

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.1**

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

**DIVISION:** Parking and Traffic Division

**BRIEF DESCRIPTION:** Approving traffic and parking modifications itemized below

**SUMMARY:**

- Before Proposition A, Stop signs and traffic items were approved by the Board of Supervisors. After Proposition A was passed, item A was returned by the Clerk of the Board to the SFMTA for approval.

**Benefit to the SFMTA 2008 – 2012 Strategic Plan:**

- Goal 1 – Customer Focus
  - 1.1 – Improve safety and security across all modes of transportation
- Goal 2 – Customer Focus
  - 2.4 – Reduce congestion through major corridors
  - 2.5 – Manage parking supply to align with SFMTA and community goals

**ENCLOSURES:**

1. MTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

PREPARING ITEM

EXECUTIVE DIRECTOR/CEO

SECRETARY

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ASSIGNED MTAB CALENDAR DATE: \_\_\_\_\_

**ITEMS:**

- RESCIND - RIGHT LANE MUST TURN RIGHT - The Embarcadero, westbound approach, from Powell Street to 170 feet easterly (to establish a streetcar-only lane). **PH: 2/1/08 Requested by: SFMTA**
- RESCIND - TOW-AWAY, NO STOPPING, 7 AM - 9 AM, MONDAY THROUGH FRIDAY - Oak Street, north side, from Laguna Street to Buchanan Street (one block) **PH: 2/1/08 Requested by: SFMTA**
- RESCIND - PERPENDICULAR (90-DEGREE ANGLE) PARKING AND ESTABLISH - DIAGONAL (45-DEGREE ANGLE) PARKING - Kansas Street, west side, from 26th Street to 133 feet northerly **PH: 2/1/08 Requested by: Residents**
- INSTALL - MEDIAN ISLAND - Kansas Street, north of 26th Street. **PH: 2/1/08 Requested by: SFMTA**
- ESTABLISH - PART-TIME BUS ZONE, 5 AM TO 7 PM, MONDAY THROUGH FRIDAY - Rivera Street, south side, from 46th Avenue to 98 feet westerly. **PH: 2/1/08 Requested by: SFMTA**
- ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "Z" (2-HOUR TIME LIMIT, 8 AM - 6 PM, MONDAY THROUGH FRIDAY) - 28th Street, both sides, between Church and Dolores Streets (100 block) **PH: 2/1/08 Requested by: Residents**
- RESCIND - MUNI BUS STOP (6:30 AM TO 6:30 PM, MONDAY THROUGH FRIDAY) AND ESTABLISH - MUNI BUS STOP (6 AM TO 7:30 PM, MONDAY THROUGH FRIDAY) - Kearny Street, east side, between Pacific Avenue and Nottingham Place. **PH: 2/1/08 Requested by: SFMTA**
- RESCIND - PART-TIME PASSENGER LOADING ZONE (6:30 PM TO 2 AM, EVERYDAY) - Kearny

Street, east side, from 11 feet south of Nottingham Place to 44 feet southerly. **PH: 2/1/08 Requested by: SFMTA**

- I. ESTABLISH - NO PARKING ANYTIME - Faxon Avenue and Southwood Drive, around the island; Powhattan Avenue, north side, between Gates and Folsom Streets; Powhattan Avenue, south side, between Folsom and Banks Streets; Powhattan Avenue, north side, between Banks and Prentiss Streets; Powhattan Avenue, north side, between Prentiss and Nevada Streets. **PH: 2/1/08 Requested by: Residents**

MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS  
CITY AND COUNTY OF SAN FRANCISCO  
RESOLUTION No. \_\_\_\_\_

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

- A. RESCIND - RIGHT LANE MUST TURN RIGHT - The Embarcadero, westbound approach, from Powell Street to 170 feet easterly (to establish a streetcar-only lane)
- B. RESCIND - TOW-AWAY, NO STOPPING, 7 AM - 9 AM, MONDAY THROUGH FRIDAY - Oak Street, north side, from Laguna Street to Buchanan Street (one block)
- C. RESCIND - PERPENDICULAR (90-DEGREE ANGLE) PARKING AND ESTABLISH - DIAGONAL (45-DEGREE ANGLE) PARKING - Kansas Street, west side, from 26th Street to 133 feet northerly
- D. INSTALL - MEDIAN ISLAND - Kansas Street, north of 26th Street.
- E. ESTABLISH - PART-TIME BUS ZONE, 5 AM TO 7 PM, MONDAY THROUGH FRIDAY - Rivera Street, south side, from 46th Avenue to 98 feet westerly.
- F. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "Z" (2-HOUR TIME LIMIT, 8 AM - 6 PM, MONDAY THROUGH FRIDAY) - 28th Street, both sides, between Church and Dolores Streets (100 block)
- G. RESCIND - MUNI BUS STOP (6:30 AM TO 6:30 PM, MONDAY THROUGH FRIDAY) AND ESTABLISH - MUNI BUS STOP (6 AM TO 7:30 PM, MONDAY THROUGH FRIDAY) - Kearny Street, east side, between Pacific Avenue and Nottingham Place
- H. RESCIND - PART-TIME PASSENGER LOADING ZONE (6:30 PM TO 2 AM, EVERYDAY) - Kearny Street, east side, from 11 feet south of Nottingham Place to 44 feet southerly
- I. ESTABLISH - NO PARKING ANYTIME - Faxon Avenue and Southwood Drive, around the island; Powhattan Avenue, north side, between Gates and Folsom Streets; Powhattan Avenue, south side, between Folsom and Banks Streets; Powhattan Avenue, north side, between Banks and Prentiss Streets; Powhattan Avenue, north side, between Prentiss and Nevada Streets.

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, Municipal Transportation Agency Board

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.2**

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

**DIVISION:** Parking and Traffic Division

**BRIEF DESCRIPTION:** Approving traffic modification itemized below

**SUMMARY:**

- Under Proposition A, the MTA Board of Directors has authority in adopting parking and traffic regulations changes

**Benefit to the SFMTA 2008 – 2012 Strategic Plan:**

- Goal 1 – Customer Focus
  - o 1.1 – Improve safety and security across all modes of transportation
- Goal 2 – Customer Focus
  - o 2.4 – Reduce congestion through major corridors
  - o 2.5 – Manage parking supply to align with SFMTA and community goals

**ENCLOSURES:**

- 1. MTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

PREPARING ITEM \_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO \_\_\_\_\_

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ASSIGNED MTAB CALENDAR DATE: \_\_\_\_\_

**ITEMS:**

- A. RESCIND – NO LEFT TURNS, 11 AM TO 7 PM, EVERYDAY – 25<sup>th</sup> Avenue, northbound, at Geary Boulevard (as part of proposal to reduce the number of lanes on 25<sup>th</sup> Avenue from 4 to 3 lanes) **Requested by SFMTA**

**EXPLANATION:**

25th Avenue between Fulton and Lake Streets is a 4-lane, secondary arterial that has travel lanes as narrow as nine feet. The lane widths force the #29 Muni buses to take up both of the travel lanes in order to maintain adequate clearance from parked vehicles. 85th percentile speeds are about 34 MPH on this street with a 25 MPH speed limit. In addition to concerns about speeding and narrow lanes, residents also have concerns about pedestrian safety and left turn movements.

After several meetings with the community, Supervisor McGoldrick and the SFMTA, a proposal was developed to convert 25th Avenue from four lanes (two in each direction) to three wider lanes (one in each direction with a

center turn lane). A computer model of this lane configuration found that none of the intersections' levels of service were below a 'C'. This project is categorically exempt.

This layout would do several things to improve 25th Avenue, including:

- Allowing the #29 Muni buses to travel in a lane of standard width
- Easing left turning movements by providing dedicated space for turning vehicles to wait
- Decreasing the likelihood of sideswipe collisions
- Allowing the most prudent driver to set the speed in the single through lane
- Discouraging vehicles from parking on the sidewalk to avoid sideswipes

The traffic alignment issue that was the reason for the current left turn restriction for 25<sup>th</sup> Avenue at Geary Boulevard will be removed as a part of this project, making the restriction unnecessary. The hope is to proceed with the re-stripping project as soon as possible and this legislation is a necessary piece that must be approved before proceeding with the project.

The majority of the proposal, rescinding pole stops and establishing bus zones, was unanimously supported by about 25 residents in attendance at a Parking and Traffic public hearing on November 30, 2007 and later approved at the SFMTA Board on February 5, 2008. The only remaining piece of this legislation package that needs approval is the traffic item, the repeal of the left turn restriction at Geary Boulevard. After the passage of Proposition A, traffic items are now approved by the SFMTA Board instead of the Board of Supervisors.

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

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

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

- A. RESCIND – NO LEFT TURNS, 11 AM TO 7 PM, EVERYDAY – 25<sup>th</sup> Avenue, northbound, at Geary Boulevard (as part of proposal to reduce the number of lanes on 25<sup>th</sup> Avenue from 4 to 3 lanes)

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, Municipal Transportation Agency Board

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

**DIVISION** Muni Service Delivery and Operations – Operation Engineering

**BRIEF DESCRIPTION:**

Authorizing the Executive Director/CEO to execute Master Agreements with Otis Elevator Company, Schindler Elevator Corporation, and KONE, Inc. for the maintenance of elevators and escalators in the Muni Metro System and at Muni Railway Facilities.

**SUMMARY:**

- Authorizing the Executive Director/CEO to execute Master Agreements for maintenance of elevators and escalators in the Muni Metro System and at Muni Railway Facilities.
- Pursuant to Chapter 6 of CCSF Administrative Code, SFMTA must execute Master Agreements with elevator/escalator companies in order to perform maintenance, inspection and repair services.
- Since the total contract amount for each agreement exceeds \$100,000.00 for a term of five years, these agreements are being submitted to the SFMTA Board for approval.
- The amount in the Master Agreement is not a payment guarantee to the company but an estimate to address call-back, emergency and vandalism repairs and work mandated by CALOSHA inspections.
- The current fiscal year budget for elevator/escalator maintenance is \$894,089.00.
- The City Attorney's Office and Contracts Compliance have reviewed this item.

**ENCLOSURES: (List numerically and by title)**

1. Resolution
2. Equipment Roster
3. Master Agreements for Otis Elevator Company, Schindler Elevator Corporation, and KONE, Inc.

APPROVALS:

DATE

DEPUTY OF DIVISION

PREPARING ITEM

\_\_\_\_\_

\_\_\_\_\_

FINANCE

\_\_\_\_\_

\_\_\_\_\_

DIRECTOR

\_\_\_\_\_

\_\_\_\_\_

SECRETARY

\_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO

Rosa Rankin

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

## **EXPLANATION:**

In 2005, San Francisco Administrative Code section 6.65 was amended. The ordinance now requires the execution of a master agreement for elevator and escalator inspection, maintenance, and repair on an as-needed basis. For the performance of specific work, the SFMTA must seek price quotations from at least three providers with master agreements. The SFMTA must issue a contract service order for the work to be performed by the provider submitting the lowest price quotation unless the public interest would best be served by accepting a price quotation that SFMTA staff determine would best serve the public interest.

The San Francisco Municipal Transportation Agency operates a total of 52 elevators and escalators. Forty elevators and escalators are located in the Muni Metro System. Twelve remaining elevators are located at other facilities.

Since installation, all elevator and escalator equipment has been maintained by the five original manufacturers or their successor companies under prior elevator/escalator maintenance agreements. In 2004, the SFMTA entered into an elevator maintenance agreement with ThyssenKrupp Elevator Company that expires on July 31, 2009. In 2007, the SFMTA entered into a Master Agreement with Star Elevator, Inc. that expires on June 30, 2011. Since the total contract amount was below \$100,000.00, pursuant to SFMTA Board Resolution #00/125 adopting a policy whereby the procurement of commodities and services formally subject to the sole approval of the Purchaser shall be subject to the sole approval of the Director, or his designee and shall not require further approval of this Board, the Master Agreement was not submitted to the SFMTA Board for approval.

In order to continue to receive services from the remaining three companies, the SFMTA must now enter into new Master Agreements with Otis Elevator Company, Schindler Elevator Corporation, and KONE, Inc.

At this time, staff recommends approval of Master Agreements with Otis Elevator Company, Schindler Elevator Corporation, and KONE, Inc. These elevator/escalator service companies have existing Master Agreements with the Department of Public Works for elevator/escalator inspection, service and repair on an as-needed basis.

Staff anticipates that costs for all elevator/escalator service maintenance will not exceed the current budget allocation of \$894,089.00 for the fiscal year. This amount includes repairs associated with vandalism and misuse of the equipment.

Funds for this work are available under the Maintenance Division's operating budget.

## **CONSISTENCY WITH SFMTA 2008-2012 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

Goal 4: Financial Capacity

Objective

4.2 Endure efficient and effective use of resources.

Recommendation:

Requesting authorization by the SFMTA Board for the Executive Director/CEO to execute Master Service Agreements with:

    Otis Elevator Company in an amount not to exceed \$1,870,000.00  
    Schindler Elevator Corporation in an amount not to exceed \$2,167,611.00  
and    KONE, Inc. in an amount not to exceed \$625,000.00

for a period not to exceed five years.

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

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

RESOLUTION NO. \_\_\_\_\_

WHEREAS, San Francisco Administrative Code section 6.65 provides that departments shall award master agreements on an as need basis to contractors who can establish experience, expertise, and quality of work; and

WHEREAS, For contracts that exceed \$100,000, the Executive Director/CEO is authorized to execute a master agreement upon approval by the SFMTA Board of Directors; and

WHEREAS, Staff recommends that the SFMTA enter into Master Agreements with Otis Elevator Company, Schindler Elevator Corporation, and KONE, Inc. for elevator/escalator maintenance; and

WHEREAS, Staff recommends approval of the Master Service Agreement with Otis Elevator Company in an amount not to exceed \$1,870,000.00 for a term of five years; and

WHEREAS, Staff recommends approval of the Master Service Agreement with Schindler Elevator Corporation in an amount not to exceed \$2,167,611.00 for a term of five years; and

WHEREAS, Staff recommends approval of the Master Service Agreement with KONE, Inc. in an amount not to exceed \$625,000.00 for a term of five years; and

WHEREAS, Staff anticipates that the cost for elevator and escalator service maintenance at all locations for this fiscal year will not exceed the current budget allocation of \$894,089.00; and

WHEREAS, Approval of these Master Service Agreements would assist the SFMTA to ensure improved safety and security across all modes of transportation and ensure efficient and effective use of resources in accordance with the goals and objectives of the 2008-2012 Strategic Plan; now, therefore be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute a Master Service Agreement with Otis Elevator Company in an amount not to exceed \$1,870,000.00 for a term of five years; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute a Master Service Agreement with Schindler Elevator Corporation in an amount not to exceed \$2,167,611.00 for a term of five years; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute a Master Service Agreement with KONE, Inc. in an amount not to exceed \$625,000.00 for a term of five years.

