractors will not affect the commencement and the progress of the work under this Agreement. The Contractor shall have all the necessary professional, technical and support personnel, including those of the subcontractors, available, ready and mobilized to perform actual work within two (2) weeks of the receipt of NTP on a particular Task.

6. Guaranteed Maximum Costs

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

b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse

the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

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

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

7. Payment; Invoice Format

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

Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

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

9. Disallowance

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

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

10. Taxes

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

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

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

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

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

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

11. Payment Does Not Imply Acceptance of Work

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

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, and must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement. The City shall have the right to interview and review the qualifications of any new personnel proposed by the Contractor. Any proposed changes to Contractor's personnel must be approved in writing by the City at least thirty (30) days in advance of assignment of such personnel to perform services under this Agreement. Such approval by the City shall not be unreasonably withheld.

13. Responsibility for Equipment

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

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

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

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

b. Payment of Taxes and Other Expenses

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that

Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

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

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

15. Insurance

a. 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:

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

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

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

(4) Professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

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

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

c. All policies shall provide thirty (30) days' advance written notice to City of reduction or non-renewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

Julie Kirschbaum
TEP Program Manager
SFMTA
1 South Van Ness Ave., 7th Floor
San Francisco, CA 94103

Copy to: Office of Contracts and Procurement
San Francisco Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, CA 94103

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

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

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

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

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

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

16. Indemnification

a. General Indemnity

To the fullest extent permitted by law, Contractor shall assume the defense of, indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subcontractors) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees and costs of investigation), that arise directly or indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Contractor and subcontractor to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

b. Limitations

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

(2) The Contractor assumes no liability whatsoever for the active negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

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

c. Copyright Infringement

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

17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's negligent acts or omissions. Contractor's liability for under this Section shall not exceed the amount of insurance coverage required under Section 15. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City

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

19. Left Blank by Agreement of Parties (Liquidated Damages)

20. Default; Remedies

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

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

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

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

(4) A court or government authority enters an order (a) 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, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other

debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, and after giving Contractor ten (10) days' written notice and opportunity to cure, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

a. 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 ten (10) days' written notice of termination. The notice shall specify the date on which termination shall become effective.

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

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

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

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

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

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

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any

service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

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

22. Rights and Duties upon Termination or Expiration

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

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

23. Conflict of Interest

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

24. Proprietary or Confidential Information of City

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

25. Notices to the Parties

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

To City: Julie Kirschbaum
TEP Program Manager
San Francisco Municipal Transportation Agency
1 South Van Ness Ave., 7th Floor
San Francisco, CA 94103
e-mail: Julie.kirschbaum@sfmta.com
Fax: 415-701-4343

To Contractor: James O'Sullivan
PB Americas, Inc.
303 Second Street, Suite 700 North
San Francisco, CA 94107
email: osullivan@pbworld.com
Fax: 415-243-9501

Any notice of default must be sent by registered mail.

26. Ownership of Results

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

27. Works for Hire

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

28. 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 work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in

part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting

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

30. Assignment

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

31. Non-Waiver of Rights

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

32. Earned Income Credit (EIC) Forms

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

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

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

pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

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

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

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

(1) Enforcement

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(2) Subcontracting Goals

The LBE subcontracting participation goal for this contract is 15%. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor.

Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

(3) Subcontract Language Requirements

Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors.

Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(4) Payment of Subcontractors

Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount.

Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

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

b. Subcontracts

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

c. Nondiscrimination in Benefits

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

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles - Northern Ireland

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

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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

38. Resource Conservation

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

39. Compliance with Americans with Disabilities Act

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

40. Sunshine Ordinance

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

41. Public Access to Meetings and Records

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

42. Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a

City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

43. Requiring Minimum Compensation for Covered Employees

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

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

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

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

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

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

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

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

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

44. Requiring Health Benefits for Covered Employees

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

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan

option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

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

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

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

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

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

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

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

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

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

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

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

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

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

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

b. First Source Hiring Agreement

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

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

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

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

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

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

(6) Set the term of the requirements.

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

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

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

c. Hiring Decisions

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

d. Exceptions

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

e. Liquidated Damages

Contractor agrees:

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

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

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

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a

result of the contractor's continued failure to comply with its first source referral contractual obligations;

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

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

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

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

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

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

f. Subcontracts

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

46. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided

under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller.

The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic

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

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Contract Compliance Office any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the SFMTA, who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue

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

51. Construction

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

52. Entire Agreement

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

53. Compliance with Laws

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

54. Services Provided by Attorneys

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

55. Left Blank by Agreement of the Parties. (Supervision of Minors)

56. Severability

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

57. Protection of Private Information

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

58. Graffiti Removal

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

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

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

59. Food Service Waste Reduction Requirements

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

60. Left Blank by Agreement of the Parties. (Slavery Era Disclosure)

61. No Third Party Beneficiary

The parties enter in to this Agreement for the sole benefit of the parties, in exclusion of any third party, and no third party beneficiary is intended or created by the execution of this Agreement.

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

CITY	CONTRACTOR
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY	PB AMERICAS, INC.
_____ Nathaniel P. Ford, Sr. Executive Director/CEO	By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.
Approved as to Form:	I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.
Dennis J. Herrera City Attorney	_____ Ron Hartje Senior Vice President 303 Second Street, Suite 700 North San Francisco, CA 94107
By: _____ Robin M. Reitzes Deputy City Attorney	City vendor number: 14303
AUTHORIZED BY:	_____ Roberta Boomer, Secretary SFMTA Board of Directors
MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS	
Resolution No: _____	
Adopted: _____	
Attest: _____ Roberta Boomer, Secretary SFMTA Board of Directors	

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: Task Order Description
- D: Project Schedule

Appendix A Services to be Provided by Contractor

BACKGROUND

This scope of work is a general guide to the work the City expects to be performed, and is not a complete listing of all services that may be required or desired. The SFMTA may, at its sole discretion, propose modifications to the scope of work based on the project needs and the actual progress of the TEP implementation.

To avoid duplication of data requests and to ensure data consistency, the Contractor shall use and validate the data and data analyses that SFMTA staff has compiled for the TEP, including cost estimates, service and operating data. The TEP is an effort to review, evaluate, and make recommendations for the existing Muni transit system, with the objectives of making service more reliable, convenient and attractive to the public and contributing to SFMTA's long-term financial stability. The Contractor shall provide constructive feedback on any data deficiencies or gaps and compile a list of outstanding data needed to complete the project according to the scope described in this Appendix. Further, to allow the City to coordinate data requests and data available to inform other City projects, the Contractor's findings and data may be shared by the City with other City consultants, as deemed appropriate by the City.

CONTRACT OBJECTIVES

The Contractor shall work collaboratively with the SFMTA Management Team, the TEP Program Manager, and other relevant consultants to develop a comprehensive work plan to guide the successful implementation of the TEP over the next five years. The comprehensive work plan shall identify and assess all components of TEP implementation, including key areas such as (but not limited to) service planning, service scheduling, capital infrastructure development, vehicle procurement, facility needs or expansion, and workforce planning with a focus on hiring and training. Other vital areas for the Contractor's consideration in the work plan shall include the Agency's financial planning and revenue cycles, and communication activities including branding and marketing.

DESIRED PROJECT OUTCOMES

The SFMTA seeks an implementation process and products that will:

- A. Provide a results-oriented, realistic implementation work plan including methods of measuring progress;
- B. Account for the Agency's unique needs and parameters (Contractor should be able to sufficiently tailor its processes and products);
- C. Provide managerial tools to balance short-term and long-term service delivery to promote safe, reliable, and efficient transit service;
- D. Promote individual and collective accountability and intra-division and inter-division teamwork for organizational success;

- E. Contain sufficient flexibility to adapt to changing conditions; and
- F. Result in improved customer satisfaction with Muni services.

Specific tasks and deliverables shall include, but are not limited to, the following:

TASK 1: PROJECT PLANNING AND ADMINISTRATION

During Task 1, the Contractor will work closely with TEP management to confirm project details and then, on an ongoing basis, perform project management and related administrative duties. Within the first month of the contract, the Contractor shall provide the Project Management Plan (PMP) for management coordination, communications and quality control to ensure successful and timely completion of all deliverables.

Successful completion of this Task shall also include confirming the desired outcomes, objectives and timeframe for TEP implementation.

Subtasks:

- 1.1 Confirm goals and strategies for TEP implementation and review, with the TEP Program Manager and the SFMTA Management Team, their conformity with the SFMTA's Strategic Plan;
- 1.2 Prepare a detailed PMP with quality control procedures including schedule (Gantt chart including milestones and Subtasks) and a cost breakdown for each Subtask described in this scope of services;
- 1.3 Submit monthly progress reports to enable project monitoring and mutual accountability;
- 1.4 Meet with the TEP Program Manager at least twice a month (may be by teleconference or in person and these meetings shall be prescheduled at a regular recurring time, as mutually agreed by the SFMTA and the Contractor) to review the cost, schedule status and progress of the work, as well as anticipated problems, obstacles, potential delays and solutions to produce the desired work within the stated timeline.
- 1.5 Prepare status presentations and meet with the TEP Program Manager and SFMTA Management Team at key project milestones to update them on status and progress of the work;
- 1.6 Prepare agendas in advance of biweekly meetings with the TEP Program Manager and keep a record of all meeting minutes highlighting agreements and action items.

Deliverables:

- A. Detailed PMP, including overall strategy, Task plan, schedule, resources, quality control plan, outcomes, measures of success, and project budget.
- B. Written monthly progress reports regarding the PMP, including issues that need to be resolved, project risks and mitigations.

- C. Presentation materials as directed, including SFMTA Board reports and relevant presentations, the exact content of which will be jointly determined by Consultant and SFMTA.
- D. Project Solve Intranet Site.
- E. Meeting agendas and minutes.

TASK 2: TEP IMPLEMENTATION WORK PLAN

The Contractor shall create a comprehensive five-year work plan and master schedule for TEP implementation, with goals and milestones for each major functional area of the Agency, measurable objectives, roles and responsibilities, timelines and deliverables. This Plan shall serve as the guiding document to enable the TEP Program Manager and the SFMTA Management Team to plan for and oversee the timely implementation of major TEP recommendations.

The deliverables shall be iterations of the Implementation Work Plan, beginning with an initial outline and finishing with a fully detailed tactical road map. This Plan should be detailed enough to be understood by all employees in the SFMTA, not only those involved in its development. The Implementation Work Plan should be developed in modules (interim deliverables), with each contributing to one comprehensive, integrated report.

This particular Task will require a significant amount of work to be performed in a short period to time. As a result, the Contractor is expected to:

- Maximize productivity when on-site, for example, conducting as many meetings/interviews as possible.
- Effectively direct assigned SFMTA staff to perform research and internal coordination activities that will best use consultant time.
- Regularly conduct scheduled progress reviews to ensure all time-related efficiency measures are being applied.

