

THIS PRINT COVERS CALENDAR ITEM NO.: 10.1

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets – Transportation Engineering

BRIEF DESCRIPTION:

Approving various routine traffic and parking modifications.

SUMMARY:

- Under Proposition A, the SFMTA Board of Directors has authority to adopt parking and traffic regulations changes.
- Taxis are not exempt from any of these regulations.

ENCLOSURE:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO _____ Tom Folks _____

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

To approve various routine traffic and parking modifications.

GOAL

This action is consistent with the SFMTA 2008-2012 Strategic Plan.

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

Objective 1.1: Improve safety and security across all modes of transportation.

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

Objective 2.4: Reduce congestion through major corridors.

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

ITEMS

- A. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA T, 1-HOUR LIMIT, 8 AM TO 1 PM, SCHOOLDAYS; and RESCIND – 1 HOUR LIMIT, 8 AM TO 1 PM, SCHOOLDAYS – 100 block of O'Shaughnessy Boulevard, both sides of the frontage road, south of Portola Drive. **PH 6/17/11 Requested by Residents.**
- B. ESTABLISH – MID-BLOCK CROSSWALK – Gilman Avenue, approximately 370 feet east of Arelious Walker Drive (crosswalk crossing Gilman Avenue). **PH 6/17/11 Requested by 49ers.**
- C. ESTABLISH – BUS ZONE – Ocean Avenue, south side, 46 feet to 166 feet west of the northbound I-280 on-ramp. **PH 6/17/11 Requested by SFMTA.**
- D. ESTABLISH – TOW-AWAY NO STOPPING ANY TIME – Jackson Street, north side, 106 feet to 145 feet east of Sansome Street. **PH 6/17/11 Requested by GSA.**

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

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

- A. ESTABLISH – RESIDENTIAL PERMIT PARKING AREA T, 1-HOUR LIMIT, 8 AM TO 1 PM, SCHOOLDAYS; and RESCIND – 1 HOUR LIMIT, 8 AM TO 1 PM, SCHOOLDAYS – 100 block of O'Shaughnessy Boulevard, both sides of the frontage road, south of Portola Drive.
- B. ESTABLISH – MID-BLOCK CROSSWALK – Gilman Avenue, approximately 370 feet east of Arelius Walker Drive.
- C. ESTABLISH – BUS ZONE – Ocean Avenue, south side, 46 feet to 166 feet west of the northbound I-280 on-ramp.
- D. ESTABLISH – TOW-AWAY NO STOPPING ANY TIME – Jackson Street, north side, 106 feet to 145 feet east of Sansome Street.

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 the Sustainable Streets Division does hereby approve the changes.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Resolution authorizing the Executive Director/CEO or his designee to execute and file an application/claim with the Metropolitan Transportation Commission (MTC) for allocation of operating assistance from Transportation Development Act (TDA), State Transit Assistance (STA), AB1107 One-Half Cent Sales Tax (AB1107), and Regional Measure 2 (RM2) funds for Fiscal Year 2012 to the support the operating budget.

SUMMARY:

- The San Francisco Municipal Transportation Agency (SFMTA) files annually an application for operating assistance with MTC in accordance with the rules and regulations established by the transportation planning agency pursuant to Public Utilities Code Section 99261.
- SFMTA is required to submit a resolution authorizing the Executive Director/CEO or his designee to execute and file appropriate TDA, STA, AB1107, and RM2 applications, together with all necessary supporting documents with the MTC for an allocation of TDA, STA, AB1107, and RM2 funds in Fiscal Year 2012.
- Annually, the SFMTA gets operating assistance from TDA, STA, AB1107 and RM2 funds administered by MTC.
- The FY 2012 Budget approved by the Board included TDA, STA, AB1107 and RM2 funds. The amount will be finalized once the MTC confirms the availability of the funds pending approval of the State budget.

ENCLOSURES:

- 1.SFMTAB Resolution
- 2.Opinion of Counsel

APPROVALS:

	DATE
DIRECTOR OF DIVISION	
PREPARING CALENDAR ITEM: _____	_____
FINANCE _____	_____
EXECUTIVE DIRECTOR/CEO _____	_____
SECRETARY _____	_____

ADOPTED RESOLUTION

TO BE RETURNED TO: Paula Florence

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

In order to receive payment from MTC, the SFMTA must submit a resolution authorizing the Executive Director/CEO or his designee to execute and file appropriate applications for allocations of TDA, STA, AB 1107 and RM2 funds in Fiscal Year 2012.

GOAL

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

- Goal 4 - Financial Capacity: To ensure financial stability and effective resource utilization
Objective 4.2 - Ensure efficient and effective use of resources

DESCRIPTION

The Metropolitan Transportation Commission (MTC) is the regional transportation planning agency for the San Francisco Bay Area pursuant to Government Code Sections 66500 *et seq.* Prospective applicants wishing to receive an allocation from the Local Transportation Fund for any transit-related purposes must file an annual claim with MTC.

Apportionment of the TDA fund is based on an estimate of sales tax generation for the claim year prepared by MTC and San Francisco County Auditors. STA revenue-based operating assistance comes from a State sales tax on fuel, and STA-population-based (paratransit) assistance is computed according to a formula based on the population of the area, which may be adjusted during the governor’s annual budget process. AB1107 one-half cent sales tax is based on MTC estimates of sales tax growth generations. RM2 funds are dispensed based on the agency’s request for operating allocations, subject to meeting eligibility requirements and availability of RM2 operating funds.

The exact amounts available to the SFMTA for FY 2012 are pending approval of the State budget.

ALTERNATIVES CONSIDERED

If this application is not submitted to the MTC, the SFMTA will not be able to receive TDA, STA, AB1107 and RM2 funds for FY 2012. If these funds are not available, alternative funding sources will need to be identified and/or services reduced or eliminated. The Board discussed these alternatives during the FY 2011 and FY 2012 budget deliberations.

FUNDING IMPACT:

While, the following amounts were included in the Board approved FY 2012 Budget,

TDA funding	\$29,929,460
State Transit Assistance – Revenue Based	\$31,400,000
AB 1107 funding	\$25,281,889
RM2 operating assistance & Owl Service funding	<u>\$890,314</u>
Total Request	\$87,501,663

The exact amounts available for FY 2012 will not be known until the State Budget is finalized and may be slightly higher than originally budgeted.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed this calendar. The attached Opinion of Counsel is required by MTC.

RECOMMENDATION

Staff recommends that the Board approve the attached Resolution authorizing the Executive Director/CEO or his designee to execute and file with MTC appropriate applications, together with all necessary supporting documents, for an allocation of TDA, STA, AB1107 and RM2 funds in Fiscal Year 2012.

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

RESOLUTION No. _____

WHEREAS, The Transportation Development Act (TDA) (Public Utilities Code §§99200 *et seq.*), provides for the disbursement of funds from the Local Transportation Fund (LTF) of the City and County of San Francisco for use by eligible applicants for the purpose of approved transit projects; and

WHEREAS, Pursuant to the provision of the TDA, and pursuant to the applicable rules and regulations hereunder (21 Cal. Code of Regs. §§6600 *et seq.*), a prospective applicant wishing to receive an allocation from the LTF shall file its claim with the Metropolitan Transportation Commission (MTC); and

WHEREAS, The State Transit Assistance (STA) fund is created pursuant to Public Utilities Code §§99310 *et seq.*; and

WHEREAS, The STA fund makes funds available pursuant to Public Utilities Code Section 99313.6 for allocation to eligible applicants to support approved transit projects; and

WHEREAS, TDA funds from the LTF of the City and County of San Francisco and STA funds will be required by the San Francisco Municipal Transportation Agency (SFMTA) in Fiscal Year 2012 for approved transit projects; and

WHEREAS, Public Utilities Code Sections 29140, *et seq.*, make available 25 percent of the half-cent sales tax revenues collected in the three BART counties (Alameda, Contra Costa, and San Francisco) for allocation by MTC to eligible applicants; and

WHEREAS, Pursuant to the provision of Public Utilities Code Section 29142.2, eligible applicants for AB1107 funds include Alameda-Contra Costa Transit District, the Bay Area Rapid Transit District, and the City and County of San Francisco for the SFMTA; and

WHEREAS, Regional Measure 2 (RM2) establishes the Regional Traffic Relief Plan and identifies specific capital projects and programs eligible to receive RM2 funding, including operating assistance, as identified in Section 30914 (c) and (d) and Section 30914.5 of the California Streets and Highway Code; and

WHEREAS, MTC has determined that the SFMTA complies with the requirements of Public Utilities Code Section 29142.5 and Government Code Section 66517.5; and

WHEREAS, The SFMTA is an eligible applicant for TDA, STA, AB 1107, and RM2 funds as attested by the opinion of counsel dated May 24 2011; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO or his designee to execute and file an application/claim with the Metropolitan Transportation Commission (MTC) for allocation of operating assistance from Transportation Development Act (TDA), State Transit Assistance (STA), AB1107 One-Half Cent Sales Tax (AB1107), and Regional Measure 2 (RM2) funds for Fiscal Year 2012 to the support the operating budget in an amount not to exceed \$100 million

FURTHER RESOLVED, That a copy of this resolution shall be transmitted to MTC in conjunction with the filing of the claim, and MTC is requested to grant the allocations of the funds as specified herein.

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

Secretary, Municipal Transportation Agency Board



May 24, 2011

Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eight Street
Oakland, CA 94607-4700

Re: MTA Application for State Transit Assistance

To Whom It May Concern:

This communication will serve as the requisite opinion of counsel in connection with the San Francisco Municipal Transportation Agency's application for an allocation of Transportation Development Act ("TDA"), State Transit Assistance ("STA"), and /or AB1107 One-Half Cent Sales Tax ("AB1107"), and/or Regional Measure 2 ("RM2") funds.

1. The City and County of San Francisco, through its Municipal Transportation Agency ("SFMTA") is authorized to provide public transportation services and to perform all the projects for which the funds are requested.
2. The SFMTA is an eligible applicant for TDA and STA funds pursuant to California Public Utilities Code ("PUC") section(s) 99260 and 99314 et seq., AB1107 funds pursuant to PUC sections 29142.4 and 29142.5, and for RM2 funds pursuant to California Street and Highways Code sections 30914 (c) and (d) and 30914.5.
3. I have reviewed the pertinent State and local laws, and I am of the opinion that there is no legal impediment to the SFMTA making applications for TDA, STA, AB1107, and/or RM2 funds for Fiscal Year 2011-2012 and that there is no pending or threatened litigation that might adversely affect the projects for which the funds are requested or the ability of SFMTA to carry out such projects.

Yours very truly,

DENNIS J. HERRERA
City Attorney

Robin M. Reitzes
Deputy City Attorney

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Office of the Deputy Executive Director

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute an Agreement with Tom Otterness Studio to design, fabricate and transport an Artwork to the City and County of San Francisco under the supervision of the San Francisco Arts Commission and consult during installation for an Artwork to be installed by the City and County of San Francisco in the Moscone (MOS) Station of the Central Subway Project, in an amount not to exceed \$750,000 and for a term from March 1, 2011 to December 31, 2018.

SUMMARY:

- Funding for Artwork for the Project will be derived from Federal Transit Administration grants and other funds granted the SFMTA, which the SFMTA provides to the San Francisco Arts Commission as required by City Administrative Code Section 3.19 for an art enrichment allocation based on two percent of the eligible construction costs for City and County of San Francisco capital improvement projects.
- The Agreement complies with the regulations of the Federal Transit Administration of the United States Department of Transportation (FTA).
- The San Francisco Arts Commission, by Resolution No. 1206-10-340 has authorized the Director of Cultural Affairs to enter into Agreement with Artist for the development and implementation of a work of art for the Central Subway Moscone Station.
- The Agreement sets forth the terms and conditions to which the Artist will adhere while designing, fabricating, transporting and consulting on the installation of the artwork for the MOS Station. The Agreement includes a detailed scope of work, project budget and payment schedule.

ENCLOSURES:

1. SFMTAB Resolution
2. Tom Otterness Studio Contract

APPROVALS:

DATE:

DIRECTOR OF DIVISION
PREPARING ITEM:

FINANCE:

EXECUTIVE DIRECTOR/CEO:

SECRETARY:

ADOPTED RESOLUTION BE RETURNED TO: Jessie Katz

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

The proposed resolution authorizes the Executive Director/CEO or his designees to execute an Agreement with Tom Otterness Studio to design, fabricate and transport an Artwork to the City and County of San Francisco under the supervision of the San Francisco Arts Commission and consult during installation for an Artwork to be installed by the City and County of San Francisco in the Moscone (MOS) Station of the Central Subway Project.

GOAL

The Tom Otterness Studio Agreement is consistent with the SFMTA Strategic Plan as follows:

Goal 3 – External Affairs/Community Relations: To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry

Objective 3.3 Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life

DESCRIPTION

The artist proposes an installation of a total of 59 bronze sculptures, some standing alone, others in groups, to be installed on all three levels of the Moscone Station. Approximately 17 of the 59 sculptures, including a working clock will be installed in a 10 foot high by 12 foot wide rectangular bronze relief panel inset into a wall on the concourse level of the station. 24 sculptures will be inset into two concrete benches to be installed on the platform level. 12 sculptures will be installed on the surface level and 6 near the escalators on the concourse level. The sculptures will be figures, buildings and other elements that are a combination of early constructivist abstraction and children's building blocks.

People are represented by four essential geometric forms: the sphere, the cone, the cube and the cylinder. The collection of sculptures will reference the intermingling of a wide variety of people using the subway system to commute to work, shop with their families, or visit the city from elsewhere. In the subway, everyone is on an equal footing.

The figure, birds, trucks, trains and other sculptural elements will be cast in silicone bronze, ranging in size from 24 to 12 to 6 inches tall. In addition, the artist is proposing a working clock, easily accessed for maintenance. The artist has previously worked with a clock manufacturing company to produce clocks or an outdoor installation at the Hilton Times Square in New York City.

The artist was selected through a competitive process. A Request for Qualifications (RFQ) was issued on October 1, 2004 and April 30, 2008, and City selected Tom Otterness Studio as one of six highest qualified scorers pursuant to the RFQ.

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ALTERNATIVES CONSIDERED

Various Public Art Design implementation approaches were considered during Preliminary and Advanced Preliminary Design as required for the project to proceed.

FUNDING IMPACT

Funding for Artwork for the Project will be derived from Federal Transit Administration grants and other funds granted the SFMTA, which the SFMTA provides to the San Francisco Arts Commission as required by City Administrative Code Section 3.19 for an art enrichment allocation based on two percent of the eligible construction costs for City and County of San Francisco capital improvement projects.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The San Francisco Arts Commission, by Resolution No. 1206-10-340 has authorized the Director of Cultural Affairs to enter into Agreement with Artist for the development and implementation of a work of art for the Central Subway Moscone Station.

Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract No. 4062-10/11 on January 3, 2011.

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

RECOMMENDATION

It is recommended that the SFMTA Board of Directors approve a resolution authorizing the Executive Director/CEO or his designees to execute an agreement with Tom Otterness Studio to design, fabricate and transport an Artwork to the City and County of San Francisco under the supervision of the San Francisco Arts Commission and consult during installation for an Artwork to be installed by the City and County of San Francisco in the Union Moscone (MOS) Station of the Central Subway Project.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The City desires that an Artist design, fabricate and transport an Artwork to the City and consult during installation for an Artwork to be installed by the City in the Moscone (MOS) Station of the Central Subway Project, Phase 2 of the SFMTA Third Street Light Rail Project ("the Project"); and,

WHEREAS, Funding for Artwork for the Project will be derived from Federal Transit Administration grants and other funds granted the SFMTA, which the SFMTA provides to the Commission to administer the art program for the Project; and,

WHEREAS, The San Francisco Arts Commission, by Resolution No. 1206-10-340 has authorized the Director of Cultural Affairs to enter into Agreement with Artist for the development and implementation of a work of art for the Central Subway Moscone Station; and,

WHEREAS, Staff of the SFMTA and San Francisco Arts Commission has negotiated an agreement with Tom Otterness Studio for the design, fabrication, transportation and consultation during installation of an Artwork for the MOS Station of the Central Subway Project; and,

WHEREAS, The total compensation to the Artist shall not exceed \$750,000; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO execute an agreement with Tom Otterness Studio to design, fabricate and transport an Artwork to the City and County of San Francisco under the supervision of the San Francisco Arts Commission and consult during installation for an Artwork to be installed by the City and County of San Francisco in the Moscone (MOS) Station of the Central Subway Project in an amount not to exceed \$750,000 and for a term from March 1, 2011 to December 31, 2018.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

CITY AND COUNTY OF SAN FRANCISCO PROFESSIONAL SERVICES

**Arts Commission
25 Van Ness Avenue, Suite 240
San Francisco, California 94102**

**AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
AND
TOM OTTERNESS STUDIO
TO PROVIDE ARTWORK FOR THE CENTRAL SUBWAY PROJECT**

This Agreement, dated for convenience as June 1, 2011 is made in the City and County of San Francisco, State of California, by and between Tom Otterness Studio, 96 Fourth Street, Brooklyn, NY 11231, hereinafter referred to as "Artist" or "Contractor" and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency ("SFMTA") and its Arts Commission ("Commission"), for the purposes and on the terms and conditions set forth below.

Recitals

A. The City desires that the Contractor design, fabricate and transport an Artwork to be installed by the City in the Moscone Station of the Central Subway Project, Phase 2 of the SFMTA Third Street Light Rail Project ("the Project").

B. Funding for Artwork for the Project will be derived from Federal Transit Administration grants and other funds granted the SFMTA, which the SFMTA provides to the Commission to administer the art program for the Project.

C. A Request for Qualifications (RFQ) was issued on October 1, 2004 and April 30, 2008, and City selected Artist as one of six highest qualified scorers pursuant to the RFQ.

D. Artist represents and warrants that it is qualified to perform and that it possesses the requisite experience and resources to render the services required by the City as set forth under this Contract.

E. The City and Contractor intend that this Agreement comply with the regulations of the Federal Transit Administration of the United States Department of Transportation ("FTA").

F. Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract No. 4062-10/11 on January 3, 2011.

G. The Commission, by Resolution No. 1206-10-340 has authorized the Director of Cultural Affairs to enter into Agreement with Artist for the development and implementation of a work of art for the Central Subway Moscone Station under the following terms and conditions.

Now, therefore, in consideration of the preceding statements, the accuracy of which the parties hereby stipulate, the Artist, the SFMTA and Commission, on behalf of City, hereby agree as follows:

Definitions:

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement or the Contract Documents, it shall have the meaning set forth below:

1. "ADA" means the Americans with Disabilities Act (including all rules and regulations thereunder), Title 24 (California Building Code) and all other applicable federal, state and local disabled access legislation, as the same may be amended, modified or supplemented from time to time.
2. "Additional Work" means Work outside the scope of work of this Agreement, as described in Appendix B to this Agreement.
3. "Agreement" ("Contract") means this agreement, including all addenda, appendices and modifications, whether created now or in the future.
4. "Alter" or "Alteration" means, with respect to the Artwork, to alter, repair, modify, remove, relocate, sell, dispose of, distort, destroy, mutilate, or deface.
5. "Approved Costs" means such costs as are scheduled on Appendix C, including the maximum expenditure authorized for each item.
6. "Architect" means the engineering design firm engaged by the SFMTA to design the portion of the Central Subway Project in which the Art Work will be incorporated or installed.
7. "Artist" (also referred to as "Contractor") means: TOM OTTERNESS STUDIO. Where there is more than one Artist, all Artists shall be referred to collectively as "Artist." If Artist is comprised of two or more individual persons or entities, each individual person or entity shall be jointly and severally responsible for satisfying Artist's obligations under this Agreement, and each individual person or entity shall be liable for the acts and omissions of every other individual person or entity comprising Artist.
8. "Artist's Fee" means that portion of the Contract Sum paid by the City to the Artist to cover all profit, labor and costs related to the design and fabrication of the Artwork, including but not limited to Overhead, that are not otherwise compensable under this Agreement.
9. "Artwork" means the work of art designed by Artist for the Site under the terms of this Agreement, as described and defined in Artist Proposal, to be attached as Appendix A upon completion of Phase I, Conceptual Design, of the Services to be Provided by Artist.
10. "Authorization" means an Agreement, properly executed by the Commission and certified by the Controller for the specific funding of this Agreement or any modification thereof.
11. "Budget" means a specific and detailed document identifying the cost of completion of all Work under this Agreement, including all modifications, as further described in Section 4(c)..