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

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Secretary, Municipal Transportation Agency Board



**SAN FRANCISCO MUNICIPAL RAILWAY  
OPERATIONS ENGINEERING  
ESCALATORS AND ELEVATORS MAINTENANCE ROSTER**

| STATE NUMBER | LOCATION     | ES | EL | MANUFACTURER   | MAINTENANCE BY        |
|--------------|--------------|----|----|----------------|-----------------------|
| M161672      | EMBARCADERO  | x  |    | Westinghouse   | Schindler Elevator Co |
| M161673      | EMBARCADERO  | x  |    | Westinghouse   | Schindler Elevator Co |
| M161670      | EMBARCADERO  | x  |    | Westinghouse   | Schindler Elevator Co |
| M161671      | EMBARCADERO  | x  |    | Westinghouse   | Schindler Elevator Co |
| M156509      | MONTGOMERY   | X  |    | Westinghouse   | Schindler Elevator Co |
| M256502      | MONTGOMERY   | X  |    | Westinghouse   | Schindler Elevator Co |
| M156526      | POWELL       | X  |    | Westinghouse   | Schindler Elevator Co |
| M456321      | POWELL       | X  |    | Westinghouse   | Schindler Elevator Co |
| M255871      | POWELL       | X  |    | Otis           | Otis Elevator Co      |
| M355872      | POWELL       | X  |    | Otis           | Otis Elevator Co      |
| M555873      | POWELL       | X  |    | Otis           | Otis Elevator Co      |
| M655874      | POWELL       | X  |    | Otis           | Otis Elevator Co      |
| M158884      | CIVIC CENTER | X  |    | Westinghouse   | Schindler Elevator Co |
| M258881      | CIVIC CENTER | X  |    | Westinghouse   | Schindler Elevator Co |
| M157476      | VAN NESS     | X  |    | Westinghouse   | Schindler Elevator Co |
| M257477      | VAN NESS     | X  |    | Westinghouse   | Schindler Elevator Co |
| M357478      | VAN NESS     | X  |    | Westinghouse   | Schindler Elevator Co |
| M163660      | VAN NESS     |    | X  | Montgomery     | Kone Corp.            |
| M264705      | VAN NESS     |    | X  | Montgomery     | Kone Corp.            |
| 71402        | VAN NESS     | X  |    | Montgomery     | Kone Corp.            |
| M160259      | CHURCH       | X  |    | Montgomery     | Kone Corp.            |
| M260258      | CHURCH       | X  |    | Montgomery     | Kone Corp.            |
| M360256      | CHURCH       | X  |    | Montgomery     | Kone Corp.            |
| M460257      | CHURCH       | X  |    | Montgomery     | Kone Corp.            |
| M559594      | CHURCH       |    | X  | U. S. Elevator | Thyssen Krupp         |
| M559600      | CHURCH       |    | X  | U. S. Elevator | Thyssen Krupp         |
| M660255      | CHURCH       |    | X  | U. S. Elevator | Thyssen Krupp         |
| M161091      | CASTRO       | X  |    | Westinghouse   | Schindler Elevator Co |
| M261092      | CASTRO       | X  |    | Westinghouse   | Schindler Elevator Co |
| M361089      | CASTRO       | X  |    | Westinghouse   | Schindler Elevator Co |
| M461090      | CASTRO       | X  |    | Westinghouse   | Schindler Elevator Co |
| M661088      | CASTRO       |    | X  | U. S. Elevator | Thyssen Krupp         |
| M761637      | CASTRO       |    | X  | U. S. Elevator | Thyssen Krupp         |
| M861638      | CASTRO       |    | X  | U. S. Elevator | Thyssen Krupp         |
| M151257      | FOREST HILL  |    | X  | Dover          | Thyssen Krupp         |
| M277639      | FOREST HILL  |    | X  | Dover          | Thyssen Krupp         |
| M377638      | FOREST HILL  |    | X  | Dover          | Thyssen Krupp         |
| M477640      | FOREST HILL  |    | X  | Dover          | Thyssen Krupp         |

| STATE NUMBER | LOCATION                      | ES | EL | MANUFACTURER | MAINTENANCE BY        |
|--------------|-------------------------------|----|----|--------------|-----------------------|
| M165997      | WEST PORTAL                   | X  |    | Westinghouse | Schindler Elevator Co |
| M265998      | WEST PORTAL                   | X  |    | Westinghouse | Schindler Elevator Co |
| O77522       | CABLE CAR BARN                |    | X  | Montgomery   | Kone Corp.            |
| 077624       | 1201 MASON ST                 |    | X  | Montgomery   | Kone Corp.            |
| M126954      | PRESIDIO                      |    | X  | Otis         | Otis Elevator Co      |
| M226955      | 949 PRESIDIO                  |    | X  | Otis         | Otis Elevator Co      |
| M163528      | WOODS                         |    | X  | Atlas        | Star Elevator Co      |
| M263529      | 1095 INDIANA                  |    | X  | Atlas        | Star Elevator Co      |
| M563530      |                               |    | X  | Atlas        | Star Elevator Co      |
| M463531      |                               |    | X  | Atlas        | Star Elevator Co      |
| 77786        | GREEN ANNEX<br>425 GENEVA     |    | X  | Otis         | Otis Elevator Co      |
| M74103       | GENEVA ANNEX<br>2301 SAN JOSE |    | X  | American     | Schindler Elevator Co |
| 091997       | SCOTT GARAGE                  |    | X  | Dover        | Thyssen Krupp         |
| 091996       | SCOTT GARAGE                  |    | X  | Dover        | Thyssen Krupp         |
| M475588      | 700 PENN                      |    | X  | Otis         | Otis Elevator Co.     |
| M475589      | 700 PENN                      |    | X  | Otis         | Otis Elevator Co.     |

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

**MASTER AGREEMENT FOR SPECIAL SERVICES  
UNDER SAN FRANCISCO ADMINISTRATIVE CODE §6.65**

AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND  
OTIS ELEVATOR COMPANY  
A UNITED TECHNOLOGIES COMPANY

This Agreement is made this 10th day of December 2007, in the City and County of San Francisco, State of California, by and between:

Otis Elevator Company  
444 Spear Street Suite 100  
San Francisco, CA 94105

hereinafter referred to as "Contractor," and City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency, hereinafter referred to as the "MTA."

**Recitals**

WHEREAS, the Municipal Transportation Agency wishes to inspect, maintain, and repair elevator and escalator equipment on an if- and as-needed basis at various MTA-owned and/or operated facilities in accordance with the provisions specified in the San Francisco Administrative Code Section 6.65; and,

WHEREAS, Contractor represents and warrants that it is qualified and has the special expertise and experience to perform the services required for City as set forth under this contract; and,

WHEREAS, approval for said Agreement was obtained from the Civil Service Commission by Resolution No. PSC #Not Applicable dated Not Applicable

Now, THEREFORE, the parties agree as follows:

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement and Specifications, it shall have the meaning herein set forth.

|               |  |
|---------------|--|
| AUTHORIZATION | Contract Order of the City and County of San Francisco properly executed by the Director of Transportation and certified by the Controller for the specific funding of this Agreement or any modification thereof. |
| CITY          | City and County of San Francisco, a municipal corporation.   |
| CONTRACTOR    | Otis Elevator Company, a United Technologies Company.  |
| CONTROLLER    | Controller of the City and County of San Francisco.  |

EXECUTIVE DIRECTOR/CEO

Director of Transportation of the City and County of San Francisco.

WORK

The work to be done in providing the services as described and specified in Appendix A.

Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of the MTA. The words "sufficient", "necessary", or "proper", and the like, mean sufficient, necessary or proper in the judgment of the MTA. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Department of MTA, unless otherwise indicated by the context.

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

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

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

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

3. Term of the Agreement

Subject to Section 2, the term of this Agreement shall be from March 1, 2008 to February 29, 2013.

4. 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.

5. Services Contractor Agrees to Perform

The Contractor agrees to perform the basic services at the standards provided for in **Appendix A**, "Services and Standards of Performance under Master Agreement For Special Services For Elevator and Escalator," attached hereto and incorporated by reference as though fully set forth herein.

Contractor acknowledges and agrees that this Agreement does not guarantee Contractor any work. For the performance of most specific tasks, the Department, at its sole discretion, shall seek price quotations from at least three special service providers with Master Agreements. The Department shall issue a Contract Service Order ("CSO") for the work to the provider submitting the lowest quotation. In the event that the Department is unable to obtain three quotations, the Executive Director/CEO shall base the issuance of the CSO on the quote or quotes received. The Department reserves the right to reject any and all quotes for any reason or no reason. The Executive Director/CEO may accept other than the lowest quotation if, in his/her discretion, the public

interest would best be served.

The Contractor acknowledges and agrees that once the Department issues a CSO under this Agreement, the scope of work and price as set forth in the CSO shall be binding on Contractor as though fully incorporated into this Agreement.

6. Compensation

Compensation shall be made in monthly payments on or before the 30<sup>th</sup> day of each month for work, as set forth in Section 5 of this Agreement, that the Executive Director/CEO, in his or her sole discretion, concludes has been performed as of the 30<sup>th</sup> day of the immediately preceding month. In no event shall the amount of this contract exceed \$1,870,000.00 dollars.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the MTA as being in accordance with this Agreement.

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

7. Method of Payment

Invoices furnished by Contractor under this Agreement must be in a form acceptable to Executive Director/CEO and Controller. 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 stated hereinabove.

8. Disallowance

In the event Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by City or 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.

9. Taxes

Payment of any taxes, including California Sales and Use Taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor. 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:

a. 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;

b. 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.

c. 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.

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

#### 10. Payment Does Not Imply Acceptance of Work

The granting of any progress payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work or material although the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. Materials, components, or workmanship which do not conform to the Specifications will be rejected and shall be replaced by Contractor without delay.

#### 11. 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 conform with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, shall be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

#### 12. Responsibility for Equipment

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

#### 13. Independent Contractor

Contractor shall be deemed at all times to be an independent Contractor and shall be wholly responsible for the manner in which Contractor performs the service required of Contractor by the terms of this Agreement. Contractor shall be liable for the acts and omissions of it, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between City and Contractor. 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.

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.

#### 14A. Performance Bond and Payment (Labor and Materials) Bond for Contracts in Excess of \$25,000

If the contract amount of this agreement is in excess of \$25,000, Contractor shall submit the Performance and Payment bonds to the MTA when the agreement is awarded as follows:

Contractor shall always have bonds in a total amount equal to or greater than the total dollar value of all CSOs for special services performed under this Agreement.

Prior to commencing any work under this Agreement, Contractor shall provide an initial Performance Bond in the amount of not less than fifty percent (50%) of the amount of the agreement as awarded or \$50,000, whichever is lower and a Payment (Labor and Materials) Bond in the amount not less than fifty percent (50%) of the amount of the agreement as awarded or \$50,000, whichever is lower. The Contractor may alternatively provide Performance and Payment bonds covering 100% of the total possible compensation amount under paragraph 6 of this Agreement.

The Contractor shall provide additional bonds in accordance with this Paragraph 14A in increments of not less than \$50,000 when the total amount of contracted construction activity for all CSOs approaches or equals \$50,000.

The City will provide forms for bonding. Sureties shall conform to the standards set forth by the City's Risk Manager under San Francisco Administrative Code section 6.22. No work shall commence without the verification of valid Performance and Payment bonds. The City will require Bonds from the entity named in the Agreement and may not accept Bonds from subcontractors.

#### 14B. Insurance

a. Without in any way limiting Contractor's liability pursuant to Section 15, "Indemnification and General Liability," of this Agreement, Contractor will maintain in force, during the full term of the Agreement,

insurance in the following amounts and coverage:

- (1) Workers' Compensation, in statutory amounts, with Employers' Liability limits not less than \$1,000,000 each accident; 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 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 – not applicable for public work or improvement construction services.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies shall be endorsed to 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 contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall be endorsed to provide:

Thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

Rosa Rankin  
Contracts Administrator  
Maintenance Engineering  
700 Pennsylvania Street  
San Francisco, California 94107

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 contract and, without lapse, for a period of three years beyond the contract expiration, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the contract, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance, other than professional liability, 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 services or 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. Contractor shall furnish complete copies of policies of any or all of the above-listed insurance policies promptly upon City request. 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.

#### 15. Indemnification

a. To the fullest extent permitted by law, the Contractor shall assume the defense of, indemnify and save harmless the City and its 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 liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees and costs of investigation) that arise directly or indirectly to the extent caused, in whole or in part, from: (1) the services under this Agreement, or any part thereof, (2) any act or omission of Contractor, and subcontractor to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"), even if such Liabilities are caused in part by the negligence of any Indemnitee, subject to the provisions set forth below in this Section.

b. The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

c. The Contractor's indemnification obligations for 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 proportionate extent of Contractor's negligence or other breach of duty.

#### 16. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages to the extent caused by Contractor's negligent acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation or any rights which City may have under applicable law.

#### 17. Liability of City

City's obligations under this contract shall be limited to the payment of the compensation provided for in Section 6 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 Contractor's own 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.

#### 18. Liquidated Damages

Contractor acknowledges and agrees that time is of the essence in responding to calls for service and repairs, as set forth in Appendix A of this Agreement, and that failure to respond may result in actual damages to the City which would be extremely difficult to or impracticable to determine. Contractor therefore further acknowledges and agrees that Individual service orders may include liquidated damages, not as a penalty, but as a reasonable estimate of the loss the City would incur based on the delay. Such liquidated damages may be set by the City, at its sole discretion, according to the particular circumstance of the service order. The City may deduct a sum representing the liquidated damages from any money due to Contractor.

#### 19. Termination For Cause

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 this Agreement, and such default continues for a period of ten days after written notice from City to Contractor.

(2) 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.

(3) 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, 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.

## 20. 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 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.

#### 21. Rights and Duties Upon Termination or Expiration

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.

#### 22. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of City's Charter and §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of such provisions.

#### 23. 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.

#### 24. Notices to the Parties

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and registered as follows:

To City:                   Municipal Transportation Agency

Contracts Administrator, Maintenance Engineering  
700 Pennsylvania Street  
San Francisco, CA 94107

To Contractor: Otis Elevator Company  
444 Spear Street Suite 100  
San Francisco, CA 94105

25. Ownership of Results

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.

26. Audit and Inspection of Records

Contractor agrees to maintain and make available to City during business hours accurate books and accounting records relative to its activities 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 of this Agreement shall have the same rights conferred upon City by this Section.

27. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is approved by written instrument executed and approved in the same manner as this Agreement. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Contractor acknowledges and agrees that an independent contractor employed by Contractor to perform work under this Agreement shall be considered a subcontractor for the purposes of this Agreement. An Agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

28. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder shall be assigned or delegated by Contractor unless approved by written instrument executed and approved in the same manner as this Agreement.

29. 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 MTA's Contract Compliance Unit or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Contract Compliance Director") 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 Contract Compliance Director 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 Contract Compliance Director 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 Contract Compliance Director or the Controller upon request.

30. Compliance with South Africa Divestment Ordinance; Liquidated Damages

Not applicable.

31. 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.

32. 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 the contractor, its employees, agents or assigns shall be deemed a material breach of contract.

33. 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.

34. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the MTA to submit to the Contract Compliance Director 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%.

35. 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 Executive Director/CEO who shall decide the true meaning and intent of the Agreement.

36. Agreement Made in California; Venue

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

37. Construction

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

38. 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 34.

39. Tropical Hardwood and Virgin Redwood Ban

The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood wood product, virgin redwood or virgin redwood wood product.

40. Ownership of Equipment

Any equipment, vehicles, computer programs (software licenses and media), etc., purchased by the Contractor or its subcontractors in connection with services to be performed under this Agreement shall become property of and will be transmitted to the City.

41. Guaranteed Maximum Costs

- a. The City's obligations 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.

42. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), Contracts, contractor's bids, responses to requests for proposals and all other records of communications between the department 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's 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 subdivision will be made available to the public upon request.

43. Proprietary or Confidential Information

- a. City Information. 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 to the extent permitted by law, 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.
- b. Contractor Information. Contractor understands and agrees that the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (Gov. Code Section 6250 *et seq.*), apply to the Agreement. Contractor shall clearly identify to City all information that Contractor provides to City that it considers to be proprietary, trade secret or is otherwise protected from disclosure under the California Public Records Act, the City's Sunshine Ordinance and other applicable law. If a public records request made to City includes information that Contractor has identified as confidential or proprietary, City will endeavor to provide Contractor reasonable notice of such request prior to disclosure of any such Records. Contractor may at its option then take whatever legal steps it deems appropriate to protect said information from disclosure to the public.