Central to the development of these work products and deliverables will be the coordinated work of a Cross-Functional Team. In collaboration with the SFMTA, the Contractor shall lead a team composed of the TEP Program Manager and at least one manager and one key line staff, or other support staff as appropriate, from each of the SFMTA's divisions impacted by the TEP implementation. The role of SFMTA staff on the Cross-Functional Team shall be to assist with gathering key program information and data requested by the Contractor as well as to review consultant work products. This Team shall meet, on average, at least every other week during completion of Task 2.

Subtasks:

- 2.1 Plan and facilitate a meeting to officially initiate Task 2. This kick-off meeting will include a review of the Project Management Plan. At the conclusion of the meeting, the Contractor will immediately begin executing Task 2 according the requirements of the PMP.

- 2.2 Review performance trends, organizational charts and key findings and deliverables from the TEP study phase to identify and assess all components of TEP implementation. Within this Subtask, the Contractor will facilitate the identification and convening of the Cross-Functional Teams.
- 2.3 Conduct initial interviews with managers in all major functional divisions that will contribute to TEP implementation efforts, to communicate desired outcomes, objectives and timeframe, and help define implementation roles, responsibilities, deliverables and timelines. This work will serve as the methodology for the development of the Action Plans.
- Identify influences such as resource inputs (labor, energy, operating needs), work processes (policies, demands and constraints), service production requirements (service miles, service hours), and service performance (ridership, on-time-performance, passenger miles, service delays) that impact current service delivery and may affect the TEP implementation, and recommend methods to address these influences.
 - Identify additional critical paths, obligations under state or local law, and other external factors that must be incorporated into the timeline (e.g., construction priorities and schedules of other departments, environmental assessment, meet and confer obligations, capital investments, financial and/or staff capacity limitations, operating processes and procedures) and recommend methods to address them.
- 2.4 Develop Implementation Work Plan approach. Based upon input from activities 2.1 through 2.3, the Contractor shall develop a draft strategic direction for the implementation effort and reengage the Cross-Functional Team to review and modify it. This document will include an outline of the Implementation Work Plan, as well as the vision, goals, and high level objectives of the implementation.
- 2.5 Reconvene Cross-Functional Teams, subdivided into three subgroups – roughly defined as engineering, operations, and project management/support subgroups. The Contractor shall facilitate the identification of factors that will potentially affect TEP implementation in each subgroup. Examples of the factors to be evaluated shall include resource inputs, work processes, service production requirements, service performance, energy, labor provision, external political considerations, and operating needs. Each Cross-Functional Team shall generate a draft plan that will include identification of key actions to be taken to support the strategic vision, including consideration of (but not limited to):
- Service planning / scheduling
 - Capital infrastructure needs
 - Vehicle availability / vehicle reliability
 - Facility needs
 - Workforce planning
 - Schedule information
 - 311 training needs
 - Financial planning / revenue cycle
 - Environmental process

- Transit priority needs
- 2.6 Develop the TEP Implementation Work Plan, including an approach for a phased implementation over five years. The Work Plan shall include a discussion of the integration of functions and disciplines necessary to successfully implement the TEP, the operating and capital costs required to implement the various phases, and recommendations regarding the how the various phases should be implemented to ensure success. The Work Plan shall include a master schedule to be developed by successive iterations using guidance from the SFMTA and information gathered during Subtasks 2.1 through 2.5. The detailed master schedule shall include tasks, milestones, all to a level of detail appropriate for SFMTA use. It shall be sufficiently detailed to provide direction to all aspects of TEP implementation. The master schedule shall be designed to be easily monitored and updated on a regular basis to allow for effective management of the implementation. Present the first draft of the TEP Implementation Work Plan to TEP Program Manager for review and feedback.
 - 2.7 Develop the Risk Identification And Mitigation Plan. The Risk Identification and Mitigation Plan shall identify the key threats to successful implementation of the TEP. The Plan shall also identify mitigation measures to be taken to address any potential shortcomings of the recommendations. Issues such as such as financial resources, operational readiness, environmental documentation and decisions, and political support should be tested and included. Present the first draft of the Risk Identification and Mitigation Plan to the TEP Program Manager for review and feedback.
 - 2.8 Review and assess draft TEP cost estimates, using the TEP capital and operating cost model as an initial input, and three to five comparable properties identified by the Contractor and agreed to by the SFMTA as a point of comparison. The Contractor shall incorporate additional costs (or, as directed, order of magnitude costs) identified during work on Subtasks 2.1 through 2.7 into the cost estimates for capital and operations for the implementation of the five year work plan. The Contractor shall also assist in the integration of capital costs into the SFMTA Capital Improvement Program.
 - 2.9 Develop Stakeholder Communication Approach. The Stakeholder Communication Approach shall describe how SFMTA and key stakeholders will stay apprised of Implementation Work Plan progress and know when the implementation plan has succeeded, including metrics and performance measures. Present the first draft of the Communication Approach to the TEP Program Manager for review and feedback.
 - 2.10 Develop individual Action Plans for SFMTA's divisions impacted by the TEP implementation. Action plans shall incorporate the critical assessments and other information generated during Subtask 2.3 through 2.7 and detail actions required by each division to achieve a successful phased implementation of the TEP. Present the first draft of the Action Plans to the TEP Program Manager for review and feedback.
 - 2.11 Using interviews and research conducted to develop the Implementation Work and Action Plans, recommend managerial efficiencies (the use of resources to produce service) and service effectiveness (consumption and delivery of service) needed for SFMTA to seamlessly integrate the TEP into its day-to-day functions.
 - 2.12 Coordinate workshop with appropriate SFMTA staff to discuss the second draft of the

TEP Implementation Work Plan, including phasing plan and master schedule, Risk Identification and Mitigation Plan, and Stakeholder Communication Approach. Collect and incorporate feedback.

- 2.13 Present final Implementation Work Plan to SFMTA Management Team for final approval.

Deliverables:

The Contractor shall provide two drafts and a final for each of the following deliverables.

- A. Implementation Work Plan approach
- B. Comprehensive five-year Implementation Work Plan with major goals/milestones, measurable objectives/metrics, designated roles and responsibilities to achieve each objective and:
 - B.1 Phasing plan with master schedule
 - B.2 Risk Identification and Mitigation Plan
 - B.3 Stakeholder Communication Approach
- C. Implementation Action Plans for SFMTA's divisions
- D. Recommendations for managerial efficiencies and/or service effectiveness for seamless integration of the TEP
- E. Capital and operating cost estimates for comprehensive five-year work plan

TASK 3: ONGOING CONSULTATION SERVICES FOR PROJECT MANAGEMENT

Following completion of Task 2, the Contractor shall conduct ongoing consulting services in collaboration with the TEP Program Manager. Work will include, but not be limited to, oversight and monitoring of the implementation of the work plan defined in Task 2. This shall include regular meetings and on-site consultation support as needed to ensure progress is being made according to the schedule and all major goals/milestones are achieved as planned.

The Contractor will discuss specific Task 3 services with the TEP Program Manager including roles and responsibilities, the nature and type of advice, level of staff, and specific objectives will be agreed upon. Key components may include a senior advisor with a big picture focus and regular on- site technical assistance.

Subtasks and deliverables may include work on or management of division-specific action plans; the collection of data for progress metrics defined in Task 2; and the preparation of quarterly progress reports.

Schedule

The shall will take place over 24 months, beginning November 5, 2008 and according to the attached schedule (Appendix D).

Reports

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

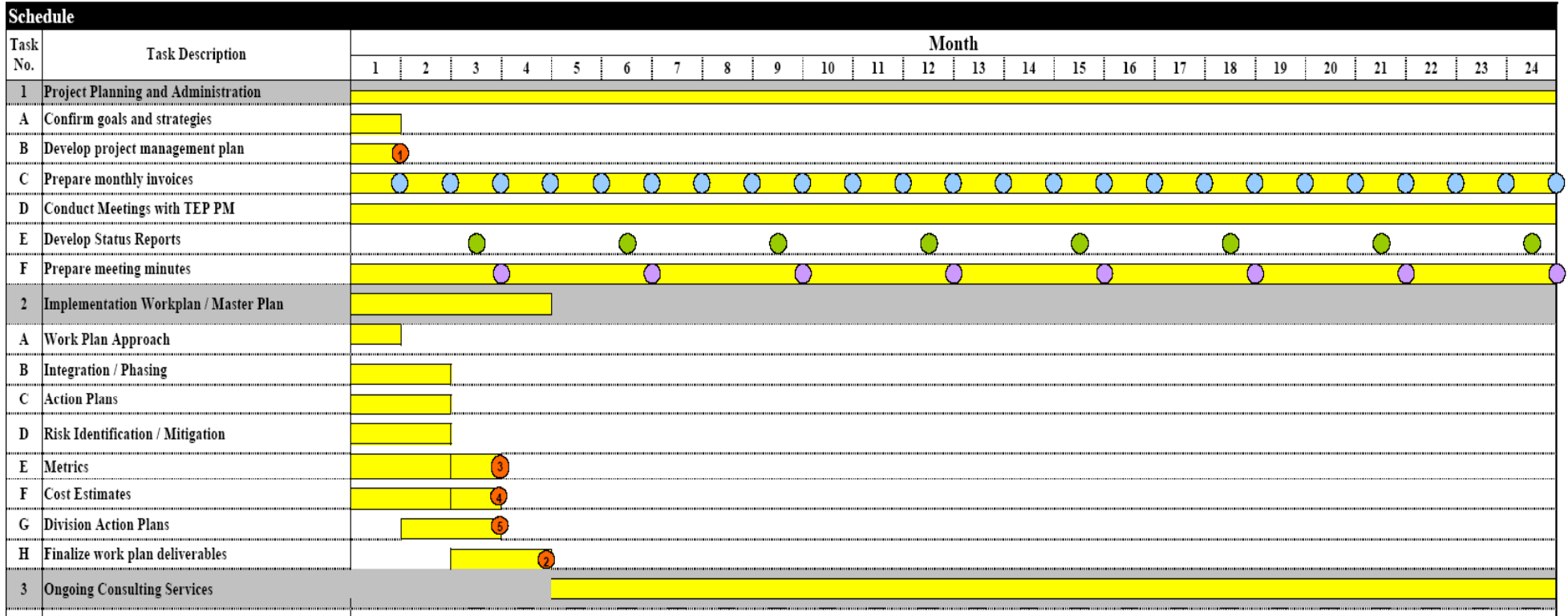
Appendix B

Calculation of Charges

Out-of-Pocket Expenses (Tasks 1 and 2): Shall not exceed \$36,000.

Lodging and other per diem expenses shall be limited to the Federal GSA Domestic per diem rates. Contractor shall provide receipts for all expenses except for meals and incidental expenses. Contractors shall purchase the lowest published routine fare for travel by the **most efficient, direct and economical mode of transportation** required by the occasion. If an alternative mode of transportation is selected, the allowable cost shall be the lower of the actual cost of alternative modes of transportation or the lowest regular fare available for regularly scheduled airlines for the date and time selected.