12. "Central Subway Project" (CSP) or "Project" means the planning, design and construction of the Central Subway Project, Phase 2 of the SFMTA Third Street Light Rail Project.
13. "City" means the City and County of San Francisco, a municipal corporation.
14. "Commission" means the San Francisco Arts Commission.
15. "Committee" means the Visual Arts Committee of the Commission.
16. "Compensable Expense" means an expenditure by Artist made in the performance of the Work that is eligible under FTA guidelines and other applicable federal regulations for reimbursement as a legitimate Project expense and approved in advance of expenditure by the Arts Commission.
17. "Conceptual Design" means drawings (in plan and elevation) and/or 3-dimensional models, a written description, proposed materials and samples and cost estimates at 30% design completion. The information provided in Conceptual Design shall be complete enough to fully illustrate the design intent of the Artwork.
18. "Construction Contractor" means the licensed contractor and its subcontractors selected by the City to construct the Central Subway Project or any portion thereof, including installation of the Artwork at the Site.
19. "Construction Documents" means the final and complete architectural, structural, mechanical and engineering Design Development Documents (including drawings, written specifications, structural and engineering calculations at 100% design completion) prepared by Artist or Artist's subcontractors and approved by the Commission that sets forth in detail the design and specifications of the Artwork and its installation, which are suitable for bidding to a Construction Contractor. Construction Documents shall describe and fix the location, size, materials and character of the Artwork with respect to architectural, structural engineering, mechanical and electrical systems, materials, colors, method of attachment and fabrication methods, and other such elements as may be appropriate. Construction Documents must be signed and stamped by design professionals licensed in the State of California as required by the California Building Code and any local amendments thereto.
20. "Construction Manager" means the Central Subway Partners, a joint venture between AECOM USA and EPC Consultants, engaged by the SFMTA to manage the design and construction of the Project as the Program Manager/Construction Manager consultant.
21. "Contract Documents" means any work, including but not limited to, Conceptual Designs, Design Development Document and Construction Documents, Shop Drawings, Mock-ups, models, engineering calculations, approved installation plans, and all material samples and product data, project budget, and any and all additional documents and submittals produced under this Agreement that the Commission has approved and to which the completed Artwork is expected to conform.
22. "Contract Sum" (or "Total Amount") means all amounts payable by the City to Artist under this Agreement, and more specifically described in Section 5.
23. "Controller" means the Controller of City.

24. "Cost-plus-Fixed-Fee" means an alternate method compensating the Artist for Work performed under the Agreement that is not paid by Lump Sum and by which the City reimburses the Artist its costs for performing the Work and also pays a Fixed Fee as compensation for having performed the Work.
25. "Days" means working days of the City and County of San Francisco (unless otherwise indicated). The use of the term "days," "working days" or "business days" shall be synonymous.
26. "Department of Transportation" (DOT) means the federal agency Department of Transportation.
27. "Director of Cultural Affairs" means the Director of Cultural Affairs for the Commission.
28. "Design Development Documents" means the design documents generated by the Artist and submitted to the Commission for review, comment and approval during the course of the design of the Artwork. The content of Design Development Documents shall be determined by the Commission, and may include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork, that describe the size and character of the Artwork with respect to its relationship to the Site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate, describe how the Artwork will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, feasibility studies and final cost estimates at design completion.
29. "FTA" means the Federal Transit Administration, a department of the federal Department of Transportation.
30. "Force Majeure" with respect to a delay in or prevention of performance means (a) any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either party), civil disturbance, future order claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body; (b) any changes in any applicable laws or the interpretation thereof; or (c) any flood, washout, explosion, or any other cause beyond the reasonable control of the party from whom performance is required.
31. "Lump Sum" means a method of compensating the Artist for Work under the Agreement that is a payment of an all-inclusive prefixed amount of compensation agreed by the Parties for completion of Milestones or other Work specified in the Agreement or an amendment to the Agreement. A Lump Sum payment amount is inclusive of and compensates the Artist for all Reimbursable Expenses, Overhead, and the Artist's Fee.
32. "Milestone" means a description of Work to be accomplished by date(s) certain, set out in Appendix D of this Agreement.
33. "Mock-ups" or "Samples" means illustrations such as standard schedules, performance charts, instructions, brochures, diagrams, and physical samples of all or any portion of the Work, and other information furnished by Artist to illustrate

materials or equipment for all or any portion of the Work. The purpose of the Mock-ups and Samples is to provide physical examples that illustrate materials, equipment or workmanship and establish the standards by which the Work will be judged.

34. "Overhead" means the costs incurred by Contractor in supporting its Work on the Project that are not specifically listed as Reimbursable Expenses.
35. "Party" means an entity bound by this Agreement.
36. "Parties" mean all entities bound by this Agreement.
37. "Project" means the Third Street Light Rail Project, Phase 2, Central Subway.
38. "Proposal" means the proposed visual, aesthetic, and artistic intent and design of the Artwork incorporated in the Contract Documents approved by the Commission. The most recent design approved by the Commission is incorporated herein by reference, and is binding unless or until changes are approved by resolution of the Commission. Attached is Artist's Proposal at the time of the Agreement date. Artist's Proposal shall be automatically superseded by any Contract Documents that are later approved by the Commission.
39. "Public Work" means a construction project, erection, installation or other element of a construction project defined as a public work or S.F. Administrative Code Section 6.1(I), as currently written or as may be amended from time to time.
40. "Reimbursable Expense" means an expenditure by the Artist, including Salary Burden, made in the course of performing the work under this Contract that the Arts Commission reimburses as part of the Contract Sum .
41. "Request for Information" (RFI) means a request from a Construction Contractor for clarification or interpretation of a Contract Document or design document prepared by or under the direction of the Artist under this Agreement.
42. "Request for Qualifications" (RFQ) means the Request for Qualifications issued by the Arts Commission on September 10, 2004 and on April 30, 2008.
43. "Salary Burden" means the full cost of payroll taxes and employee benefits, such as health and dental care insurance, vacation, leave, retirement and pension that are provided to employees in addition to wages.
44. "Scope of Services" or "Work" means the services, tasks, and deliverables that the Artist will provide to the Arts Commission under this Agreement, as outlined in Appendix B of this Agreement.
45. "SFMTA" means the San Francisco Municipal Transportation Agency, created under Article 8A of the City's Charter.
46. "Shop Drawings" means drawings, diagrams and other data specifically prepared by Artist or Artist's subcontractors, fabricators, manufacturers, suppliers, Construction Contractor, or distributors illustrating in detail exactly how the work, or any element thereof, is to be fabricated and installed. Shop Drawings shall be signed and stamped by a licensed design professional unless this requirement is specifically waived by the Commission.

47. "Small Business Enterprise"(SBE) means a for-profit, small business concern with a three (3) year average gross revenue not exceeding Twelve Million Dollars (\$12,000,000) and is certified under any of the following programs: the State of California's Small Business Program ("State Program"), the City and County of San Francisco's LBE Program ("City Program"), or the California Unified Certification Program ("Federal DBE Program").
48. "Site" means the Project location where the Artwork is to be installed, which for this Agreement is the Central Subway Chinatown Station located at the corner of Stockton and Washington streets.
49. "Work" means the work of Artist necessary, incidental or otherwise pertaining to the performance of the services and deliverables required under this Agreement. In addition to all other services and deliverables required, Work shall include the design, fabrication, consultation concerning the delivery and installation of the Artwork. (See Scope of Work.)

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 Commission or the SFMTA, as provided herein. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the Commission. The words "approval," "acceptable," "satisfactory," or words of like import, means approved by, or acceptable to, or satisfactory to the Commission or of the SFMTA, as provided herein, unless otherwise indicated by the context. The terms "include," "included" or "including" and similar terms shall be deemed to be followed by the words "without limitation.

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

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

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

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

THIS SECTION 1 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement.

The term of this Agreement shall be from June 1, 2011 to December 31, 2018, unless extended by subsequent contract modification pursuant to the contract modification requirements in this Agreement. Notwithstanding the above, this Agreement may be extended by mutual written agreement of the parties for a period not to exceed two years beyond the initial term, provided that such extension does not create a contract with a total aggregate term of more than 9 years.

3. Effective Date of Agreement.

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

4. Services Artist Agrees to Perform; Procedure for Execution of Work; Budget; Consultation.

a. Services. As more specifically provided in Appendix B “Services to be Provided by Artist,” Artist agrees to design, fabricate and transport and consult during installation by the Construction Contractor of the Artwork for the Central Subway Project, as well as any services provided in any subsequent modification to this Agreement. This Contract is a personal services contract, it is not a public works or construction contract subject to Chapter 6 of San Francisco Administrative Code or to the California Public Contract Code.

b. Procedure for Execution of Work.

(1) As more specifically described in Appendix B to this Agreement, the Artist shall perform the Work under this Agreement in three phases. In Phase 1, the Artist shall complete and submit the Design Development Documents and other required submittals for the Artwork. In Phase 2, provided that City determines, in its sole discretion, to go forward with the fabrication of the Artwork, the Artist shall fabricate (or supervise the fabrication of) the Artwork in conformance with the Design Development and Final Design documents and other required submittals approved by the Commission. Provided that the City determines in its sole discretion to install the Artwork, in Phase 3, as directed by the Commission, the Contractor shall assist and consult with the Commission, the SFMTA and the Construction Contractor as to the transportation and installation of the Artwork at the Site, as determined by the Arts Commission.

(2) By authorizing Phase 1, the Commission is not obligated to authorize any subsequent Phase or other work. Subject to the limitations contained in this Agreement, the Commission may terminate this Agreement at any time.

(3) Artist shall not commence any Phase nor incur any expense in anticipation of commencing any Phase unless the Commission has given prior written authorization and the Controller has certified the availability of funds. Prior to beginning each Phase, Artist shall obtain the necessary approval of the previous Phase. In no event shall City be liable for any claims or damages arising from Artist’s unauthorized actions.

(4) The parties may negotiate any Additional Work to be performed under this Agreement, which shall not be effective unless and until memorialized in a written modification to this Agreement executed as provided herein.

(5) The City may terminate the Work at anytime, during or between Phases, with or without cause. If the City terminates the Work for convenience (without cause), the Artist shall be paid the amount(s) agreed for completed Milestones and for

preapproved and documented Reimbursable Expenses reasonably and actually incurred up to the date of termination.

c. Budget. Unless otherwise specified in a modification to this Agreement, at the completion of Final Design Documents, Artist shall submit for the Commission's approval a final Budget for the entire cost of completion of the Artwork, including costs for any further design, fabrication, Construction Support services. Once adopted by the Commission as part of the approval of Phase 1, the Budget shall be binding upon Artist. The Artist's failure to provide the completed and installed Artwork to City within the approved Budget will be a material breach of this Agreement.

d. Consultation. Artist agrees to cooperate in good faith with the Commission and to be available as reasonably necessary for consultation and attendance at meetings with the Commission, Architect, SFMTA, Construction Manager, and Construction Contractor during all stages of the Work. The Commission shall facilitate cooperation and arrange for and coordinate all necessary consultation among the Commission, Artist, and the SFMTA. Artist agrees to consult with the Commission, the SFMTA, the Architect and the Construction Contractor as may be required by the Commission on all matters concerning the design, configuration, placement, installation, support requirements of the Artwork. As directed by the Commission, the Artist shall assist the SFMTA and its design consultants and Construction Manager with preparation of drawings, specifications and other documents that may be necessary for the preparation of construction contract modifications and responses to Requests For Information (RFIs) from the Construction Contractor. The Artist's attendance at meetings, consultation with the Architect, SFMTA and Commission, and preparation of contract documents and responses to RFIs are within the Contract Sum

(1) Artist shall incorporate into the Construction Documents any changes made by the Architect to the Site design during the design process.

(2) Artist shall copy Commission on all correspondence between Artist, Architect, SFMTA, Construction Manager, or Construction Contractor in which Commission is not a party. Artist shall notify Commission in writing of any verbal agreements and /or understandings that are arrived at in conversations or meetings between Artist and Architect, SFMTA, Construction Management Team and/or Construction Contractor to which Commission is not a party. Artist understands that failure to inform Commission of such agreements in writing within five Days or in advance of taking any and all actions based on such agreements may result in such agreements not being honored.

(3) The Artist shall request in writing to the Arts Commission any information and data it will require from the SFMTA or the Architect for its Work. The Artist shall identify the timing and priority for which this information and data will be required in its request for that information. The Artist shall plan its work to allow adequate time for the City to provide the requested information. The Artist shall respond promptly, but in no case more than five Days, to any request for information from the Arts Commission.

(4) The Artist shall inform the Commission at the earliest possible time of any changes in the Design Development Documents, the weight of the Artwork, any special support, suspension or other requirements of the superstructure of the Site necessary for the installation of the Artwork, any electrical power or other utility requirements for the Artwork. The Artist shall ensure that the Commission is notified of any changes to said requirements at the earliest possible time. The Artist shall at all times avoid changes in the design of the Artwork that deviate materially from the Artist's Proposal. The Artist

shall avoid at all times changes to support or installation requirements of the Artwork that would require modification to the Site superstructure design or would require change orders (modification of contract) with the Construction Contractor. The Artist shall not alter any aspect of the Artwork as approved by the Arts Commission and SFMTA without prior written permission from the Art Commission. The Artist shall be entirely responsible for any costs incurred by the City associated with any changes in their Artwork that have not be specifically approved by the Arts Commission in writing in advance of making such changes.

e. Presentations to Community Representatives. As directed by the Commission, the Artist shall meet with and make presentations to representatives of communities and property owners along the alignment that may be affected by the Project and other interested parties.

f. Installation Support Services. As described in Appendix B, the Artist shall be available to consult as directed by the Commission with the Commission, the Construction Contractor and the SFMTA as to installation of the Artwork at the Site. Said Installation Support Services shall include but are not limited to consulting as to the proper means and methods of installation of the Artwork, inspection of the site prior to installation, and inspection of the installed Artwork to confirm it meets the requirements of the Artist's approved design.

5. Compensation.

a. Total Amount.

(1) The Total Amount payable to Artist under this Agreement (the "Contract Sum") for all Work performed by Artist, shall not exceed **Seven Hundred and Fifty Thousand Dollars (\$ 750,000.00)**, unless this Agreement is amended as provided herein. Payment of the full Contract Sum is not guaranteed; to receive the full Contract Sum the Artist shall fully perform all Work described in this Agreement in compliance with the standards of performance described herein. All compensation due to Artist for Work performed under this Agreement shall made in accordance with Appendices C and D, attached hereto.

(2) **This is a fixed-price contract. Except as specifically provided in this Contract, Artist agrees to design and fabricate the Artwork for the amount stated as the Contract Sum.** The Contract Sum is inclusive of the Artist's Fee and all Reimbursable Expenses, including but not limited to direct labor costs, other direct costs and indirect costs for all Work performed under this Agreement, subject only to authorized adjustments as specifically provided in this Agreement. In the event the Artist incurs costs in excess of the Contract Sum (as adjusted) that is not due to actions or directives of the City or the City's engineering consultants or contractors, the Artist shall pay such excess from the Artist's Fee or its own funds, and City shall not be required to pay any part of such excess, and the Artist shall have no claim against City on account thereof. Out of the total Contract Sum, Artist shall be responsible for paying all of Artist's costs and expenses associated with the Work, including Overhead, the costs of suppliers, subcontractors, fees, taxes, permits, insurance, transportation to and from meetings, and all other costs associated with the scope of the Work specified in this Agreement.

b. Artist's Fee. The Artist's Fee (which is compensation remaining after payment of costs and expenses) is included in every Milestone Payment and in the Contract Sum. the City shall have no obligation to further pay additional Artist's Fee or otherwise

compensate or reimburse Artist if the cost incurred or expenses paid by Artist to meet the requirements of this Contract exceed the Contract Sum.

c. Milestones; Calculation of Compensation. Compensation shall be made to Artist in the amounts and based upon Artist's successful completion, in the sole reasonable discretion of the Director of Cultural Affairs, of the Milestones described in Appendix D to this Agreement. No charges shall be incurred under this Agreement nor shall any payments become due to Artist until deliverables, services, or both, required under this Agreement are received from Artist and approved by the Commission as being in accordance with this Agreement. City may withhold payment to Artist in any instance in which Artist has failed or refused to satisfy any material obligation provided for under this Agreement.

d. Change in Scope of Services. If the Scope of Services of any Phase or other portion of the Project is reduced, that reduction shall be memorialized in an amendment to the Agreement, and the Fixed Fee for that Work shall be reduced, as negotiated by the Parties, but such reduction shall not be less than the proportional value of the reduced Work, as measured by the value of that Work set out in Attachment C (Summary of Fees) to this Agreement or other agreed document setting out the relative value of tasks. If the Scope of Services is increased, then the Parties will negotiate an appropriate Fixed Fee for the Additional Services. Any negotiations for changes in the scope of services shall be subject to the agreement of the Commission and the Artist. The Artist shall do no work in addition to or beyond the scope of the services set forth and contemplated by this Agreement unless and until it is authorized to do so by the issuance to it of a "Modification of Contract," duly executed and approved.

e. Additional Work. Where the City designates Additional Work to be performed, the Parties shall negotiate a reasonable Lump Sum amount as full compensation for the Additional Work, which shall include a budget for the Additional Work that covers all additional Artist's Fee and all additional costs and expenses incurred by Artist arising from the Additional Work to be paid upon the Artist's completion of the Additional Work to the satisfaction of the Commission.

f. Cost Plus Fixed Fee Payment.
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g. Transfer of Unused Funds. Artist may request City's approval to transfer unused funds from one subtask to another subtask within the same main task to cover the unexpected shortfall of another subtask provided that the need for additional funds to complete the subtask is not due to Artist's poor management or planning. Artist may request City's approval to transfer unused funds from one task(s) to other tasks to cover the unexpected shortfall of the other Tasks, provided that (1) the task(s) from which the funds are transferred out of (including all subtasks within the task(s)) is at least ninety-five percent (95%) complete; (2) the funds are no longer necessary for the original task(s) for which the funds were allotted; and (3) the main reason for the task(s) requiring additional funds is not due to Artist's poor management or planning. Such request must be made in writing to the Program Manager at least 15 calendar days in advance of the need to transfer funds across subtasks. City's approval of subtask or task amount changes will not be unreasonably withheld. City's approval shall be by the Commission's Program Manager.

h. Non-Reimbursable Expenses. For Additional Work not compensated whether an amount is paid as Lump Sum or otherwise, Artist shall be compensated only for those Reimbursable Expenses authorized in Attachment C. If an expense is not a Reimbursable

Expense, the City shall have no obligation to compensate Artist for it. Computer usage, facsimile and telecommunication expenses shall not be accounted as Reimbursable Expenses. Artist and subcontractor personnel entertainment or personal expenses of any kind shall not be considered a Reimbursable Expense. Office and field supplies/ expenses are not reimbursable expenses unless said supplies can be demonstrated to be out of the ordinary and used exclusively for this Project.

i. Prepayment. Unless the SFMTA and Commission give specific written authorization, Artist shall not submit invoices and the City shall not pay or otherwise reimburse Artist for costs of any kind that the Artist has not actually incurred and paid prior to date of invoice.

j. Refunds, Rebates and Credits. Artist shall assign to the City any refunds, rebates or credits accruing the Artist that are allocable to costs for which the City has paid or has otherwise reimbursed the Artist or for which the Artist will submit an invoice.

k. Payment of Invoices. Compensation shall be made within 45 days that the Commission, in its sole discretion, concludes the Milestone or other undisputed portion of Work approved for payment has been performed. City shall make payment to Artist at the address specified in Section 25 (Notices to the Parties). All amounts paid by City to Artist shall be subject to audit by City.

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

m. Payment Limitations.

(1) No charges shall be incurred under this Agreement nor shall any payments become due to Artist until all Work Product and other services required under this Agreement are received from Artist and approved by the SFMTA as being in accordance with this Agreement.

(2) The City may reasonably withhold payment to the Artist pending resolution, in an amount equal to questioned, disputed, or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the City in connection with the Artist's negligent errors or omissions. Payments for undisputed amounts due on the same or other invoice shall not be unreasonably withheld or delayed.

(3) The Artist shall not submit more than one invoice in any month.

n. Project Suspension or Termination.

(1) If the Project is suspended for more than one hundred eighty (180) days or abandoned in whole or in part, the Artist shall be compensated for services satisfactorily performed prior to receipt of written notice from the City of such suspension or abandonment. If the Project is resumed after being suspended for more than one hundred eighty (180) days, the Artist's compensation for the remainder of the services to be provided for the Project shall be equitably adjusted based on the Artist's demonstrated increased costs.