44. Non-Discrimination in City Contracts and Benefits Ordinance

a. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor.

b. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code 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. Non-Discrimination 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 or where the work is being performed for the City or elsewhere within 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 Section 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 of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

45. Submitting False Claims; Monetary Penalties

Any contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for the costs, including attorney's 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) 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. (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.

46. Earned Income Credit (EIC) Forms

(a) Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) 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 (30) 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 (30) 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.

47. Requiring Minimum Compensation for Employees

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](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of \$10.77 an hour beginning January 1, 2005 and for the remainder of the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.

(b) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

(c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

(d) 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, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

- (1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
- (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar Contractor from entering into future contracts with the City for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

- (e) 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.
- (f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the CITY, which communications are marked to indicate that they are to be distributed to Covered Employees.
- (g) Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.
- (h) The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.
- (i) The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.
- (j) 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. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. 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.

(k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

(l) 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 (\$50,000 for nonprofits), 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 (\$50,000 for nonprofits) in the fiscal year.

#### 48. 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 <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in

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

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

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

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

h. Contractor shall keep itself informed of the current requirements of the HCAO.

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

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

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

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

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

#### 49. Notification of Limitations on Contributions

This paragraph applies if this contract is in excess of \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Contractor understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Contractor except as provided under the Conduct Code. Contractor agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this contract. Upon request, Contractor agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Contractor with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or Contractor of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

#### 50. Prohibiting Use of City Funds for Political Activity

No funds appropriated by the City and County of San Francisco for any contract, grant agreement or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign for any candidate or measure. Recipients of city funds will cooperate in audits conducted by the Controller to verify that no City funds were used for political purposes.

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.

#### 51. 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.

#### 52. 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.

#### 53. Preservative-treated Wood Containing Arsenic

As of July 1, 2003, 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.

#### 54. 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.

#### 55. Nondisclosure of Private Information

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

- (a) Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:
  - (i) The disclosure is authorized by this Agreement;
  - (ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or
  - (iii) The disclosure is required by law or judicial order.
- (b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized

by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(d) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

#### 56. 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.

#### 57. Force Majeure

Under no circumstances shall Otis Elevator Company be liable for any loss, damage or delay due to any cause beyond its reasonable control, including but not limited to acts of government, strikes, lockouts, labor disputes, fire, explosion, theft, weather damage, flood, earthquake, riot, civil commotion, war, malicious mischief or act of God.



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

**CITY**

**CONTRACTOR**

Approved:

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

\_\_\_\_\_  
Otis Elevator Company

\_\_\_\_\_  
Name

\_\_\_\_\_  
444 Spear Street, Suite 100

\_\_\_\_\_  
Address

\_\_\_\_\_  
San Francisco CA 94105

\_\_\_\_\_  
City State Zip

Municipal Transportation Agency  
Board of Directors  
Resolution No. \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary, MTA Board

I have read and understood Sec. 31, 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.

\_\_\_\_\_

\_\_\_\_\_  
By

Signature

\_\_\_\_\_  
Dennis Fuller General Manager

\_\_\_\_\_  
Name Title

\_\_\_\_\_  
415 546-0880

\_\_\_\_\_  
Area Code Phone Number

\_\_\_\_\_

\_\_\_\_\_  
13-5583389

Federal Employer Number

Approved as to Form:  
Dennis J. Herrera  
City Attorney

\_\_\_\_\_  
John I. Kennedy  
Deputy City Attorney

## APPENDIX A

### SCOPE OF SERVICES AND STANDARDS OF PERFORMANCE UNDER MASTER AGREEMENT FOR SPECIAL SERVICES FOR THE INSPECTION, MAINTENANCE AND REPAIR OF ELEVATOR AND ESCALATOR

Bidding Packages shall be issued for each facility or facilities to be serviced. Each Bidding Package shall include specific terms and conditions in the specifications for the Contract Service Order (CSO) award that shall be used in lieu of the Scope of Services and Standards of Performance in Appendix A. No terms and conditions in the Bidding Package are intended to conflict with the terms and conditions of the Master Agreement For Special Services; however, if a conflict exists, the terms and conditions of the Master Agreement For Special Services shall govern. In the event that a Bidding Package is not issued for a bid quotation, the terms and conditions in the Scope of Services and Standards of Performance in Appendix A shall be used.

#### 1. SCOPE OF WORK

The scope of work shall include the furnishing of all labor, materials, equipment and services necessary for and incidental to the full service maintenance of elevators and escalators at various locations within the City & County of San Francisco.

**NOTE:** Contractor will be responsible for all permits, fees, building inspections and other requirements in connection with the execution of the above scope of work. If additional work not related to the above scope of work is required the contractor shall notify the contract manager in writing of any discrepancies and submit a written proposal if work can be performed by contractor. Contractor will comply with all Federal, State and local environmental regulations and follow outlined procedures.

#### 2. NOTICE OF START OF WORK

The Contractor shall notify Rosa Rankin at (415) 401-3107 at least five (5) days prior to starting work.

#### 3. SCHEDULING

The areas are presently occupied and the contractor shall arrange a schedule with Scott Border, Elevator/Escalator Inspector at (415) 509-6929 (cell).

#### 4. TIME ALLOWED FOR COMPLETION

Time allowed for full performance of the Contract Service Order referenced by this document is 30 working days from award and orders to begin performance which will be issued by Rosa Rankin for the City and County of San Francisco, telephone number (415) 401-3107.

#### 5. COMPLETION OF WORK

All work shall be completed in a manner satisfactory to the Elevator/Escalator Inspector within 30 days of award of a Contract Service Order.

#### 6. OBTAINING PLANS AND SPECIFICATIONS

Plans and specifications are available at, 700 Pennsylvania St., San Francisco, California. To obtain a copy of plans and specifications contact Rosa Rankin at (415) 401-3107.

## 7. INSPECTION OF THE SITE

The Contractor shall inspect the location of the work and familiarize himself or herself with the conditions under which the work shall be performed, and verify that all conditions, dimensions and specifications are as indicated on the drawings prior to submittal of bid. Do not proceed with affected work until any variations or discrepancies are resolved by Scott Broder at (415) 401-3107.

## 8. PROTECTION OF PROPERTY

Keep construction area broom clean, all work shall be done in neat, clean and professional manner. Protect from damage all materials, construction, utilities and other items and appurtenances not scheduled for demolition. Any damage that should occur shall be repaired as incidental work under the contract at no additional cost to the City.

## 9. DEBRIS

All dirt, rubbish and debris caused by the work shall be hauled away by the contractor. Premises will be left in a clean and orderly condition at the completion of each days work.

## 10. LABOR STANDARDS

Contractor shall comply with the mandate under San Francisco Charter section A7.204 and Administrative section 6.22(E) and shall pay its workers performing work under this Agreement the prevailing wage for the craft or crafts required to complete the work. The Board of Supervisors determines the prevailing wage rates and such wage rates are available at the San Francisco Office of Labor Standards Enforcement ("OLSE") or through the California Department of Industrial Relations. In the event that Contractor employs a subcontractor to perform work under this Agreement, Contractor shall require its subcontractor(s) likewise comply with the prevailing wage requirements.

The Contractor shall keep for a period of four years from the date of performance of any CSO, payrolls and basic records including time cards, trust fund forms, apprenticeship agreements, accounting ledgers, tax forms and superintendent and foreman daily logs for all trades workers performing work under this Agreement. Such records shall include the name, address and social security number of each worker who worked under a CSO, including apprentices, his/her classification, a general description of the work each worker performed each day, the rate of pay (including fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. The Contractor shall require its subcontractors, if any, to maintain the same records.

The Contractor shall maintain weekly certified payroll records for submission to the awarding department as required. The Contractor shall be responsible for the submission of payroll records of its subcontractors, if any.

All payroll and related records described in the foregoing paragraphs shall at all times be open to inspection and examination of the duly authorized officers and agents of the City and County of San Francisco, including representatives of the Office of Labor Standards Enforcement.

The Contractor further acknowledges and agrees that it shall comply with the City's labor standards enforcement procedures as follows:

1. Contractor shall cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage and other labor standards requirements;

2. The Labor Standards Enforcement Officer and his or her designees, in the performance of his/her duties,

shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks;

3. Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site;
4. Contractor shall prominently post at each job-site a sign informing employees that the work is subject to the City's prevailing wage requirements with reference to the Office of Labor Standards Enforcement;
5. The Office of Labor Standards Enforcement may audit such records of the contractor as he or she reasonably deems necessary to determine compliance with the prevailing wage and other labor standards imposed by the City Charter and the Administrative Code.

Failure to comply with the labor standards provisions of this Agreement may result in a forfeiture of penalties and back wages under Administrative Code section 6.22(E)(8).

#### 11. DEMOLITION

Demolition is not limited to what is shown on the drawings. The intent of the drawings is to indicate the general scope of the work required. Notify Rosa Rankin at (415) 401-3107 of any discrepancies.

#### 12. MATERIALS

All work and materials shall be new unless otherwise noted.

#### 13. ASBESTOS

If during the course of the work performed it is discovered that there is a potential for disturbing asbestos containing material, work must be suspended immediately until it is determined that it is safe to proceed and/or adequate control measures have been established.

#### 14. ASBESTOS INFORMATION

Attached hereto and incorporated by reference as though fully set forth herein.

#### 15. INSTALLATION

The contractor shall furnish all labor, equipment and materials to provide for the installation of the following:

- A. Repair & maintenance of City owned elevators and escalators at various locations.

#### 16. STANDARDS

All work to comply with Title 21 and Title 24 of the CAC and to conform with Federal ADA (Americans with Disabilities Act) Standards.

APPENDIX B

SCHEDULE OF VALUES

Billing Rates shall be based on the bid quotations awarded for each Contract Service Order (CSO).

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

**MASTER AGREEMENT FOR SPECIAL SERVICES  
UNDER SAN FRANCISCO ADMINISTRATIVE CODE §6.65**

AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND  
SCHINDLER ELEVATOR CORPORATION

This Agreement is made this 10th day of December, 2007, in the City and County of San Francisco, State of California, by and between:

Schindler Elevator Corporation  
555 McCormick Street  
San Leandro, CA 94577-1107

hereinafter referred to as "Contractor," and City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency, hereinafter referred to as the "MTA."

**Recitals**

WHEREAS, the Municipal Transportation Agency wishes to inspect, maintain, and repair elevator and escalator equipment on an if- and as-needed basis at various MTA-owned and/or operated facilities in accordance with the provisions specified in the San Francisco Administrative Code Section 6.65; and,

WHEREAS, Contractor represents and warrants that it is qualified and has the special expertise and experience to perform the services required for City as set forth under this contract; and,

WHEREAS, approval for said Agreement was obtained from the Civil Service Commission by Resolution No. PSC #Not Applicable dated Not Applicable

Now, THEREFORE, the parties agree as follows:

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement and Specifications, it shall have the meaning herein set forth.

AUTHORIZATION

Contract Order of the City and County of San Francisco properly executed by the Director of Transportation and certified by the Controller for the specific funding of this Agreement or any modification thereof.

CITY

City and County of San Francisco, a municipal corporation.

|                        |  |
|------------------------|--|
| CONTRACTOR             | Schindler Elevator Corporation.  |
| CONTROLLER             | Controller of the City and County of San Francisco.  |
| EXECUTIVE DIRECTOR/CEO | Director of Transportation of the City and County of San Francisco.                                    |
| WORK                   | The work to be done in providing the services as described and specified in Appendix A and Appendix B. |

Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of the MTA. The words "sufficient", "necessary", or "proper", and the like, mean sufficient, necessary or proper in the judgment of the MTA. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Department of MTA, unless otherwise indicated by the context.

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

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

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

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

3. Term of the Agreement

Subject to Section 2, the term of this Agreement shall be from March 1, 2008 to February 29, 2013.

4. 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.

5. Services Contractor Agrees to Perform

The Contractor agrees to perform the basic services at the standards provided for in **Appendix A**, "Services and Standards of Performance under Master Agreement For Special Services For Elevator and Escalator," attached hereto and incorporated by reference as though fully set forth herein.

Contractor acknowledges and agrees that this Agreement does not guarantee Contractor any work. For the performance of most specific tasks, the Department, at its sole discretion, shall seek price quotations from at least three special service providers with Master Agreements. The Department shall issue a Contract Service Order ("CSO") for the work to the provider submitting the lowest quotation. In the event that the Department is

unable to obtain three quotations, the Executive Director/CEO shall base the issuance of the CSO on the quote or quotes received. The Department reserves the right to reject any and all quotes for any reason or no reason. The Executive Director/CEO may accept other than the lowest quotation if, in his/her discretion, the public interest would best be served.

The Contractor acknowledges and agrees that once the Department issues a CSO under this Agreement, the scope of work and price as set forth in the CSO shall be binding on Contractor as though fully incorporated into this Agreement.

6. Compensation

Compensation shall be made in monthly payments on or before the 30<sup>th</sup> day of each month for work, as set forth in Section 5 of this Agreement, that the Executive Director/CEO, in his or her sole discretion, concludes has been performed as of the 30<sup>th</sup> day of the immediately preceding month. In no event shall the amount of this contract exceed dollars \$2,167,611.00.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the MTA as being in accordance with this Agreement.

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

7. Method of Payment

Invoices furnished by Contractor under this Agreement must be in a form acceptable to Executive Director/CEO and Controller. 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 stated hereinabove.

8. Disallowance

In the event Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by City or 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.

9. Taxes

Payment of any taxes, including California Sales and Use Taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor. 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:

a. 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;

b. 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.

c. 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.

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

#### 10. Payment Does Not Imply Acceptance of Work

The granting of any progress payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work or material although the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. Materials, components, or workmanship which do not conform to the Specifications will be rejected and shall be replaced by Contractor without delay.

#### 11. 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 conform with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, shall be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

#### 12. Responsibility for Equipment

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

#### 13. Independent Contractor

Contractor shall be deemed at all times to be an independent Contractor and shall be wholly responsible for the manner in which Contractor performs the service required of Contractor by the terms of this Agreement. Contractor shall be liable for the acts and omissions of it, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between City and Contractor. 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.

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.

#### 14A. Performance Bond and Payment (Labor and Materials) Bond for Contracts in Excess of \$25,000

If the contract amount of this agreement is in excess of \$25,000, Contractor shall submit the Performance and Payment bonds to the MTA when the agreement is awarded as follows:

Contractor shall always have bonds in a total amount equal to or greater than the total dollar value of all CSOs for special services performed under this Agreement.

Prior to commencing any work under this Agreement, Contractor shall provide an initial Performance Bond in the amount of not less than fifty percent (50%) of the amount of the agreement as awarded or \$50,000, whichever is lower and a Payment (Labor and Materials) Bond in the amount not less than fifty percent (50%) of the amount of the agreement as awarded or \$50,000, whichever is lower. The Contractor may alternatively provide Performance and Payment bonds covering 100% of the total possible compensation amount under paragraph 6 of this Agreement.

The Contractor shall provide additional bonds in accordance with this Paragraph 14A in increments of not less than \$50,000 when the total amount of contracted construction activity for all CSOs approaches or equals \$50,000.

The City will provide forms for bonding. Sureties shall conform to the standards set forth by the City's Risk Manager under San Francisco Administrative Code section 6.22. No work shall commence without the verification of valid Performance and Payment bonds. The City will require Bonds from the entity named in the Agreement and may not accept Bonds from subcontractors.