Appendix D PROJECT MANAGEMENT SCHEDULE



- | | |
|---|--|
| <ul style="list-style-type: none"> ① Project Management Plan ② Comprehensive Work Plan ③ Metrics / Phasing ④ Capital and Operating Cost Estimates ⑤ Division Specific Work Plans - | <ul style="list-style-type: none"> ● Invoice ● Meeting ● Minutes ● Written Documentation and Summaries |
|---|--|

Work Hours	Jim O'Sullivan	A Danaher / J Gonsalves	Debra Jones	K Lin / T Schill	Tim Rosenberger	Tiffany Batac	Patrick Blankenship	Richard Callender	Pat McNamee	Dom Spaethling	Eric Roecks	Amy Zwas	Alan Lubliner	Angelo Figone	Chi-Hsin Shao	Minna Lee	John Pappas	P H Adams & Associates Phil Adams
	PB Americas, Inc.										PB Consult			CHS				
Raw Billing Rate	\$86.96	\$70.12	\$55.29	\$76.92	\$46.00	\$27.40	\$32.81	\$35.95	\$69.92	\$74.52	\$285.00	\$210.00	\$285.00	\$150.00	\$220.00	\$95.00	\$125.00	\$171.00
Escalation	\$93.95	\$75.75	\$59.73	\$83.10	\$49.69	\$29.60	\$35.45	\$38.83	\$75.54	\$80.50	\$307.89	\$226.86	\$307.89					
Overhead	1.574	1.574	1.574	1.574	1.574	1.574	1.574	1.574	1.574	1.574	0	0	0					
Fee	10%	10%	10%	10%	10%	10%	10%	10%	10%	10%	0%	0%	0%					
Hourly Rate	\$266.00	\$214.48	\$169.12	\$235.28	\$140.70	\$ 83.82	\$100.37	\$109.95	\$213.88	\$227.94	\$307.89	\$226.86	\$307.89	\$150.00	\$220.00	\$95.00	\$125.00	\$171.00

Hours Per Task

Task Description	Jim O'Sullivan	A Danahe r / J Gonsalves	Debra Jones	Ken Lin / Tony Schill	Tim Rosenber ger	Tiffany Batac	Patrick Blanke nship	Richard Callend er	Pat McNam ee	Dom Spaethli ng	Eric Roecks	Amy Zwas	Alan Lubline r	Angelo Figone	Chi-Hsin Shao	Minna Lee	John Pappas	P H Adams & Associates Phil Adams	Hours by Task
	PB Americas, Inc.										PB Consult		CHS						
Task 1 - Project Planning and Administration	104	0	0	0	0	120	0	24	0	8	100	0	0	4	0	0	0	32	392
A - Confirm Goals and Strategies	16	0	0	0	0	0	0	0	0	0	4	0	0	4	0	0	0	0	24
B - Develop project management plan	24	0	0	0	0	40	0	0	0	2	24	0	0	0	0	0	0	16	106
C - Monthly invoices through Task 2	8	0	0	0	0	0	0	24	0	2	8	0	0	0	0	0	0	0	42
D - Meetings with TEP Manager through Task 2	32	0	0	0	0	32	0	0	0	2	32	0	0	0	0	0	0	16	114
E - Develop Status Reports	16	0	0	0	0	8	0	0	0	2	16	0	0	0	0	0	0	0	42
F - Prepare Meeting Minutes	8	0	0	0	0	40	0	0	0	0	16	0	0	0	0	0	0	0	64
Task 2 - Implementation Work Plan / Master Plan	152	120	80	140	48	152	80	0	56	16	136	48	44	164	40	40	240	96	1,652
2.1 -2.4 - Kick Off / Interviews / Work Plan Approach	40	8	4	8	4	16	0	0	0	2	40	24	24	20	16	0	40	16	262
2.5-2.6 - Implementation Work Plan / Phasing	32	36	16	36	4	32	20	0	8	2	16	0	4	80	8	40	80	24	438
2.10 - Action Plans	16	36	16	24	0	20	16	0	0	2	16	0	4	16	0	0	20	8	194
2.7 - Risk Identification / Mitigation	16	8	16	24	0	16	4	0	0	2	8	8	4	16	0	0	20	8	150
2.9 - Stakeholder Communications Approach	8	0	8	0	0	16	4	0	0	2	8	8	0	4	16	0	16	8	98
2.11 - Managerial Efficiencies / Metrics	8	0	0	8	4	16	4	0	0	2	16	0	0	0	0	0	20	8	86
2.8 - Capital / Operating Cost Estimates	12	16	4	24	20	16	16	0	40	2	8	4	4	12	0	0	24	16	218
2.12-2.13 - Draft / Finalize work plan deliverables	20	16	16	16	16	20	16	0	8	2	24	4	4	16	0	0	20	8	206
Task 3 - Ongoing Consulting Services	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
A - To Be Determined																			0
See scope for direct expenses																			0
Total	256	120	80	140	48	272	80	24	56	24	236	48	44	168	40	40	240	128	2,044

Fee Estimate

Task Description	Jim O'Sullivan	A Danahe r / J Gonsalves	Debra Jones	K Lin / T Schill	Tim Rosenber ger	Tiffany Batac	Patrick Blanke nship	Richar d Callend er	Pat McNam ee	Dom Spaethlin g	Eric Roecks	Amy Zwas	Alan Lubliner	Angelo Figone	Chi-Hsin Shao	Minna Lee	John Pappas	P H Adams & Associate s Phil Adams	Fee by Task
	PB Americas, Inc.										PB Consult			CHS					
1 - Project Planning and Administration	\$ 27,664	\$ -	\$ -	\$ -	\$ -	\$10,059	\$ -	\$2,639	\$ -	\$ 1,824	\$ 30,789	\$ -	\$ -	\$ 600	\$ -	\$ -	\$ -	\$ 5,472	\$ 79,045
A - Confirm Goals and Strategies	\$ 4,256	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,232	\$ -	\$ -	\$ 600	\$ -	\$ -	\$ -	\$ -	1,832
B - Develop project management plan	\$ 6,384	\$ -	\$ -	\$ -	\$ -	\$ 3,353	\$ -	\$ -	\$ -	\$ 456	\$ 7,389	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,736	13,934
C - Prepare Monthly Invoices	\$ 2,128	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$2,639	\$ -	\$ 456	\$ 2,463	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	5,558
D - Meetings with TEP Manager through Task 2 -	\$ 8,512	\$ -	\$ -	\$ -	\$ -	\$ 2,682	\$ -	\$ -	\$ -	\$ 456	\$ 9,852	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,736	15,727
E - Develop Status Reports	\$ 4,256	\$ -	\$ -	\$ -	\$ -	\$ 671	\$ -	\$ -	\$ -	\$ 456	\$ 4,926	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	6,053
F - Prepare Meeting Minutes	\$ 2,128	\$ -	\$ -	\$ -	\$ -	\$ 3,353	\$ -	\$ -	\$ -	\$ -	\$ 4,926	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	8,279
2 - Implementation Work Plan / Master Plan	\$40,431	\$25,738	\$ 13,529	\$32,939	\$6,754	\$12,741	\$ 8,029	\$ -	\$11,977	\$ 3,647	\$ 41,872	\$10,889	\$13,547	\$24,600	\$8,800	\$ 3,800	\$ 30,000	\$ 16,416	\$ 305,711
2.1 -2.4 - Kick Off / Interviews / Work Plan Approach	\$10,640	\$ 1,716	\$676	\$ 1,882	\$ 563	\$ 1,341	\$ -	\$ -	\$ -	\$ 456	\$ 12,315	\$ 5,445	\$ 7,389	\$ 3,000	\$3,520	\$ -	\$ 5,000	\$ 2,736	\$ 46,040
2.5-2.6 - Implementation Work Plan / Phasing	\$ 8,512	\$ 7,721	\$ 2,706	\$ 8,470	\$ 563	\$ 2,682	\$ 2,007	\$ -	\$ 1,711	\$ 456	\$ 4,926	\$ -	\$ 1,232	\$12,000	\$1,760	\$ 3,800	\$ 10,000	\$ 4,104	\$ 64,138
2.1 - Action Plans	\$ 4,256	\$ 7,721	\$ 2,706	\$ 5,647	\$ -	\$ 1,676	\$ 1,606	\$ -	\$ -	\$ 456	\$ 4,926	\$ -	\$ 1,232	\$ 2,400	\$ -	\$ -	\$ 2,500	\$ 1,368	\$ 32,238
2.7 - Risk Identification / Mitigation	\$ 4,256	\$ 1,716	\$ 2,706	\$ 5,647	\$ -	\$ 1,341	\$ 401	\$ -	\$ -	\$ 456	\$ 2,463	\$ 1,815	\$ 1,232	\$ 2,400	\$ -	\$ -	\$ 2,500	\$ 1,368	\$ 24,044
2.9 - Stakeholder Communications Approach	\$ 2,128	\$ -	\$ 1,353	\$ -	\$ -	\$ 1,341	\$ 401	\$ -	\$ -	\$ 456	\$ 2,463	\$ 1,815	\$ -	\$ 600	\$3,520	\$ -	\$ 2,000	\$ 1,368	\$ 15,317
2.11 - Managerial Efficiencies / Metrics	\$ 2,128	\$ -	\$ -	\$ 1,882	\$ 563	\$ 1,341	\$ 401	\$ -	\$ -	\$ 456	\$ 4,926	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,500	\$ 1,368	\$ 13,438
2.8 - Capital / Operating Cost Estimates	\$ 3,192	\$ 3,432	\$676	\$ 5,647	\$2,814	\$ 1,341	\$ 1,606	\$ -	\$ 8,555	\$ 456	\$ 2,463	\$ 907	\$ 1,232	\$ 1,800	\$ -	\$ -	\$ 3,000	\$ 2,736	\$ 36,665
2.12-2.13 - Draft / Finalize work plan deliverables	\$ 5,320	\$ 3,432	\$ 2,706	\$ 3,764	\$2,251	\$ 1,676	\$ 1,606	\$ -	\$ 1,711	\$ 456	\$ 7,389	\$ 907	\$ 1,232	\$ 2,400	\$ -	\$ -	\$ 2,500	\$ 1,368	\$ 33,399
Direct Costs	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
A - Other Direct Costs - PB	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 35,840
0 - PB Mark-up on subs (2%)	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,970

0 - Other Direct Costs - CHS	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 8,880
Total Labor Costs	\$ 68,095	\$25,738	\$ 13,529	\$32,939	\$6,754	\$22,800	\$8,029	\$ 2,639	\$ 11,977	\$ 5,471	\$72,661	\$ 10,889	\$ 13,547	\$ 25,200	\$ 8,800	\$ 3,800	\$ 30,000	\$ 21,888	
Total for Task 1 & 2																			431, 446

Appendix C
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
TASK ORDER FORM

Contract Title: _____ **Contract No.:** _____

Project Title: _____ **Project No.:** _____

TASK ORDER DESCRIPTION

Task Title		
<input type="checkbox"/> New Task Order <input type="checkbox"/> Revised Task Order		
Work to be Performed		
Schedule		
Start Date:	Estimated Completion Date:	
Budget Amount: \$	Index Code:	
Deliverables		
Descriptions	Date Requested	Quantity
APPROVALS		
Approved _____ Date: _____ <div style="text-align: center;">TEP Program Manager</div>		
Approved _____ Date: _____ <div style="text-align: center;">SFMTA Chief Operations Officer</div>		