(2) In the event that the City terminates the Agreement for fault, the City may reduce any amount earned or otherwise due the Artist by the sum of any additional costs the City has or will incur as a result of the Artist's default.

o. Final Payment. Final payment of any balance earned by the Artist for Project work will be made within ninety (90) days after all of the following:

- (1) Satisfactory completion of all work required by this Agreement;
- (2) Receipt by SFMTA of the Work Product not previously delivered;
- (3) Delivery of all equipment/materials purchased specifically for the project where SFMTA has reimbursed the Artist for such costs;
- (4) Receipt by SFMTA of a fully executed final statement of amounts paid to and owed to each SBE under this Agreement;
- (5) Such audit and verification as SFMTA may deem necessary; and,

Execution and delivery by the Artist of a release of all claims against the City arising as of the date of the release under or by virtue of this Agreement, other than such claims, if any, as may be specifically exempted by the Artist from the operation of the release in stated amounts to be set forth therein.

p. Request for Additional Work. If the Artist considers any work or services that the Commission directs Artist to perform to be outside the Scope of Services as established by this Agreement, the Artist shall notify the Commission, in writing within five (5) Days of discovering such extra work or services to request authorization to perform the Additional Work. Neither Artist nor any subcontractor or subconsultant shall be reimbursed for out-of-scope work performed without first obtaining the written approval of Commission. If the Artist proceeds to do work that it perceives to be Additional Work without first obtaining City's written approval in as provided herein, regardless of the amount or value of the work, the City shall have no obligation to reimburse Artist for the work thus performed. Eagerness to respond to the City's comments or concerns, expediency, schedule constraints will not be acceptable reasons to proceed with Additional Work without City's prior written approval.

q. Escalation. Artist may request increases in reimbursement amounts to the extent that Artist can document increases in materials or labor costs outside the control of the Artist. Approval of such requests is entirely at the discretion of the Commission.

r. Delay. Artist shall not claim and waives any claim for damages and additional compensation for delay, other than an extension of time for the completion of Work. Such an extension will be for the period of time that the City determines that Artist was delayed in the completion of Work, where such delay was not caused by and could not have been reasonably avoided by Artist.

6. Guaranteed Maximum Costs.

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

Except as may be provided by laws governing emergency procedures, officers and employees of City are not authorized to request, and City is not required to reimburse Artist for, commodities or services beyond the scope of this Agreement unless the changed scope is authorized by amendment and approved as required by law.

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

7. Payments; Invoice Format; Suppliers and Subcontractors.

a. Artist Invoices. Invoices furnished by the Artist under this Agreement must be in a form acceptable to the Controller. At a minimum, invoices must identify the contractor as Tom Otternss Studio, the contract project as Central Subway Moscone Station Landmark Artwork and include the date of transaction, name and address of Artist, interim payment number for which compensation is requested, and amount requested.

The Artist must submit an original invoice. City shall make payment to the Artist at the address listed for notices in this Agreement. All amounts paid by City to Artist shall be subject to audit by City and other agencies with jurisdiction over the Project and Project funding.

b. Supplier and Subcontractor Invoices. Artist shall provide the Commission with the name, address and telephone number of suppliers and subcontractors whose total invoices are expected to exceed one thousand dollars (\$1,000.00) prior to Artist beginning work under this Agreement, or as such expenses are incurred by Artist after certification of this Agreement.

c. Activity Reports. The Artist shall submit status reports with its invoices for payment, describing all Milestones and other Work completed by the Artist and subcontractors during the period billed and copies of all invoices for Reimbursable Expenses relating thereto.

8. Submitting False Claims; Monetary Penalties.

Pursuant to San Francisco Administrative Code sections 6.80 to 6.83 and 21.35, and pursuant to applicable federal law, any contractor (including Artist), subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in those ordinances and statutes, including but not limited to statutory fines, treble damages, costs and attorneys fees. The text of Sections 6.80 to 6.83 and 21.35, along with the entire San Francisco Administrative Code are available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. Artist or any contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim. Artist agrees that remedies under local law are cumulative and in addition to the remedies and penalties provided for false claims under federal law.

9. Disallowance, Disputed Amounts, and Debarment.

a. If Artist claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Artist 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 Artist under this Agreement or any other agreement between the Artist and the City.

b. Any Compensation or reimbursement received by Artist under this Agreement does not constitute a final decision or waiver of decision by the City as to whether said payment meets the terms and requirements of this Agreement. If following audit or other review, the City determines that the Artist and/or subconsultants are not entitled to certain compensation requested or received, the City shall notify the Artist stating the reasons therefore.

c. Acceptance of the Artwork, or any portion of the Work under this Agreement, will not alter Artist's or a subconsultant's obligations to return any funds due the City as a result of later refunds, corrections, or other transactions, nor alter the SFMTA or its funding agencies' rights to disallow or otherwise not recognize costs on the basis a later audit or other review. The City may reasonably withhold payment to the Artist pending resolution, in an amount equal to questioned, disputed or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the City in connection with the Artist's negligent errors or omissions. Payments for other amounts due on the same or other invoice shall not be unreasonably withheld or delayed.

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

10. Taxes.

a. Except as specifically provided herein, any taxes levied upon the Agreement, the transaction, or the equipment or services delivered under this Agreement, including possessory interest taxes and California sales and use taxes, shall be paid by Artist. To the extent allowed by law, the costs to Artist of sales, use, and possessory interest taxes arising out of the Work performed under this Agreement are Reimbursable Expenses.

b. Artist 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 Artist to possession, occupancy, or use of City property for private gain. Only agencies with jurisdiction over tax matters have the authority to determine if a possessory interest has been created; the Commission and SFMTA have no authority to make such determination. If a taxing authority determines that a possessory interest is created, then the following shall apply:

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

(2) Artist, on behalf of himself 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. Artist accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of City to the County Assessor the information required by

Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Artist, on behalf of himself 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). Artist accordingly agrees on behalf of himself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

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

(5) The Commission and the SFMTA consider Artist's presence on SFMTA property while performing Work under this Contract to be necessary to the Work and a convenience to the Project. Taxes for any possessory interest created by the Artist's presence on SFMTA property will be considered a Reimbursable Expense.

11. Payment Does Not Imply Acceptance of Work; Approval and Final Acceptance.

a. Payment Does Not Imply Acceptance of Work. The issuance of any payment for Milestone(s), other progress payment or final payment by the City or the receipt thereof by the Artist shall in no way lessen the liability of the Artist to correct unsatisfactory Work or materials, although the unsatisfactory nature of such Work may or may not have been apparent or detected at the time such payment was made. Work that does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced or performed again by Artist without delay.

b. Correction of Errors. Upon notice from Commission, the Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in such plans, designs, drawings, specifications, reports, and other services; and, in the event of any deficiencies in such plans, designs drawings, specifications, reports, or other services resulting from the Artist's professional negligence, whether or not said deficiencies have been brought to the attention of the Commission, the Artist shall indemnify and reimburse the City for the cost of the corrective remedial work (including, without limitation, design, demolition, and construction) necessary to correct any such deficiencies and the consequences of such deficiencies caused by said professional negligence.

c. Approval and Final Acceptance.

(1) Approval. The granting or withholding of any approval by the Commission shall be determined by the Commission in its sole and reasonable discretion. However, the Commission shall approve all deliverables if they conform to plans or Contract Documents previously approved by the Commission. If the Commission withholds approval of any deliverables or Phase, in addition to other rights or remedies available to the Commission under the Agreement or applicable law, the Commission shall have the right to terminate this Agreement immediately and shall have no further obligations under this Agreement.

(2) Final Acceptance. Artist shall advise the Commission in writing when Artist has completed all obligations, services and deliverables under this Agreement and

all modifications. The Commission promptly shall send a Notice of Response identifying in writing any obligations, services or deliverables that Artist has not satisfactorily met, any defects in Artist's performance, and the requirements for Artist to cure any such default. Artist shall have 20 days from dispatch of the Notice of Response to cure any defects in Artist's performance identified in the Commission's Notice of Response. The Artwork shall not be finally accepted by City unless the Commission has issued a resolution of Final Acceptance. City shall make a good faith effort to make a determination as to Final Acceptance promptly.

(3) Civic Art Collection. Upon Final Acceptance, the Commission shall accession the Artwork into the Civic Art Collection.

11A. Bonds.

a. Labor and Materials (Payment) and Performance Bonds: To the extent that the fabrication and/or installation of any artwork is a "Public Work" as defined by San Francisco Administrative Code Section 6.1(I), and any contract amount, including any subcontract amount, for such fabrication or installation exceeds \$25,000, the Artist or Artist's sub-contractors shall provide performance and payment bonds from a City-approved surety under San Francisco Administrative Code Section 6.22(A). The bonds shall each be in an amount of not less than one hundred percent of the agreement for project-specific work. The performance bond shall name the City and County of San Francisco as sole obligee if provided by the Artist. The bonds shall be on a City-approved form provided by the City to the Artist. The Artist shall submit the bonds to the Arts Commission for approval.

b. Bonds Provided by Subcontractors: Bonds provided by the Artist's sub-contractor shall identify the project and name as dual obligees the Artist and the City and County of San Francisco. Upon written request by the City, in the event of any of Artist's subcontractors' failure to perform, Artist shall assign all rights under any Performance and Payment or Labor and Materials bond in favor of City. The bonds shall be on a City-approved form provided by the City to the Artist. The Artists shall submit the bonds to the for approval.

c. Labor and Materials (Payment) and Performance Bonds required at Commission's Discretion: To the extent that the fabrication and/or installation of any artwork and the contract amount, including any subcontract amount for such fabrication or installation exceeds \$25,000, the Commission may, at the Commission's sole discretion, require Payment and Performance Bonds, whether or not the fabrication and or installation of the artwork is defined as a "Public Work" by the San Francisco Administrative Code. In such event, all the above requirements shall apply.

11B. Licensed Contractor Requirements.

The parties do not intend that the design and fabrication of the Artwork is a Public Work, as the Artwork will be erected, installed and incorporated into the Project by the Construction Contractor, not the Artist. Artist's responsibilities as to installation of the Artwork shall be limited to consultation with the City and the Construction Contractor only. The parties intentions notwithstanding, if any part of the Artist's Work is deemed by an agency having jurisdiction constitute a "Public Work" as defined by San Francisco Administrative Code Section 6.1 (I) and requires a licensed contractor, Artist shall be solely responsible for ensuring that Artist and Artist's subcontractors (if any) have valid appropriate licenses under California law or the applicable jurisdiction. If the Artist and/or any of Artist's subcontractors are unlicensed during any phase of the project under

this Agreement, the City shall have the right to bar Artist from receiving any payment for Artist's services. If Artist is not a licensed contractor, Artist shall not subcontract with licensed contractors for fabrication and/or installation of the Artwork or any portion of the Artwork under this Agreement.

12. Qualified Personnel.

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Artist. Artist will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Artist. Artist shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment.

City is not responsible for any damage to persons or property, including Artwork, as a result of the use, misuse or failure of any equipment used by Artist, or by any of its employees, even though such equipment be furnished, rented or loaned to Artist by City. Artist, rather than City, is responsible for site conditions and the health and safety of Artist's employees, subcontractors and agents, and all other persons that work on or visit the Site at the invitation of Artist.

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

a. Independent Contractor. Artist shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which Artist performs the services and work requested by City under this Agreement. Artist is liable for the acts and omissions of itself, its employees and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Artist.

Any terms in this Agreement referring to direction from City or the Commission shall be construed as providing for direction as to policy and the result of Artist's work only, and not as to the means by which such a result is obtained.

b. Payment of Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Artist 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 Artist 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 Artist for City, upon notification of such fact by City, Artist shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Artist under this Agreement (again, offsetting any credits for amounts already paid by Artist which can be applied against this 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, Artist shall not be considered an employee of City. Notwithstanding the

foregoing, should any court, arbitrator, or administrative authority determine that Artist is an employee for any other purpose, then Artist 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 Artist was not an employee.

15. Insurance.

a. Required Insurance. Without in any way limiting Artist's liability pursuant to Section 16, the "Indemnification and General Liability" section of this Agreement, Artist shall maintain, or cause to be maintained, in force insurance in the following amounts and coverages, or as modified in Appendix B. Artist shall obtain such insurance on or before the time specified below; if no time is specified below, Artist shall obtain such insurance when required to do so by Appendix B or a modification to this Agreement. Except for required insurance under claims-made form (see Section 15 (d) (2), artist shall maintain all required insurance continuously from the time originally specified, throughout the term of this Agreement until Final Acceptance of the Work by resolution of the Arts Commission. The Director of Cultural Affairs, with the approval of the City's Risk Manager, may authorize in writing the release of an interest in such insurance at an earlier date.

(1) **Workers Compensation**, in statutory amounts with Employers' Liability Limits not less than \$1,000,000 each accident, injury or illness. Artist shall obtain such insurance prior to certification of this Agreement. To the extent Artist warrants, in writing, that Artist is not an employer and has no employees as defined by the California Labor Code Sections 3351-3351.1, Artist need not provide to the City proof of Workers Compensation insurance.

(2) **Professional Liability Insurance** for all design professionals (such as architects, landscape architects or engineers), applicable to any of the Artist's subcontractors who is a licensed engineer or architect. Such insurance shall have limits not less than \$1,000,000 each claim with respect to negligent acts, errors and omissions. Artist or Artist's subcontractors shall obtain such insurance when Artist subcontracts for any work from such a design professional, and prior to the submittal of Construction Documents. Any design professional required to obtain professional liability insurance shall maintain such insurance, and proof thereof, for the term of this Agreement.

(3) **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. Artist shall obtain such insurance prior to commencing the fabrication of the artwork and shall maintain through the transportation and installation of the Work at the Site.

(4) **Automobile Liability Insurance**: If Artist is an *individual*, Personal Automobile Liability Insurance with limits not less than \$100,000/\$300,000 each occurrence. If Artist is a corporation or other legal entity, Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable, unless a lesser amount is approved by City's Risk Manager. Artist shall obtain such insurance prior to certification of this Agreement.

(5) Fine Arts Insurance or other insurance against loss in an amount equal to the total payment specified under Section 5 (Compensation) of the contract. Artist shall obtain such insurance prior to commencing fabrication of the Artwork.

(6) Transportation and/or Installation Coverage, as required by the Commission.

b. Required Policy Language.

(1) Commercial General Liability and Commercial Automobile Liability Insurance shall be endorsed to provide:

(a) Endorse the policy to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees;

(b) Professional Liability policies shall name the specific project as a covered project; and

(c) State that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits.

(d) Regarding Workers' Compensation, Artist hereby agrees to waive subrogation which any insurer of Artist may acquire from Artist by virtue of the payment of any loss. Artist agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Artist, its employees, agents and subcontractors.

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

Jennifer Lovvorn, Project Manager
San Francisco Arts Commission
25 Van Ness Avenue, Suite 240
San Francisco, CA 94102

and to

Shahnam Farhangi, Contracts Manager
SFMTA Capital Projects and Construction Division
1 South Van Ness, 3rd floor
San Francisco, CA 94103

c. Miscellaneous Insurance Requirements.

(1) All insurance policies required under this Agreement shall be issued by insurance companies reasonably acceptable to City and authorized to do business in the State of California. Before commencing any operations under this Agreement, Artist shall do the following: (a) furnish to City certificates of insurance; and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, and that

are satisfactory to City, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon City request.

(2) Should any of the required insurance be provided under a claims-made form, Artist shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of four years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. This tail coverage requirement may be waived by the City's Risk Manager in writing where appropriate.

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

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

(5) Approval of the insurance by City shall not relieve or decrease the liability of Artist hereunder.

(6) In the event of loss or damage and where any insurance proceeds are paid to City, the Commission shall make a determination, in its sole discretion, as to whether the Work shall be restored, reconstructed or abandoned. If the Commission determines that Artist shall restore or reconstruct the Work, all insurance proceeds received by City shall be paid to Artist to the extent the proceeds are used for such restoration or reconstruction.

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

16. Indemnification.

a. Artist shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Artist or loss of or damage to property, arising directly or indirectly from Artist's performance of this Agreement, including, but not limited to, Artist's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Artist, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

c. Artist shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages.

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

18. Liability of City.

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

19. Timely Provision of Services; Damages for Delayed Performance.

a. Time. Time is of the essence in the Artist's performance of the Work. Artist agrees to provide all deliverables in accordance with the timelines contained herein unless changes to those timelines are approved in writing by the Commission. All changes to schedule must be approved by the Commission in writing.

b. Damages for Delayed Performance.

(1) Generally. Artist shall be liable for all incidental and consequential damages resulting, directly or indirectly, from delays in performance caused by Artist's acts or omissions. Artist shall not be liable to City for damages resulting from delays caused by Force Majeure or by acts or omissions of City, Architect or the Construction Contractor, except to the extent Artist failed to act reasonably to mitigate such damages.

(2) Illness, Injury, Death or Incapacity. Should Artist die, become ill, injured or otherwise incapacitated (collectively, "incapacitated") such that Artist or Artists Studio is unable to work for any period exceeding 30 days (whether consecutive or non-consecutive), any delay arising out of such incapacity will be allowed by City whenever it is practicable to do so, considering the facts and circumstances of the Work, the Project, the Architect, the Construction Contractor and the SFMTA. City may require Artist to provide medical certification of any claimed incapacity. In the event Artist dies or is incapacitated after City's approval of the Proposal, such that Artist is unable to work for a period exceeding a total of 30 days (whether

consecutive or non-consecutive), Artist’s Studio or other legal representative, unless otherwise agreed in writing by the Arts Commission, shall fabricate the Artwork consistent with the City-approved Proposal specifications and the terms of the Agreement, using Arts Commission and SFMTA approved fabricators and shall work with the City to arrange for the installation of the Artwork by the Central Subway Construction Contractor for the Moscone Station and fulfill the terms of this Agreement. The Artwork shall be represented to be the completed work of the Artist. If the Artist is incapacitated prior to the City’s approval of the Artwork Proposal, the City may terminate this Agreement in accordance with the provisions of this Agreement. In case of incapacity exceeding 30 days. The following person shall be Artist’s representative vis-à-vis the City for purposes of this Section 19: COLEEN FITZGIBBON, ARTIST’S SPOUSE, AT ARTIST’S ADDRESS UNDER SECTION 25 (NOTICES TO THE PARTIES) unless otherwise directed in writing by the Artist.

- c. **Delivery of Artwork.** Following final approval of the fabricated Artwork by the Arts Commission, the Artist shall deliver the Artwork to a designated City storage site no earlier than September 30, 2014, but no later than September 30, 2015. Following inspection and approval by the Arts Commission of the delivered Artwork at the City’s storage site, the Arts Commission will store the Artwork at no cost to the Artist. The Artist shall be responsible for the storage and safekeeping of the Artwork prior to the delivery of the Artwork to the City.

- d. **Delay.** In case of delay in Artist’s services through no fault of Artist, including **construction** delay, Artist shall store the Work at no additional cost to City for up to 6 months. If Artist’s work is delayed due to construction delays at the Site or other delays caused by City or its contractors, so that Artist suffers documented direct cost impacts in the form of increased costs of materials and/or labor, Artist may apply to the City for reimbursement of those expenses, which City may award in its sole discretion.

20. Artist's Default; Remedies.

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

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

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| <ul style="list-style-type: none"> 8. Submitting False Claims;
Monetary Penalties 10. Taxes 11A. Bonds 11B. Licensed Contractor
Requirements 15. Insurance 22A. Artist's Warranties 24. Proprietary or Confidential
Information of City | <ul style="list-style-type: none"> 29. Subcontracting 29A. Prevailing Wages 30. Assignment or Transfer 37. Drug-Free Workplace Policy 53. Compliance with Laws 57. Protection of Private
Information 58. Graffiti Removal |
|--|--|

(2) Artist's failure or refusal to perform or do any act required of Artist in this Agreement, including unexcused failure to meet the delivery deadlines or to conform the Work to the Contract Documents approved by the Commission;

(3) Artist (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 Artist or of any substantial part of Artist's property or (e) takes action for the purpose of any of the foregoing;

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Artist or with respect to any substantial part of Artist'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 Artist;

b. Termination in the Case of Default. On or after any event of Artist default, City shall have the right to exercise its legal and equitable remedies. City's remedies include the right to terminate this Agreement upon written notice to Artist (setting forth with specificity the basis for the Commission's termination), or to seek specific performance of all or any part of this Agreement. Upon termination by the Commission, this Agreement shall be of no further force or effect. The date of termination shall be 5 calendar days from the Commission's dispatch of notice of termination, unless a later termination date is specified in the notice of termination. The Commission may rescind the notice of termination or extend the date for termination, but no rescission or extension is valid unless it is in writing and approved by resolution of the Commission.

c. Opportunity to Cure. In its sole discretion, the Commission may give Artist a grace period and opportunity to cure any default. Such grace period may be up to 35 calendar days after dispatch of written notice from the Commission setting forth the nature of the default and the requirements to cure.

d. No Obligation to Pay. Except as specifically provided in this Agreement, City shall have absolutely no payment or other obligations to Artist for any work or service completed, begun or contemplated by Artist subsequent to termination of this Agreement for any reason.

e. Remedies are Cumulative. These remedies are in addition to all other remedies available to either party under this Agreement or under applicable federal, state or local laws should the other party fail to comply with the terms of this Agreement.