#### 14B. Insurance

a. Without in any way limiting Contractor's liability pursuant to Section 15, "Indemnification and General Liability," of this Agreement, Contractor will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage:

- (1) Workers' Compensation, in statutory amounts, with Employers' Liability limits not less than \$1,000,000 each accident; 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 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 – not applicable for public work or improvement construction services.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies shall be endorsed to 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 contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall be endorsed to provide:

Thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

Rosa Rankin  
Contracts Administrator  
Maintenance Engineering  
700 Pennsylvania Street  
San Francisco, California 94107-3443

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 contract and, without lapse, for a period of three years beyond the contract expiration, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the contract, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance, other than professional liability, 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 services or 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. Contractor shall furnish complete copies of policies of any or all of the above-listed insurance policies promptly upon City request. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

#### 15. Indemnification

a. To the fullest extent permitted by law, the Contractor shall assume the defense of, indemnify and save harmless the City and its 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 liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees and costs of investigation) that arise directly or indirectly to the extent caused, in whole or in part, from: (1) the services under this Agreement, or any part thereof, (2) any act or omission of 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 below in this Section. In the event of the joint negligence of City and Contractor, responsibility shall be allocated on the basis of each party's respective fault or negligence.

b. The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnatee or the contractors of any Indemnatee.

c. The Contractor's indemnification obligations for 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 proportionate extent of Contractor's negligence or other breach of duty.

#### 16. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages to the extent caused by Contractor's negligent acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation or any rights which City may have under applicable law.

#### 17. Liability of City

City's obligations under this contract shall be limited to the payment of the compensation provided for in Section 6 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 Contractor's own 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.

#### 18. Liquidated Damages

Contractor acknowledges and agrees that time is of the essence in responding to calls for service and repairs, as set forth in Appendix A of this Agreement, and that failure to respond may result in actual damages to the City which would be extremely difficult to or impracticable to determine. Contractor therefore further acknowledges and agrees that Individual service orders may include liquidated damages, not as a penalty, but as

a reasonable estimate of the loss the City would incur based on the delay. Such liquidated damages may be set by the City, at its sole discretion, according to the particular circumstance of the service order. The City may deduct a sum representing the liquidated damages from any money due to Contractor.

19. Termination For Cause

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 this Agreement, and such default continues for a period of ten days after written notice from City to Contractor.
- (2) 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.
- (3) 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, 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.

20. 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 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).



25. Ownership of Results

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.

26. Audit and Inspection of Records

Contractor agrees to maintain and make available to City during business hours accurate books and accounting records relative to its activities under this Agreement. Upon reasonable notice by the City and during normal business hours, 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 of this Agreement shall have the same rights conferred upon City by this Section.

27. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is approved by written instrument executed and approved in the same manner as this Agreement. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Contractor acknowledges and agrees that an independent contractor employed by Contractor to perform work under this Agreement shall be considered a subcontractor for the purposes of this Agreement. An Agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

28. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder shall be assigned or delegated by Contractor unless approved by written instrument executed and approved in the same manner as this Agreement.

30. 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 MTA's Contract Compliance Unit or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Contract Compliance Director") 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 Contract Compliance Director 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 Contract Compliance Director 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 Contract Compliance Director or the Controller upon request.

30. Compliance with South Africa Divestment Ordinance; Liquidated Damages

Not applicable.

31. 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.

32. 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 the contractor, its employees, agents or assigns shall be deemed a material breach of contract.

33. 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.

34. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the MTA to submit to the Contract Compliance Director 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%.

35. 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 Executive Director/CEO who shall decide the true meaning and intent of the Agreement.

36. Agreement Made in California; Venue

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

37. Construction

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

38. 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 34.

39. Tropical Hardwood and Virgin Redwood Ban

The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood wood product, virgin redwood or virgin redwood wood product.

40. Ownership of Equipment

Any equipment, vehicles, computer programs (software licenses and media), etc., purchased by the Contractor or its subcontractors in connection with services to be performed under this Agreement shall become property of and will be transmitted to the City.

41. Guaranteed Maximum Costs

a. The City's obligations 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.

#### 42. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), Contracts, contractor's bids, responses to requests for proposals and all other records of communications between the department 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's 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 subdivision will be made available to the public upon request.

#### 43. Proprietary or Confidential Information

a. City Information. 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 to the extent permitted by law, 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.

b. Contractor Information. Contractor understands and agrees that the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (Gov. Code Section 6250 *et seq.*), apply to the Agreement. Contractor shall clearly identify to City all information that Contractor provides to City that it considers to be proprietary, trade secret or is otherwise protected from disclosure under the California Public Records Act, the City's Sunshine Ordinance and other applicable law. If a public records request made to City includes information that Contractor has identified as confidential or proprietary, City will endeavor to provide Contractor reasonable notice of such request prior to disclosure of any such Records. Contractor may at its option then take whatever legal steps it deems appropriate to protect said information from disclosure to the public.

#### 44. Non-Discrimination in City Contracts and Benefits Ordinance

a. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor.

b. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code 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. Non-Discrimination 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 or where the work is being performed for the City or elsewhere within 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 Section 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.

l. 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 of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

#### 45. Submitting False Claims; Monetary Penalties

Any contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for the costs, including attorney’s 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) 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. (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.

#### 46. Earned Income Credit (EIC) Forms

(a) Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) 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 (30) 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 (30) 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.

#### 47. Requiring Minimum Compensation for Employees

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](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of \$10.77 an hour beginning January 1, 2005 and for the remainder of the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.

(b) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

(c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

(d) 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, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(6) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(7) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;

(8) The right to terminate this Agreement in whole or in part;

(9) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(10) The right to bar Contractor from entering into future contracts with the City for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

(e) 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.

(f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the CITY, which communications are marked to indicate that they are to be distributed to Covered Employees.

(g) Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

(h) The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

(i) The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

(j) 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. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. 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.

(l) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the

maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

(l) 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 (\$50,000 for nonprofits), 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 (\$50,000 for nonprofits) in the fiscal year.

#### 48. 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 <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

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

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee

for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

m. 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.

n. 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.

o. Contractor shall keep itself informed of the current requirements of the HCAO.

p. 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.

q. 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.

r. 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.

#### 49. Notification of Limitations on Contributions

This paragraph applies if this contract is in excess of \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Contractor understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Contractor except as provided under the Conduct Code. Contractor agrees to notify any other individuals or entities that may be deemed "public benefit recipients" under the Conduct Code because of this contract. Upon request, Contractor agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to

ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Contractor with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or Contractor of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

50. Prohibiting Use of City Funds for Political Activity

No funds appropriated by the City and County of San Francisco for any contract, grant agreement or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign for any candidate or measure. Recipients of city funds will cooperate in audits conducted by the Controller to verify that no City funds were used for political purposes.

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.

51. 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.

52. 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.



### 53. Preservative-treated Wood Containing Arsenic

As of July 1, 2003, 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.

### 54. 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.

### 55. Nondisclosure of Private Information

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

- (a) Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:
  - (i) The disclosure is authorized by this Agreement;
  - (ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or
  - (iii) The disclosure is required by law or judicial order.
- (b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.
- (c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.
- (e) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under

equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

56. 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.

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

**CITY**

**CONTRACTOR**

Approved:

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

I have read and understood Sec. 31, the City's

Municipal Transportation Agency  
Board of Directors  
Resolution No. \_\_\_\_\_

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary, MTA Board

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.

\_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Title

\_\_\_\_\_  
Area Code Phone Number

\_\_\_\_\_

Approved as to Form:  
Dennis J. Herrera  
City Attorney

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

\_\_\_\_\_  
John I. Kennedy  
Deputy City Attorney

## APPENDIX A

### SCOPE OF SERVICES AND STANDARDS OF PERFORMANCE UNDER MASTER AGREEMENT FOR SPECIAL SERVICES FOR THE INSPECTION, MAINTENANCE AND REPAIR OF ELEVATOR AND ESCALATOR

**Bidding Packages shall be issued for each facility or facilities to be serviced. Each Bidding Package shall include specific terms and conditions in the specifications for the Contract Service Order (CSO) award that shall be used in lieu of the Scope of Services and Standards of Performance in Appendix A. No terms and conditions in the Bidding Package are intended to conflict with the terms and conditions of the Master Agreement For Special Services; however, if a conflict exists, the terms and conditions of the Master Agreement For Special Services shall govern. In the event that a Bidding Package is not issued for a bid quotation, the terms and conditions in the Scope of Services and Standards of Performance in Appendix A shall be used.**

#### 1. SCOPE OF WORK

The scope of work shall include the furnishing of all labor, materials, equipment and services necessary for and incidental to the full service maintenance of elevators and escalators at various locations within the City & County of San Francisco.

**NOTE:** Contractor will be responsible for all permits, fees, building inspections and other requirements in connection with the execution of the above scope of work. If additional work not related to the above scope of work is required the contractor shall notify the contract manager in writing of any discrepancies and submit a written proposal if work can be performed by contractor. Contractor will comply with all Federal, State and local environmental regulations and follow outlined procedures.

#### 2. NOTICE OF START OF WORK

The Contractor shall notify Rosa Rankin at (415) 401-3107 at least five (5) days prior to starting work.

#### 3. SCHEDULING

The areas are presently occupied and the contractor shall arrange a schedule with Scott Border, Elevator/Escalator Inspector at (415) 509-6929 (cell).

#### 4. TIME ALLOWED FOR COMPLETION

Time allowed for full performance of the Contract Service Order referenced by this document is 30 working days from award and orders to begin performance which will be issued by Rosa Rankin for the City and County of San Francisco, telephone number (415) 401-3107.

#### 5. COMPLETION OF WORK

All work shall be completed in a manner satisfactory to the Elevator/Escalator Inspector within 30 days of award of a Contract Service Order.

#### 6. OBTAINING PLANS AND SPECIFICATIONS

Plans and specifications are available at, 700 Pennsylvania Avenue, San Francisco, California. To obtain a copy of plans and specifications contact Rosa Rankin at (415) 401-3107.

## 7. INSPECTION OF THE SITE

The Contractor shall inspect the location of the work and familiarize himself or herself with the conditions under which the work shall be performed, and verify that all conditions, dimensions and specifications are as indicated on the drawings prior to submittal of bid. Do not proceed with affected work until any variations or discrepancies are resolved by Scott Broder at 415-509-6929.

## 8. PROTECTION OF PROPERTY

Keep construction area broom clean. All work shall be done in neat, clean and professional manner. Protect from damage all materials, construction, utilities and other items and appurtenances not scheduled for demolition. Any damage that should occur shall be repaired as incidental work under the contract at no additional cost to the City.

## 9. DEBRIS

All dirt, rubbish and debris caused by the work shall be hauled away by the contractor. Premises will be left in a clean and orderly condition at the completion of each days work.

## 10. LABOR STANDARDS

Contractor shall comply with the mandate under San Francisco Charter section A7.204 and Administrative section 6.22(E) and shall pay its workers performing work under this Agreement the prevailing wage for the craft or crafts required to complete the work. The Board of Supervisors determines the prevailing wage rates and such wage rates are available at the San Francisco Office of Labor Standards Enforcement ("OLSE") or through the California Department of Industrial Relations. In the event that Contractor employs a subcontractor to perform work under this Agreement, Contractor shall require its subcontractor(s) likewise comply with the prevailing wage requirements.

The Contractor shall keep for a period of four years from the date of performance of any CSO, payrolls and basic records including time cards, trust fund forms, apprenticeship agreements, accounting ledgers, tax forms and superintendent and foreman daily logs for all trades workers performing work under this Agreement. Such records shall include the name, address and social security number of each worker who worked under a CSO, including apprentices, his/her classification, a general description of the work each worker performed each day, the rate of pay (including fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. The Contractor shall require its subcontractors, if any, to maintain the same records.

The Contractor shall maintain weekly certified payroll records for submission to the awarding department as required. The Contractor shall be responsible for the submission of payroll records of its subcontractors, if any.

All payroll and related records described in the foregoing paragraphs shall at all times be open to inspection and examination of the duly authorized officers and agents of the City and County of San Francisco, including representatives of the Office of Labor Standards Enforcement.

The Contractor further acknowledges and agrees that it shall comply with the City's labor standards enforcement procedures as follows:

1. Contractor shall cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage and other labor standards requirements;

2. The Labor Standards Enforcement Officer and his or her designees, in the performance of his/her duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks;
3. Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site;
4. Contractor shall prominently post at each job-site a sign informing employees that the work is subject to the City's prevailing wage requirements with reference to the Office of Labor Standards Enforcement;
5. The Office of Labor Standards Enforcement may audit such records of the contractor as he or she reasonably deems necessary to determine compliance with the prevailing wage and other labor standards imposed by the City Charter and the Administrative Code.

Failure to comply with the labor standards provisions of this Agreement may result in a forfeiture of penalties and back wages under Administrative Code section 6.22(E)(8).

#### 11. DEMOLITION

Demolition is not limited to what is shown on the drawings. The intent of the drawings is to indicate the general scope of the work required. Notify Rosa Rankin at (415) 401-3107 of any discrepancies.

#### 12. MATERIALS

All work and materials shall be new unless otherwise noted.

#### 13. ASBESTOS

If during the course of the work performed it is discovered that there is a potential for disturbing asbestos containing material, work must be suspended immediately until it is determined that it is safe to proceed and/or adequate control measures have been established.

#### 14. ASBESTOS INFORMATION

Attached hereto and incorporated by reference as though fully set forth herein.

#### 15. INSTALLATION

The contractor shall furnish all labor, equipment and materials to provide for the installation of the following:

- A. Repair & maintenance of City owned elevators and escalators at various locations.

#### 16. STANDARDS

All work to comply with Title 21 and Title 24 of the CAC and to conform with Federal ADA (Americans with Disabilities Act) Standards.

APPENDIX B

SCHEDULE OF VALUES

Billing Rates shall be based on the bid quotations awarded for each Contract Service Order (CSO).

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

**MASTER AGREEMENT FOR SPECIAL SERVICES  
UNDER SAN FRANCISCO ADMINISTRATIVE CODE §6.65**

AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND  
KONE INC.

This Agreement is made this 28th day of January, 2008, in the City and County of San Francisco, State of California, by and between:

KONE Inc  
15021 Wicks Boulevard  
San Leandro, CA 94577

hereinafter referred to as "Contractor," and City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency, hereinafter referred to as the "MTA."

**Recitals**

WHEREAS, the Municipal Transportation Agency wishes to inspect, maintain, and repair elevator and escalator equipment on an if- and as-needed basis at various MTA-owned and/or operated facilities in accordance with the provisions specified in the San Francisco Administrative Code Section 6.65; and,

WHEREAS, Contractor understands that the continuous, safe operation of elevator and escalator equipment is imperative to the MTA in order for the agency to provide transit services to its passengers; and,

WHEREAS, Contractor understands that any delay in repairing MTA-owned elevator and escalator equipment may subject the MTA to possible fines, breach of its legal obligations to provide accessible access, and monetary penalties; and,

WHEREAS, Contractor understands that time is of the essence in repairing MTA-owned elevator and escalator equipment in order to avoid any delay in the operation of MTA-owned elevator and escalator equipment; and,

WHEREAS, Contractor represents and warrants that it is qualified and has the special expertise and experience to perform the services required for City as set forth under this contract; and,

WHEREAS, approval for said Agreement was obtained from the Civil Service Commission by Resolution No. PSC #Not Applicable dated Not Applicable

Now, THEREFORE, the parties agree as follows:

1. Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement and Specifications, it shall have the meaning herein set forth.

|                        |  |
|------------------------|--|
| AUTHORIZATION          | Contract Order of the City and County of San Francisco properly executed by the Director of Transportation and certified by the Controller for the specific funding of this Agreement or any modification thereof. |
| CITY                   | City and County of San Francisco, a municipal corporation.   |
| CONTRACTOR             | KONE Inc.  |
| CONTROLLER             | Controller of the City and County of San Francisco.  |
| EXECUTIVE DIRECTOR/CEO | Director of Transportation of the City and County of San Francisco.  |
| WORK                   | The work to be done in providing the services as described and specified in Appendix A and Appendix B.   |

Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of the MTA. The words "sufficient", "necessary", or "proper", and the like, mean sufficient, necessary or proper in the judgment of the MTA. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Department of MTA, unless otherwise indicated by the context.