Appendix D
PROJECT MANAGEMENT SCHEDULE

Task No. - Task Description	Month (24 month period)
1 - Project Planning and Administration	Months 1 through 24
A - Confirm goals and strategies	Month 1
B - Develop project management plan	Project Management Plan - month 1
C - Prepare monthly invoices	Monthly Invoices - months 1 through 24
D - Conduct Meetings with TEP PM	Months 1 through 24
E - Develop Status Reports	Meetings in months 3, 6, 9, 12, 15, 18, 21, and 24
F - Prepare meeting minutes	Minutes at the end of months 3, 6, 9, 12, 15, 18, 21, and 24
2 - Implementation Workplan / Master Plan	Months 1 through 4
A - Work Plan	Month 1
B - Integration / Phasing	Months 1 and 2
C - Action Plans	Months 1 and 2
D - Risk Identification / Mitigation	Months 1 and 2
E - Metrics	Metrics/Phasing - month 1 through 3
F - Reporting	Capital and Operating Cost Estimates - months 1 through 3
G - Division Action Plans	Division Specific Work Plans - months 2 and 3
H - Finalize work plan deliverables	Comprehensive Work Plan - months 3 and 4
3 - Ongoing Consulting Services	Months 1 through 24
A - Develop division-specific work plans	
B - Collect data, prepare quarterly progress reports	Months 3, 6, 9, 12, 15, 18, 21, and 24
C - Provide consultative support to TEP PM	Written Documentation and Summaries - Months 4 through 24

THIS PRINT COVERS CALENDAR ITEM NO. : _____

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

This informational calendar item is a report on the status of the Lifeline Pass and on options to enhance the program and increase pass sales in response to the Board of Directors' request. The Board is asked to provide guidance on the various options summarized in the Enclosure.

SUMMARY:

- The Lifeline Pass currently provides eligible low-income individuals with a \$10 discount off the regular Adult FastPass[®] and is \$25 more than monthly passes for seniors, youth and disabled riders.
- When the Board-approved fare changes take effect in July 2009, the discount for the Lifeline Pass off the regular Adult FastPass[®] will increase to \$20 and the price will be \$20 more than monthly passes for seniors, youth and disabled riders.
- From the program's inception in September 2005 to July 2008, Lifeline Pass sales have increased over 50 percent from less than 4,000 per month to over 6,000 per month.
- This informational calendar item presents an analysis of the ridership and financial impacts of potential modifications to Lifeline Pass sales and distribution, pricing, eligibility, and use on BART.

ENCLOSURES:

1. Lifeline Pass Program Review

APPROVALS:

DIRECTOR OF DIVISION

PREPARING ITEM _____

DATE

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION BE RETURNED TO: Jason Lee

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

This presentation is in response to an SFMTA Board request to explore potential modifications to the Lifeline Pass Program.

GOAL

The Lifeline Pass helps remove the accessibility barrier of cost for low-income households, thereby increasing the number of residents who benefit from transit services.

This is in accordance with the SFMTA Strategic Plan, Goal 1 - Customer Focus: To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy. It specifically addresses Objective 1.4: Improve accessibility across transit service.

DESCRIPTION

Historical Background

As the SFMTA was preparing its FY 2006 budget in early 2005, it identified an operating shortfall of approximately \$57.3 million. To close this gap, staff recommended a variety of fare increases, parking fee and fine increases, and service reductions. Fare proposals included raising the price of the Adult FastPass® from \$45 to \$50 or more.

At the time, there was concern about the financial impacts of the proposed increase to the FastPass® on low-income individuals. As a result, a new Lifeline Pass was created to provide a discount for people earning less than 200 percent of the Federal Poverty Level. This pass was valid on all Muni services but not on BART within San Francisco. At \$35, this pass was priced at the same level as the Adult FastPass® between 1993 and 2003.

Ultimately, the Adult FastPass® price remained at \$45. To balance the FY 2006 budget, the SFMTA increased the base fare from \$1.25 to \$1.50, enacted administrative efficiencies, and reduced service.

Administration

The SFMTA partners with the City's Human Services Agency (HSA) to verify income eligibility and sell passes. SFMTA issues an annual work order of \$250,000 to pay for HSA's administrative costs, which include the following activities:

- Establishment and maintenance of a Lifeline Pass client database – HSA keeps track of all eligible clients in a computer database.
- Marketing – HSA mails information about obtaining and renewing the Lifeline Pass to households that qualify for its services.
- Sales and Verification – Two HSA sales clerks are dedicated to selling Muni Lifeline Passes and verifying client eligibility. HSA also invoices program-related work hours provided by its Sales Supervisor and other staff.
- Administration – HSA allocates a fraction of staff time to administer the program.

Pass sales are currently available at three locations:

- SFMTA Customer Service Office at 11 South Van Ness (Monday-Friday, 8 am – 5 pm).
- HSA Office at 170 Otis (Monday-Friday, 8 am – 4:30 pm, cash only).
- Career Links at 3120 Mission (Monday-Friday, 8 am – 4:30 pm, cash only).

HSA's database contains approximately 67,000 clients whose eligibility for the Lifeline Pass has been verified. Using US Census data, HSA estimates that approximately 85,000 to 90,000 residents citywide may be eligible for the pass. From the program's inception in September 2005 to July 2008, Lifeline Pass sales have increased by approximately 50 percent, from less than 4,000 per month to over 6,000 per month. The 6,000 issued passes are roughly broken down into:

- 3,000 passes are purchased by HSA and distributed to selected clients at no cost.
- 2,000 passes are purchased at the HSA Office and Career Links.
- 1,000 passes are purchased at SFMTA's Customer Service Office.

Based on these figures, approximately seven percent of eligible San Franciscans currently purchase or receive a Lifeline Pass. By comparison, the number of Adult FastPass[®] sales is approximately 25 percent of the adult population of San Francisco. Some concern has been expressed about the relatively low Lifeline Pass penetration rate – or the percentage of the eligible population purchasing the pass.

There may be several reasons for this low penetration rate:

- Some eligible residents may drive to their destinations.
- Some may live in communities where they can primarily walk to employment and shopping and have limited need to travel outside the neighborhood.
- Some may ride transit, but may prefer to pay the cash fare because they ride only a few times per week or cannot afford to pay \$35 at one time.
- Some may prefer to purchase the regularly-priced Adult FastPass[®] rather than to receive public financial assistance.
- Some may not have appropriate documents or may not wish to share their names, income levels and other personal information in order to receive the Lifeline Pass discount.
- Some may be unaware of the Lifeline Pass and where to purchase it.
- The three existing Lifeline Pass sales locations may not have convenient locations and hours of operation.

Staff analyzed multiple options relating to Lifeline Pass sales and distribution, prices, eligibility and use on BART. These are presented below under the Alternatives section, and their financial implications are discussed under the Funding Impact section.

Since this is an informational calendar item, the City Attorney was not required to review this report.

ALTERNATIVES CONSIDERED

Staff analyzed the following potential modifications to the Lifeline Pass, which are discussed in detail in the Enclosure.

- Sales and Distribution: Currently, verification is performed by HSA eligibility workers and sales occur at three locations during weekday business hours. An option for the Board of Directors' consideration is to improve sales and distribution by implementing a photo ID card. Customers would purchase a Lifeline Pass sticker each month that they would affix to the card. Stickers would be available at HSA's office and at most vendors within SFMTA's existing network of pass sales retail outlets.
- Prices: The Lifeline Pass price is currently \$35. Financial impacts of lowering the price of the Lifeline Pass to \$30, \$25, and \$20 were estimated, assuming greater purchase of the pass at lower price levels offset by revenue loss from the Adult FastPass[®].
- Pass eligibility: Pass eligibility is currently set at 200 percent of the Federal Poverty Level. The impact of changing the threshold to 300 percent was examined.
- Use on BART: The financial impact of accepting the Lifeline Pass on BART within San Francisco was investigated. Implementation was not explored in depth with BART at this time given BART's focus on implementing the Senior and Disabled BART/Muni FastPass[®].

FUNDING IMPACT

Below is a summary of the overall ridership and financial impacts of potential Lifeline Pass modifications as detailed in the Enclosure.

Financial Impacts

- Sales and Distribution: Implementing a photo ID card with monthly stickers and expanding sales locations would cost approximately \$2.5 million over three years (\$1.0 million during the first year, including implementation, and \$720,000 to \$740,000 during subsequent years).
- Pass prices: Reducing pass prices would result in a projected net revenue loss of \$1.8 to \$6.7 million annually depending on the amount of the reduction. Providing new service to accommodate new riders generated by lower pass prices is projected to increase operating costs by \$3.5 to \$5.1 million annually, assuming that 25% of the incremental Lifeline Pass purchases would be new riders.
- Pass eligibility: The projected financial impact of increasing Lifeline Pass eligibility from 200 percent to 300 percent of the Federal Poverty Level ranges from \$13 to \$17 million, depending on the price of the Lifeline Pass and assuming approximately 50,000 additional residents would meet the new eligibility criteria.
- Use on BART: The financial impact of extending pass privileges to BART within San Francisco would be approximately \$1.9 to \$2.6 million.

Ridership Impacts

If the SFMTA Board of Directors were to approve changes to pass sales and distribution, monthly Lifeline Pass distribution could increase from 6,000 to a range of 17,600 to 24,200, depending on the price of the Lifeline Pass. Approximately 3,650 to 5,300 are projected to be new riders (about 25% of the total). The remaining 13,950 to 18,900 are forecasted to be riders who currently use the Lifeline Pass and those who currently purchase the Adult FastPass[®] but would switch to the Lifeline Pass because of its lower price.

Funding Options

In late August, SFMTA staff applied for \$1.7 million in Metropolitan Transportation Commission (MTC) Lifeline Transportation Program grant funding to cover administrative costs associated with expanding Lifeline Pass sales. Lost revenue from pass discounts is not eligible for funding.

Contingent upon State budget approval, MTC's grant program may provide up to \$11 million over the next three years for qualifying transportation projects in San Francisco. The San Francisco County Transportation Authority (SFCTA) is currently evaluating other applications and will make recommendations to the MTC about which projects should receive funding. A decision about the one-time grant request is anticipated by November.

SFMTA staff identified options to fund additional costs and loss of revenue associated with potential modifications to the Lifeline Pass. Staff examined various scenarios and assumed that there would be no changes to current income eligibility requirements. Potential funding options are outlined below (the financial implications of specific scenarios are detailed in the Enclosure):

- Raise the Adult FastPass[®] price: The Adult FastPass[®] price may need to be raised to \$66. The SFMTA Board has already approved a price increase from \$45 to \$55 effective July 2009.
- Raise the Adult FastPass[®] and discount pass prices: The Adult FastPass[®] and discount pass (for youths, seniors and disabled) may need to be raised to \$63 and \$20, respectively. The SFMTA Board has also approved a price increase for discount passes from \$10 to \$15 effective July 2009.
- Raise parking rates and all monthly pass prices: The parking rate may need to be increased by 25¢ per hour and the Adult FastPass[®] and discount passes may need to be raised to \$61 and \$20, respectively.
- Revenue Panel recommendations: Some options to cover projected financial shortfalls, such as the hotel tax, motor vehicle license tax, and sales tax, would require approval by other policy bodies and, in some cases, by the voters.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

To be determined pending direction from the SFMTA Board of Directors regarding Lifeline Pass options.