21. Termination for Convenience.

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Artist written notice of termination. The notice shall specify the date on

which termination shall become effective. As described below in subsection c., City shall pay Artist for services rendered prior to the date of termination.

b. Upon receipt of the notice, Artist shall commence and perform, with diligence, all actions necessary on the part of Artist to effect the termination of this Agreement on the date specified by City and to minimize the liability of Artist 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 Artist'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 Artist and in which City has or may acquire an interest.

c. Within 30 days after the specified termination date, Artist shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Artist, without profit, for all services and other work City directed Artist 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 Artist's direct costs for services or other work. Any overhead allowance shall be separately itemized. Artist 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 Artist can establish, to the satisfaction of City, that Artist 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 Artist 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 Artist, 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 Artist 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 Artist under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Artist's final invoice; (2) any claim which City may have against Artist in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties Upon Termination or Expiration.

If the Commission terminates this Agreement for any reason, City shall be automatically vested with title to any Work produced under this Agreement up to the date of termination. Artist shall deliver any such Work to City in the manner, at the times, and to the extent directed by City. If termination is due to the default of Artist, City may, at its option, require Artist to refund to City any interim payments received under the Agreement; in such case, City may transfer title to the Work to Artist. If the City terminates the Agreement due to the default of the Artist, the City shall retain the right to fabricate or execute the Artwork, or to publicly display the unfinished Artwork, provided that the City gives the Artist written notice and an opportunity to cure the default within 30 days of the date of the notice and uses reasonable efforts to use fabricators approved by the Artist or fabricators used by the Arts Commission for similar types of artwork. The parties shall provide each other with a list of approved fabricators upon request after signing the Agreement. But if the City terminates the Agreement for convenience, no right to fabricate or execute the Artwork, or to publicly display the unfinished Artwork, shall pass the City. This Section and the following sections shall survive termination or expiration of this Agreement:

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| 8. | Submitting False Claims;
Monetary Penalties | 22C. | Artist's Moral Rights; City's
Ownership Rights |
| 9. | Disallowance, Disputed
Amounts, and Debarment | 24. | Proprietary or Confidential
Information of City |
| 10. | Taxes | 26. | Ownership of Results and
Risk of Loss |
| 11. | Payment Does Not Imply
Acceptance of Work;
Approval and Final
Acceptance | 27. | Intellectual Property and
Publicity Rights |
| 11A. | Bonds | 28. | Audit and Inspection of
Records; Reports |
| 11B. | Licensed Contractor
Requirements | 28A. | City Access to
Artwork/Work and
Inspection; Status Reports;
Artist's Availability |
| 13. | Responsibility for Equipment | 29A. | Prevailing Wages |
| 14. | Independent Contractor;
Payment of Taxes and Other
Expenses | 48. | Modification of Agreement |
| 15. | Insurance | 49. | Administrative Remedy for
Agreement Interpretation |
| 16. | Indemnification | 50. | Agreement Made in
California; Venue |
| 17. | Incidental and Consequential
Damages | 51. | Construction |
| 18. | Liability of City | 52. | Entire Agreement |
| 22A. | Artist's Warranties | 56. | Severability |
| 22B. | Instructions for Maintenance;
Variable Media Guidelines;
Anticipated Life Span of
Artwork | 57. | Protection of private
information |
| | | 58. | Graffiti Removal |

22A. Artist's Warranties.

a. Warranty of Title. Artist represents and warrants that Artist is the sole author of the Artwork and that Artist is the sole owner of any and all copyrights pertaining to the Artwork. Artist further represents that the Artwork is free and clear of any liens and that there are no outstanding disputes in connection with property rights, intellectual property rights or any other rights in the Artwork or any parts of the Artwork.

b. Warranty of Workmanship. If the Artist fabricates the Artwork or subcontracts for fabrication of the Artwork, then Artist represents and warrants that, for a period of three years after final acceptance, the will be free of defects in workmanship or materials, including Inherent Defects (as defined below), and that the Work will be executed in permanent, non-fugitive materials that will not tend to degrade or fade over long-term installation at the Site. "Inherent Defect" refers to a quality within the material or materials, which comprise the Work which, either alone or in combination, results in the tendency of the Work to destroy itself. "Inherent Defect" does not include any tendency to deteriorate that is specifically identified in the Contract Documents approved by the Commission. Artist shall, at Artist's sole cost and expense, remedy any defects in workmanship or materials that appear within a period of three years from the date of final acceptance of the Artwork by City.

c. Warranty of Public Safety. Artist represents and warrants that the Work will not pose a danger to public health or safety in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement.

d. Warranty of Acceptable Standard of Display and Operation. Artist represents and warrants that:

(1) The Artwork will conform with design specifications and, where Artwork involves electronic, digital, video, mechanical, living, variable, moving or other dynamic components, the Artwork will also operate, function or perform in accordance with Artist's representations to the City without any costs beyond the final Budget for the Artwork or any additional staff assistance.

(2) Occasional or minimal cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Work within an acceptable standard of public display;

(3) Foreseeable exposure to the elements and general wear and tear will cause the Work to experience only minor repairable damages and will not cause the Work to fall below an acceptable standard of public display; and

(4) With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Work will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.

e. Manufacturer's Warranties. To the extent the Work incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to City.

22B. Instructions for Maintenance; Variable Media Guidelines; Anticipated Life Span of Artwork.

Unless specifically provided in this Agreement, Artist shall not be responsible for ongoing maintenance of the Artwork. Artist shall provide the Commission with a General Maintenance Plan for the Artwork, with a detailed description of future anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating artwork and the frequency of such staff involvement; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork. Artist shall also provide Commission and with a description of all equipment and or machinery needed to operate the project (if applicable) and any anticipated or required staffing, supervision or operational needs. The Artwork shall be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, dirt, dust, vibration, and considerable movement of people and equipment. Artist shall ensure that all maintenance requirements of the Artwork will be reasonable in terms of time and expense, and no specialized equipment will be required.

With respect to Artwork involving or incorporating electronic, digital, video, mechanical, living, variable, moving or other dynamic components ("Variable Media"), the Artist shall also provide the Commission with a written recommendations for translating the Artwork into new media or replacing elements of the Artwork in the event that the original medium, components and/or the Artist's installation plan become obsolete ("Variable Media Guidelines."). Although the City is not required to comply with such Variable Media Guidelines, the City may take such Guidelines into account when maintaining the Artwork or trying to preserve the integrity of the Artwork.

Although City strives to maintain the Civic Art Collection in good repair and condition, City is not required by this Agreement to maintain the Artwork to any particular standard. City may determine to allow the Artwork to deteriorate in accordance with the Artwork's temporary life span, if deemed appropriate by City or if City lacks sufficient funds for required maintenance and/or conservation. If the Artwork suffers deterioration, City shall have sole discretion to determine whether to remove the Artwork from display as a result of deterioration, whether to replace any portion of the Artwork or translate any component into new media, or whether to maintain the Artwork on display despite its deteriorated condition.

The anticipated life span of the Artwork is twenty five (25) years from the date of final acceptance by the Commission. After that time, the Commission in its sole discretion may re-evaluate the Artwork to determine if it retains its identity as a work of art and, if not, whether to take appropriate action, including the possibility of destroying the Artwork. If the Commission determines that, through decay, vandalism or other forces, the Artwork has lost its integrity to the point where it should be destroyed, the Commission shall first offer the Artwork to Artist free of charge.

22C. Artist's Moral Rights; City's Ownership Rights.

a. The Commission, having expended considerable public funds to commission the Artwork, and pursuant to its Charter responsibilities, intends to display the Artwork at the Site as originally created by Artist and to maintain the Artwork in good condition. Public artworks commissioned by the Commission are sometimes integrated into their site, such that they become an integral, permanent and site-specific part of the building's architecture or landscaped environment and removal of the artwork would result in significant changes to the artwork and the building's architecture. City, however, shall preserve complete flexibility to operate and manage City property in the public's interest. Therefore, City retains the absolute right to Alter the Artwork in City's sole judgment. For example, City may Alter the Artwork to eliminate hazard, to comply with the ADA, to otherwise aid City in the management of its property and affairs, or through neglect or accident. If, during or after the term of this Agreement, City finds the Site to be inappropriate, City has the right to install the Artwork at an alternate location that City chooses in its sole discretion. If the Artwork is free-standing such that it can be removed without significant damage to the Artwork or the Site, and if the Commission authorizes the removal of the Artwork, the Commission shall take reasonable precautions to minimize Alteration of the Artwork during removal.

b. With respect to the Artwork produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, Artist waives any and all claims, arising at any time and under any circumstances, against City, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the Artwork is incorporated into a building such that the Artwork cannot be removed from the building without Alteration of the Artwork, Artist waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for Alteration of the Artwork.

c. If City intends to take any action with respect to the Site or the Artwork that would Alter the Artwork, other than routine cleaning and maintenance, the following procedures shall apply:

(1) Notice. Where time permits, Commission shall make reasonable good faith efforts to notify Artist at least 20 calendar days prior to authorizing any Alteration of the Artwork, at the last phone number or address provided by Artist to the Commission's Collections Manager. Where time does not permit prior to Alteration of the Artwork – for example, in cases of public hazard, accident or unauthorized Alteration – Commission shall notify Artist within 30 calendar days after such Alteration.

(2) Consultation. After receiving such notice, Artist shall consult with City to determine whether the Artwork can be restored or relocated, and to attempt to come to a mutually agreeable plan for disposition of the Artwork. Such consultation shall be without charge by Artist unless otherwise specifically agreed in writing. If City intends to remove the Artwork, Artist shall consult regarding methods to minimize or repair any Alteration to the Artwork caused by such removal and the potential costs of such removal.

(3) Restoration. If the Artwork is Altered, with or without prior notice to Artist, and City intends to maintain the Artwork on display, City shall make a reasonable good faith effort to engage Artist in the restoration of the Artwork and to compensate Artist for Artist's time and efforts at fair market value, which may be the subject of a future Agreement between Artist and City. However, City has no obligation under this Agreement to restore the Artwork to its original condition, to compensate Artist for any restoration work, or to maintain the Artwork on display. If Artist fails or refuses to negotiate with City in good faith with respect to any restoration, City may contract with any other qualified art conservator or artist for such restoration. During Artist's lifetime, City shall make best efforts not to display or deaccession only a portion of the Artwork without Artist's consent.

(4) Removal by Artist. Where time permits, if City intends to take action that will destroy or significantly Alter the Artwork, such as destruction of all or part of the Site, and City determines that it will not remove the Artwork itself, City shall allow Artist to remove the Artwork at Artist's expense within 60 days of notice from the City of the need to remove the Artwork, in which case title shall revert to Artist. If Artist fails to remove the Artwork within that 60 day period, City may Alter the Artwork in any manner, including destroying it, in City's sole discretion.

(5) Remedies. If City breaches any of its obligations under this Section, Artist's remedies shall be limited as follows: If City inadvertently fails to provide a required prior notice of Alteration, City will provide notice as soon as it discovers the omission, and before Alteration of the Artwork if that remains possible. If City Alters the Artwork without providing Artist a required prior notice of Alteration, Artist shall be given the first right of refusal to restore the Artwork at the same location and City shall make reasonable efforts to provide funding for the restoration. If City funds cannot be made available after reasonable efforts are made to secure such funding, Artist may, but is not obligated to, restore the Artwork at Artist's expense. If Artist elects not to restore the Artwork, City may retain another artist or conservator to restore it, or may Alter the Artwork in any manner, at City's sole discretion.

d. If City Alters the Artwork without Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Artwork in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

e. Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of City, Artist retains Artist's moral rights in the Artwork, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and 989), or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent Artist from pursuing a claim for Alteration of the Artwork against a third party who is not an officer, employee, agent, successor or assign of City. City has no obligation to pursue claims against third parties to remedy or prevent Alteration of the Artwork. However, as owner of the Artwork, City may pursue claims against third parties for damages or to restore the Artwork if the Artwork has been altered without City's authorization.

23. Conflict of Interest.

Through its execution of this Agreement, Artist acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City.

Artist understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Artist 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. Artist agrees that all information disclosed by City to Artist shall be held in confidence and used only in performance of the Agreement. Artist shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties; Department Liaison.

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

To Commission:

San Francisco Arts Commission
25 Van Ness Avenue, Suite 240
San Francisco, CA 94102
Attn: Jennifer Lovvorn
Phone: (415) 252-4637
Fax: (415) 252-2595
Email: jennifer.lovvorn@sfgov.org

To Artist:

Tom Otterness Studio
96 Fourth Street

Brooklyn, NY 11231
Phone: 718-802-0074
Email: tom@tomotterness.net

Any notice of default shall be sent by registered mail.

Any change in the designation of the person or address to which submittals, requests, notices and reports shall be delivered is effective when the other party has received written notice of the change.

b. Department Liaison. In performing the services provided for in this Agreement, Artist's liaison with the Arts Commission will be the designated Public Art Project Manager for the Central Subway Project.

26. Ownership of Results and Risk of Loss.

a. Title Transfer. Except in the case of early termination of this Agreement, title to the Artwork shall transfer from Artist to City upon the Commission's Final Acceptance of the Artwork. Title transfer shall be self-executing upon Commission's Final Acceptance. Artist will cooperate in providing to City any title transfer documents, confirmation of payment of subcontractors, lien releases, and other documents as the City may request or require during or after the Term of this Agreement.

b. Risk of Loss. The risk of loss or damage to the Artwork shall be borne solely by Artist until Final Acceptance of the Artwork by the Commission. Artist shall take steps to protect the Artwork from loss or damage. The Commission staff shall make a good faith effort to inspect the Artwork within 15 days after completion so that the Commission can approve the Artwork by resolution in a timely fashion.

c. Ownership of Documents. Conceptual Design, Design Development Documents, Construction Documents, Samples, Mock-ups and all other documents prepared and submitted by Artist to the Commission pursuant to this Agreement shall belong to the Commission. Artist may retain originals of such documents and items and provide copies to City.

27. Intellectual Property and Publicity Rights.

a. Copyright. Subject to usage rights and licenses granted to City hereunder, Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. Artist's copyright shall not extend to predominantly utilitarian aspects of the Work, such as landscaping elements, furnishings, or other similar objects. If Artist is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the Work.

b. City's Intellectual Property License. Artist grants to City, and to City's agents, authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to the Work, the Artwork, and any original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital) throughout the universe:

(1) Implementation, Use and Display. City may use and display the Work (to the extent the Work includes graphic representations or models) and the Artwork. To the extent the Work involves design elements that are incorporated by City into the design of the Site, City may implement such elements at the Site.

(2) **Reproduction and Distribution.** City may make and distribute, and authorize the making, display and distribution of, photographs and other 2-dimensional reproductions. City may use such reproductions for any City-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, gifts for the Commission benefactors, documentation of City's Civic Art Collection, and catalogues or similar publications. City shall ensure that such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of the Commission. The proceeds from the sale of any such reproductions shall be used to maintain and support City's Civic Art Collection or for any other public purposes that City deems appropriate. The license granted hereunder does not include the right to create 3-dimensional reproductions on items such as tote-bags, T-shirts, coffee mugs and similar merchandise. Such reproductions may only be created pursuant to separate license agreements with Artist.

(3) **Public Records Requests.** Any documents provided by Artist to City are public records and City may authorize third parties to review and reproduce such documents pursuant to public records laws, including the San Francisco Sunshine Ordinance and California Public Records Act.

c. Third Party Infringement. The Commission is not responsible for any third party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.

d. Credit. Artist hereby agrees that all formal references to the Artwork and any reproductions of the Artwork in any form shall include the following credit: "Collection of the City and County of San Francisco, San Francisco Arts Commission." City shall credit Artist for the Artwork upon publication of any two dimensional reproductions of the Artwork. Wherever the City finds practicable, the City shall make an effort to ensure that all reproductions by City shall contain a copyright notice substantially in the following form: "Copyright (c), Artist's name, date," in such a manner and location as shall comply with the U.S. Copyright laws.

e. Publicity. City shall have the right to use Artist's name, likeness, and biographical information, in connection with the display or reproduction and distribution of the Artwork including all advertising and promotional materials regarding City or the Commission. Artist shall be reasonably available to attend any inauguration or presentation ceremonies relating to the public dedication of the Artwork.

f. Trademark. In the event that City's use of the Artwork creates trademark, service mark or trade dress rights in connection with the Artwork, City shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

g. Unique. In an effort to ensure that the City commissions a unique Artwork that members of the public would not be able to see and enjoy elsewhere, Artist warrants that the design of the Artwork as expressed in the Proposal is an edition of one, and that neither Artist nor Artist's agents will execute or authorize another to execute another work of the same or virtually identical image, design, dimensions, configuration, grouping, arrangement, and materials as the Artwork. Artist may create works that utilize or incorporate various individual art elements (such as individual bronze sculptural figures) that comprise the Artwork, so long as the work utilizing or incorporating such individual elements is not the same in image, design, dimensions, configuration, grouping, arrangement, and materials as the Artwork. This warranty shall continue in

effect for a period consisting of the life of Artist plus 70 years or for the duration of the Artwork's copyright protected status, whichever is longer, and shall be binding on Artist and Artist's heirs and assigns. In the case where Artist Team is comprised of two or more individual persons or a group of people, the measuring life shall be the life of the last surviving individual person comprising Artist Team. Recognizing that City has no adequate remedy at law for Artist's violation of this warranty, Artist agrees that, in the event Artist breaches this warranty, City shall be entitled to enjoin Artist's breach. Nothing hereunder shall be construed to constrain Artist from creating posters of the Artwork, note cards of the Artwork, or other reproductions of the Artwork, provided that the Artist shall credit the San Francisco Arts Commission where practicable.

h. Resale Royalty. If City sells the Artwork as a fixture to real property, and if the resale value of the Artwork is not itemized separately from the value of the real property, the parties agree that the resale price of the Artwork shall be presumed to be less than the purchase price paid by City under this Agreement. Thus, City has no obligation to pay resale royalties pursuant to California Civil Code §986 or any other law requiring the payment of resale royalties. If City sells the Artwork as an individual piece, separate from or itemized as part of a real property transaction, City shall pay to Artist a resale royalty to the extent required by law, based upon the sale price of the Artwork.

28. Audit and Inspection of Records; Reports.

a. Audit and Inspection of Records. Artist agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Artist 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. Artist shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

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

28A. City Access to Artwork/Work and Inspection; Status Reports; Artist's Availability.

a. City Access to Artwork; Inspection of Work and Artwork. City shall have the right to inspect the Work, including the Artwork, at the Site during any phase of the project at any time. In the event that all or part of the Work is created in a location other than the Site, the City shall have the right to inspect the Work, including the Artwork, at any phase of the project following **10 Working Days** hours written notice from the City to the Artist. The Artist shall be responsible for facilitating City's prompt access to Artist's property or the property of the Artist's subcontractors where the Work or portions of the Work are being fabricated or installed.

b. Status Reports. Artist shall submit written reports regarding the status of the Work, including the Artwork, as requested by the Commission. The Commission shall

determine the format for the content of such reports. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

c. Artist Availability. Artist or Artist's authorized agent shall be available to meet in San Francisco with the Architect, SFMTA and Commission staff, and others as the SFMTA and the Commission may require to ensure the proper installation and operation of the Artwork. The costs of such meetings are within the Contract Sum, as provided in Appendix C ("Calculation of Charges"). During each visit to San Francisco from a location outside the nine counties of the San Francisco Bay Area, unless otherwise agreed upon by the Arts Commission and the SFMTA. Artist's visits shall last for at least a full 8 hour day.