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

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

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

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

3. Term of the Agreement

Subject to Section 2, the term of this Agreement shall be from March 1, 2008 through February 29, 2013.



4. 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.

5. Services Contractor Agrees to Perform

The Contractor agrees to perform the basic services at the standards provided for in **Appendix A**, "Services and Standards of Performance under Master Agreement For Special Services For Elevator and Escalator," attached hereto and incorporated by reference as though fully set forth herein.

Contractor acknowledges and agrees that this Agreement does not guarantee Contractor any work. For the performance of most specific tasks, the Department, at its sole discretion, shall seek price quotations from at least three special service providers with Master Agreements. The Department shall issue a Contract Service Order ("CSO") for the work to the provider submitting the lowest quotation. In the event that the Department is unable to obtain three quotations, the Executive Director/CEO shall base the issuance of the CSO on the quote or quotes received. The Department reserves the right to reject any and all quotes for any reason or no reason. The Executive Director/CEO may accept other than the lowest quotation if, in his/her discretion, the public interest would best be served.

The Contractor acknowledges and agrees that once the Department issues a CSO under this Agreement, the scope of work and price as set forth in the CSO shall be binding on Contractor as though fully incorporated into this Agreement.

6. Compensation

Compensation shall be made in monthly payments on or before the 30<sup>th</sup> day of each month for work, as set forth in Section 5 of this Agreement, that the Executive Director/CEO, in his or her sole discretion, concludes has been performed as of the 30<sup>th</sup> day of the immediately preceding month. In no event shall the amount of this contract exceed dollars (\$625,000.00).

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the MTA as being in accordance with this Agreement.

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

7. Method of Payment

Invoices furnished by Contractor under this Agreement must be in a form acceptable to Executive Director/CEO and Controller. 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 stated hereinabove.

8. Disallowance

In the event Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by City or 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.

9. Taxes

Payment of any taxes, including California Sales and Use Taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor. 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:

- a. 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;
- b. 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.
- c. 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.
- d. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

10. Payment Does Not Imply Acceptance of Work

The granting of any progress payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work or material although the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. Materials, components, or workmanship which do not conform to the Specifications will be rejected and shall be replaced by Contractor without delay.

11. 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 conform with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, shall be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

12. Responsibility for Equipment

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

### 13. Independent Contractor

Contractor shall be deemed at all times to be an independent Contractor and shall be wholly responsible for the manner in which Contractor performs the service required of Contractor by the terms of this Agreement.

Contractor shall be liable for the acts and omissions of it, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between City and Contractor. 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.

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.

14A. Performance Bond and Payment (Labor and Materials) Bond for Contracts in Excess of \$25,000

If the contract amount of this agreement is in excess of \$25,000, Contractor shall submit the Performance and Payment bonds to the MTA when the agreement is awarded as follows:

Contractor shall always have bonds in a total amount equal to or greater than the total dollar value of all CSOs for special services performed under this Agreement.

Prior to commencing any work under this Agreement, Contractor shall provide an initial Performance Bond in the amount of not less than fifty percent (50%) of the amount of the agreement as awarded or \$50,000, whichever is lower and a Payment (Labor and Materials) Bond in the amount not less than fifty percent (50%) of the amount of the agreement as awarded or \$50,000, whichever is lower. The Contractor may alternatively provide Performance and Payment bonds covering 100% of the total possible compensation amount under paragraph 6 of this Agreement.

The Contractor shall provide additional bonds in accordance with this Paragraph 14A in increments of not less than \$50,000 when the total amount of contracted construction activity for all CSOs approaches or equals \$50,000.

The City will provide forms for bonding. Sureties shall conform to the standards set forth by the City's Risk Manager under San Francisco Administrative Code section 6.22. No work shall commence without the verification of valid Performance and Payment bonds. The City will require Bonds from the entity named in the Agreement and may not accept Bonds from subcontractors.

14B. Insurance

- a. Without in any way limiting Contractor's liability pursuant to Section 15, "Indemnification and General Liability," of this Agreement, Contractor will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage:
  - (1) Workers' Compensation, in statutory amounts, with Employers' Liability limits not less than \$1,000,000 each accident; 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 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 – not applicable for public work or improvement construction services.
- b. In lieu of naming the city and County of San Francisco as additional insured on our General Liability Insurance policy, Kone will name the City as named insured on an Owners and Contractors Protective Liability Policy at no additional cost to the City
- c. All policies shall be endorsed to provide:

Thirty (30) days advance written notice to City of reduction or nonrenewal of coverages or cancellation

of coverages for any reason. Notices shall be sent to the following address:

Rosa Rankin  
Contracts Administrator  
Maintenance Engineering  
700 Pennsylvania Street  
San Francisco, California 94107

- 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 contract and, without lapse, for a period of three years beyond the contract expiration, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the contract, such claims shall be covered by such claims-made policies.
  - e. Should any of the required insurance, other than professional liability, 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 services or 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. Contractor shall furnish complete copies of policies of any or all of the above-listed insurance policies promptly upon City request. Failure to maintain insurance shall constitute a material breach of this Agreement.
  - j. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.
15. Indemnification
- a. To the fullest extent permitted by law, the Contractor shall assume the defense of, indemnify and save harmless the City and its 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 liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees and costs of investigation) that arise directly or indirectly to the extent caused, in whole or in part, from: (1) the services under this Agreement, or any part thereof, (2) any act or omission of Contractor, and subcontractor to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"), even if such Liabilities are caused in part by the negligence of any Indemnitee, subject to the provisions set forth below in this Section. In the event of the joint negligence of City and Contractor, responsibility shall be allocated on the basis of each party's respective fault or negligence.
  - b. The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

- c. The Contractor's indemnification obligations for 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 proportionate extent of Contractor's negligence or other breach of duty.

16. Incidental and Consequential Damages

DELETED BY MUTUAL AGREEMENT OF THE PARTIES.

17. Liability of City

City's obligations under this contract shall be limited to the payment of the compensation provided for in Section 6 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 Contractor's own 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.

18. Liquidated Damages

Contractor acknowledges and agrees that time is of the essence in responding to calls for service and repairs, as set forth in Appendix A of this Agreement, and that failure to respond may result in actual damages to the City which would be extremely difficult to or impracticable to determine. Contractor therefore further acknowledges and agrees that Individual service orders may include liquidated damages, not as a penalty, but as a reasonable estimate of the loss the City would incur based on the delay. Such liquidated damages may be set by the City, at its sole discretion, according to the particular circumstance of the service order. The City may deduct a sum representing the liquidated damages from any money due to Contractor.

19. Termination For Cause

- 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 this Agreement, and such default continues for a period of ten days after written notice from City to Contractor.
  - (2) 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.

- (3) 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, 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.

## 20. 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 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.

## 21. Rights and Duties Upon Termination or Expiration

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.

22. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of City's Charter and §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of such provisions.

23. 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.

24. Notices to the Parties

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and registered as follows:

To City:                   Municipal Transportation Agency  
                                  Contracts Administrator, Maintenance Engineering  
                                  700 Pennsylvania Street  
                                  San Francisco, CA 94107

To Contractor:       KONE Inc.  
                                  15021 Wicks Boulevard  
                                  San Leandro, CA 94577

25. Ownership of Results

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.

26. Audit and Inspection of Records

Contractor agrees to maintain and make available to City during business hours accurate books and accounting records relative to its activities 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 of this Agreement shall have the same rights conferred upon City by this Section.

27. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is approved by written instrument executed and approved in the same manner as this Agreement. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Contractor acknowledges and agrees that an independent contractor employed by Contractor to perform work under this Agreement shall be considered a subcontractor for the purposes of this Agreement. An Agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

28. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder shall be assigned or delegated by Contractor unless approved by written instrument executed and approved in the same manner as this Agreement.

31. 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 MTA's Contract Compliance Unit or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Contract Compliance Director") 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 Contract Compliance Director 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 Contract Compliance Director 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 Contract Compliance Director or the Controller upon request.

30. Compliance with South Africa Divestment Ordinance; Liquidated Damages

Not applicable.

31. 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.

32. 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 the contractor, its employees, agents or assigns shall be deemed a material breach of contract.

33. 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.

34. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the MTA to submit to the Contract Compliance Director 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%.

35. 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 Executive Director/CEO who shall decide the true meaning and intent of the Agreement.

36. Agreement Made in California; Venue

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

37. Construction

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

38. 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 34.

39. Tropical Hardwood and Virgin Redwood Ban

The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood wood product, virgin redwood or virgin redwood wood product.

40. Ownership of Equipment

Any equipment, vehicles, computer programs (software licenses and media), etc., purchased by the Contractor or its subcontractors in connection with services to be performed under this Agreement shall become property of and will be transmitted to the City.

41. Guaranteed Maximum Costs

- a. The City's obligations 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.

42. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), Contracts, contractor's bids, responses to requests for proposals and all other records of communications between the department 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's 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 subdivision will be made available to the public upon request.

43. Non-Discrimination in City Contracts and Benefits Ordinance

- a. Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor.
- b. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code 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. Non-Discrimination 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 or where the work is being performed for the City or elsewhere within 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 Section 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.
- s. 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 of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing,

Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

44. Submitting False Claims; Monetary Penalties

Any contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for the costs, including attorney's 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) 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. (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.

45. Earned Income Credit (EIC) Forms

(a) Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) 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 (30) 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 (30) 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.

46. Requiring Minimum Compensation for Employees

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](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

- (a) For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of \$10.77 an hour beginning October 14, 2007 and Contractor shall pay a minimum of \$11.03 an hour beginning January 1, 2008; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour beginning October 14, 2007.
- (b) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.
- (c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.
- (d) 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, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:
  - (11) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
  - (12) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
  - (13) The right to terminate this Agreement in whole or in part;
  - (14) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
  - (15) The right to bar Contractor from entering into future contracts with the City for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

- (e) 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.
- (f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the CITY, which communications are marked to indicate that they are to be distributed to Covered Employees.
- (g) Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.
- (h) The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.
- (i) The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.
- (j) 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. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. 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.
- (m) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and



expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

- (1) 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 (\$50,000 for nonprofits), 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 (\$50,000 for nonprofits) in the fiscal year.

#### 47. 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 <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

- a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.
- b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.
- c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.
- d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.
- e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee

for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

- t. 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.
- u. 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.
- v. Contractor shall keep itself informed of the current requirements of the HCAO.
- w. 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.
- x. 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.
- y. 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.

#### 48. Notification of Limitations on Contributions

This paragraph applies if this contract is in excess of \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are "public benefit recipients" of the contract. Public benefit recipients of the contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Contractor understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Contractor except as provided under the Conduct Code. Contractor agrees to notify any other individuals or entities that may be deemed "public benefit recipients"

under the Conduct Code because of this contract. Upon request, Contractor agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Contractor with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or Contractor of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

49. Prohibiting Use of City Funds for Political Activity

No funds appropriated by the City and County of San Francisco for any contract, grant agreement or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign for any candidate or measure. Recipients of city funds will cooperate in audits conducted by the Controller to verify that no City funds were used for political purposes.

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.

50. 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.

51. 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.

## 52. Preservative-treated Wood Containing Arsenic

As of July 1, 2003, 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.

## 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. Nondisclosure of Private Information

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

- (a) Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:
  - (i) The disclosure is authorized by this Agreement;
  - (ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or
  - (iii) The disclosure is required by law or judicial order.
- (b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.
- (c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

- (f) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

55. 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.

56. Force Majeure

Under no circumstances shall Contractor be liable for any loss, damage or delay due to any cause beyond its reasonable control, including but not limited to acts of government, strikes, lockouts, labor disputes, fire, explosion, theft, weather damage, flood, earthquake, riot, civil commotion, war, malicious mischief or act of God.

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

**CITY**

**CONTRACTOR**

Approved:

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
15021 Wicks Boulevard

\_\_\_\_\_  
Address

\_\_\_\_\_  
San Leandro CA 94577  
City State Zip

Municipal Transportation Agency  
Board of Directors  
Resolution No. \_\_\_\_\_

I have read and understood Sec. 31, 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.

Adopted: \_\_\_\_\_

Attest: \_\_\_\_\_  
Secretary, MTA Board

\_\_\_\_\_  
By  
Signature

\_\_\_\_\_  
Dennis Viehweg Senior V.P. West Region  
Name Title

\_\_\_\_\_  
510 351-5141  
Area Code Phone Number

\_\_\_\_\_  
362357423F  
Federal Employer Number

\_\_\_\_\_  
Approved as to Form:  
Dennis J. Herrera  
City Attorney

\_\_\_\_\_  
John I. Kennedy  
Deputy City Attorney

## APPENDIX A

### SCOPE OF SERVICES AND STANDARDS OF PERFORMANCE UNDER MASTER AGREEMENT FOR SPECIAL SERVICES FOR THE INSPECTION, MAINTENANCE AND REPAIR OF ELEVATOR AND ESCALATOR

**Bidding Packages shall be issued for each facility or facilities to be serviced. Each Bidding Package shall include specific terms and conditions in the specifications for the Contract Service Order (CSO) award that shall be used in lieu of the Scope of Services and Standards of Performance in Appendix A. No terms and conditions in the Bidding Package are intended to conflict with the terms and conditions of the Master Agreement For Special Services; however, if a conflict exists, the terms and conditions of the Master Agreement For Special Services shall govern. In the event that a Bidding Package is not issued for a bid quotation, the terms and conditions in the Scope of Services and Standards of Performance in Appendix A shall be used.**

#### 1. SCOPE OF WORK

The scope of work shall include the furnishing of all labor, materials, equipment and services necessary for and incidental to the full service maintenance of elevators and escalators at various locations within the City & County of San Francisco.

**NOTE:** Contractor will be responsible for all permits, fees, building inspections and other requirements in connection with the execution of the above scope of work. If additional work not related to the above scope of work is required the contractor shall notify the contract manager in writing of any discrepancies and submit a written proposal if work can be performed by contractor. Contractor will comply with all Federal, State and local environmental regulations and follow outlined procedures.

#### 2. NOTICE OF START OF WORK

The Contractor shall notify Rosa Rankin at (415) 401-3107 at least five (5) days prior to starting work.

#### 3. SCHEDULING

The areas are presently occupied and the contractor shall arrange a schedule with Scott Border, Elevator/Escalator Inspector at (415) 509-6929.

#### 4. TIME ALLOWED FOR COMPLETION

Time allowed for full performance of the Contract Service Order referenced by this document is 30 working days from award and orders to begin performance which will be issued by Rosa Rankin at (415) 401-3107.

5. COMPLETION OF WORK

All work shall be completed in a manner satisfactory to the Elevator/Escalator Inspector within 30 days of award of a Contract Service Order.

6. OBTAINING PLANS AND SPECIFICATIONS

Plans and specifications are available at 700 Pennsylvania, Building B, San Francisco, California. To obtain a copy of plans and specifications contact Rosa Rankin at (415) 401-3107.

7. INSPECTION OF THE SITE

The Contractor shall inspect the location of the work and familiarize himself or herself with the conditions under which the work shall be performed, and verify that all conditions, dimensions and specifications are as indicated on the drawings prior to submittal of bid. Do not proceed with affected work until any variations or discrepancies are resolved by Rosa Rankin at (415) 401-3107.

8. PROTECTION OF PROPERTY

Keep construction area broom clean. All work shall be done in neat, clean and professional manner. Protect from damage all materials, construction, utilities and other items and appurtenances not scheduled for demolition. Any damage that should occur shall be repaired as incidental work under the contract at no additional cost to the City.

9. DEBRIS

All dirt, rubbish and debris caused by the work shall be hauled away by the contractor. Premises will be left in a clean and orderly condition at the completion of each days work.