RECOMMENDATION

This item is presented for the SFMTA Board of Directors' information.

LIFELINE PASS PROGRAM REVIEW

I. Overview:

- Board request for review of the Lifeline Pass Program
- Reviewed the following areas: Sales and Distribution, Pricing, Eligibility, Use on BART
- Analyzed possible program changes in each area
- Estimated ridership and financial impacts
- Identified potential ways to fund changes

II. Lifeline Program Review:

	Current Policy	Program Review
Sales and Distribution	MTA Customer Service Office (weekdays 8 am – 5 pm) 2 HSA Sites (weekdays 8 am – 4:30 pm)	<ul style="list-style-type: none">• Review the need and feasibility of establishing additional sales sites throughout San Francisco• Assess extending the hours and days when passes can be purchased• Examine alternative payment options
Pricing	\$35 per month (\$10 discount off current Fast Pass, \$20 discount after July 2009)	<ul style="list-style-type: none">• Explore increasing the discount on the Lifeline Fast Pass to a level that is not cost-prohibitive for SFMTA
Eligibility	200% of Federal Poverty Level	<ul style="list-style-type: none">• Evaluate whether the income eligibility threshold should be increased• Examine method for determining qualifying income level
Use on BART	Not valid on BART within San Francisco	<ul style="list-style-type: none">• Explore allowing the Lifeline Fast Pass to be valid on BART within San Francisco

III. Sales and Distribution:

1) Projected HSA Administrative Costs

	Fare Media	Verification	Sales Locations	Annual HSA Administrative Cost
Option 1 – Status Quo	Paper Lifeline Fast Pass	HSA Eligibility Workers at HSA office	HSA, SFMTA Customer Service Office	\$270,000
Option 2 – Eligibility verification at HSA and sales at HSA, SFMTA & other locations	Photo I.D. card with monthly Lifeline Pass sticker attached	HSA Eligibility Workers at HSA office	HSA, SFMTA Customer Service Office, and vendors throughout San Francisco	\$375,000
Option 3 – Eligibility verification at HSA and sales at SFMTA & other locations	Photo I.D. card with monthly Lifeline Pass sticker attached	HSA Eligibility Workers at HSA Office	SFMTA Customer Service Office, and vendors throughout San Francisco (not available at HSA)	\$250,000

Possible changes to pass sales and distribution (Options 2 & 3)

- Eligible customers would apply for a photo ID card valid for one year at HSA. Eligibility would take place throughout the year.
- Customers would purchase a Lifeline Pass sticker each month that they would affix to the card.
- Stickers would be available at HSA’s office and at most vendors within SFMTA’s existing network of pass sales outlets throughout San Francisco (e.g., Safeway, Walgreens). Customers could purchase the pass using different payment methods such as credit and debit cards as well as cash.

2) Projected SFMTA Administrative Costs

Option	Description	SFMTA Administrative Cost
Option 1 – Status Quo	<ul style="list-style-type: none"> • Staffing to manage the program • Sales staff at the SFMTA Customer Service Office 	\$250,000 annually*
Option 2 – Eligibility verification and sales at HSA, SFMTA & other locations and Option 3 – Eligibility verification at HSA and sales at SFMTA & other locations	<ul style="list-style-type: none"> • Staffing to initiate and manage the program • Photo ID cards, stickers and photo equipment • Marketing • Sales staff at the SFMTA Customer Service Office 	\$450,000 annually* + \$330,000 one-time startup costs

* Plus inflation after the first year

Projected Total Administrative Costs – HSA and SFMTA

Option	Year 1	Year 2	Year 3	Three-Year Total
Option 1 – Status Quo	\$520,000	\$535,000	\$550,000	\$1,605,000
Option 2 – Eligibility verification at HSA and sales at HSA, SFMTA & other locations	\$1,160,000	\$850,000	\$880,000	\$2,880,000
Option 3 – Eligibility verification at HSA and sales at SFMTA & other locations	\$1,030,000	\$720,000	\$740,000	\$2,490,000

MTC Lifeline Transportation Program Grant

- Up to \$11 million of MTC Lifeline Transportation Program funding is available over 3 years, contingent upon State budget approval
- SFMTA has applied for a \$1.69 million grant
- The San Francisco County Transportation Authority (SFCTA) is currently evaluating other grant applications from the SFMTA, BART and Golden Gate Transit
- A decision about the one-time grant request is anticipated by November

IV. Pricing:

Table 1: Peer Monthly Pass Prices

City	Price
San Francisco (Lifeline Pass)	\$ 35.00
San Francisco (Fast Pass)	\$ 45.00
Atlanta	\$ 52.50
Boston	\$ 59.00
Denver	\$ 60.00
Los Angeles	\$ 62.00
Seattle	\$ 63.00
San Diego	\$ 64.00
Chicago	\$ 75.00
Portland	\$ 75.00
Philadelphia	\$ 78.00
New York	\$ 81.00

- SFMTA's low-income Lifeline Pass is unique among large transit systems in the United States.
- The Adult Fast Pass is priced lower than other transit passes in the United States

Table 2: Peer Monthly Pass Prices - Adjusted for Cost of Living Differences

City	Price
San Francisco (Lifeline Pass)	\$ 35.00
San Francisco (Fast Pass)	\$ 45.00
New York	\$ 67.60
Los Angeles	\$ 71.68
Boston	\$ 76.34
San Diego	\$ 80.34
Seattle	\$ 94.02
Atlanta	\$ 95.60
Denver	\$ 102.61
Chicago	\$ 103.23
Philadelphia	\$ 116.02
Portland	\$ 119.70

Source: ACCRA Cost of Living Index for cost of living adjustment.

- When cost of living differences are taken into consideration, Muni's Lifeline Pass (and the Adult Fast Pass) is priced lower relative to other metropolitan areas.
- Transit advocates have pointed to the fact that since non-transit expenditures consume a large portion of household earnings in San Francisco, relatively little income is left to pay for transit.

Table 3: Historical Pass Prices

Year	Monthly pass price for low-income individuals	Inflation-Adjusted 1988 Pass Price	Notes
1988	\$ 28.00	\$ 28.00	
1989	\$ 28.00	\$ 29.78	
1990	\$ 28.00	\$ 31.56	
1991	\$ 30.00	\$ 32.69	
1992	\$ 32.00	\$ 33.77	
1993	\$ 35.00	\$ 34.32	
1994	\$ 35.00	\$ 34.40	
1995	\$ 35.00	\$ 34.95	
1996	\$ 35.00	\$ 35.80	
1997	\$ 35.00	\$ 36.53	
1998	\$ 35.00	\$ 37.16	
1999	\$ 35.00	\$ 38.71	
2000	\$ 35.00	\$ 40.07	
2001	\$ 35.00	\$ 40.70	
2002	\$ 35.00	\$ 40.62	
2003	\$ 45.00	\$ 41.97	
2004	\$ 45.00	\$ 43.66	
2005	\$ 35.00	\$ 45.09	Lifeline Pass created
2006	\$ 35.00	\$ 46.44	
2007	\$ 35.00	\$ 48.21	
2008	\$ 35.00	\$ 50.73	

- Low-income individuals pay a \$35 monthly fare, the same as in 1993 prior to the creation of the Lifeline Pass. Adjusted for inflation, this is equivalent to a price decrease of 30%.
- If the pass price for low-income individuals had been subject to inflation increases, the price would be about \$50 per month.

Table 4: Number of Work Hours at Minimum Wage Equivalent to the Price of a Muni Pass

Year	# Hours	Notes
1988	6.6	
1989	6.6	
1990	6.6	
1991	7.1	
1992	7.5	
1993	8.2	
1994	8.2	
1995	8.2	
1996	7.4	
1997	7.0	
1998	6.1	
1999	6.1	
2000	6.1	
2001	5.6	
2002	5.2	
2003	6.7	
2004	5.3	SF Minimum Wage Ordinance
2005	4.1	Lifeline Pass created
2006	4.0	
2007	3.8	
2008	3.7	

- A full-time minimum wage employee in San Francisco is currently eligible for the Lifeline Pass.
- In the mid-1990s, the cost of a Muni Adult Fast Pass exceeded minimum wage income from a full 8-hour workday. Currently, a \$35 Lifeline Pass is less than 4 hours of minimum wage income and the regular \$45 Adult Fast Pass is less than 5 hours of minimum wage income.
- Purchasing a Lifeline Pass costs 2.2 percent of earnings for a full-time minimum wage worker

Table 5: Estimated Financial Impacts of Lifeline Pass Changes (200% of Federal Poverty Level Eligibility)

Lifeline Pass Price	Current (with \$45 Fast Pass)	\$35 (with \$55 Fast Pass)	\$30 (with \$55 Fast Pass)	\$25 (with \$55 Fast Pass)	\$20 (with \$55 Fast Pass)
Administration	-\$ 501,596	-\$ 683,476	-\$ 697,776	-\$ 712,076	-\$ 726,376
Net Fare Revenue Loss	-\$ 720,000	-\$ 1,815,000	-\$ 3,168,000	-\$ 4,785,000	-\$ 6,666,000
Cost of Adding Service Capacity	\$ -	-\$ 3,526,222	-\$ 4,057,570	-\$ 4,588,919	-\$ 5,120,267
Total	-\$ 1,221,596	-\$ 6,024,698	-\$ 7,923,346	-\$10,085,995	-\$12,512,643

Assumptions

- Of new Lifeline Pass sales, 75% will be former customers who purchased the Adult Fast Pass while 25% will be new customers
- Additional peak vehicles will need to be added to Muni's fleet to accommodate new customers (approximately 1 vehicle per 822 new weekday boardings) at an operating cost of about \$305,000 per year
- No off-peak service would be added
- Lifeline Pass penetration among eligible San Francisco residents would roughly double from 7% to 15% with the expansion of pass sales to SFMTA's network of vendors throughout San Francisco
- For every \$1 additional discount relative to the cost of the Adult Fast Pass, Lifeline Pass penetration among eligible residents would increase by ½%.