29. Subcontracting.

a. Approval Required. Artist is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by the Commission in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. Any approved subcontracts shall be itemized in Appendix B (or amendment thereto), and Artist shall provide a copy of each approved subcontract to the City with copies of the insurance documents required herein.

b. Documentation of Subcontracts. Artist shall provide a description of the Work to be performed under any subcontract and the amount of the subcontract, and shall provide the Commission with written copies of Artist's agreements with each subcontractor. Artist shall include by reference, and include in each and every contract, the requirements of this Agreement relating to the following: submitting false claims; inspection and audit of records; Administrative Code Chapters 12B (non-discrimination), SBE participation requirements, 12P (minimum compensation of employees), 12Q (Health Care Accountability Ordinance); indemnity provisions; bond and insurance requirements; earned income credit form provisions; provisions regarding City Access to Artwork/Inspection of Work and Artwork; required deliverables and City's right to use and implement the Work. Artist shall include a statement in the subcontract requiring that the subcontractor shall comply with all Agreement requirements applicable to the Artist, including compliance with applicable Federal, State and local laws, including any City contracting requirements applicable to the Artist.

c. Subcontract Requirements. If the Artist subcontracts any portion of the Work under this Agreement (including but not limited to engineering, architecture and/or fabrication of the Artwork), the City must grant prior approval of such subcontractors and the Artist shall require such subcontractors to:

(1) Name the City and County of San Francisco as a third-party beneficiary to the subcontract by expressly stating that "the parties agree that the City and County of San Francisco shall be a third-party beneficiary to this agreement" and Artist shall provide the City with a copy of each such subcontract.

(2) Name the City and County of San Francisco as an additional insured on the subcontractor's general liability insurance policy.

(3) The Subcontractor shall agree to indemnify and hold harmless the City and County of San Francisco (consistent with the "Indemnification and General Liability" provisions contained herein as Section 16.)

(4) The subcontractor shall also be responsible for providing any performance and payment (labor and materials) bonds required under this Agreement on the City's form and shall name the City and Artist as dual obligees of such bonds. In the event of Artist or any of Artist's subcontractors' failure to perform, Artist shall assign all rights under any such bonds in favor of the City.

(5) Subcontractor shall certify that he or she has all applicable licenses required by the State for subcontractor to perform any required engineering and/or fabrication specified in the subcontract and that subcontractor warrants that such licenses are valid for the full term of this Agreement and during the period in which the subcontractor performed work under this Agreement.

(6) If Artist does not have an appropriate license issued by the State of California, any subcontract between Artist and any firm engaged to perform a Public Work under this Agreement is void and the City shall have no liability whatsoever for any costs incurred under said subcontract.

d. Responsibility. The Artist shall be responsible for the professional standards, performance, and actions of all persons and firms performing subcontract work under this Agreement at any and all tiers.

e. Substitutions of Subcontractors. Artist may substitute any Approved Subcontractor listed in Appendix B for: (a) failure to perform to a reasonable level of professional competence; (b) inability to provide sufficient resources to the Project; or (c) unwillingness to negotiate reasonable contract terms or compensation. Artist may only substitute subcontractors with the prior written approval of the SFMTA and the Commission.

f. Prompt Payment of Subcontractors. In accordance with SFMTA's SBE Program, no later than three (3) working days from the date of Artist's any payments by the City for the Work or any portion thereof, the Artist shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors, unless the Artist notifies the CCO in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between the Artist and the subcontractor. Within ten (10) working days following receipt of payment from the City, Artist shall provide City with a declaration under penalty of perjury that it has promptly paid such subcontractors for the work they have performed and stating the amounts paid. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

g. Interest on Unpaid Amounts. If the Artist does not pay its subcontractor as required under the above paragraphs, it shall pay interest to the subcontractor at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure. This Section shall not impair or limit any remedies otherwise available to the Artist or a subcontractor in the event of a dispute involving late payment or nonpayment by the Artist or deficient subcontractor performance or nonperformance by the Artist.

h. Retention. Artist may withhold retention from subcontractors if City withholds retention from the Artist. Should retention be withheld from Artist, within thirty (30) days of City's payment of retention to Artist for satisfactory completion of all work required of a subcontractor, Artist shall release any retention withheld to the subcontractor. Satisfactory completion means when all the tasks called for in the subcontract with subcontractor have been accomplished and documented as required by

City. Within forty (40) days of satisfactory completion of all Work required of the subcontractor, Artist should release any retention withheld to the subcontractor.

i. Substitutions of SBE Firms. If Artist wishes to substitute a subcontractor that is a SBE, the Artist must make good faith efforts to use another SBE as a substitute. The Artist shall notify Commission in writing of any request to substitute a SBE subcontractor or supplier and provide the Commission with any documentation requested to support the substitution. The and the Commission and the SFMTA's CCO must approve the request in writing for the substitution to be valid.

j. Addition of Subcontractors. The City reserves the right to require the Artist to retain a subcontractor that possess specific expertise to provide services under this Agreement, if the City determines that the Artist does not have specific expertise necessary for the timely and successful completion of the Artwork.

k. Flowdown Requirements. Artist shall fully inform all subcontractors, and shall require each of its subcontractors to warrant that it has fully informed each of its respective lower tier subcontractors (if any), of the terms and conditions of this Agreement. Artist shall ensure that all services performed and material furnished and the manner by which those services and materials are provided shall conform to the requirements of this Agreement. The terms and conditions of the Artist's subcontracts shall conform to the requirements of this Agreement. Each subcontract and a cost summary of each of those agreements shall be subject to review by the and the SFMTA prior to the subcontractor proceeding with the Work. Artist shall provide the City copies of any written agreements between a first tier subcontractor and any lower tier subcontractor prior to proceeding with the Work.

l. Privity. Contractor shall include in every subcontract for architecture and/or engineering services a requirement that to the maximum extent provided by California law, the City may rely upon and bring action for errors and omissions in the designs, calculations and other work performed for the Artist under this Contract as if the City had directly contracted with the architect or engineer. Notwithstanding the preceding provision, the Artist shall be fully responsible for the errors and omissions of its engineers and architects and other subcontractors under this Agreement.

m. Availability. Artist's subcontracted engineer(s) and architect(s) must be available to provide Construction Support through the completion of the installation of the Artwork.

29A. Prevailing Wages.

Notwithstanding that the parties do not intend that the Work performed under this Agreement shall constitute a Public Work, if the fabrication and/or installation of any Work under this Agreement is determined by any administrative agency having jurisdiction to be a "Public Work", as that term is defined by San Francisco Administrative Code Section 6.1(I), and Artist subcontracts all or any part of the fabrication of any Work under this Agreement, Artist agrees to pay to all persons performing labor in the fabrication of the of the Work not less than the highest general prevailing rate of wages, as such prevailing wages are established according to Section 6.22(E) of the San Francisco Administrative Code, as may be amended from time to time. Artist further agrees to include, in any such subcontract a requirement that the subcontractor shall pay to all persons performing labor under such contract not less than the highest general prevailing rate of wages for the labor so performed. Artist shall provide, and shall require any subcontractor to provide, upon request, certified payroll

reports with respect to all persons performing labor in the fabrication and/or installation of the Work.

30. Assignment or Transfer.

a. Artist guarantees that Artist will consistently give personal attention to the faithful execution of this Agreement, including any work performed by employees, agents or subcontractors. Artist shall keep the Work under Artist's control and shall not assign or subcontract the Work, in whole or in part, except as provided in this Agreement and authorized by the Commission. All transactions with subcontractors shall be made through Artist, and no subcontract, assignment or other transfer by Artist shall relieve Artist of any of Artist's liability or obligations under this Agreement.

31. Non-waiver of Rights.

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

32. Earned Income Credit (EIC) Forms.

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

Artist shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Artist 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 Artist; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

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

Any Subcontract entered into by Artist shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

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

33. Small Business Enterprise Program.

The City is committed to a Small Business Enterprise Program ("SBE Program") for the participation of SBEs in contracting opportunities. In addition, the Artist must comply

with all applicable federal regulations regarding Disadvantaged Business Enterprise (DBE) participation, as set out in Title 49, Part 26 of the Code of Federal Regulations (49 C.F.R. Part 26), with respect to DBEs performing work under this Agreement. More information on federal DBE requirements can be found on the internet at: <http://www.fta.dot.gov/library/admin/BPPM/ch7.html>.

34. Nondiscrimination; Penalties.

a. Artist Shall Not Discriminate. In the performance of this Agreement, Artist 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 Artist, in any of Artist'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 Artist.

b. Subcontracts. Artist shall incorporate by reference in all subcontracts the provisions of §12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Artist's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits. Artist does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract. As a condition to this Agreement, Artist 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 HRC.

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. Artist shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Artist understands that pursuant to §§12B.2(h) and 12C.3(g) of the 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 Artist and/or deducted from any payments due Artist.

35. MacBride Principles—Northern Ireland.

Pursuant to San Francisco Administrative Code §12.F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, Artist acknowledges and agrees that Artist Team has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban.

Artist shall not import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Agreement.

37. Drug-Free Workplace Policy.

Artist 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. Artist agrees that any violation of this prohibition by Artist, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation.

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

39. Compliance with Americans with Disabilities Act.

Artist acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through Artist, shall be accessible to the disabled public. Artist shall provide the services specified in this Agreement in a manner that complies with the ADA. Artist shall not 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 Artist, its employees, agents or assigns will constitute a material breach of this Agreement.

Artist shall cooperate with City and allow City to take reasonable steps to ensure that the Artwork is accessible to the disabled, with respect to the elimination of both architectural and programmatic barriers. Such cooperation shall include assisting with modifications to the Artwork, or preparing or authorizing tactile models, reproductions, or other materials necessary to provide access to the Artwork. If requested by City, Artist shall engage a consultant, as part of the project Budget, to review the Artwork for compliance with the ADA.

40. Sunshine Ordinance.

Pursuant to San Francisco Administrative Code §67.24(e), contracts, Artist’s bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person’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 paragraph will be made available by City to the public upon request.

41. Public Access to Meetings and Records.

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

42. Limitations on Contributions.

Through execution of this Agreement, Artist acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Artist acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Artist further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Artist's board of directors; Artist's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Artist; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Artist. Additionally, Artist acknowledges that Artist must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Artist further agrees to provide to City the names of each person, entity or committee described above.

43. Requiring Minimum Compensation for Employees.

a. Artist 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 Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set

forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Artist's obligations under the MCO is set forth in this Section. Artist is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Artist to pay Artist's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Artist is obligated to keep informed of the then-current requirements. Any subcontract entered into by Artist shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Artist'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 Artist.

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

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

e. The City is authorized to inspect Artist's job sites and conduct interviews with employees and conduct audits of Artist

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

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

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

i. If Artist is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Artist later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Artist 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 Artist and this department to exceed \$25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees.

Unless exempt, Artist 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 section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Artist shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Artist 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 Artist 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. Artist's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Artist 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, Artist fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Artist 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 Artist 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. Artist 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 Artist 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 Artist based on the Subcontractor's failure to comply, provided that City has first provided Artist with notice and an opportunity to obtain a cure of the violation.

- e. Artist shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Artist'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. Artist 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. Artist 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. Artist shall keep itself informed of the current requirements of the HCAO.
- i. Artist 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. Artist 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. Artist shall allow City to inspect Artist's job sites and have access to Artist's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Artist to ascertain its compliance with HCAO. Artist agrees to cooperate with City when it conducts such audits.
- m. If Artist is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Artist later enters into an agreement or agreements that cause Artist'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 Artist and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program.

Intentionally left blank by Agreement of Parties.

46. Prohibition on Political Activity with City Funds.

In accordance with San Francisco Administrative Code Chapter 12.G, Artist 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. Artist 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 Artist 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 Artist from bidding on or receiving any

new City contract for a period of two (2) years. The Controller will not consider Artist's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic.

Artist 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 Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" means 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. Artist 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 Artist from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement.

- a. Except as provided herein, this Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.
- b. Artist shall cooperate with the Arts Commission and the SFMTA's Office of Contract Compliance to submit to the OCC 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%.
- c. The Commission and Artist, by written agreement signed by both parties, may clarify provisions of Appendix A ("Artists Proposal") and/or Appendix B ("Services to be Provided by Artist), by further outlining, correcting, clarifying and refining the substance of each of the Phases of the Work as to the date(s) of deliverables (including modifying or changing the order of the due date(s) for deliverables), the costs associated with each Phase and the Performance and Payment Schedule. Such changes shall be kept on file at the Commission. Such clarifications shall not alter the total maximum term or maximum compensation allowed in Section 2 (Term of the Agreement) and section 5 (Compensation), respectively.

49. Administrative Remedy for Agreement Interpretation.

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue.

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

51. Construction.

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

52. Entire Agreement.

This Contract and the documents incorporated by reference herein sets forth and memorializes the entire agreement between the Parties, and supersedes all other oral or written understandings or provisions. This contract may be modified only as provided in Section 48 (Modification of Agreement).

53. Compliance with Laws.

Artist 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 shall at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Services Provided by Attorneys.

Any services to the Project to be provided by a law firm or attorney (engaged by the Artist) must be reviewed and approved in writing by the City Attorney in advance of the Artist's engagement of the attorney. No invoices for services to the Artist provided by law firms or attorneys to the Artist, including, without limitation, as subcontractors of Artist, will be reimbursed by the City unless the provider received advance written approval from the City Attorney and such amount is within the Artist's approved Budget. The City Attorney will not review or approve an attorney who only provides confidential advice to the Artist, but the City will not reimburse the Artist for those expenses.

55. Priority of Documents.

The services and Work that Artist shall provide and perform for the Project are described in this Agreement, the RFP, and the Proposal. All requirements of the RFP and the representations made in the Artist's Proposal that are not in conflict with provisions of this Contract are hereby incorporated by reference and made an integral part of the contract as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or the Proposal, this Agreement shall control except where the RFP or the Proposal refers to services not otherwise mentioned in this Agreement, in which case and to such extent the RFP shall control. The Proposal shall control only where an issue or subject is not addressed in either the RFP or this Agreement. A modification to the Agreement shall control over all other documents. In case of conflict among modifications to the Agreement, the latest modification shall have precedence over any earlier modification.

56. Severability.

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

further action by the parties to the extent necessary to make such provision valid and enforceable.

57. Protection of Private Information.

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

58. Graffiti Removal.

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

Artist shall remove all graffiti from any real property owned or leased by Artist in the City and County of San Francisco within forty eight (48) hours of the earlier of Artist'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 Artist 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 Artist to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements.

Artist agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code

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

60. Cooperative Drafting.

This Agreement is the product of negotiations between the City and the Artist, each of which has opportunity to consult with legal counsel of its choosing as to the terms and conditions set out herein. No statute or rule of construction or interpretation that would require that an ambiguity in this Agreement be construed against the drafter shall apply to this Agreement, but the Agreement shall be construed to implement the intent of the parties.

61. Dispute Resolution Procedure.

If agreed to by both Parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

62. Federal Requirements.

a. Federal Contract Requirements and Applicable Law. The provisions set out in this Section 62 are required by federal law. If there is any conflict between said provisions or any federal law, regulation or requirement, including such limitations and requirements as the FTA may impose, such federal requirements, terms and conditions shall take precedence over any terms and conditions set out in this Agreement. The City and County of San Francisco is a chartered City and County with home rule powers under the Constitution of the State of California. The terms of this Agreement are governed by California Law and the ordinances and Charter of the City and County of San Francisco. Except as expressly provided for in this Agreement, the Federal Acquisition Regulations (FAR) shall not apply to this Agreement, except as to provide guidance as to accounting and auditing standards, including but not limited to calculation of compensable costs and overhead.

b. Incorporation of Federal Transit Administration (FTA) Terms.

(1) All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, (http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html), as amended and the Master Grant Agreement (<http://www.fta.dot.gov/documents/15-Master.pdf>), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Artist shall not perform any act, fail to perform any act, or refuse to comply with any City request that would cause the City to be in violation of the FTA terms and conditions.

(2) The FTA Master Agreement obligates SFMTA to incorporate certain provisions into this Agreement and any lower tier subcontracts at any level and to take appropriate measures to ensure that Artist and its lower tier subcontractors at any level comply with certain applicable requirements set forth in the Master Agreement. The FTA Master Agreement is hereby incorporated by reference into this Agreement, and Artist shall comply with all such requirements.

(3) Copies of the FTA Master Agreement are available from the Commission.

c. Applicability of Federal Grant Contract.

(1) This procurement may be subject to one or more financial assistance contracts between SFMTA and the U.S. Department of Transportation, which incorporate the current FTA Master Agreement and Circular 4220.1F as amended. U.S. Department of Transportation's level of financial assistance may be between zero and eighty percent (0-80%). The Artist is required to comply with all terms and conditions prescribed for third party contracts in these documents.

(2) Federal laws, regulations, policies and administrative practices may be modified or codified after the date this Agreement is established and may apply to this Agreement. To assure compliance with changing federal requirements, Contract Award indicates that the Artist agrees to accept all changed requirements that apply to this Agreement.

d. Federal Funding Limitation. Artist understands that funds to pay for Artist's performance under this Agreement are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All funds must be approved and administered by FTA. The City's obligation hereunder is payable from funds that are appropriated and allocated by FTA for the performance of this Agreement. If funds are not allocated, or ultimately are disapproved by FTA, the City may terminate or suspend Artist's services without penalty. The Commission shall notify Artist promptly in writing of the non-allocation, delay, or disapproval of funding.

e. No Federal Government Obligation to Third Parties. Artist agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party contractor, or any other person not a party to the Grant Agreement in connection with this Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including a subrecipient or third party contractor.

f. Federal Lobbying Restrictions.

(1) This Agreement is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 C.F.R. Part 20, which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an office or employee of Congress or an employee of any Member of Congress in connection with the awarding of any federally funded contract, the making of any Federal grant or loan, or entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Consultants and Subcontractors at any time who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New

Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Artist shall submit the "Certification Regarding Lobbying" included in this document. The Artist's signature on this certification shall certify that: a) it has not engaged in the prohibited activity and b) the language of the certification shall be included in all lower tier subcontracts, which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly. SFMTA is responsible for keeping the certification form of the Artist, who is in turn responsible for keeping the certification forms of subcontractors. Further, by executing the Agreement, the Artist agrees to comply with these laws and regulations.

(2) If the Artist has engaged in any lobbying activities to influence or attempt to influence the awarding of this Agreement, the Artist must disclose these activities. In such a case, the Artist shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities". SFMTA must also receive all disclosure forms.

(3) The Artist and any subcontractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Agreement; or

(b) A change in the person(s) influencing or attempting to influence this federally funded Agreement; or

(c) A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Agreement.

g. Lobbying Certification and Disclosure. Pursuant to 49 C.F.R. Part 20 (which is by this reference incorporated herein), the Artist shall execute and return the Certification Regarding Lobbying by Artist form set forth in Attachment H with the execution of this agreement.

h. Certification Regarding Debarment, Suspension And Other Responsibility Matters.

(1) Pursuant to Executive Order 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 and federal regulations in 49 C.F.R. 29, entities and individuals who are debarred or suspended by the federal government are excluded from obtaining federal assistance funds under this Contract. To assure that such entities and individuals are not involved as participants on this FTA-financed contract, if the contract exceeds \$25,000 each Artist shall complete and submit, as part of its Proposal, the certification form, contained in these documents. The inability of a Artist to provide a certification will not necessarily result in denial of consideration for contract award. A

Artist that is unable to provide a certification must submit a complete explanation attached to the certification form. Failure to submit a certification or explanation may disqualify the Artist from participation under this Contract. SFMTA, in conjunction with FTA, will consider the certification or explanation in determining contract award. No contract will be awarded to a potential third-party contractor submitting a conditioned debarment or suspension certification, unless approved by the FTA.

(2) The certification is a material representation of fact upon which reliance is placed in determination of award of contract. If at any time the Artist learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately provide written notice to SFMTA. If it is later determined that the Artist knowingly rendered an erroneous certification, or failed to notify SFMTA immediately of circumstances which made the original certification no longer valid, SFMTA may disqualify the Artist. If it is later determined that the Artist knowingly rendered an erroneous certification, or failed to notify SFMTA immediately of circumstances which made the original certification no longer valid, SFMTA may terminate the contract, in addition to other remedies available including FTA suspension and/or debarment.