10. LABOR STANDARDS

Contractor shall comply with the mandate under San Francisco Charter section A7.204 and Administrative section 6.22(E) and shall pay its workers performing work under this Agreement the prevailing wage for the craft or crafts required to complete the work. The Board of Supervisors determines the prevailing wage rates and such wage rates are available at the San Francisco Office of Labor Standards Enforcement ("OLSE") or through the California Department of Industrial Relations. In the event that Contractor employs a subcontractor to perform work under this Agreement, Contractor shall require its subcontractor(s) likewise comply with the prevailing wage requirements.

The Contractor shall keep for a period of four years from the date of performance of any CSO, payrolls and basic records including time cards, trust fund forms, apprenticeship agreements, accounting ledgers, tax forms and superintendent and



foreman daily logs for all trades workers performing work under this Agreement. Such records shall include the name, address and social security number of each worker who worked under a CSO, including apprentices, his/her classification, a general description of the work each worker performed each day, the rate of pay (including fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. The Contractor shall require its subcontractors, if any, to maintain the same records.

The Contractor shall maintain weekly certified payroll records for submission to the awarding department as required. The Contractor shall be responsible for the submission of payroll records of its subcontractors, if any.

All payroll and related records described in the foregoing paragraphs shall at all times be open to inspection and examination of the duly authorized officers and agents of the City and County of San Francisco, including representatives of the Office of Labor Standards Enforcement.

The Contractor further acknowledges and agrees that it shall comply with the City's labor standards enforcement procedures as follows:

1. Contractor shall cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage and other labor standards requirements;
2. The Labor Standards Enforcement Officer and his or her designees, in the performance of his/her duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks;
3. Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site;
4. Contractor shall prominently post at each job-site a sign informing employees that the work is subject to the City's prevailing wage requirements with reference to the Office of Labor Standards Enforcement;
5. The Office of Labor Standards Enforcement may audit such records of the contractor as he or she reasonably deems necessary to determine compliance with the prevailing wage and other labor standards imposed by the City Charter and the Administrative Code.

Failure to comply with the labor standards provisions of this Agreement may result in a forfeiture of penalties and back wages under Administrative Code section 6.22(E)(8).

11. DEMOLITION

Demolition is not limited to what is shown on the drawings. The intent of the drawings is to indicate the general scope of the work required. Notify Rosa Rankin at (415) 401-3107 of any discrepancies.

12. MATERIALS

All work and materials shall be new unless otherwise noted.

13. ASBESTOS

If during the course of the work performed it is discovered that there is a potential for disturbing asbestos containing material, work must be suspended immediately until it is determined that it is safe to proceed and/or adequate control measures have been established.

14. ASBESTOS INFORMATION

Attached hereto and incorporated by reference as though fully set forth herein.

15. INSTALLATION

The contractor shall furnish all labor, equipment and materials to provide for the installation of the following:

- A. Repair & maintenance of City owned elevators and escalators at various locations.

16. STANDARDS

All work to comply with Title 21 and Title 24 of the CAC and to conform with Federal ADA (Americans with Disabilities Act) Standards.

APPENDIX B

SCHEDULE OF VALUES

Billing Rates shall be based on the bid quotations awarded for each Contract Service Order (CSO).

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.4**

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

**DIVISION:** Traffic Engineering

**BRIEF DESCRIPTION:** Authorizing the award of Department of Public Works Contract No. 1387J: Contract 58 New Traffic Signals to Phoenix Electric Company, 1300 Van Dyke Avenue, San Francisco, CA 94124, as the lowest responsive and responsible bidder, for a total contract amount not to exceed \$1,283,849.

**SUMMARY:**

- On September 4, 2007, the SFMTA Board approved Resolution No. 07-145 to issue a bid call for DPW Contract No. 1387J for installation of new traffic signals at six intersections in San Francisco.
- The engineer's detailed cost estimate for the work was \$1,127,434.
- On January 23, 2008, the City received one bid from Abbett Electric Corporation for \$1,757,344 (55.87% above City's engineer's estimate) and another bid from Phoenix Electric Company for \$1,283,849 (13.87% above the engineer's estimate).
- DPT staff recommends awarding the contract to Phoenix Electric Company in the amount of \$1,283,849. Although Phoenix's bid is over 10% above the engineer's estimate, staff recently discovered that the engineer's estimate for High Density Polyethylene (HDPE) conduits was underestimated by over 20%. The underestimation is due to a significant increase in prices for HDPE conduits compared to last year. If the engineering estimate for the HDPE conduits was adjusted to reflect actual current prices, the bid by Phoenix Electric would have been within 10% above the engineer's estimate.
- The contract work will be fully funded through Propositions B and K Sales Tax revenues.
- 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% LBE goal.
- The City Attorney's Office has reviewed this calendar item.

**ENCLOSURES:**

1. SFMTA Board Resolution
2. Project Budget and Financial Plan

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

PREPARING ITEM \_\_\_\_\_

FINANCE \_\_\_\_\_

EXECUTIVE DIRECTOR/CEO \_\_\_\_\_

SECRETARY \_\_\_\_\_

ADOPTED RESOLUTION Geraldine de Leon

BE RETURNED TO

**ASSIGNED SFMTA BOARD CALENDAR DATE:** \_\_\_\_\_

## **EXPLANATION:**

### **Scope of Work:**

On September 4, 2007, the SFMTA Board approved Resolution No. 07-145 to issue a bid call for DPW Contract 1387J: Contract 58 New Traffic Signals.

Under this contract, the contractor will install new traffic signals at the following six intersections: Baker and Turk Streets; California and Lyon Streets; Geary Boulevard and Spruce Street; Geary Boulevard and 11<sup>th</sup> Avenue; Hyde and Vallejo Streets; and Douglass and Market Streets and install conduits at 30<sup>th</sup> Avenue and Lincoln Way and Lincoln Way from 19<sup>th</sup> to Funston Avenues (collectively, "the Work").

The new traffic signals at the six above mentioned intersections will 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 conduit installations on Lincoln Way will support future traffic signal projects as described below. These conduit installations were added to Contract 58 to avoid conflict with an upcoming DPW pavement renovation project on Lincoln Way.

The conduit work on 30<sup>th</sup> Avenue and Lincoln Way is needed to support new traffic signals which will be installed as part of an upcoming signal contract. The conduit work on Lincoln Way from 19<sup>th</sup> to Funston Avenues is needed to support a future fiber optic network for the San Francisco Integrated Traffic Management System (SFgo). This segment is important because it will connect corridors, including 19<sup>th</sup> Avenue, to the SFgo Traffic Management Center (SFgo TMC) located at 25 Van Ness Avenue. This network connection will allow the SFgo TMC to monitor existing traffic conditions and implement changes in signal timing to respond to actual traffic conditions such as special events and traffic collisions.

DPT staff performed the initial conceptual design for this contract. DPW staff performed the detailed electrical design and contract preparation. DPW staff will also provide contract administration and construction management services.

Including the work on Lincoln Way, the City's engineer's detailed estimate was \$1,127,434.

The time allotted to substantially complete the work is 210 calendar days from the written notice to proceed. Liquidated damages are \$3,000 per day for failure to complete the Work on time.

### **Funding:**

The Work will be funded through Propositions B and K Sales Tax revenues, a half-cent sales tax approved by San Francisco voters in 1989 and 2003, respectively. The San Francisco County Transportation Authority (SFCTA) has already approved \$199,023 from Proposition K for the design phase of this project.

SFCTA has also already approved \$1,577,170 from Proposition K for the construction phase of this project. DPT will request and expects SFCTA approval for the following additional construction funds for this project totaling \$409,037: \$23,565 in Proposition B funds to cover costs of installing traffic signal conduits at 30<sup>th</sup> Avenue and Lincoln Way, \$265,472 in Proposition K funds to cover the costs of installing fiber optic network conduits on Lincoln Way from 19<sup>th</sup> to Funston Avenues, and \$120,000 in Proposition K funds to cover the differential between engineer's estimate and low bid for contract and contingency costs.

The total budget including design and construction phases will be \$2,185,230 (see Enclosure 2).

**Bids:**

On December 20, 2007, 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 day of the bid opening on the City's internet website at <http://www.sfgov.org/oca/purchasing>.

On January 23, 2008, the Department of Public Works received and publicly opened the following two bids for DPW Contract No. 1387J:

Abbett Electric Corporation  
1850 Bryant Street  
San Francisco, CA 94110  
**Bid Amount: \$1,757,344**

Phoenix Electric Company  
1300 Van Dyke Avenue  
San Francisco, California 94124  
**Bid Amount: \$1,283,849**

DPW determined that Abbett Electric was a non-responsive bidder because its bid security, a corporate surety bond, was less than 10% of its total bid amount. San Francisco Administrative Code Section 6.21(A)(4) requires that all bids in excess of \$25,000 be accompanied by a bid security of not less than 10% of the amount bid for the cost of the proposed work.

Although Phoenix's bid is over 10% above engineer's estimate, staff recommends award to Phoenix based on the recent discovery that the engineer's estimate for HDPE conduits was underestimated by over 20%. The underestimation is due to a significant increase in prices for conduits compared to last year. A local vendor for Phoenix Electric confirmed that HDPE conduits have increased in price by approximately 10% to 20% in the past year. If the engineering estimate for the HDPE conduits was adjusted to reflect actual current prices, the bid by Phoenix Electric would have been within 10% above the engineer's estimate.

Phoenix is a responsible contractor with extensive experience in traffic signal installations in the City.

The Contract Compliance Officer (CCO) from the Human Rights Commission reviewed the bid

documents from Phoenix Electric Company and concluded that they will meet the 20% Local Business Enterprise (LBE) participation goal for this contract.

The City Attorney has reviewed this calendar item.

**Strategic Plan Goals:**

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

- Goal 1 – Customer Focus
  - 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 – System Performance
  - 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

**Recommendation:**

Staff recommends that the SFMTA Board authorize the Executive Director/CEO to approve the award of Department of Public Works Contract No. 1387J: Contract 58 New Traffic Signals, to Phoenix Electric Company, 1300 Van Dyke Avenue, San Francisco, California 94124, as the lowest responsive and responsible bidder, for a total contract amount of \$1,283,849.

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

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 six 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: Baker and Turk Streets; California and Lyon Streets; Geary Boulevard and Spruce Street; Geary Boulevard and 11<sup>th</sup> Avenue; Hyde and Vallejo Streets; and Douglass and Market Streets; DPT has also determined that conduits need to be installed at 30<sup>th</sup> Avenue and Lincoln Way and Lincoln Way from 19<sup>th</sup> to Funston Avenues to support future traffic signal projects (collectively, "the Work"); and,

WHEREAS, The Work will be funded with Propositions B and K sales tax revenues; and,

WHEREAS, On September 4, 2007, the SFMTA Board approved Resolution No. 07-145 to issue a bid call for DPW Contract 1387J: Contract 58 New Traffic Signals; and,

WHEREAS, The City advertised for bids for DPW Contract No. 1387J and received two bids, which were opened publicly on January 23, 2008; and

WHEREAS, The Department of Public Works has determined that Phoenix Electric Company is the lowest responsive and responsible bidder, with a bid of \$1,283,849; and,

WHEREAS, The Contract Compliance Officer confirmed that Phoenix Electric Company will meet the 20% LBE participation goal; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to approve the award of Department of Public Works Contract No. 1387J: Contract 58 New Traffic Signals, to Phoenix Electric, 1300 Van Dyke Avenue, San Francisco, CA 94124, for a total contract amount not to exceed \$1,283,849.

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**

**Department of Public Works Contract No. 1387J: Contract 58 New Traffic Signals  
Project Budget and Financial Plan**

| <b>PROJECT BUDGET</b>  |                      |
|--|----------------------|
| <b>Category</b>  | <b>Budget Amount</b> |
| DPT Traffic Engineering & DPW Bureau of Engineering (Design, Planning Coordination, & Detailed Electrical Design) *  | \$199,023            |
| Detailed Engineering Estimate for Construction Contract Cost Prior to Addition of Conduit Work on Lincoln Way **   | \$955,172            |
| 10% Construction Cost Contingency **   | \$95,517             |
| Other Direct Costs (Electrical Service, 911 Call Boxes, & Cable Car Switches) **   | \$37,000             |
| DPW Bureau of Construction Management & Bureau of Engineering (Contract Preparation, Public Affairs, Materials Testing Lab, Wage Check & Construction Engineering) **                        | \$270,426            |
| DPT Traffic Engineering & Signal Shop (Construction Support) **  | \$219,055            |
| Pending Additional Funds from the SFCTA for SFgo conduits on Lincoln Way from 19 <sup>th</sup> to Funston Avenues ***  | \$265,472            |
| Pending Additional Funds from the SFCTA for Traffic Signal Conduits on 30 <sup>th</sup> Avenue and Lincoln Way ***   | \$23,565             |
| Pending Additional Funds from the SFCTA to Cover Differential between Engineer's Estimate and Low Bid for Contract and Contingency Costs ***   | \$120,000            |
| <b>TOTAL (DESIGN PHASE)</b>  | <b>\$199,023</b>     |
| <b>TOTAL (CONSTRUCTION PHASE)</b>  | <b>\$1,986,207</b>   |
| <b>TOTAL (DESIGN AND CONSTRUCTION PHASES)</b>  | <b>\$2,185,230</b>   |
| * Design funds already previously approved by the SFCTA<br>** Construction funds already previously approved by the SFCTA<br>*** Additional construction funds pending approval by the SFCTA |                      |

| <b>FINANCIAL PLAN</b> |  |  |
|-----------------------|--|--|
|-----------------------|--|--|

| <b>Funding Source</b>                            | <b>Amount</b> | <b>Percentage</b> |
|--|---------------|-------------------|
| Local Half Cent Sales Tax - Propositions B and K | \$2,185,230   | 100%              |





**THIS PRINT COVERS CALENDAR ITEM NO. : 10.5**

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

**DIVISION:** Parking and Traffic

**BRIEF DESCRIPTION:**

Authorizing the Executive Director/CEO to execute an Agreement to accept \$130,000 from the State of California for conversion of the traffic signals at Silver Avenue/San Bruno Avenue and Silver Avenue/Bayshore intersections back to City standards, and upon receipt of such funds, to assume the obligation to operate, control and maintain the traffic signal systems.

**SUMMARY:**

- The State of California performed seismic retrofitting work for the route 101/280 interchange in 1994.
- The State accepted responsibility for and converted the City traffic signals at the intersections of Silver Avenue/San Bruno Avenue and Silver Avenue/Bayshore to State standards so that the State could operate them when controlling traffic through the State's work zones.
- The SFMTA now proposes to upgrade and convert the traffic signals back to City standards and operate, control and maintain them.
- The State has agreed to contribute \$130,000 to the conversion and upgrade project.
- The remainder of the funds for the upgrading and conversion of the traffic signal at Silver Avenue/Bayshore is being provided as traffic mitigation for the Home Depot project at Bayshore Boulevard near Cortland Avenue. The remainder of the funds for the converting and upgrading of the traffic signal Silver Avenue/San Bruno is being provided by the SFMTA as part of its annual traffic signal upgrading projects.

**ENCLOSURES:**

1. MTAB Resolution
2. Contribution/Maintenance Agreement

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

PREPARING ITEM \_\_\_\_\_

FINANCE \_\_\_\_\_

EXECUTIVE DIRECTOR/CEO \_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ADOPTED RESOLUTION Dan Arellano  
BE RETURNED TO:

**ASSIGNED MTAB CALENDAR DATE:** \_\_\_\_\_

**EXPLANATION:**

The State of California performed seismic retrofitting work for the route 101/280 interchange in 1994. As part of the project, the State accepted responsibility for and converted the City traffic signals at the intersections of Silver Avenue/San Bruno Avenue and Silver Avenue/Bayshore to State standards so that the State could operate them when controlling traffic through the State's work zones. Since the seismic has been completed, the State no longer needs to control these traffic signals.