Expanding sales locations and lowering the Lifeline Pass price would provide further discounts to existing Muni riders (estimated to be 75% of pass users) and attract new riders (25% of pass users)

Financial impacts include:

- Lower net pass revenues \$1.8 to \$6.7 million annually, depending on the Lifeline Pass price) due to the lower pass price, offset by new ridership and pass sales
- Increased operating costs to provide service for new riders \$3.5 to \$5.7 million annually)

V. Eligibility – Compared to other low-income programs

Persons in Family or Household	Federal Poverty Level - 48 Contiguous States and D.C.	SFMTA Lifeline Pass 200% of Federal Poverty Level)	Food Stamps 130% of Federal Poverty Level)	Universal LifeLine Telephone Service
1	\$ 10,400	\$ 20,800	\$ 13,520	\$ 22,900
2	\$ 14,000	\$ 28,000	\$ 18,200	\$ 22,900
3	\$ 17,600	\$ 35,200	\$ 22,880	\$ 26,900
4	\$ 21,200	\$ 42,400	\$ 27,560	\$ 32,400
5	\$ 24,800	\$ 49,600	\$ 32,240	\$ 37,900
6	\$ 28,400	\$ 56,800	\$ 36,920	\$ 43,400
7	\$ 32,000	\$ 64,000	\$ 41,600	\$ 48,900
8	\$ 35,600	\$ 71,200	\$ 46,280	\$ 54,400
For each additional person, add	\$ 3,600	\$ 7,200	\$ 4,680	\$ 5,500

- At 200% of the Federal Poverty Level, the Lifeline Pass eligibility standard is consistent with the most inclusive of the assistance programs administered by HSA
- The 200% level was recommended by HSA to hold down administrative costs by incorporating this program into its existing verification process
- A person who is eligible for any HSA assistance program is also eligible to purchase the Lifeline Pass
- More people are eligible than for Food Stamps (130% of Federal Poverty Level), CalWORKS (approximately 125% of Federal Poverty Level), or the California Universal LifeLine Telephone Service.
- No phase-out of Lifeline Pass benefits, unlike certain federal and state welfare programs

VI. Eligibility

Estimated Financial Impacts of Changing the Lifeline Pass Eligibility from 200% to 300% of Federal Poverty Level

	\$35.00 Lifeline Pass Price	\$30.00 Lifeline Pass Price	\$25.00 Lifeline Pass Price	\$20.00 Lifeline Pass Price
Net Fare Revenue Loss	-\$ 3,230,220	-\$ 4,308,998	-\$ 5,537,776	-\$ 6,916,553
Additional HSA Administrative Cost	-\$ 10,000,000	-\$ 10,000,000	-\$ 10,000,000	-\$ 10,000,000
Total Added SFMTA Operating Costs	-\$ 13,230,220	-\$ 14,308,998	-\$ 15,537,776	-\$ 16,916,553

- Increasing eligibility from 200% to 300% of Federal Poverty Level would result in about 50,000 more eligible residents
- A \$55 Adult Fast Pass would amount to 2.1% to 3.2% of total earnings in this income bracket.
- If the Lifeline Pass were frozen at \$35, there would be an annual net revenue loss of at least \$3 million increasing by more than \$1 million for every \$5 reduction in pass price
- A unique Lifeline Pass qualification standard (300% of Federal Poverty Level) would require HSA to establish a separate income eligibility unit and many more staffing hours
- HSA estimates administrative costs in the range of \$10 million annually

VII. Use on BART

Estimated Financial Impacts of Accepting the Lifeline Pass on BART within San Francisco (200% of Federal Poverty Level Eligibility)

	\$35.00 Lifeline Pass Price	\$30.00 Lifeline Pass Price	\$25.00 Lifeline Pass Price	\$20.00 Lifeline Pass Price
Added SFMTA Operating Costs	-\$ 1,895,731	-\$ 2,132,698	-\$ 2,369,664	-\$ 2,606,630

Assumptions:

- SFMTA must reimburse BART \$1.02 per trip taken
- Approximately 20% of Lifeline Pass customers would use BART on a regular basis
- 44 trips per month would be taken one round-trip per workday
- Assuming no changes to income eligibility, permitting BART rides with the Lifeline Pass would result in financial impacts of at least \$1.9 million
- Additional costs and implementation time to make the Lifeline Pass compatible with BART fare equipment are undetermined
- BART’s willingness to consider honoring the Lifeline Pass is unknown

VIII. Ridership and Financial Impacts

Proposed Lifeline Pass Price	Penetration Rate (% of eligible residents buying pass)	Total Monthly Lifeline Passes Sold*	New Riders	No Service Added - Deficit	No Service Added – Incremental Deficit compared to status quo	Service Added for New Riders - Deficit	Service Added for New Riders – Incremental Deficit compared to status quo
\$35	20.0%	17,600	3,650	-\$2.5 million	-\$1.3 million	-\$6.0 million	-\$4.8 million
\$30	22.5%	19,800	4,200	-\$3.9 million	-\$2.6 million	-\$7.9 million	-\$6.7 million
\$25	25.0%	22,000	4,750	-\$5.5 million	-\$4.3 million	-\$10.1 million	-\$8.9 million
\$20	27.5%	24,200	5,300	-\$7.4 million	-\$6.2 million	-\$12.5 million	-\$11.2 million

* Currently, 3,000 passes are sold monthly and 3,000 are purchased by HSA and distributed to clients for free

Model Assumptions

- HSA verifies client eligibility and issues an ID card for individuals earning 200% of Federal Poverty Level or less. Monthly Lifeline Pass stickers valid on Muni vehicles are sold at the SFMTA Customer Service Office and at pass vendors citywide.
- The number of eligible San Francisco residents earning less than 200% of Federal Poverty Level is approximately 85,000 to 90,000 according to HSA estimates.
- The percentage of eligible residents purchasing the Lifeline Pass would roughly double from 7% to 15% with the implementation of the ID card and expansion of sales outlets. For every \$1 additional discount relative to the cost of the Adult Fast Pass, the Lifeline Pass penetration rate would increase by another ½%. About ¾ of total Lifeline Pass purchasers would be existing Muni patrons who currently buy the Adult Fast Pass and ¼ would be new riders.

IX. Funding Options:

Funding Option 1A: Raise Adult Fast Pass prices, No added service for new riders:

- In July 2009, Adult Fast Pass prices will increase from \$45 to \$55 and Discount Passes will increase from \$10 to \$15.
- If no changes are made to Discount Pass prices, then Adult Fast Pass prices may need to be raised to \$61.
- If the Adult Fast Pass price is raised, there may be additional impacts to ridership and revenue.

Scenario 1A: No service is added to accommodate new Lifeline Pass customers 25% of total

Proposed Lifeline Pass Price	Estimated Deficit millions	Incremental Estimated Deficit* millions	Proposed Adult Fast Pass Price	Change from Present Price
\$35	-\$2.5 M	-\$1.3 M	\$56	+\$11
\$30	-\$3.9 M	-\$2.6 M	\$57	+\$12
\$25	-\$5.5 M	-\$4.3 M	\$59	+\$14
\$20	-\$7.4 M	-\$6.2 M	\$61	+\$16

* Compared to status quo

Funding Option 1B: Raise Adult Fast Pass prices, Add service for new riders

- If new service is added to accommodate projected ridership increases due to Lifeline Pass Program changes, then Adult Fast Pass prices may need to be raised to \$66
- If the Adult Fast Pass price is raised, there may be additional impacts to ridership and revenue

Scenario 1B: Service is added to accommodate new Lifeline Pass customers 25% of total

Proposed Lifeline Pass Price	Estimated Deficit millions	Incremental Estimated Deficit* millions	Proposed Adult Fast Pass Price	Change from Present Price
\$35	-\$6.0 M	-\$4.8 M	\$59	+\$14
\$30	-\$7.9 M	-\$6.7 M	\$61	+\$16
\$25	-\$10.1 M	-\$8.9 M	\$63	+\$18
\$20	-\$12.5 M	-\$11.2 M	\$66	+\$21

* Compared to status quo

Funding Option 2A: Raise Adult and Discount Pass prices, No added service for new riders

- Alternatively, all pass prices could be increased to fund changes to the price and sales distribution of the Lifeline Pass. With no added service to accommodate new riders, Discount Pass prices may need to be raised to \$20 and Adult Fast Pass prices may need to be raised to \$58.
- If these prices are raised, there may be additional impacts to ridership and revenue

Scenario 2A: No service is added to accommodate new Lifeline Pass customers 25% of total

Proposed Lifeline Pass Price	Estimated Deficit millions	Incremental Estimated Deficit* millions	Proposed Adult Fast Pass Price	Change from Present Price	Proposed Discount Pass Price	Change from Present Price
\$35	-\$2.5 M	-\$1.3 M	\$56	+\$11	\$16	+\$6
\$30	-\$3.9 M	-\$2.6 M	\$56	+\$11	\$17	+\$7
\$25	-\$5.5 M	-\$4.3 M	\$57	+\$12	\$18	+\$8
\$20	-\$7.4 M	-\$6.2 M	\$58	+\$13	\$20	+\$10

* Compared to status quo

Funding Option 2B: Raise Adult and Discount Pass prices, Add service for new riders

- If new service is added to accommodate projected ridership increases due to Lifeline Pass Program changes. Discount Pass prices may need to be raised to \$20. Adult Fast Pass prices may need to be raised to \$63.
- If these prices are raised, there may be additional impacts to ridership and revenue

Scenario 2B: Service is added to accommodate new Lifeline Pass customers (25% of total)

Proposed Lifeline Pass Price	Estimated Deficit millions	Incremental Estimated Deficit* millions	Proposed Adult Fast Pass Price	Change from Present Price	Proposed Discount Pass Price	Change from Present Price
\$35	-\$6.0 M	-\$4.8 M	\$58	+\$13	\$16	+\$7
\$30	-\$7.9 M	-\$6.7 M	\$60	+\$15	\$18	+\$8
\$25	-\$10.1 M	-\$8.9 M	\$61	+\$16	\$19	+\$9
\$20	-\$12.5 M	-\$11.2 M	\$63	+\$18	\$20	+\$10

* Compared to status quo

Funding Option 3A: Raise Parking Rates and All Fast Pass Prices, No added service for new riders

As a third option, all Fast Pass prices and parking meter rates could be increased to fund changes to the price and sales distribution of the Lifeline Pass. With no added service to accommodate new riders:

- Parking meter rates may need to increase by 25¢ per hour \$1.75-\$3.25 instead of \$1.50-\$3.00 per hour
- Discount Pass prices may need to be raised to \$16
- Adult Fast Pass prices may need to be raised to \$58

Scenario 3A: No service is added to accommodate new Lifeline Pass customers 25% of total

Proposed Lifeline Pass Price	Estimated Deficit millions	Incremental Estimated Deficit* millions	Proposed Parking Rate Increase	Proposed Adult Fast Pass Price	Change from Present Price	Proposed Discount Pass Price	Change from Present Price
\$35	-\$2.5 M	-\$1.3 M	25¢/hour	\$55	+\$10	\$15	+\$5
\$30	-\$3.9 M	-\$2.6 M	25¢/hour	\$55	+\$10	\$15	+\$5
\$25	-\$5.5 M	-\$4.3 M	25¢/hour	\$57	+\$12	\$16	+\$6
\$20	-\$7.4 M	-\$6.2 M	25¢/hour	\$58	+\$13	\$16	+\$6

* Compared to status quo

Funding Option 3B: Raise Parking Rates and All Fast Pass Prices, Add service for new riders