(3) Further, the Artist shall not knowingly enter into any subcontract with an entity or person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds. As such, the Artist shall require all subcontractors seeking subcontracts to complete and submit the same certification form contained in these documents before entering into any agreement with said subcontractor.

i. Exclusionary Or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, the Artist agrees that it will comply with the requirement of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

j. Conservation. The Artist shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State Energy Action plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.).

k. Clean Water. The Artist agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Artist agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Artist also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

l. Clean Air. The Artist agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Artist agrees to report each violation to the City and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Artist also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

m. Buy America. The Broker agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and

manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include microcomputer equipment, software, and small purchases (\$100,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j) (2) (C) and 49 C.F.R. 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

n. Fly America. International air transportation of any persons involved in or property acquired for the Project must be provided by U.S. flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, in accordance with U.S. GAO regulations, "Uniform Standards and Procedures for Transportation Transactions," 4 C.F.R. Part 52, and U.S. GAO Guidelines for Implementation of the "Fly America Act" B-138942, 1981 U.S. Comp. Gen. LEXIS 2166. March 31, 1981.

o. Seismic Safety. The Artist agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Artist also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

p. National Intelligent Transportation Systems Consultanture and Standards. The Artist agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Consultanture and Standards as required by Section 5206(e) of TEA-21, 23 U.S.C. § 502-, and with FTA Notice, "Federal Transit Administration National ITS Consultanture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other subsequent Federal directives that may be issued.

q. Electronic and Information Technology. When providing reports or other information to the SFMTA, or to the Federal Transit Administration (FTA), among others, on behalf of the SFMTA, the Artist agrees to prepare such reports or information using electronic or information technology capable of assuring that the reports or information delivered will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

r. Nondiscrimination. In addition to the provisions prohibiting discrimination set out in Section 34, above, the Artist shall ensure compliance by it and its subcontractors with all requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d), federal Executive Order No. 11246, regulations of the U. S. Department of Labor issued thereunder, the regulations of the federal Department of Transportation issued thereunder, and the Americans with Disabilities Act, as they may be amended from time to time. Accordingly, during the performance of this Agreement, the Artist, for itself, its assignees, and successors in interest (hereinafter referred to as the "Artist"), agrees as follows:

(1) The Artist shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter "DOT"), Title 49, Code of Federal Regulations, Part 21 ("Nondiscrimination in Federally-Assisted Programs of the Dept. of Transportation"), as they may be amended from time to time

(hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

(2) In all solicitations either by competitive bidding or negotiation made by the Artist for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Artist of the Artist's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, creed, sex, sexual orientation, disability, age, or nationality.

(3) The Artist shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SFMTA or FTA to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information is required of a contractor or subcontractor that is in the exclusive possession of another who fails or refuses to furnish this information, the Artist shall so certify to SFMTA, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(4) In the event of the Artist's noncompliance with the nondiscrimination provisions of this Agreement, SFMTA shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:

- (a) Requiring the Artist to take remedial action to bring the Artist into compliance;
- (b) Withholding of payments to the Artist under the Agreement until the Artist complies; and/or
- (c) Cancellation, termination, or suspension of the Agreement, in whole or in part.

(5) The Artist shall include the provisions of these Subsections **r(1) to r(4)** in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Artist shall take such action with respect to any subcontract or procurement as SFMTA or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Artist becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Artist may request SFMTA to enter into such litigation to protect the interests of SFMTA and, in addition, the Artist may request the United States to enter into such litigation to protect the interest of the United States.

s. Title VI Compliance. During the performance of this Agreement, Artist, for itself, its assignees, and its successors in interest agrees as follows:

(1) **Compliance with Regulations:** Artist shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made part of this Agreement.

(2) **Nondiscrimination:** Artist, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, or

national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Artist shall not participate either directly or indirectly in the discrimination prohibited by 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Artist for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Artist of Artist's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.

(4) **Information and Reports:** Artist shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SFMTA or the FTA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Artist is in the exclusive possession of another who fails or refuses to furnish this information, Artist shall so certify to SFMTA, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of Artist's noncompliance with the nondiscrimination provisions of this Agreement, SFMTA shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

(a) Withholding of payments to Artist under the Agreement until Artist complies, and/or,

(b) Cancellation, termination or suspension of the Agreement, in whole or in part.

(6) **Incorporation of Provisions:** Artist shall include the provisions of Subsection 62.18.1 through 62.18.5 of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Artist shall take such action with respect to any subcontract or procurement as SFMTA or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event Artist becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Artist may request SFMTA to enter into such litigation to protect the interests of SFMTA, and, in addition, Artist may request the United States to enter into such litigation to protect the interests of the United States.

t. Requirements of Americans with Disabilities Act. The Artist is required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

(1) U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 27;

(3) U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(4) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(5) U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(6) U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(7) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. Part 64, Subpart F; and

(8) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

(9) Any implementing requirements that the FTA may issue.

u. Recycled Products. To the extent practicable and economically feasible, the Artist agrees to provide a competitive preference for recycled products to be used in the Project pursuant to the U.S. Environmental Protection Agency Guidelines at 40 C.F.R. Parts 247, implementing Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962. If possible, the Artist shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical at the fulfillment of this Agreement.

v. Privacy.

(1) Should the Artist, or any of its subcontractors, or their employees administer any system of records on behalf of the federal government, the Privacy Act of 1974, 5 USC § 552a, imposes restrictions on the party administering the system of records.

(2) For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, SFMTA and any Consultants, third-party contractors, subcontractors, and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Agreement will make this Agreement subject to termination.

(3) The Artist agrees to include this clause in all subcontracts awarded under this Agreement that require the design, development, or operation of a system of records on individuals subject to the Act.

w. False or Fraudulent Statements and Claims.

(1) The Artist recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Accordingly, by signing this Agreement, the Artist certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered Grant Agreement, Cooperative agreement, Contract or Project. In addition to other penalties that may be applicable, the Artist acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Artist, to the extent the Federal Government deems appropriate.

(2) The Artist also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Artist the penalties of 18 U.S.C. § 1001, 31 USC §§ 3801, et seq., and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

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

- x. **Drug-Free Workplace Policy.** Artist acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, 41 U.S.C. 702, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Artist agrees that any violation of this prohibition by Artist, its employees, agents or assigns will be deemed a material breach of this Agreement.

63. Approval by Counterparts.

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

64. Included Appendices.

The Appendices listed below are incorporated to the Agreement by reference.

- A: Artist's Proposal
- B: Services to be Provided by Artist
- C. Artist's Approved Costs
- D. Payment Schedule
- E. Civic Art Collection Forms

[The remainder of this page has been intentionally left blank.]

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

CITY

APPROVED:

Luis R. Cancel
Director of Cultural Affairs
San Francisco Arts Commission

APPROVED

SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY

Nathaniel P. Ford Sr.
Executive Director/CEO
San Francisco Municipal
Transportation Agency
Date: _____

AUTHORIZED BY:

SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY
BOARD OF DIRECTORS

Resolution No:

Adopted:

Attest:

Roberta Boomer, Secretary to the
SFMTA Board of Directors

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Robert K. Stone
Deputy City Attorney

ARTIST

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

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

Tom Otterness
Tom Otterness Studio
96 Fourth Street
Brooklyn, NY 11231

City vendor number: 66297

APPENDIX A

CENTRAL SUBWAY MOSCONE STATION WAYFINDING ARTWORK

TOM OTTERNESS STUDIO

CONCEPTUAL ARTWORK PROPOSAL

Proposal approved by Arts Commission Resolution 0802-10-216 on August 10, 2010, to be developed under this Agreement and subject to ongoing revisions, reviews and approvals by the Commission and the SFMTA.

UNTITLED

The artist proposes an installation of a total of 59 bronze sculptures, some standing alone, others in groups, to be installed on all three levels of the Moscone Station. Approximately 17 of the 59 sculptures, including a working clock will be installed in a 10 foot high by 12 foot wide rectangular bronze relief panel inset into a wall on the concourse level of the station. 24 sculptures will be inset into two concrete benches to be installed on the platform level. 12 sculptures will be installed on the surface level and 6 near the escalators on the concourse level. The sculptures will be figures, buildings and other elements that are a combination of early constructivist abstraction and children's building blocks.

People are represented by four essential geometric forms: the sphere, the cone, the cube and the cylinder. The collection of sculptures will reference the intermingling of a wide variety of people using the subway system to commute to work, shop with their families, or visit the city from elsewhere. In the subway, everyone is on an equal footing.

The figure, birds, trucks, trains and other sculptural elements will be cast in silicone bronze, ranging in size from 24 to 12 to 6 inches tall. In addition, the artist is proposing a working clock, easily accessed for maintenance. The artist has previously worked with a clock manufacturing company to produce clocks or an outdoor installation at the Hilton Times Square in New York City.

Conceptual Proposal Display Board Image Attached

Appendix B
Services to be Provided by Tom Otterness Studio

**Design, Fabrication, Transportation and Consultation during Installation of Artwork for
the Central Subway Moscone Station**

Authorization: Phases I, II and III of this Agreement have been authorized by Arts Commission Resolution Number 1206-10-340. The Commission must approve Artist's submittals at the completion of each Phase of the Work before the Artist proceeds to the next Phase.

PHASE I - DESIGN

1. Scope of Work.

a. General

(1) Artist has delivered a Conceptual Proposal for the Artwork ("Proposal") approved by the Arts Commission, Resolution 0802-10-216. The scope of work under this Phase includes the development of the Proposal through all Phases of design, including Conceptual Design, Design Development that meets the SFMTA's construction document requirements, Final Design of the Artwork, and Construction Documents for the fabrication and installation of the Artwork.

(2) The Commission must approve changes to the Proposal at each Phase of development before the Artist proceeds to the next Phase. If the Commission does not accept the Proposal at any design Phase, the Artist agrees to submit one alternate proposal or design alternative at no additional cost to the City.

(3) The Proposal shall reflect the requirements of the SFMTA, Architect and Commission, as expressed in the Request for Qualifications and as further directed and discussed in communications with the Commission, SFMTA and Architect.

(4) Artist shall attend Project meetings and make presentations to City staff, the Architect, Commissions, and other individuals and organizations, as directed by the Commission.

(5) Artist agrees to collaborate closely with Architect through in-person meetings and other necessary means of communication to allow the Architect to thoroughly integrate the Proposal into architectural and engineering drawings and plans throughout all Phases of design of the Artwork. **Artist shall coordinate his/her communications with the Architect and the SFMTA through the Arts Commission Project Manager.**

(6) Prior to directing any subcontractor to perform Work, the Artist shall deliver to the City copies of the Artist's subcontracts and required insurance documents. The Artist shall also submit as required by the City documentation establishing that all employees, subcontractors and suppliers have been paid in a timely manner.

b. Design Development

(1) Design Development Documents and materials shall incorporate the further development and refinement of the Proposal, Budget and Maintenance Report developed under Conceptual Design.

(2) Design Development Documents shall include presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, and final cost estimates at design completion. Design Development Documents shall fix and describe the size and character of the Artwork with respect to its relationship to the Site, including architectural, structural, mechanical and electrical systems, lighting design, materials and other elements as may be appropriate. Design Development Deliverables shall include but are not limited to the following:

(a) Final Design Drawings, to scale, illustrating the bronze wall inset to be installed on the station concourse level, including details of each sculpture, with all dimensions and materials in high resolution digital file.

(b) Final Design Drawings, to scale, illustrating two concrete benches to be installed on the platform level with the attached sculptures, including details of each sculpture, with all dimensions and materials in high resolution digital files.

(c) Final Design Drawings illustrating all additional sculptures, for a total of 59 bronze sculptures, not including the bronze wall and the concrete bench, to scale and in detail, either individually or in groups, as they will be installed in the station head house and the concourse level, or other sites as approved, in high resolution digital file;

(d) Design Drawing illustrating the final placement in plan view for all of the sculptural elements on the street, concourse and platform levels of the Moscone Station;

(e) Design Drawings illustrating the final placement in elevation view for each sculpture, including the wall relief, on the street, concourse and platform levels of the Moscone Station;

(f) Engineering Drawings for the bronze wall inset, the two concrete benches, and all other sculptures, including illustrations of connections and locations for mounting the wall inset into the concourse wall, the benches onto the platform and all sculptures to the wall inset, the benches, to all other bases, which must be signed and stamped by engineers licensed in the State of California, as required by the California Uniform Building Code and any San Francisco amendments to the Building Code. These drawings shall be supplied as high resolution digital files and AutoCAD file.

(g) Design of required foundations, backings and attachment systems for the bronze wall inset, the benches and all other sculptures, to be supplied as high resolution digital files;

(h) Budget detailing Artwork purchase price, storage, transportation, installation and contingency. Artist shall supply written cost estimates for storage, transportation and installation.

(i) Artist shall provide drawings and specifications for all components of the Artwork, including attachment methods and installation requirements in sufficient detail so that the installation of the Artwork can be accurately bid by a California-licensed contractor qualified to perform the specified work and meets

all City contracting requirements.

(3) Artist and Artist's subcontractor structural engineer or architect shall review all Design Development Documents for consistency and constructability, and report any engineering, structural concerns, or constructability concerns to the City. Modifications to the design necessitated by this review shall be submitted and approved by the City prior to beginning the production of Construction Documents and incorporated therein.

(4) Maintenance Plan. At the time Artist submits Artist's amended Proposal for review by the Arts Commission as part of the Design Development Documents, Artist shall provide the Commission with a General Maintenance Plan for the Artwork, with a detailed description of future anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating Artwork and the frequency of such staff involvement; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork. Artist shall also provide the Commission with a description of all equipment and or machinery needed to operate the Artwork and any anticipated or required staffing, supervision or operational needs. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment, and may also be subject to graffiti and vandalism. Artist shall ensure that all maintenance requirements will be reasonable in terms of time and expense. The Artist shall be responsible for making any updates or clarifications to this Maintenance Plan if the maintenance requirements and estimates change over the course of the Project.

c. Construction Documents:

(1) The plans for the construction and/or installation of the proposed Artwork as set out in the Construction Documents must conform to the California Uniform Building Code and any San Francisco amendments to the Building Code, and must be signed and stamped by design professionals licensed in the State of California.

(2) Artist shall deliver Mock-ups and Samples, as required by Commission or its staff.

(3) Artist and its subcontractor architect or engineer shall review the Architect's plans, designs and specifications to ensure they accurately reflect the agreed installation of the Artwork at the Site, and Artist shall provide the Commission and Architect with written comments and/or corrections.

(4) If the anticipated maintenance requirements and estimates have changed, Artist shall provide the Commission with a revised Maintenance Plan.

(5) Artist shall deliver an updated schedule describing Artist's specific timelines for completing the Work.

d. Schedule of Deliverables. See Appendix D.

e. Compensation. Artist's compensation for Phase I shall be in accordance with Appendix D, Payment and Performance Schedule. Such compensation shall cover all of Artist's costs and fees for Phase I, II and III.

f. Approved Subcontractors and corresponding insurance requirements

The Arts Commission shall approve the Artist's subcontracts to provide structural engineering documents and other design development deliverables, and other consultants as necessary to provide project assistance. Subcontractors are subject to the same insurance requirements as listed above unless waived by the City Risk Manager.

g. Total City Costs. Artist shall design the Artwork so that it can be designed, fabricated and installed for an amount not to exceed Eight Hundred Thousand Dollars (\$800,000). Said amount includes but is not the compensation to the Artist, but is the total cost to the City for the Artwork. This Budget must cover all costs associated with the Artwork, whether or not the Work is performed (that is, designed, fabricated, and installed) by the Artist, Artist's subcontractors, or by another contractor under a separate agreement with City. Said costs include, but are not limited to: Artist fees, employees, consultants, fabrication, including but not limited to design fees charged by the Artist's subcontracted architects and engineers. In the event that cost estimates indicate that the Artist's Proposal cannot be executed within the approved Budget, the Artist hereby agrees to redesign or modify the Proposal so that the Artwork can be fabricated within the approved Budget.

PHASE II - FABRICATION OF ARTWORK

1. Scope of Work.

a. Fabrication. Artist shall oversee fabrication of the Artwork following Notice to Proceed from the Arts Commission, to include all elements and attachment hardware, according to the design drawings provided by the Artist in coordination with the Arts Commission and the SFMTA architects and engineers, and as approved by the Arts Commission and the SFMTA.

b. Inspection of Artwork.

(1) Artist shall notify the Arts Commission 30 days in advance of the completion of the sculpture molds and the wooden mock-up of the wall inset so that the Arts Commission staff can perform a field inspection and approval at the Artist's studio prior to Artist shipping molds and wooden mock-up of the wall inset to the fabricator.

(2) Artist shall send photo documentation to the Arts Commission of 100% completion of all clay models.

(2) Artist shall send photo documentation to the Arts Commission when Artist has completed the bronze wall relief with the 17 sculptures applied finishes so that the Commission may review and approve the finished look of the Artwork well in advance of completion of the remaining sculptures. Arts Commission reserves the option to perform a field inspection of the wall relief with the 17 sculptures prior to granting approval to the Artist to proceed to complete the remaining sculptures and both cement benches.

(3) Artist shall notify the Arts Commission 30 days in advance of 100 percent completion of all of the bronze sculptures and the cement benches in order for the Arts Commission to make plans for a field inspection at the fabricator's facility to review and approve all completed Artworks prior to shipping to the Site.

(4) Molds, mock-ups and Artworks must be reviewed and approved at each stage of completion prior to advancing with next Phase of fabrication. All completed Artwork at the foundry must be approved by the Arts Commission at a field inspection prior to crating and shipping the Artwork to the storage site.

2. **Schedule of Deliverables.** See Appendix D for specific schedule. Note: The Artwork must be completed and in San Francisco ready for installation no later than September 30, 2015. The Artist shall be held responsible for any costs arising from Artist's delay in meeting this deadline.

3. **Compensation and Payment Schedule.** Artist's total compensation for Phase II and the payment schedule for said Work shall be in accordance with Appendices C, Approved Costs, and Appendix D, Performance and Payment Schedule, which are both incorporated herein by reference.

4. **Approved Subcontractors:** The Arts Commission approves the Artist's subcontracts with fabricators and other consultants as necessary to provide project assistance.

Approved Subcontractors:

Walla Walla Foundry, 405 Woodland Avenue, Walla Walla, WA 99362

**PHASE III -
CONSULTATION DURING TRANSPORTATION AND INSTALLATION OF
ARTWORK**

1. Scope of Work.

a. Transportation and Installation. The Artist shall transport the Artwork to the Site. The Artwork will be installed by the Construction Contractor. The Artist shall review and provide written comments and recommendations concerning the Construction Contractor's plans for transportation and installation of the Artwork, and the Artist shall consult with the City and the Construction Contractor as to the means and methods of transporting and installing the Artwork. The preparation of the Site for installation of the Artwork shall be the responsibility of the Construction Contractor.

b. Prior to installation of the Artwork, the Artist shall visit the Site and confer with the Commission, the SFMTA and Construction Contractor to verify that the preparation of the space(s) designated for the installation of the Artwork conform with the Artist's design intent as expressed in the SFMTA's contract documents and the Artist's Contract Documents approved in Phase I. Artist shall be present in San Francisco to provide on-Site consulting services on the installation of the Artwork, with a Commission staff person present at all times, and as directed by the Commission. Artist shall respond to requests for information from the City within 72 hours of the request. Artist shall coordinate Artist's activities on-Site with the General Contractor through Commission staff and the SFMTA Construction Management Team.

c. Approval of Site. Artist shall examine the work of the Construction Contractor and report in writing to the Commission any visible defect or condition that may interfere with the installation of the Artwork as depicted in the Artist's approved design documents. If Artist fails to measure, inspect and/or report defects that are reasonably discoverable, all additional costs of installing the Artwork shall be borne by Artist. The forgoing does not apply to latent construction defects. Artist shall report to City any defects in another Contractor's work at any time such defects become known to the Artist. Any difference or conflict that may arise between Artist and the Construction Contractor, or other Contractors engaged by City to perform work on the Site, shall be adjusted as determined by City, its agents, or its authorized representatives when necessary to facilitate the completion of the Project. No damages or claims by Artist will be allowed other than an extension of time for the completion of Work. Such an extension will be for the period of time City shall consider Artist to have been delayed in the completion of Work by reason of the work of other Contractors or workers.

d. Maintenance Documents. Artist shall deliver all information necessary for the Commission to properly care for and maintain the Artwork, including information regarding the physical make-up of the Artwork, methods and materials, and information about the Artistic intent of Artist in the Design, Fabrication and Installation of the Artwork in the forms attached as Appendix E: Civic Art Collection Forms.

e. Photographic Documentation. Artist shall deliver a CD Rom containing both high resolution and low resolution digital images of the Artwork from various perspectives.