The SFMTA's Department of Parking and Traffic (DPT) has been pursuing conversion of the traffic signals back to City Standards and returning to the City the obligations for operation and control of the signals. This was delayed for many years due to staff turnover at both the State and the City.

DPT has negotiated an agreement with Caltrans regarding the upgrade and conversion of the traffic signals. The State has agreed to contribute \$130,000 to the conversion and upgrade project. As soon as the SFMTA receives the funds from Caltrans, the City will assume the obligation for operation, control and maintenance of the traffic signals.

DPT has received requests from the neighborhood to make changes to the signal at Silver Avenue/Bayshore, including installation of pedestrian countdown signals and separate left turn phases to improve safety. These were referred to the State, since the State had assumed control and operation of the traffic signal during its seismic retrofit work. However, the State was not willing to make these improvements since the traffic signal is not within the State right of way. After many letters and phone calls and discussions, the State finally agreed to fund a large portion of the costs so that the City can make upgrades and operate the signals.

SFMTA estimates that it will cost approximately \$150,400 to perform the upgrading and conversion of the traffic signal system at Silver Avenue/Bayshore. Home Depot will provide approximately \$120,000 of the funds needed for the Silver Avenue/Bayshore traffic signal as traffic mitigation for its project at Bayshore Boulevard near Cortland Avenue. The remainder of the funds required will come from the State contribution.

For the upgrading and conversion of the signal system at Silver Avenue/San Bruno Ave., State funding will provide \$100,000 for the project and the SFMTA will provide the remainder of the funds, approximately \$47,000, from its annual traffic signal upgrading budget.

**SFMTA GOALS AND OBJECTIVES:**

Executing and Approving the Agreement with Caltrans will aid the SFMTA in achieving its Strategic Goals:

Goal 1 – Customer Focus:

Objective 1.1 Improve safety and security across all modes of transportation  
Goal 2 – System Performance:

Objective 2.4 Reduce congestion through major corridors

Goal 3 – External Affairs/Community Relations:

Objective 3.1 Improve economic vitality by growing relationships with business, community and stake holder groups.

Goal 4 – Financial Capacity:

Objective 4.2 Ensure efficient and effective use of resources

**Recommendation:** Staff requests that the Municipal Transportation Agency Board of Directors authorize the Executive Director/CEO to execute the Agreement with the State of California to receive \$130,000 from the State for conversion of the traffic signals at Silver Avenue/San Bruno Avenue and Silver Avenue/Bayshore intersections to City Standards; and to assume the obligation to operate, control and maintain the two traffic signal systems.

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

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

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

WHEREAS, In 1994, the State performed seismic retrofitting for the route 101/interchange and accepted responsibility for and converted the existing City traffic signals at Silver Avenue /San Bruno Avenue and Silver Avenue/Bayshore Avenue (the "traffic signal systems") to State standards so the State could operate when controlling the traffic flow through the State's work zones; and

WHEREAS, The seismic retrofit work has been completed and the State desires to return control of the traffic signals to the SFMTA; and

WHEREAS, The SFMTA would like to convert the traffic signal systems back to City standards, make upgrades, and resume control and operation of the traffic signal systems; and

WHEREAS, The State has agreed to contribute \$130,000 of the funds for the project, with additional funds coming from Home Depot and the SFMTA annual budget for traffic signal upgrades; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute an Agreement to accept \$130,000 from the State of California for conversion of the traffic signals at Silver Avenue/San Bruno Avenue and Silver

Avenue/Bayshore intersections back to City standards, and upon receipt of such funds, to assume the obligation to operate, control and maintain the traffic signal systems;

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

04-SF 101 PM 1.77  
Route 101/280 Traffic Signals  
04380-2L1800  
District Agreement No. 4-2165

### CONTRIBUTION/MAINTENANCE AGREEMENT

THIS AGREEMENT, ENTERED INTO EFFECTIVE ON \_\_\_\_\_, 2008, is between the STATE OF CALIFORNIA, acting by and through its Department of Transportation, referred to herein as "STATE", and the

CITY AND COUNTY OF SAN FRANCISCO, a body politic and a municipal corporation of the State of California, referred to herein as "CITY."

### RECITALS

1. STATE and CITY, pursuant to Streets and Highways Code Section 114 and 130, are authorized to enter into a Cooperative Agreement for improvements within the City and County of San Francisco.
2. STATE performed seismic retrofitting for the Route 101/280 interchange in 1994. Caltrans accepted responsibility for and converted the existing CITY signals at the Silver Avenue/San Bruno Avenue and Silver Avenue/Bayshore Boulevard intersections in the City and County of San Francisco, referred to herein as INTERSECTIONS, to State standards so STATE could operate them when controlling the flow of traffic through STATE's work zones.
3. CITY now proposes to upgrade the existing traffic signals at INTERSECTIONS. The project will convert the signals back to CITY standards (i.e. hardware, software), provide left turn phases for Bayshore Blvd. at Silver Avenue northbound and southbound approaches, and install countdown pedestrian signals, referred to herein as PROJECT.
4. STATE has agreed to contribute financially towards PROJECT.
5. STATE desires to contribute a lump sum of \$130,000 towards the amount needed to convert the signals back to CITY standards through funds from its 2007/08 Minor B funding program, and

the CITY will be responsible for the remainder of all costs, including all cost overruns, and for designing and constructing this PROJECT.

6. The parties intend to define in this Agreement the terms and conditions under which PROJECT is to be constructed, financed, and maintained.

#### SECTION I

##### CITY AGREES:

1. To resume maintenance, control and liability over the traffic signals at INTERSECTIONS, in the City and County of San Francisco, upon receipt of STATE's deposit and therewith, relieve STATE of any responsibility for maintenance, control and liability over the INTERSECTIONS.
2. To design, advertise, award and administer the construction contract for PROJECT.
3. The total estimated PROJECT cost is \$345,000 and the STATE contribution will be a lump sum in the amount of \$130,000. Any additional funds needed to complete the PROJECT will be borne by CITY.
4. To invoice STATE upon execution of this Agreement in the amount of \$130,000, which represents STATE's lump sum contribution.

#### SECTION II

##### STATE AGREES:

1. To deposit with CITY within twenty-five (25) days of receipt of billing, the amount of \$130,000, which figure represents the lump sum total amount of STATE's agreed contribution to PROJECT pursuant to this Agreement.

#### SECTION III

##### IT IS MUTUALLY AGREED:

1. All obligations of STATE under the terms of this Agreement are subject to the appropriation of resources by the Legislature, State Budget Act authority and the allocation of resources by the California Transportation Commission (CTC).
2. CITY's obligation to construct PROJECT 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.
3. 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.

4. Nothing in the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or affect the legal liability of either party to the Agreement by imposing any standard of care with respect to the maintenance of State highways different from the standard of care imposed by law.
5. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction conferred upon CITY and arising under this Agreement. It is understood and agreed that CITY will fully defend, indemnify and save harmless STATE and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.
6. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction conferred upon STATE and arising under this Agreement. It is understood and agreed that STATE will fully defend, indemnify and save harmless CITY and all its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.
7. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.
8. This Agreement shall terminate upon payment to CITY by STATE, pursuant to this Agreement, or on December 31, 2008, whichever is earlier in time, except that ownership, operation, maintenance, indemnification, legal challenges and claims articles shall remain in effect until terminated or modified, in writing, by mutual agreement.

STATE OF CALIFORNIA  
Department of Transportation

CITY AND COUNTY OF SAN FRANCISCO  
Municipal Transportation Agency

WILL KEMPTON  
Director

By: \_\_\_\_\_

By: \_\_\_\_\_

Deputy District Director

Nathaniel P. Ford, Sr.

Executive Director/CEO

Approved as to form and procedure:

Municipal Transportation Agency  
Board of Directors

\_\_\_\_\_  
\_\_\_\_\_  
Attorney  
Department of Transportation

Resolution  
Number: \_\_\_\_\_

Dated: \_\_\_\_\_  
\_\_\_\_\_

Attest: \_\_\_\_\_

Certified as to budgeting of funds:

\_\_\_\_\_  
Roberta Boomer, Secretary

\_\_\_\_\_  
\_\_\_\_\_  
District Budget Manager

Approved as to form:  
Dennis J. Herrera, City Attorney

Certified as to financial terms and  
conditions:

By: \_\_\_\_\_

\_\_\_\_\_  
Robin M. Reitzes  
Deputy City Attorney

\_\_\_\_\_  
\_\_\_\_\_  
Accounting Administrator



**THIS PRINT COVERS CALENDAR ITEM NO. : 10.6**

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

**DIVISION:** TRANSPORTATION PLANNING AND DEVELOPMENT

**BRIEF DESCRIPTION:**

Requesting the approval under Administrative Code Section 6.60(D) of emergency contracting work in the Twin Peaks Tunnel to replenish ballast; re-tamp and realign rail; and remove, replace, and transpose rail.

**SUMMARY:**

- During October 2007, a SFMTA team of safety, engineering, maintenance, operations, and construction staff inspected the Twin Peaks Tunnel Area, between Eureka and West Portal Stations, and identified areas that required emergency repairs.
- Pursuant to Section 6.60 of the Administrative Code, on November 16, 2007, the Chairman of the SFMTA Board of Directors, Rev. Dr. James McCray, Jr., authorized the SFMTA Executive Director/CEO to implement emergency work in the Twin Peaks Tunnel – replacing ballast, tamping, leveling and realigning track, and replacing worn rails and ties.
- Under the SFMTA's exclusive authority over contracting contained in Charter Section 8A.102(b)(1) (Prop. E, modified by Prop. A), the SFMTA no longer has to go to the Board of Supervisors for approval to award emergency contracts exceeding \$250,000; instead, the SFMTA must obtain subsequent approval from its Board of Directors.
- Staff seeks approval from the Board to continue with the emergency work, under Contract Modification No. 6 to MR-1210, Muni Metro System Subway Overhead Reconstruction Project, with Shimmick Construction Company, Inc.

**ENCLOSURES:**

1. MTAB Resolution
2. Memorandum to Rev. Dr. James McCray, Jr., dated November 16, 2007
3. Contract Modification No. 6 to SFMTA Contract No. MR-1210, Muni Metro System Subway Overhead Reconstruction Project

**APPROVALS:**

DIRECTOR OF DIVISION

PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION

BE RETURNED TO

Contracting Section Attn: Gigi Pabros

**DATE**

**ASSIGNED MTAB CALENDAR DATE:** \_\_\_\_\_

## **EXPLANATION:**

During October 2007, a SFMTA team of safety, engineering, maintenance, operations, and construction staff inspected the Twin Peaks Tunnel Area, between Eureka and West Portal Stations, and observed the following conditions:

- worn rails;
- deteriorating railway ties;
- loose railway spikes;
- misaligned rail geometry;
- unstable track bed, requiring ballast replenishment and tamping; and
- fouled ballast.

Based on these conditions, SFMTA staff directed that LRV operating speeds be reduced and that rail replacement be accelerated in the affected area.

San Francisco Administrative Code Sections 6.60(C)(2) and 6.60(D) provide that under specified emergency conditions, such as the breakdown or imminent breakdown of equipment necessitating immediate emergency repair or reconditioning to safeguard the property of the City and protect the public, the repair work necessitated by the emergency may be executed by the department head responsible for such work in the most expeditious manner. If the estimated cost of the emergency work exceeds \$250,000, the department head, prior to authorizing the commencement of the work, must first secure the approval in writing of the president of the board or commission concerned. As a result of the passage of Propositions E and A, the SFMTA must obtain subsequent approval of the SFMTA Board instead of the Board of Supervisors, as required of other departments of the City.

On November 16, 2007, SFMTA Board Chairman, Rev. Dr. James McCray, Jr., provided written authorization for the SFMTA Executive Director/CEO to implement the emergency work in the Twin Peaks Tunnel (enclosure 2).

SFMTA staff determined that the most expeditious manner to execute this work was to modify an existing contract instead of issuing a new contract. Shimmick Construction Company, Inc., under Contract No. MR-1210, Muni Metro System Subway Overhead Reconstruction Project, was working in the tunnel area and was familiar with the conditions in the area between Eureka and West Portal Stations. The contractor also possessed both the expertise and available resources to accomplish the necessary tasks within the shutdown window time frame – by March 31, 2008.

Staff expeditiously negotiated and processed Contract Modification No. 6 to Contract No. MR-1210 so that Shimmick Construction Company, Inc. would be able to meet the scope and time requirements of the emergency work (Enclosure 3). The Executive Director/CEO executed Contract Modification No. 6 in the amount of \$1,649,859, extending the term of the Contract by 76 calendar days. The emergency work began on January 2, 2008. As of February 20, 2008, the

Contractor has completed 75% of the emergency work.

The emergency work being performed under Contract Modification No. 6 to MR-1210 assists in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

Strategic Plan 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.
- 1.5 Increase percentage of trips using more sustainable modes.

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

- 4.2 Ensure efficient and effective use of resources

The City Attorney's Office and Contract Compliance have reviewed this calendar item. Staff recommends that the SFMTA Board approve, under Administrative Code Section 6.60(D), the plan for emergency contracting work in the Twin Peaks Tunnel to replenish ballast; re-tamp and realign rail; and remove, replace, and transpose rail.

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

RESOLUTION NO. \_\_\_\_\_

WHEREAS, During October 2007, a SFMTA team of safety, engineering, maintenance, operations, and construction staff inspected the Twin Peaks Tunnel, between Eureka and West Portal Stations, and observed worn rails; deteriorating railway ties; loose railway spikes; misaligned rail geometry; unstable track bed requiring ballast replenishment and tamping; and fouled ballast; and,

WHEREAS, Based on these conditions, SFMTA staff identified specific areas that required emergency repairs, such as replenishing ballast; re-tamping and realigning rail; and removal, replacement, and transposition of rail in the Twin Peaks Tunnel between Eureka and West Portal Stations (the "emergency work"); and,

WHEREAS, San Francisco Administrative Code Sections 6.60(C)(2) and 6.60(D) provide that under specified emergency conditions, such as the breakdown or imminent breakdown of equipment necessitating immediate emergency repair or reconditioning to safeguard the property of the City, the repair work necessitated by the emergency may be executed by the department head responsible for such work in the most expeditious manner; if the estimated cost of the work exceeds \$250,000, the department head, prior to authorizing the commencement of the work, must first secure the approval in writing of the president of the board or commission concerned; and

WHEREAS, Under the authority in Administrative Code Section 6.60(D), on November 16, 2007, SFMTA Board of Directors Chairman, Rev. Dr. James McCray, Jr., authorized the SFMTA Executive Director/CEO to implement the emergency work in an amount in excess of \$250,000; and,

WHEREAS, The SFMTA determined that the most expeditious way to implement the emergency work was by amending Contract No. MR-1210, Muni Metro System Subway Overhead Reconstruction Project, with Shimmick Construction Company, Inc., because the contractor was already working in the Twin Peaks Tunnel and was familiar with the conditions in the area; and,

WHEREAS, This emergency work in the Twin Peaks Tunnel will assist SFMTA in meeting the Strategic Plan Goal 1 in providing safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy by improving safety and security across all modes of transportation and increasing percentage of trips using more sustainable modes; and Strategic Plan Goal 4 in ensuring financial stability and effective resource utilization by ensuring efficient and effective use of resources; and,

WHEREAS, The Executive Director/CEO executed Contract Modification No. 6 to Contract No. MR-1210 with Shimmick Construction Company, Inc. to execute the emergency work for an amount not to exceed \$1,649,589, with an extension of 76 calendar days to the term of the Contract; now, therefore, be it,

RESOLVED, Under Administrative Code Section 6.60(D), the SFMTA Board approves the plan for the emergency work in the Twin Peaks Tunnel, including Contract Modification No. 6 to Contract No. MR-1210, Muni Metro System Subway Overhead Reconstruction Project, with Shimmick Construction Company, Inc., in the amount of \$1,649,589, with an extension of the Contract term of 76 calendar days.

I certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of March 4, 2008.

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Secretary, San Francisco Municipal Transportation Agency Board

### **MEMORANDUM**

DATE: November 16, 2007

TO: Rev. Dr. James McCray, Jr.  
SFMTA Board of Director's Chairman

FROM: Nathaniel P. Ford, Sr.  
Executive Director/CEO

SUBJECT: Request for Emergency work Approval Track Tamping and Rail realignment in the Twin Peaks Tunnel between Eureka Station and West Portal Station

During the month of October 2007, a SFMTA team of safety, engineering, maintenance, operations and construction staff inspected the Twin Peak Tunnel between the Eureka Station and West Portal Station. The following conditions were identified: worn rail on the outbound trackway; deteriorating railway ties; spikes working loose; track geometry out of alignment; and unstable track bed requiring tamping and ballast replacement.

In order to properly mitigate the above findings, ballast replenishment, tamping, leveling and realignment of the tracks, and replacement of worn rails and ties must be done. Our staff engineers have estimated the cost of the work to be approximately \$700,000.

Operations staff has taken immediate measures to reduce the operating speed in the affected areas and our Track Maintenance Department has accelerated the replacement of worn rail in the Twin Peaks tunnel.

Currently, we do not have the resources to accomplish the tamping “in-house” within the present Twin Peaks Tunnel early shutdown window. Therefore, we must rely upon a contractor for this task.

SFMTA must immediately issue an emergency contract in order to secure the services of a qualified contractor who can meet the scope and time requirements of this job.

Section 6.60(C)(2) of the City’s Administrative Code states that an “actual emergency” includes “the breakdown of any plant, equipment, structure, street or public work necessitating the immediate emergency repair or reconditioning to safeguard the lives of the citizens; or the property of the City and County.” This emergency work is required to prevent the loss of essential public services and to safeguard the public health and welfare by avoiding any accidents within the Twin Peaks Tunnel.

Section 6.60(D) of the City’s Administrative Code requires the written approval of the Chairman of the Municipal Transportation Agency’s Board of Directors for emergency repair and installation work that will exceed \$250,000 and is not awarded pursuant to a competitive bid process. Approval shall also be requested of the SFMTA Board of Directors and Board of Supervisors as soon as possible thereafter.

Accordingly, authorization is requested to execute an agreement for emergency work that will exceed \$250,000. Please indicate your approval by your signature below.

---

Rev. Dr. James McCray, Jr.  
SFMTA Board of Directors’ Chairman

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Date

Approval is granted to perform the ballast replenishment, tamping, leveling and realignment of the tracks in the Twin Peaks Tunnel from the Eureka Station to the West Portal Station.

cc: SFMTA Board of Directors

CONTRACT MODIFICATION NO. 6

**San Francisco Municipal Railway Contract No. MR-1210**

MUNI Metro System Subway Overhead Reconstruction

Contractor: Shimmick Construction Co. Inc.  
24200 Clawiter Road  
Hayward, CA 94545

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IT IS MUTUALLY AGREED by the parties to this modification that the contract referred to above, and related plans and specifications, are modified as described below:

1. **Realign and Retamp Twin Peaks Track Alignment:** Raise, tamp, align, and level approximately 21,200 Track Feet (Track Feet: Linear Feet times two for each side of the track) of track from the entrance of the Twin Peaks Tunnel at West Portal Station to the point of switches for the existing shoofly alignments at Eureka Station. The limit of tamping and realigning work begins at the entrance to the Twin Peaks Tunnel at West Portal Station, at approximately Station 3+62.59 and extends to the point of switches for the existing shoofly alignment at Eureka Station (abandoned), Station 112+15.44. The tamping excludes Forest Hill Station, which has track pavement from Station 30+83.00 to 33+82.00. The track work shall be raised, tamped, aligned and leveled to the proper alignment and elevation as directed by the Engineer, who will be on-site. The realignment of the track work, vertical and horizontal shall conform substantially to existing track work at the limits of work.

The work includes hauling ballast from SFMTA Maintenance stock pile and placing new ballast where replenishing is required. SFMTA will furnish a tamping machine. Contractor is responsible for servicing and maintaining it while work is in progress. Areas are to be hand tamped where access to the ballast is impeded by existing track work, such as the single crossover, at axle counters or where gage rods are positioned between ties, and wherever necessary to achieve proper temping of ballast. Care must be taken to avoid damage to existing Advanced Train Control System (ATCS) cables. If the cables are damaged, the Contractor shall inform SFMTA Maintenance personnel immediately and allow time for crews to repair the cable prior to restoring revenue service.

In advance of the tamping, the Contractor shall remove foreign material from the surface of the tunnel and track way which might contaminate the ballast starting from West Portal Station to Eureka Station, including Forest Hill Station.

All work shall be performed in compliance with Section 05650: BASIC TRACK WORK MATERIALS AND METHODS of the Technical

Specifications.

Lump Sum: \$626,764.00

2. **Remove, Replace and Transpose Rail:** Prior to tamping and realigning Track Left east of Forest Hill Station, the Contractor shall weld and install 1,000 LF of new 100# rail furnished by SFMTA. The work includes transporting rail from the SFMTA yard to the job site, stringing rail in the tunnel and furnishing all material and equipment for welding the pieces into continuous strings. The existing rail segment shall be removed and replaced by new rail. The joints between existing rails and/or new rails shall be bolted together with 100# joint bar assemblies furnished by SFMTA. Existing insulation joints shall be salvaged and reinstalled at same locations. The impedance bonds shall be reconnected to the new rail. This work also includes removing the existing rail from the tunnel and transporting it to a salvage yard.

The Contractor shall salvage approximately 500 LF of existing rail and use it to start transposing the rail on Track Left. This work is continuous from the Eastern side of Forest Hill Station at Station 33+82 to the start of the Twin Chamber Tunnel at the Eureka Station 100+70 for an estimated 6,688 TF. If the existing rail has insulation joints, the joint assemblies shall be salvaged and reinstalled at the same locations. The impedance bonds shall be reconnected to the rail at the same locations. Any sections that have been previously transposed by SFMTA crew shall be removed. Any additional welding or insertion of salvaged rail to create a 500 LF string for transposing shall be done on force account. The joints between transposed rails shall be bolted together with joint bars: 100# joint bar assemblies shall be furnished by SFMTA.

The work shall be performed in compliance with Sections 05650, 056950 and 16120 of the Technical Specifications.

Lump Sum: \$354,673.00

3. **Replace Fouled Ballast and Clean Weep Holes:** Remove, handle, haul, dispose, and replace fouled ballast; clean out existing weep holes in the tunnel wall; and transport new ballast to site. The work shall consist of cleaning out the existing weep holes in the tunnel wall and removal and replacement of fouled ballast. Contractor shall haul fouled ballast to the designated SFMTA yard and transport new ballast to the worksite. Most of the fouled ballast is in areas contaminated by seepage from the weep holes. At these locations water borne soil has leached into the ballast. Removal of soil from the weep holes and ballast area requires four distinct categories of remediation, as set forth below. Most of the removal required is between the tunnel walls and the outside end of the railroad ties. See attached spreadsheet, Attachment 1, for locations, square footages and notes.



- a. Clear soil from existing weep holes in tunnel wall, so that water flows freely. Scrape surface of the tunnel wall free of any seepage: at approximately 50 locations.
- b. Skim surface: Remove mud sand and dust laying on surface of ballast: see Attachment 1 for Category 2 locations.
- c. Remove and replace ballast down to bottom of ties, between edges of tunnel wall to end of ties: approximately 2 feet in width. At areas where water flow and soil leaching are extensive, provide containment berms to prevent sludge from running into the area between ties. See Attachment 1 for Category 3 locations.
- d. In areas where water infiltration has undermined the integrity of the track way, remove ballast between ties to bottom of ties and refill area with fresh ballast, tamp, ballast in lifts as required. Provide berms along tunnel wall as needed to divert water.

Lump Sum:

\$328,491.00

4. **Nightly Verification for Restoration of Service:** All realigning, tamping, placing of ballast, and replacing and transposing rail work shall be verified nightly. Before restoration of service each night, the Contractor shall perform a vertical and horizontal check, verifying that proper horizontal and vertical alignment with respect to the OCS contact wire has been maintained. The Contact wire should be at approximately 13'-5" above top of rail, plus or minus 2 inches. Verify and record the vertical clearance between top of rails and the OCS wire, and horizontal offset of the OCS wire from the track center line. The OCS alignment shall be checked at each strong-arm support.

Contractor shall verify re-aligned track with the following details:

- a. Verify and record gage and cross level at 12 ft-6 in intervals.
- b. Verify and record horizontal alignment and vertical elevations of rails at 25 ft intervals. Verifications shall be based on the benchmark set up by DPW.

A test train will pass through alignment each day before the resumption of service to verify functionality of the system. The Contractor shall include in the schedule the time needed for a test train. Nightly Verification work shall be regarded as included work.

5. **Miscellaneous Work:** The following miscellaneous work may be required of Contractor. Contractor shall perform the work on a force account basis, as directed by the Engineer:

- a. **OCS Adjustment:** After tamping and aligning the tracks, adjustment of the OCS vertical and horizontal alignments may be needed. A test train will be brought in to verify the offset of pantograph centerline to contact wire. The horizontal distance of the wire from the center line of the pantograph shall not exceed 6 inches, at any location. The OCS shall be adjusted as needed by SFMTA Overhead Line crews under the supervision of Contractor.
- b. **Removal of Abandoned Electrical Equipment:** Contractor shall remove abandoned electrical equipment in the tunnel.
- c. **Safety Training:** Contractor will provide 10-15 employees for rail safety training by the SFMTA.
- d. **Existing Interface Between Open Tie and Ballast Track and Embedded Track at West Portal Station:** Existing Interface between open ballast track and embedded track at West Portal Station has a discontinuity in the vertical alignment profile. The discontinuity cannot be eliminated by lining and tamping. Contractor shall smooth the profile out by removing track paving adjacent to the rail and shimming the rail plates to provide a smoother transition.
- e. **Salvaging Rail from VTA San Jose:** The Contractor shall provide labor and equipment to cut, remove, load, transport and stock pile abandoned rail of the Santa Clara Valley Transportation Authority from San Jose to the designated SFMTA yard. The amount of rail to be salvaged will be determined by SFMTA.
- f. **Pick-up of Material and Equipment Furnished by SFMTA:** Contractor shall pick up material and equipment furnished by SFMTA at the MTA Maintenance yard. This shall be included work.

Total for Miscellaneous Work shall not exceed: \$150,000.00

6. **Time Extension**

- a. Section SP-3.B.3 of the Special Provisions is amended to read as follows:

**Phase III:** The Contractor shall **substantially complete** all work under Phase III of the Contract in Sector 2 as described in Section 01110, paragraph 1.07A of the Specifications within **Four Hundred and Forty-One (441) calendar days**

from and including the official date for commencement of **Phase III work** as designated by the Municipal Transportation Agency in accordance with

Section SP-2, paragraph C of the Special Provisions.

**Incentive:** Contractor has been given a time extension of 76 days (up to March 31, 2008) to complete all work under this Modification. Because of the critical nature of the work, Contractor shall receive \$70,000 as an incentive for substantially completing Phase III work by March 22, 2008. Contractor shall receive a further incentive of \$10,000 a day for completion before March 22, 2008, up to a maximum of \$70,000. The total incentive payment shall not exceed \$140,000. No incentive will be given to Contractor should substantial completion occur after March 22, 2008.

- b. Section SP-4.C of the Special Provisions (Liquidated Damages for Delay in Completion of Remaining Work) is amended to read as follows:

The Contractor shall pay the sum of Ten Thousand Dollars (\$10,000) per day for each and every calendar day of delay, for delay in total completion of all the work as described in Section SP-3.B.3 of Special Provisions of the Contract Specifications herein, beyond the number of days specified in such section, with the actual number of days counted from and including the official date for issuance of NTP No. 3, and continuing to the date at which all the work is substantially completed for Phase III, such that the City can fully use and operate all facilities and there will be no further interference or inconvenience for traffic, MUNI operation, and the public, and accepted as such in writing by the Engineer.

Total Incentive shall not exceed: \$140,000.00

7. **Extended Bond and Builder's Risk Costs**

As the result of the extended time for the completion of project, the prime bond cost is increased by \$14,661 and the Builder's Risk is increased by \$35,000.

Lump sum: \$49,661.00

8. The following new sections, attached to this Modification as Attachments 2 and 3, are added to Division 5: METALS, of the Technical Specifications of the Contract:

- a. SECTION 05650: BASIC TRACK WORK MATERIALS AND METHODS
- b. SECTION 05690: RAIL WELDING

9. Section 16120: WIRE AND CABLE of DIVISION 16: ELECTRICAL of the Technical Specifications of the Contract is deleted and replaced with a new Section 16120: WIRE AND CABLE, attached to this Modification as Attachment 4.

10. The following new Items are added to the Schedule of Bid Prices (all items include overhead and markups):

| Item  | Description   | Unit          | Amount         |
|---|---|---------------|----------------|
| CM 6.1                                      | Realign and Retamp Twin Peaks Tunnel Alignment<br>(Estimated Quantity of 6,767 TM at Unit Price of \$83.13) | Lump Sum      | \$626,764.00   |
| CM 6.2                                      | Remove, Replace and Transpose Rail<br>(Estimated Quantity of 2,039 TM at Unit Price of \$201.77)            | Lump Sum      | \$354,673.00   |
| CM 6.3                                      | Replace Fouled Ballast and Clean Weep Holes   | Lump Sum      | \$328,491.00   |
| CM 6.5                                      | Miscellaneous Work  | Not to Exceed | \$150,000.00   |
| CM 6.6                                      | Incentive for Early Completion  | Not to Exceed | \$140,000.00   |
| CM 6.7                                      | Extended Bond and Builder's Risk Cost   | Lump Sum      | \$49,661.00    |
| Total Amount of this Contract Modification: |   | Increase      | \$1,649,589.00 |

|                                |                 |
|--------------------------------|-----------------|
| Previous Total of Contract:    | \$8,500,695.00  |
| New Revised Total of Contract: | \$10,150,284.00 |

|  |         |
|--|---------|
| Total Contract Time added by this Contract Modification: | 76 Days |
|--|---------|

|  |                  |
|--|------------------|
| Previous Phase III Substantial Completion Date:    | January 15, 2008 |
| New Revised Phase III Substantial Completion Date: | March 31, 2008   |

11. This Modification is made in accordance with Article 75 of the Contract General Provisions.

12. Except as provided herein all previous terms and conditions of the Contract remain unchanged.

13. Contractor acknowledges and agrees that the amounts agreed for the work described above shall be in full accord and satisfaction of all current and prospective costs incurred in connection with Contractor's performance of the work under this modification, without limitation, including any all markups and overhead. Contractor releases the City from all claims for which full accord and satisfaction is hereby made, as set forth above.

If this modification involves the granting of an extension of time, with or without cost, Contractor releases the City from all claims and costs associated with such extension of time. Such costs may include, but are not limited to, costs for labor, materials, equipment,

disruption, lost productivity, escalation, delay, extended overhead, administration and extended performance time.

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In Witness Whereof, the parties have executed this Contract Modification in quadruplicate in San Francisco, California as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**SHIMMICK CONSTRUCTION CO. INC.    CITY AND COUNTY OF SAN FRANCISCO**

By: \_\_\_\_\_

*Signature*  
Charley McDonell  
Project Manager

By: \_\_\_\_\_

*Signature*  
Nathaniel P. Ford, Sr.  
Executive Director / CEO MTA

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

By: \_\_\_\_\_

*Signature*  
Robin M. Reitzes  
Deputy City Attorney