If service is added to accommodate new riders:

- Parking meter rates may need to increase by 25¢ per hour \$1.75-\$3.25 instead of \$1.50-\$3.00 per hour
- Discount Pass prices may need to be raised to \$20, depending on the scenario
- Adult Fast Pass prices may need to be raised to \$61

Proposed Lifeline Pass Price	Estimated Deficit millions	Incremental Estimated Deficit* millions	Proposed Parking Rate Increase	Proposed Adult Fast Pass Price	Change from Present Price	Proposed Discount Pass Price	Change from Present Price
\$35	-\$6.0 M	-\$4.8 M	25¢/hour	\$56	+\$11	\$17	+\$7
\$30	-\$7.9 M	-\$6.7 M	25¢/hour	\$58	+\$13	\$18	+\$8
\$25	-\$10.1 M	-\$8.9 M	25¢/hour	\$59	+\$14	\$19	+\$9
\$20	-\$12.5 M	-\$11.2 M	25¢/hour	\$61	+\$16	\$20	+\$10

* Compared to status quo

Funding Option 4: Revenue Panel Recommendations

Funding may include sources being considered by the Revenue Panel, including:

- Hotel Tax
- Sales Tax
- Motor Vehicle License Fee
- Impact Fee/Assessment District

X. Projected Implementation Timeline

Task	Estimated Lead Time
Obtain SFMTA Board approval for implementation of changes to the Lifeline Pass and potentially transit fares and parking rates	6 months
Notify external and internal stakeholders	6 months
Design and order ID cards and stickers	6 months
Community meetings	3 months
Web site update	3 months
Staff training	2 months
Public information distribution	2 months
Estimated Total Lead Time for Implementation	6 months

XI. Financial Model Assumptions (For reference only)

- The annual administrative cost of the program is at least \$700,000, depending on the number of ID cards issued and passes sold. Administrative costs consist of the following:
 - HSA costs (most economical option): \$250,000
 - SFMTA costs (includes Finance staff, sales and sales supervision staff, overhead and materials): \$450,000 annually plus \$330,000 in one-time costs
- The Adult Fast Pass price will be raised from \$45 to \$55 in July 2009, an increase of 22%. As a result of the fare increase, Adult Fast Pass sales will decrease by 2.7% (an assumed elasticity of -0.12) as some people will elect to stop riding Muni.
- The number of eligible San Francisco residents earning less than 200% of Federal Poverty Level is approximately 88,000. This figure was provided by HSA. Roughly 67,000 residents are currently in HSA's client database.
- The percentage of eligible residents purchasing the Lifeline Pass would roughly double from 7% to 15% with the implementation of the ID card and expansion of sales outlets. For every \$1 additional discount relative to the cost of the Adult Fast Pass, the Lifeline Pass penetration rate would increase by another ½%. (By comparison, the Adult Fast Pass penetration rate is approximately 25%.)
- For every \$1 additional discount relative to the cost of the Adult Fast Pass, Lifeline Pass penetration among eligible residents would increase by another ½%.
- Approximately ¾ of total Lifeline Pass purchasers would be existing Muni patrons who currently buy the Adult Fast Pass and ¼ would be new riders.
- Each new customer is expected to ride Muni approximately 65 times per month. It is assumed that each person would ride 22 days per month, twice per day (once in each direction). According to market research performed for SFMTA's Transit Effectiveness Project, approximately 31% of all trips involve a transfer and 11-13% involve two or more transfers. The following formula was used to calculate the average number of trips per pass: 22 days per month * 2 trips per day * [1 initial ride + 31% * 1 transfer in each direction * 2 trips per day + 12% * 2 transfers in each direction] = 65 trips per month.
- To accommodate additional customers, more vehicles would have to be added in service to reduce overcrowding. In FY 2007, 15% of Muni routes exceeded desired peak period load factors (more than 85% of seated and standing capacity). Many potential Lifeline Pass customers live along routes that are already at or near capacity during a portion of the day (e.g., 9 San Bruno, 14 Mission, 30 Stockton, 38 Geary, 49 Van Ness-Mission, L Taraval, N Judah). The model assumes that each new Lifeline Pass customer would take approximately 60 trips per month, or twice a day.
- Service capacity would need to be expanded by one new vehicle per 822 new daily rides. This is based on the average weekday ridership per peak bus (motor coach or trolley coach).
- Each peak vehicle costs approximately \$305,000 per year to operate for 6 hours per day. It is assumed that additional off-peak ridership generated by the Lifeline Pass would not require more service hours because off-peak vehicles typically have some passenger capacity. As this is not always the case, this cost estimate may actually understate the true cost of adding capacity.
- No capital costs were estimated to procure additional peak vehicles that may be required to accommodate Lifeline Pass customers.

THIS PRINT COVERS CALENDAR ITEM NO. : 13

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Approving procedures for appeals to the SFMTA Board of Directors of SFMTA staff determinations of the Transit Impact Development Fee ("TIDF") in accordance with the provisions of Section 38.5 of the San Francisco Administrative Code.

SUMMARY:

- The original TIDF ordinance went into effect in 1981 with the intent to mitigate the burden of new office developments in downtown San Francisco on the transit services provided by the City and County of San Francisco. In 2004, the ordinance was substantially amended to expand its scope to include most new commercial development throughout the City.
- Under the TIDF ordinance, the SFMTA must provide feepayers with an opportunity to appeal to the SFMTA Board of Directors the Agency's determination of the TIDF due. SFMTA has not promulgated appeal procedures since the 2004 revision and expansion of the TIDF ordinance.
- The SFMTA has a pending appeal relating to one TIDF determination. This appeal will be scheduled for hearing by the SFMTA Board of Directors following approval of the procedures.

ENCLOSURES:

1. SFMTAB Resolution
2. Transit Impact Development Fee ("TIDF") and Office Space Development Fee ("OSDF") Appeal Procedures

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO Jay De Los Reyes, SFMTA Real Estate

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

To establish appeal procedures for fee payers seeking to appeal to the SFMTA Board of Directors the SFMTA's determination of the TIDF.

GOAL

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

- Goal 4.2 – Ensure efficient and effective use of resources.

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

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

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

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

DESCRIPTION

The original TIDF ordinance went into effect in 1981 with the intent to mitigate the burden of new office developments in downtown San Francisco on the transit services provided by the City and County of San Francisco. In 2004, the ordinance was substantially amended to expand its scope to include most new commercial development throughout the City. The fee is based on the square footage and uses of the development and thus amount of the fee varies for each project.

Since its inception, the TIDF ordinance has authorized an appeal of the staff determination of the TIDF to the SFMTA Board or Directors or its predecessors. No procedures for such an appeal have been developed since the creation of the SFMTA and the 2004 revision and expansion of the ordinance. With more new developments and Project Sponsors being subject to the TIDF ordinance due to the 2004 amendments, the need for current procedures has significantly increased.

The SFMTA has received an appeal relating to one TIDF determination. This appeal will be scheduled for hearing by the SFMTA Board of Directors following approval of the procedures.

The proposed Transit Impact Development Fee ("TIDF") and Office Space Development Fee ("OSDF") Appeal Procedures are attached as Enclosure 2.

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ALTERNATIVES CONSIDERED

Under §§ 38.3-1 or 38.5 of the San Francisco Administrative Code, a Sponsor of a development project subject to the TIDF or OSDF may appeal to the Board the determination made by the Director of Transportation ("Director") of the TIDF or OSDF due for the project.

The Transit Impact Development Fee ("TIDF") and Office Space Development Fee ("OSDF") Appeal Procedures proposed by staff ensure a fair hearing to property owners and project sponsors, while also ensuring prompt and efficient Board review.

FUNDING IMPACT

Approval of the appeal procedures has no immediate funding impact.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The appeal procedures were developed by the City's Attorney's Office with assistance from SFMTA Finance and Information Technology staff. The City Attorney's Office has reviewed this calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board approves the proposed Transit Impact Development Fee ("TIDF") and Office Space Development Fee ("OSDF") Appeal Procedures.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Chapter 38 of the San Francisco Administrative, requires the SFMTA to determine and collect a Transit Impact Development Fee ("TIDF") to mitigate the impact of new non-residential development on transit services in the City and County of San Francisco and to provide feepayers with an opportunity to appeal the Agency's determination of the TIDF due to the SFMTA Board of Directors; and

WHEREAS, The TIDF ordinance was substantially revised and expanded in 2004; and

WHEREAS, SFMTA has not promulgated TIDF appeal procedures since passage of the 2004 revisions; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors hereby adopts the proposed Transit Impact Development Fee ("TIDF") and Office Space Development Fee ("OSDF") Appeal Procedures.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2

Transit Impact Development Fee ("TIDF") and Office Space Development Fee ("OSDF") Appeal Procedures

- a) **Definitions.** Capitalized terms used in these procedures shall have the same meaning given in §38.1 of the San Francisco Administrative Code, except that the term "Board" when used in these procedures shall mean the Board of Directors of the San Francisco Municipal Transportation Agency ("SFMTA").
- b) **Appeal Authorized.** A Sponsor of a development project subject to the TIDF or OSDF may appeal to the Board the determination made by the Executive Director/CEO of SFMTA ("Executive Director/CEO") of the TIDF or OSDF due for the project under §§ 38.3-1 or 38.5 of the San Francisco Administrative Code ("Administrative Code"). An appeal must be submitted in writing and filed with the SFMTA Board in care of the Board Secretary at One South Van Ness Street, 7th Floor, San Francisco, CA 94103, with concurrent service on the Director in accordance with paragraph (1) of these procedures.
- c) **Time for Appeal.** The Sponsor's appeal must be filed with the Board within the time period specified for appeal in §38.5 of the Administrative Code. If no appeal is filed with the Board within this time period, the Executive Director/CEO's determination of the TIDF or OSDF amount due shall become binding on the Sponsor pursuant to § 38.5 of the Administrative Code.
- d) **Basis for Appeal.** The appeal shall specify the Sponsor's grounds for appeal, state any facts in support of the appeal, and attach a copy of the Executive Director/CEO's determination being appealed. Permissible grounds for appeal include, but are not limited to, challenges to the Executive Director/CEO's determination of: (1) the number of Gross Square Feet of Use subject to the TIDF as described in § 38.5 of the Administrative Code, or gross square feet of office use subject to the OSDF as described in § 38.3-1 of the Administrative Code; (2) the Economic Activity Category or Categories applied (as described in § 38.4 of the Administrative Code); or (3) any credit for prior uses eliminated (as described in § 38.6 of the Administrative Code).
- e) **Response by Executive Director/CEO.** The Executive Director/CEO shall file a written response to the Sponsor's appeal. For any such appeal filed after adoption of these procedures, the Executive Director/CEO's response shall be filed with the Board and concurrently served on the Sponsor, within 30 calendar days of the date the Sponsor's appeal was filed and served.
- f) **Rebuttal by Sponsor.** The Sponsor may submit written rebuttal to the Executive Director/CEO's response. Any rebuttal must be filed with the SFMTA Board and concurrently served on the Director, within 15 calendar days of the date the Director's response was filed and served.