2. Schedule of Deliverables. See Appendix D. Note: The Artwork must be completed and in San Francisco ready for installation no later than September 30, 2015. The Artist shall be held responsible for any costs arising from Artist's delay in meeting this deadline.

3. Compensation and Payment Schedule. Artist's total compensation for Phase II and the payment schedule for said Work shall be in accordance with Appendices C, Approved Costs, and Appendix D , Performance and Payment Schedule, which are both incorporated herein by reference.

**Appendix C
ARTIST'S APPROVED COSTS**

Central Subway Artist Budge Appendix C Contractor: Tom Otterness Studio	DRAFT Project costs
Phase 1a Conceptual Design	
Submittal of drawings and data for SFMTA's 65% construction documents	
Drawings	2,000.00
Computer design	2,000.00
Total Phase 1a costs	4,000.00
Phase 1b Design Development	
Submittal of drawings and data for SFMTA's 100% construction documents	
Engineering	5,000.00
Drawings	2,000.00
Computer design	2,000.00
Total Phase 1b costs	9,000.00
Phase 1c Final Design	
Submittal of artwork construction docs and shop drawings, models, samples	
Engineering	15,000.00
Drawings	8,000.00
Computer design and modeling	8,000.00
Bronze samples	7,000.00
Travel (artist) up to two trips	4,000.00
Total Phase 1 costs	42,000.00
Phase IIa Fabrication:Molds	
Clay modeling	141,400.00
Full scale wood wall relief	10,000.00
Waste Molds	31,480.00
Plaster casting	140,000.00
Rubber molds	37,520.00
Transportation	2,000.00
Total Phase 11a costs	360,400.00
Phase IIb Fabrication	
Bronze wall relief with 17 bronze elements	139,600.00
42 additional bronze elements	150,000.00
Concrete benches (2)	10,000.00
Travel (artist)	4,000.00
Plaster models/molds shipped (Brooklyn to WallaWalla)	5,000.00
Wooden wall relief model (Brooklyn to WallaWalla)	9,000.00
Total Phase II costs	327,600.00

Central Subway Artist Budge Appendix C Contractor: Tom Otterness Studio	DRAFT Project costs
Phase III Installation Consultation	
Bronze figures/elements, wall relief (WallaWalla to SF)	10,000.00
Contractor Fee	5,000.00
Travel (artist) 2 trips	2,000.00
Total Phase III Costs	17,000.00
TOTAL PROJECT COSTS	750,000.00

**Appendix D
PAYMENT SCHEDULE**

TOM OTTERNESS STUDIO	Artist Fee
Payment 1: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to drawings, data, specifications, samples, mock-ups, required to the SFMTA's 65% construction documents. Subcontracts and documentation subcontractors and other pre-approved expenditures have been paid.	4,000
Payment 2: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to, additional drawings, data, specifications, samples, mock-ups required for the SFMTA's 100% construction documents. Subcontracts and documentation all subcontractors and other pre-approved expenditures have been paid.	8,000
Payment 3: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to, artwork drawings, any imagery or text, construction documents, specifications, data, shop drawings, material samples, material data sheets, mock-ups, required tests for ease of maintenance and durability required for final approval and fabrication of the artwork.	42,000
Payment 4: Invoice may be submitted upon approval of clay models of artwork.	141,400
Payment 5: Invoice may be submitted upon approval completion of full scale wood wall relief, waste molds, plaster chasing, rubber molds of Artwork and transportation of models and molds of Art from Brooklyn to WallaWall, and approval of all required documents, and documentation that all subcontractors have been paid.	233,000
Payment 6: Invoice may be submitted upon approval of completion of bronze wall relief with 17 bronze elements and approval of all required documents, and documentation that all subcontractors have been paid	139,600
Payment 7: Invoice may be submitted upon approval of completion of 42 additional bronze elements, 2 concrete benches and approval of all required documents, and documentation that all subcontractors have been paid.	164,000
Payment 8: Invoice may be submitted upon approval of transported and installed artwork by the Arts Commission and the SFMTA, and approval of all remaining required submittals and documentation that all subcontractors have been paid.	17,000

TOM OTTERNESS STUDIO	Artist Fee
Payment Schedule Notes:	
1. All payments are not-to-exceed amounts.	
2. All due dates are subject to change by the Arts Commission or SFMTA.	
3. Artist shall not proceed to the next Phase, as indicated above, without written permission from the Arts Commission.	
4. Artist may request approval by the Arts Commission in advance to submit invoices for additional interim payments for submittals completed and approved within each Phase.	

Appendix E
CIVIC ART COLLECTION FORMS

THIS PRINT COVERS CALENDAR ITEM NO. : 10.4

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Office of the Deputy Executive Director

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute an Agreement with Paramedia LLC to design, fabricate and transport an Artwork to the City and County of San Francisco under the supervision of the San Francisco Arts Commission and consult during installation for an Artwork to be installed by the City and County of San Francisco in the Union Square Market Street (UMS) Station of the Central Subway Project, in an amount not to exceed \$536,550 and for a term from March 1, 2011 to December 31, 2018.

SUMMARY:

- Funding for Artwork for the Project will be derived from Federal Transit Administration grants and other funds granted the SFMTA, which the SFMTA provides to the San Francisco Arts Commission as required by City Administrative Code Section 3.19 for an art enrichment allocation based on two percent of the eligible construction costs for City and County of San Francisco capital improvement projects.
- The Agreement complies with the regulations of the Federal Transit Administration of the United States Department of Transportation (FTA).
- The San Francisco Arts Commission, by Resolution No. 1206-10-339 has authorized the Director of Cultural Affairs to enter into Agreement with Artist for the development and implementation of a work of art for the Central Subway Union Square/Market Street Station.
- The Agreement sets forth the terms and conditions to which the Artist will adhere while designing, fabricating, transporting and consulting on the installation of the artwork for the UMS Station. The Agreement includes a detailed scope of work, project budget and payment schedule.

ENCLOSURES:

1. SFMTAB Resolution
2. Paramedia LLC Contract

APPROVALS:

DATE:

DIRECTOR OF DIVISION
PREPARING ITEM: _____

FINANCE: _____

EXECUTIVE DIRECTOR/CEO: _____

SECRETARY: _____

ADOPTED RESOLUTION BE RETURNED TO: Jessie Katz

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

The proposed resolution authorizes the Executive Director/CEO or his designees to execute an Agreement with Paramedia LLC to design, fabricate and transport an Artwork to the City and County of San Francisco under the supervision of the San Francisco Arts Commission and consult during installation for an Artwork to be installed by the City and County of San Francisco in the Union Square Market Street (UMS) Station of the Central Subway Project.

GOAL

The Paramedia LLC Agreement is consistent with the SFMTA Strategic Plan as follows:

Goal 3 – External Affairs/Community Relations: To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry

Objective 3.3 Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life

DESCRIPTION

The artist proposes creating an artwork that will span the entire ceiling of the concourse level of the Union Square/Market Street Station. The ceiling will be covered with approximately 1750 proprietary, translucent 10” x 10” squares (“light pixels”) aligned in a diamond grid. The distance between the light pixels is approximately six feet measured along the diagonal lines of the grid. Each light pixel consists of a framed, clear, acrylic panel, each with surface holes on both sides. The holes will reflect light from RGB-LEDs embedded in the metal or plastic frame.

The individual light units are computer controlled and display simple patterns and animations. Individual light panels slowly change color in synch, creating an ever-changing, dazzling spectacle for the station users.

The panels are clear acrylic (flammability UL94) with either a metal (stainless steel or aluminum) or plastic frame, side lighted with RGB LEDs controlled with an industry standard DMX lighting controller. All electrical elements are electrical code compliant and for equipment using more than 100 W UL – listed if available.

The LED lighting elements are:

- Low power consumption compared to conventional lighting.
- No ultra-violet output
- Radiate very little heat
- Have a long lamp life of approximately 100,000 hours
- Light weight
- Easy to replace

PAGE 3.

The artist was selected through a competitive process. A Request for Qualifications (RFQ) was issued on October 1, 2004 and April 30, 2008, and City selected Paramedia LLC as one of six highest qualified scorers pursuant to the RFQ.

ALTERNATIVES CONSIDERED

Various Public Art Design implementation approaches were considered during Preliminary and Advanced Preliminary Design as required for the project to proceed.

FUNDING IMPACT

Funding for Artwork for the Project will be derived from Federal Transit Administration grants and other funds granted the SFMTA, which the SFMTA provides to the San Francisco Arts Commission as required by City Administrative Code Section 3.19 for an art enrichment allocation based on two percent of the eligible construction costs for City and County of San Francisco capital improvement projects.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The San Francisco Arts Commission, by Resolution No. 1206-10-339 has authorized the Director of Cultural Affairs to enter into Agreement with Artist for the development and implementation of a work of art for the Central Subway Union Square/Market Street Station.

Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract No. 4062-10/11 on January 3, 2011.

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

RECOMMENDATION

It is recommended that the SFMTA Board of Directors approve a resolution authorizing the Executive Director/CEO or his designees to execute an agreement with Paramedia LLC to design, fabricate and transport an Artwork to the City and County of San Francisco under the supervision of the San Francisco Arts Commission and consult during installation for an Artwork to be installed by the City and County of San Francisco in the Union Square Market Street (UMS) Station of the Central Subway Project.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The City desires that an Artist design, fabricate and transport an Artwork to the City and consult during installation for an Artwork to be installed by the City in the Union Square Market Street (UMS) Station of the Central Subway Project, Phase 2 of the SFMTA Third Street Light Rail Project ("the Project"); and,

WHEREAS, Funding for Artwork for the Project will be derived from Federal Transit Administration grants and other funds granted the SFMTA, which the SFMTA provides to the Commission to administer the art program for the Project; and,

WHEREAS, The San Francisco Arts Commission, by Resolution No. 1206-10-339 has authorized the Director of Cultural Affairs to enter into Agreement with Artist for the development and implementation of a work of art for the Central Subway Union Square/Market Street Station; and,

WHEREAS, Staff of the SFMTA and San Francisco Arts Commission has negotiated an agreement with Paramedia LLC for the design, fabrication, transportation and consultation during installation of an Artwork for the UMS Station of the Central Subway Project; and,

WHEREAS, The total compensation to the Artist shall not exceed \$536,550; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO execute an agreement with Paramedia LLC to design, fabricate and transport an Artwork to the City and County of San Francisco under the supervision of the San Francisco Arts Commission and consult during installation for an Artwork to be installed by the City and County of San Francisco in the Union Square Market Street (UMS) Station of the Central Subway Project, in an amount not to exceed \$536,550 and for a term from March 1, 2011 to December 31, 2018.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

CITY AND COUNTY OF SAN FRANCISCO PROFESSIONAL SERVICES

**Arts Commission
25 Van Ness Avenue, Suite 240
San Francisco, California 94102**

**AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
AND PARAMEDIA LLC
TO PROVIDE ARTWORK FOR THE CENTRAL SUBWAY PROJECT**

This Agreement, dated for convenience as June 1, 2011 is made in the City and County of San Francisco, State of California, by and between Paramedia LLC, 425 Napoleon Road #5, Bowling Green, OH 43402, hereinafter referred to as "Artist" or "Contractor" and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency ("SFMTA") and its Arts Commission ("Commission"), for the purposes and on the terms and conditions set forth below.

Recitals

A. The City desires that the Contractor design, fabricate and transport an Artwork to the City and consult during installation for an Artwork to be installed by the City in the Union Square Market Street (UMS) Station of the Central Subway Project, Phase 2 of the SFMTA Third Street Light Rail Project ("the Project").

B. Funding for Artwork for the Project will be derived from Federal Transit Administration grants and other funds granted the SFMTA, which the SFMTA provides to the Commission to administer the art program for the Project.

C. A Request for Qualifications (RFQ) was issued on October 1, 2004 and April 30, 2008, and City selected Artist as one of six highest qualified scorers pursuant to the RFQ.

D. Artist represents and warrants that it is qualified to perform and that it possesses the requisite experience and resources to render the services required by the City as set forth under this Contract.

E. The City and Contractor intend that this Agreement comply with the regulations of the Federal Transit Administration of the United States Department of Transportation ("FTA").

F. Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract No. 4062-10/11 on January 3, 2011.

G. The Commission, by Resolution No. 1206-10-339 has authorized the Director of Cultural Affairs to enter into Agreement with Artist for the development and implementation of a work of art for the Central Subway Union Square/Market Street Station under the following terms and conditions.

Now, therefore, in consideration of the preceding statements, the accuracy of which the parties hereby stipulate, the Artist, the SFMTA and Commission, on behalf of City, hereby agree as follows:

Definitions:

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement or the Contract Documents, it shall have the meaning set forth below:

1. "ADA" means the Americans with Disabilities Act (including all rules and regulations thereunder), Title 24 (California Building Code) and all other applicable federal, state and local disabled access legislation, as the same may be amended, modified or supplemented from time to time.
2. "Additional Work" means Work outside the scope of work of this Agreement, as described in Appendix B to this Agreement.
3. "Agreement" ("Contract") means this agreement, including all addenda, appendices and modifications, whether created now or in the future.
4. "Alter" or "Alteration" means, with respect to the Artwork, to alter, repair, modify, remove, relocate, sell, dispose of, distort, destroy, mutilate, or deface.
5. "Approved Costs" means such costs as are scheduled on Appendix C, including the maximum expenditure authorized for each item.
6. "Architect" means the engineering design firm engaged by the SFMTA to design the portion of the Central Subway Project in which the Art Work will be incorporated or installed.
7. "Artist" (also referred to as "Contractor") means: PARAMEDIA LLC. Where there is more than one Artist, all Artists shall be referred to collectively as "Artist." If Artist is comprised of two or more individual persons or entities, each individual person or entity shall be jointly and severally responsible for satisfying Artist's obligations under this Agreement, and each individual person or entity shall be liable for the acts and omissions of every other individual person or entity comprising Artist.
8. "Artist's Fee" means that portion of the Contract Sum paid by the City to the Artist to cover all profit, labor and costs related to the design and fabrication of the Artwork, including but not limited to Overhead, that are not otherwise compensable under this Agreement.
9. "Artwork" means the work of art designed by Artist for the Site under the terms of this Agreement, as described and defined in Artist Proposal, to be attached as Appendix A upon completion of Phase I, Conceptual Design, of the Services to be Provided by Artist.
10. "Authorization" means an Agreement, properly executed by the Commission and certified by the Controller for the specific funding of this Agreement or any modification thereof.
11. "Budget" means a specific and detailed document identifying the cost of completion of all Work under this Agreement, including all modifications, as further described in Section 4(c)..
12. "Central Subway Project" (CSP) or "Project" means the planning, design and construction of the Central Subway Project, Phase 2 of the SFMTA Third Street Light Rail Project.

13. "City" means the City and County of San Francisco, a municipal corporation.
14. "Commission" means the San Francisco Arts Commission.
15. "Committee" means the Visual Arts Committee of the Commission.
16. "Compensable Expense" means an expenditure by Artist made in the performance of the Work that is eligible under FTA guidelines and other applicable federal regulations for reimbursement as a legitimate Project expense and approved in advance of expenditure by the Arts Commission.
17. "Conceptual Design" means drawings (in plan and elevation) and/or 3-dimensional models, a written description, proposed materials and samples and cost estimates at 30% design completion. The information provided in Conceptual Design shall be complete enough to fully illustrate the design intent of the Artwork.
18. "Construction Contractor" means the licensed contractor and its subcontractors selected by the City to construct the Central Subway Project or any portion thereof, including installation of the Artwork at the Site.
19. "Construction Documents" means the final and complete architectural, structural, mechanical and engineering Design Development Documents (including drawings, written specifications, structural and engineering calculations at 100% design completion) prepared by Artist or Artist's subcontractors and approved by the Commission that sets forth in detail the design and specifications of the Artwork and its installation, which are suitable for bidding to a Construction Contractor. Construction Documents shall describe and fix the location, size, materials and character of the Artwork with respect to architectural, structural engineering, mechanical and electrical systems, materials, colors, method of attachment and fabrication methods, and other such elements as may be appropriate. Construction Documents must be signed and stamped by design professionals licensed in the State of California as required by the California Building Code and any local amendments thereto.
20. "Construction Manager" means the Central Subway Partners, a joint venture between AECOM USA and EPC Consultants, engaged by the SFMTA to manage the design and construction of the Project as the Program Manager/Construction Manager consultant.
21. "Contract Documents" means any work, including but not limited to, Conceptual Designs, Design Development Document and Construction Documents, Shop Drawings, Mock-ups, models, engineering calculations, approved installation plans, and all material samples and product data, project budget, and any and all additional documents and submittals produced under this Agreement that the Commission has approved and to which the completed Artwork is expected to conform.
22. "Contract Sum" (or "Total Amount") means all amounts payable by the City to Artist under this Agreement, and more specifically described in Section 5.
23. "Controller" means the Controller of City.
24. "Cost-plus-Fixed-Fee" means an alternate method compensating the Artist for Work performed under the Agreement that is not paid by Lump Sum and by which the City

reimburses the Artist its costs for performing the Work and also pays a Fixed Fee as compensation for having performed the Work.

25. "Days" means working days of the City and County of San Francisco (unless otherwise indicated). The use of the term "days," "working days" or "business days" shall be synonymous.
26. "Department of Transportation" (DOT) means the federal agency Department of Transportation.
27. "Director of Cultural Affairs" means the Director of Cultural Affairs for the Commission.
28. "Design Development Documents" means the design documents generated by the Artist and submitted to the Commission for review, comment and approval during the course of the design of the Artwork. The content of Design Development Documents shall be determined by the Commission, and may include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork, that describe the size and character of the Artwork with respect to its relationship to the Site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate, describe how the Artwork will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, feasibility studies and final cost estimates at design completion.
29. "FTA" means the Federal Transit Administration, a department of the federal Department of Transportation.
30. "Force Majeure" with respect to a delay in or prevention of performance means (a) any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either party), civil disturbance, future order claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body; (b) any changes in any applicable laws or the interpretation thereof; or (c) any flood, washout, explosion, or any other cause beyond the reasonable control of the party from whom performance is required.
31. "Lump Sum" means a method of compensating the Artist for Work under the Agreement that is a payment of an all-inclusive prefixed amount of compensation agreed by the Parties for completion of Milestones or other Work specified in the Agreement or an amendment to the Agreement. A Lump Sum payment amount is inclusive of and compensates the Artist for all Reimbursable Expenses, Overhead, and the Artist's Fee.
32. "Milestone" means a description of Work to be accomplished by date(s) certain, set out in Appendix D of this Agreement.
33. "Mock-ups" or "Samples" means illustrations such as standard schedules, performance charts, instructions, brochures, diagrams, and physical samples of all or any portion of the Work, and other information furnished by Artist to illustrate materials or equipment for all or any portion of the Work. The purpose of the Mock-ups and Samples is to provide physical examples that illustrate materials, equipment or

workmanship and establish the standards by which the Work will be judged.

34. "Overhead" means the costs incurred by Contractor in supporting its Work on the Project that are not specifically listed as Reimbursable Expenses.
35. "Party" means an entity bound by this Agreement.
36. "Parties" mean all entities bound by this Agreement.
37. "Project" means the Third Street Light Rail Project, Phase 2, Central Subway.
38. "Proposal" means the proposed visual, aesthetic, and Artistic intent and design of the Artwork incorporated in the Contract Documents approved by the Commission. The most recent design approved by the Commission is incorporated herein by reference, and is binding unless or until changes are approved by resolution of the Commission. Attached is Artist's Proposal at the time of the Agreement date. Artist's Proposal shall be automatically superseded by any Contract Documents that are later approved by the Commission.
39. "Public Work" means a construction project, erection, installation or other element of a construction project defined as a public work or S.F. Administrative Code Section 6.1(I), as currently written or as may be amended from time to time.
40. "Reimbursable Expense" means an expenditure by the Artist, including Salary Burden, made in the course of performing the work under this Contract that the Arts Commission reimburses as part of the Contract Sum .
41. "Request for Information" (RFI) means a request from a Construction Contractor for clarification or interpretation of a Contract Document or design document prepared by or under the direction of the Artist under this Agreement.
42. "Request for Qualifications" (RFQ) means the Request for Qualifications issued by the Arts Commission on September 10, 2004 and on April 30, 2008.
43. "Salary Burden" means the full cost of payroll taxes and employee benefits, such as health and dental care insurance, vacation, leave, retirement and pension that are provided to employees in addition to wages.
44. "Scope of Services" or "Work" means the services, tasks, and deliverables that the Artist will provide to the Arts Commission under this Agreement, as outlined in Appendix B of this Agreement.
45. "SFMTA" means the San Francisco Municipal Transportation Agency, created under Article 8A of the City's Charter.
46. "Shop Drawings" means drawings, diagrams and other data specifically prepared by Artist or Artist's subcontractors, fabricators, manufacturers, suppliers, Construction Contractor, or distributors illustrating in detail exactly how the work, or any element thereof, is to be fabricated and installed. Shop Drawings shall be signed and stamped by a licensed design professional unless this requirement is specifically waived by the Commission.
47. "Small Business Enterprise"(SBE) means a for-profit, small business concern with a three (3) year average gross revenue not exceeding Twelve Million Dollars

(\$12,000,000) and is certified under any of the following programs: the State of California's Small Business Program ("State Program"), the City and County of San Francisco's LBE Program ("City Program"), or the California Unified Certification Program ("Federal DBE Program").