- g) **Agreement to Shorten Time.** The Executive Director/CEO and the Sponsor may agree in writing to shorten either the time period for filing either the Executive Director/CEO's response under paragraph (e), the Sponsor's rebuttal under paragraph (f), or both.
- h) **Ex Parte Communications Prohibited.** An "ex parte communication" is any communication regarding any aspect of an appeal under these procedures between a party to the appeal or any representative of a party, and any individual Board member, the Board as a whole, the Board Secretary or counsel, or a hearing officer if designated in accordance with paragraph (i)(2), where the other party to the case is not included in the communication. All ex parte communications, by any means, including but not limited to, by telephone, email, in person, or written correspondence, are prohibited.

The prohibition on ex parte communications does not prohibit communications where all parties to the case are included in the communication. In addition, a party or a party's representative may have ex parte communications about the case with the Board Secretary or the Board's counsel, provided that the communication is limited solely to procedural matters.

- i) **Board Review.** (1) The Board shall review and consider the Sponsor's appeal at a regularly scheduled Board meeting within 45 days of the deadline for filing the Sponsor's rebuttal, regardless of whether a rebuttal is actually filed. If no regularly scheduled Board meeting occurs within this time period, the appeal shall be heard at the next such meeting of the Board. The Board's review shall be a *de novo* review and shall be based on the record consisting of the Sponsor's appeal, the Executive Director/CEO's response, any rebuttal from the Sponsor, and any oral comments received from the parties on this matter at the Board meeting. The Board Chairman may set a time limit for comments. In addition, Board members may ask questions of the parties.
- (2) As an alternative to the procedure for Board review set forth in paragraph (1), the Board Chairman may delegate to a hearing officer the duty to conduct a hearing to hear and receive evidence and argument from the parties, compile a record and make findings and a recommendation to the full Board. Such hearing shall be held within 45 days of the deadline for filing the Sponsor's rebuttal, regardless of whether a rebuttal is actually filed. The hearing officer may be either a member of the Board, or a qualified individual who is not an employee of the SFMTA. The hearing officer's recommendation shall be based on the Sponsor's appeal, the Executive Director/CEO's response, any rebuttal from the Sponsor, and any oral comments received from the parties at the hearing. The hearing officer shall make a recommendation to affirm, reverse or modify the Executive Director/CEO's determination. Following completion of this hearing, the Board Secretary shall submit the record of the proceedings, including the evidence considered by the hearing officer, and the hearing officer's findings and recommendation, to each Board Member.
- j) **Board Decision; Finality.** Where the Board has heard a direct review of the appeal under (i)(1), the Board shall deliberate and reach a decision based on the record described in paragraph (i) of these procedures. Where the Board has delegated the duty to compile an administrative hearing record under (i)(2), the Board members shall, after reviewing the

record of the proceedings before the hearing officer deliberate and reach a decision based on the record described in paragraph (i)(2). The Board shall issue a written decision stating the basis for the Board's decision and specifying the fee amount, if any, that the Board determines is owed by the Sponsor. For purposes of § 38.5 of the Administrative Code, the Board's decision under this paragraph shall constitute the SFMTA's final determination of the TIDF or OSDF due for the project. Where the Board has heard a direct review of the appeal under (i)(1), the Board shall issue its written decision within 60 days of the date on which the hearing on the appeal is closed. Where the Board has delegated the duty to compile an administrative hearing record under (i)(2), the Board shall issue its written decision within 60 days of the date on which the Board completes its deliberations.

- k) **Service of the Board Decision.** The Board shall serve its decision under paragraph (j) of these procedures on the Sponsor and the Executive Director/CEO within three business days following the issuance of the Board's written decision. In addition, the Board shall provide a copy of its decision to the Department of Building Inspection and the Treasurer within three business days following the issuance of the Board's written decision.

- l) **Filing and Service Requirements.** The parties shall file or submit any correspondence, pleading or other material for the SFMTA Board in care of the Board Secretary, One South Van Ness Avenue, 7th Floor, San Francisco, California, 94103. The parties may file or submit materials via hand delivery, email, facsimile, overnight delivery, or registered U.S. Mail, except that the initial appeal by the Sponsor must be served on the Board Secretary by hand delivery, overnight delivery, or registered U.S. Mail. When a party files or submits any correspondence, pleading or other material to the Board, the party shall concurrently submit the correspondence, pleading or other material to the other party or, if known, to that party's representative, using a method that ensures delivery on the same date as delivery to the Board. An item is "filed" or "submitted" when received by the Board Secretary.

THIS PRINT COVERS CALENDAR ITEM NO. : _____

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Administration Division

BRIEF DESCRIPTION:

Presentation of the FY08 Q4 and Year End Service Standards Report.

SUMMARY:

- Schedule adherence (A1) went from 70.8% in FY07 to 70.6% in FY08.
- Scheduled service hours delivered (A2) increased from 94.3% in FY07 to 95.9% in FY08.
- The unscheduled absence rate for transit operators (A6) went from 10.9% in FY07 to 11.0% in FY08.
- Color curb applications reviewed and responded to within 30 days (A10) decreased from 72% in FY07 to 33% in FY08.
- Hazardous traffic signal reports responded to and repaired within two hours (A13) increased from 91% in FY07 to 96% in FY08.
- Operator complaints resolved within 30 days (C2) decreased from 68% in FY07 to 48% in FY08.
- Administrative citation hearing customers served within 10 minutes (C8) increased from 68% in FY07 to 88% in FY08.

ENCLOSURES:

1. FY08 Year-End Service Standards Report
2. FY08 Year-End Service Standards Appendix

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO _____ N/A

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

In accordance with Charter Section 8A.103, the San Francisco Municipal Transportation Agency (SFMTA) tracks, monitors, and reports on over 35 service standards for system reliability and performance, staffing performance and customer service on a quarterly basis.

Results are presented in two documents: the *Service Standards Report*, which presents results in a graphical format, and the *Service Standards Appendix* which contains detailed current and historical data previously contained in the main report.

GOAL

The Service Standards Program supports a number of the Agency's strategic goals, including:

GOAL 2: To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy.

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

GOAL 4: To ensure financial stability and effective resource utilization.

Objective 4.1 Ensure efficient and effective use of resources.

GOAL 5: To provide a flexible, supportive work environment and develop a workforce that takes pride and ownership of the Agency's mission and vision and leads the agency into an evolving, technology-driven future.

Objective 5.1 Increase resources available for employees in performing their jobs.

Objective 5.3 Improve internal communication and employee satisfaction.

GOAL 6: To improve service and efficiency, the SFMTA must leverage technology.

Objective 6.1 Identify, develop, and deliver the new and enhanced systems and technologies required to support SFMTA's 2012 goals.

DESCRIPTION

Key results for Q4 FY08 (April – June 2008) and FY08 (July 2007 –June 2008) are as follows:

Schedule adherence (A1) improved for the second consecutive quarter, rising from 70.5% in Q3 FY08 to 71.4% in Q4 FY08. On a year over year basis, schedule adherence dipped slightly from 70.8% in FY07 to 70.6% in FY08. The goal is 85%.

Scheduled service hours delivered (A2) increased from 96.0% in Q3 FY08 to 96.6% in Q4 FY08. On an annual basis, performance improved for the third consecutive year. Scheduled service hours delivered rose from 94.3% in FY07 to 95.9% in FY08. The goal is 98.5%.

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The unscheduled absence rate for transit operators (A6) fell slightly last quarter, decreasing from 11.3% in Q3 FY08 to 11.0% in Q4 FY08. On a year over year basis, operator absenteeism increased from 10.9% to 11.0%. The goal for FY08 was 10.7%.

Color curb applications reviewed and responded to within 30 days (A10) decreased to 16% in Q4 FY08 from 41% in Q3 FY08. While the resolution rate remains below the goal of 90%, staff have achieved significant progress in clearing the backlog of applications. The pending hire of a survey technician will facilitate a return to peak performance in this area.

Hazardous traffic signal reports responded to and repaired within two hours (A13) reached an all time high of 98% in Q4 FY08. Annual performance also reached an all time high. The resolution rate increased from 91% in FY07 to 96% in FY08. The goal is 92%.

Operator complaints resolved within 30 days (C2) increased from 15% in Q3 FY08 to 29% in Q4 FY08, but fell on an annual basis from 68% in FY07 to 48% in FY08. The goal is 75%. Cross-divisional efforts are underway to resolve residual technological challenges associated with the transition from the legacy AutoDispatch system to the Trapeze application. Significant improvement is anticipated in Q1 FY09.

Administrative citation hearing customers served within 10 minutes (C8) rose for the fifth consecutive quarter. Percent of customers served increased from 90% in Q3 FY08 to 91% in Q4 FY08. On an annual basis, performance jumped from 68% in FY07 to 88% in FY08. The goal is 80%.

ALTERNATIVES CONSIDERED

Not applicable. Regular reporting on the achievement of SFMTA Service Standards is required by Charter.

FUNDING IMPACT

Not applicable.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The CAC will review the report during its October meeting.

RECOMMENDATION

Receive the report.

THIS PRINT COVERS CALENDAR ITEM NO. : _____

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Administration

BRIEF DESCRIPTION:

Presentation and discussion of the key findings of the annual SFMTA customer survey and SFMTA employee survey.

SUMMARY:

- Presentation of annual results of the SFMTA customer survey and employee survey by pollster Jon Canapary of Corey Canapary & Galanis.
- Brief discussion of proposed enhancements of survey research efforts.

ENCLOSURES:

1. Executive Summary of customer survey and employee survey results.

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO Corey Marshall

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

To keep the SFMTA Board of Directors apprised of SFMTA public opinion research efforts and trends in employee satisfaction and public opinion related to SFMTA.

GOAL

The annual customer survey and employee survey address the following SFMTA Strategic Goals:

1. Goal 1: Customer Focus. To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy.
2. Goal 3: Community Relations. To improve the customer experience, community value and enhance the image of the SFMTA, as well as to ensure SFMTA is a leader in the industry.
3. Goal 5: SFMTA Workforce. To provide a flexible, supportive work environment and develop a workforce that takes pride and ownership of the agency's mission and vision and leads the agency into an evolving, technology-driven future.

DESCRIPTION

Proposition E mandates that the San Francisco Municipal Transportation Agency conduct annual surveys of its employees and riders, which are included in annual Service Standards reports. The attached executive summaries discuss the high level results of each survey. Corey, Canapary & Galanis Research principal Jon Canapary will provide an overview of results from each survey which were conducted as follows.

- The employee survey was a self-administered questionnaire completed by SFMTA employees. A total of 694 surveys were completed from December 2007 through February 2008.
- The customer survey was a telephone survey conducted among San Francisco residents who had used Muni in the previous 6 months. A total of 445 interviews were conducted in English, Spanish, and Cantonese from November 1 to November 16, 2007.

Improvements to the methodology and content of these surveys are currently under review by SFMTA External Affairs to enhance multi-lingual capabilities, increase survey response rates, and enable greater market segmentation for use in community outreach and marketing efforts.