48. "Site" means the Project location where the Artwork is to be installed, which for this Agreement is the Central Subway UMS Station located at the corner of Geary and Stockton streets.
49. "Work" means the work of Artist necessary, incidental or otherwise pertaining to the performance of the services and deliverables required under this Agreement. In addition to all other services and deliverables required, Work shall include the design, fabrication, consultation concerning the delivery and installation of the Artwork. (See Scope of Work.)

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 Commission or the SFMTA, as provided herein. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the Commission. The words "approval," "acceptable," "satisfactory," or words of like import, means approved by, or acceptable to, or satisfactory to the Commission or of the SFMTA, as provided herein, unless otherwise indicated by the context. The terms "include," "included" or "including" and similar terms shall be deemed to be followed by the words "without limitation."

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

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

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

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

THIS SECTION 1 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement.

The term of this Agreement shall be from March 1, 2011 to December 31, 2018, unless extended by subsequent contract modification pursuant to the contract modification requirements in this Agreement. Notwithstanding the above, this Agreement may be

extended by mutual written agreement of the parties for a period not to exceed two years beyond the initial term, provided that such extension does not create a contract with a total aggregate term of more than 9 years.

3. Effective Date of Agreement.

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

4. Services Artist Agrees to Perform; Procedure for Execution of Work; Budget; Consultation.

a. Services. As more specifically provided in Appendix B “Services to be Provided by Artist,” Artist agrees to design, fabricate, transport and consult during the installation by the Construction Contractor of the Artwork for the Central Subway Project, as well as any services provided in any subsequent modification to this Agreement. This Contract is a personal services contract, it is not a public works or construction contract subject to Article 6 of San Francisco Administrative Code or to the California Public Contract Code.

b. Procedure for Execution of Work.

(1) As more specifically described in Appendix B to this Agreement, the Artist shall perform the Work under this Agreement in three Phases. In Phase 1, the Artist shall complete and submit the Design Development Documents and other required submittals for the Artwork. In Phase 2, provided that City determines, in its sole discretion, to go forward with the fabrication of the Artwork, the Artist shall fabricate (or supervise the fabrication of) the Artwork in conformance with the Design Development and Final Design documents and other required submittals approved by the Commission. Provided that the City determines in its sole discretion to install the Artwork, in Phase 3, as directed by the Commission, the Contractor shall assist and consult with the Commission, the SFMTA and the Construction Contractor as to the transportation and installation of the Artwork at the Site, as determined by the Arts Commission.

(2) By authorizing Phase 1, the Commission is not obligated to authorize any subsequent Phase or other work. Subject to the limitations contained in this Agreement, the Commission may terminate this Agreement at any time.

(3) Artist shall not commence any Phase nor incur any expense in anticipation of commencing any Phase unless the Commission has given prior written authorization and the Controller has certified the availability of funds. Prior to beginning each Phase, Artist shall obtain the necessary approval of the previous Phase. In no event shall City be liable for any claims or damages arising from Artist’s unauthorized actions.

(4) The parties may negotiate any Additional Work to be performed under this Agreement, which shall not be effective unless and until memorialized in a written modification to this Agreement executed as provided herein.

(5) The City may terminate the Work at anytime, during or between Phases, with or without cause. If the City terminates the Work for convenience (without cause), the Artist shall be paid the amount(s) agreed for completed Milestones and for preapproved and documented Reimbursable Expenses reasonably and actually incurred up to the date of termination.

c. Budget. Unless otherwise specified in a modification to this Agreement, at the completion of Final Design Documents, Artist shall submit for the Commission's approval a final Budget for the entire cost of completion of the Artwork, including costs for any further design, fabrication, Construction Support services. Once adopted by the Commission as part of the approval of Phase 1, the Budget shall be binding upon Artist. The Artist's failure to provide the completed and installed Artwork to City within the approved Budget will be a material breach of this Agreement.

d. Consultation. Artist agrees to cooperate in good faith with the Commission and to be available as reasonably necessary for consultation and attendance at meetings with the Commission, Architect, SFMTA, Construction Manager, and Construction Contractor during all stages of the Work. The Commission shall facilitate cooperation and arrange for and coordinate all necessary consultation among the Commission, Artist, and the SFMTA. Artist agrees to consult with the Commission, the SFMTA, the Architect and the Construction Contractor as may be required by the Commission on all matters concerning the design, configuration, placement, installation, support requirements of the Artwork. As directed by the Commission, the Artist shall assist the SFMTA and its design consultants and Construction Manager with preparation of drawings, specifications and other documents that may be necessary for the preparation of construction contract modifications and responses to Requests For Information (RFIs) from the Construction Contractor. The Artist's attendance at meetings, consultation with the Architect, SFMTA and Commission, and preparation of contract documents and responses to RFIs are within the Contract Sum.

(1) Artist shall incorporate into the Artist's Construction Documents any changes made by the Architect to the Site design during the design process.

(2) Artist shall copy Commission on all correspondence between Artist, Architect, SFMTA, Construction Manager, or Construction Contractor in which Commission is not a party. Artist shall notify Commission in writing of any verbal agreements and /or understandings that are arrived at in conversations or meetings between Artist and Architect, SFMTA, Construction Management Team and/or Construction Contractor to which Commission is not a party. Artist understands that failure to inform Commission of such agreements in writing within five Days or in advance of taking any and all actions based on such agreements may result in such agreements not being honored.

(3) The Artist shall request in writing to the Arts Commission any information and data it will require from the SFMTA or the Architect for its Work. The Artist shall identify the timing and priority for which this information and data will be required in its request for that information. The Artist shall plan its work to allow adequate time for the City to provide the requested information. The Artist shall respond promptly, but in no case more than eight Working Days, to any request for information from the Arts Commission.

(4) The Artist shall inform the Commission at the earliest possible time of any changes in the Design Development Documents, the weight of the Artwork, any special support, suspension or other requirements of the superstructure of the Site necessary for the installation of the Artwork, any electrical power or other utility requirements for the Artwork. The Artist shall ensure that the Commission is notified of any changes to said requirements at the earliest possible time. The Artist shall at all times avoid changes in the design of the Artwork that deviate materially from the Artist's Proposal. The Artist shall avoid at all times changes to support or installation requirements of the Artwork that would require modification to the Site superstructure design or would require change

orders (modification of contract) with the Construction Contractor. The Artist shall not alter any aspect of the Artwork as approved by the Arts Commission and SFMTA without prior written permission from the Art Commission. The Artist shall be entirely responsible for any costs incurred by the City associated with any changes in their Artwork that have not be specifically approved by the Arts Commission in writing in advance of making such changes.

e. Presentations to Community Representatives. As directed by the Commission, the Artist or a representative designated by the Artist shall meet with and make presentations to representatives of communities and property owners along the alignment that may be affected by the Project and other interested parties.

f. Installation Support Services. As described in Appendix B, the Artist shall be available to consult as directed by the Commission with the Commission, the Construction Contractor and the SFMTA as to installation of the Artwork at the Site. Said Installation Support Services shall include but are not limited to consulting as to the proper means and methods of installation of the Artwork, inspection of the site prior to installation, and inspection of the installed Artwork to confirm it meets the requirements of the Artist's approved design.

5. Compensation.

a. Total Amount.

(1) The Total Amount payable to Artist under this Agreement (the "Contract Sum") for all Work performed by Artist, shall not exceed **Five Hundred and Thirty Six Thousand, Five Hundred and Fifty Dollars (\$536,550.00)**, unless this Agreement is amended as provided herein. Payment of the full Contract Sum is not guaranteed; to receive the full Contract Sum the Artist shall fully perform all Work described in this Agreement in compliance with the standards of performance described herein. All compensation due to Artist for Work performed under this Agreement shall made in accordance with Appendices C and D, attached hereto.

(2) This is a fixed-price contract. Except as specifically provided in this Contract, Artist agrees to design and fabricate the Artwork for the amount stated as the Contract Sum. The Contract Sum is inclusive of the Artist's Fee and all costs, including but not limited to direct labor costs, other direct costs and indirect costs for all Work performed under this Agreement, subject only to authorized adjustments as specifically provided in this Agreement. In the event the Artist incurs costs in excess of the Contract Sum (as adjusted) that is not due to actions or directives of the City or the City's engineering consultants or contractors, the Artist shall pay such excess from the Artist's Fee or its own funds, and City shall not be required to pay any part of such excess, and the Artist shall have no claim against City on account thereof. Out of the total Contract Sum, Artist shall be responsible for paying all of Artist's costs and expenses associated with the Work, including Overhead, the costs of suppliers, subcontractors, fees, taxes, permits, insurance, transportation to and from meetings, and all other costs associated with the scope of the Work specified in this Agreement.

b. Artist's Fee. The Artist's Fee (which is compensation remaining after payment of costs and expenses) is included in every Milestone Payment and in the Contract Sum. the City shall have no obligation to further pay additional Artist's Fee or otherwise compensate or reimburse Artist if the cost incurred or expenses paid by Artist to meet the requirements of this Contract exceed the Contract Sum.

c. Milestones; Calculation of Compensation. Compensation shall be made to Artist in the amounts and based upon Artist's successful completion, in the sole reasonable discretion of the Director of Cultural Affairs, of the Milestones described in Appendix D to this Agreement. No charges shall be incurred under this Agreement nor shall any payments become due to Artist until deliverables, services, or both, required under this Agreement are received from Artist and approved by the Commission as being in accordance with this Agreement. City may withhold payment to Artist in any instance in which Artist has failed or refused to satisfy any material obligation provided for under this Agreement.

d. Change in Scope of Services. If the Scope of Services of any Phase or other portion of the Project is reduced, that reduction shall be memorialized in an amendment to the Agreement, and the Fixed Fee for that Work shall be reduced, as negotiated by the Parties, but such reduction shall not be less than the proportional value of the reduced Work, as measured by the value of that Work set out in Attachment C (Summary of Fees) to this Agreement or other agreed document setting out the relative value of tasks. If the Scope of Services is increased, then the Parties will negotiate an appropriate Fixed Fee for the Additional Services. Any negotiations for changes in the scope of services shall be subject to the agreement of the Commission and the Artist. The Artist shall do no work in addition to or beyond the scope of the services set forth and contemplated by this Agreement unless and until it is authorized to do so by the issuance to it of a "Modification of Contract," duly executed and approved.

e. Additional Work. Where the City designates Additional Work to be performed, the Parties shall negotiate a reasonable Lump Sum amount as full compensation for the Additional Work, which shall include a budget for the Additional Work that covers all additional Artist's Fee and all additional costs and expenses incurred by Artist arising from the Additional Work to be paid upon the Artist's completion of the Additional Work to the satisfaction of the Commission.

f. Cost Plus Fixed Fee Payment. For all Additional Work for which the parties cannot agree on price, the City may direct the Artist to perform said Additional Work and reimburse Artist for Reimbursable Expenses (allowable costs) provided and approved by the Commission in the Budget and pay an additional Artist's Fee proportionate to the value of the Work. Compensation for Cost-plus-Fixed-Fee Work will be computed as the sum of Reimbursable Expenses actually incurred by Artist in performing the Additional Work and a reasonable additional Artist's Fee.

g. Transfer of Unused Funds. Artist may request City's approval to transfer unused funds from one subtask to another subtask within the same main task to cover the unexpected shortfall of another subtask provided that the need for additional funds to complete the subtask is not due to Artist's poor management or planning. Artist may request City's approval to transfer unused funds from one task(s) to other tasks to cover the unexpected shortfall of the other Tasks, provided that (1) the task(s) from which the funds are transferred out of (including all subtasks within the task(s)) is at least ninety-five percent (95%) complete; (2) the funds are no longer necessary for the original task(s) for which the funds were allotted; and (3) the main reason for the task(s) requiring additional funds is not due to Artist's poor management or planning. Such request must be made in writing to the Program Manager at least 15 calendar days in advance of the need to transfer funds across subtasks. City's approval of subtask or task amount changes will not be unreasonably withheld. City's approval shall be by the Commission's Program Manager.

h. Non-Reimbursable Expenses. Whether an amount is paid as Lump Sum or otherwise, Artist shall be compensated only for those Reimbursable Expenses authorized in Attachment C. If an expense is not a Reimbursable Expense, the City shall have no obligation to compensate Artist for it. Computer usage, facsimile and telecommunication expenses shall not be accounted as Reimbursable Expenses. Artist and subcontractor personnel entertainment or personal expenses of any kind shall not be considered a Reimbursable Expense. Office and field supplies/ expenses are not reimbursable expenses unless said supplies can be demonstrated to be out of the ordinary and used exclusively for this Project.

i. Prepayment. Unless the SFMTA and Commission give specific written authorization, Artist shall not submit invoices and the City shall not pay or otherwise reimburse Artist for costs of any kind that the Artist has not actually incurred and paid prior to date of invoice.

j. Refunds, Rebates and Credits. Artist shall assign to the City any refunds, rebates or credits accruing the Artist that are allocable to costs for which the City has paid or has otherwise reimbursed the Artist or for which the Artist will submit an invoice.

k. Payment of Invoices. Compensation shall be made within 45 days that the Commission, in its sole discretion, concludes the Milestone or other undisputed portion of Work approved for **payment** has been performed. City shall make payment to Artist at the address specified in Section 25 (Notices to the Parties). All amounts paid by City to Artist shall be subject to audit by City.

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

m. Payment Limitations.

(1) No charges shall be incurred under this Agreement nor shall any payments become due to Artist until all Work Product and other services required under this Agreement are received from Artist and approved by the SFMTA as being in accordance with this Agreement.

(2) The City may reasonably withhold payment to the Artist pending resolution, in an amount equal to questioned, disputed, or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the City in connection with the Artist's negligent errors or omissions. Payments for undisputed amounts due on the same or other invoice shall not be unreasonably withheld or delayed.

(3) The Artist shall not submit more than one invoice in any month.

n. Project Suspension or Termination.

(1) If the Project is suspended for more than one hundred eighty (180) days or abandoned in whole or in part, the Artist shall be compensated for services satisfactorily performed prior to receipt of written notice from the City of such suspension or abandonment. If the Project is resumed after being suspended for more than one hundred eighty (180) days, the Artist's compensation for the remainder of the services to be provided for the Project shall be equitably adjusted based on the Artist's demonstrated increased costs.

(2) In the event that the City terminates the Agreement for fault, the City may reduce any amount earned or otherwise due the Artist by the sum of any additional costs the City has or will incur as a result of the Artist's default.

o. Final Payment. Final payment of any balance earned by the Artist for Project work will be made within ninety (90) days after all of the following:

- (1) Satisfactory completion of all work required by this Agreement;
- (2) Receipt by SFMTA of the Work Product not previously delivered;
- (3) Delivery of all equipment/materials purchased specifically for the project where SFMTA has reimbursed the Artist for such costs;
- (4) Receipt by SFMTA of a fully executed final statement of amounts paid to and owed to each SBE under this Agreement;
- (5) Such audit and verification as SFMTA may deem necessary; and,

Execution and delivery by the Artist of a release of all claims against the City arising under or by virtue of this Agreement, other than such claims, if any, as may be specifically exempted by the Artist from the operation of the release in stated amounts to be set forth therein.

p. Request for Additional Work. If the Artist considers any work or services that the Commission directs Artist to perform to be outside the Scope of Services as established by this Agreement, the Artist shall notify the Commission, in writing within five (5) Days of discovering such extra work or services to request authorization to perform the Additional Work. Neither Artist nor any subcontractor or subconsultant shall be reimbursed for out-of-scope work performed without first obtaining the written approval of Commission. If the Artist proceeds to do work that it perceives to be Additional Work without first obtaining City's written approval in as provided herein, regardless of the amount or value of the work, the City shall have no obligation to reimburse Artist for the work thus performed. Eagerness to respond to the City's comments or concerns, expediency, schedule constraints will not be acceptable reasons to proceed with Additional Work without City's prior written approval.

q. Escalation. Artist may request increases in reimbursement amounts to the extent that Artist can document increases in materials or labor costs outside the control of the Artist. Approval of such requests is entirely at the discretion of the Commission.

r. Delay. Artist shall not claim and waives any claim for damages and additional compensation for delay, other than an extension of time for the completion of Work. Such an extension will be for the period of time that the City determines that Artist was delayed in the completion of Work, where such delay was not caused by and could not have been reasonably avoided by Artist.

6. Guaranteed Maximum Costs.

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

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

Artist for, commodities or services beyond the scope of this Agreement unless the changed scope is authorized by amendment and approved as required by law.

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

7. Payments; Invoice Format; Suppliers and Subcontractors.

a. Artist Invoices. Invoices furnished by the Artist under this Agreement must be in a form acceptable to the Controller. At a minimum, invoices must identify the contractor as Paramedia LLC, the contract project as Central Subway UMS Station Landmark Artwork and include the date of transaction, name and address of Artist, interim payment number for which compensation is requested, and amount requested. The Artist must submit an original invoice. City shall make payment to the Artist at the address listed for notices in this Agreement. All amounts paid by City to Artist shall be subject to audit by City and other agencies with jurisdiction over the Project and Project funding.

b. Supplier and Subcontractor Invoices. Artist shall provide the Commission with the name, address and telephone number of suppliers and subcontractors whose total invoices are expected to exceed one thousand dollars (\$1,000.00) prior to Artist beginning work under this Agreement, or as such expenses are incurred by Artist after certification of this Agreement.

c. Activity Reports. The Artist shall submit status reports with its invoices for payment, describing all Milestones and other Work completed by the Artist and subcontractors during the period billed and copies of all invoices for Reimbursable Expenses relating thereto.

8. Submitting False Claims; Monetary Penalties.

Pursuant to San Francisco Administrative Code sections 6.80 to 6.83 and 21.35, and pursuant to applicable federal law, any contractor (including Artist), subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in those ordinances and statutes, including but not limited to statutory fines, treble damages, costs and attorneys fees. The text of Sections 6.80 to 6.83 and 21.35, along with the entire San Francisco Administrative Code are available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. Artist or any contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim. Artist agrees that remedies under local law are cumulative and in addition to the remedies and penalties provided for false claims under federal law.

9. Disallowance, Disputed Amounts, and Debarment.

- a. If Artist claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Artist 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 Artist under this Agreement or any other agreement between the Artist and the City.
- b. Any Compensation or reimbursement received by Artist under this Agreement does not constitute a final decision or waiver of decision by the City as to whether said payment meets the terms and requirements of this Agreement. If following audit or other review, the City determines that the Artist and/or subconsultants are not entitled to certain compensation requested or received, the City shall notify the Artist stating the reasons therefore.
- c. Acceptance of the Artwork, or any portion of the Work under this Agreement, will not alter Artist's or a subconsultant's obligations to return any funds due the City as a result of later refunds, corrections, or other transactions, nor alter the SFMTA or its funding agencies' rights to disallow or otherwise not recognize costs on the basis a later audit or other review. The City may reasonably withhold payment to the Artist pending resolution, in an amount equal to questioned, disputed or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the City in connection with the Artist's negligent errors or omissions. Payments for other amounts due on the same or other invoice shall not be unreasonably withheld or delayed.
- d. By executing this Agreement, Artist certifies that Artist is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Artist acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

10. Taxes.

- a. Except as specifically provided herein, any taxes levied upon the Agreement, the transaction, or the equipment or services delivered under this Agreement, including possessory interest taxes and California sales and use taxes, shall be paid by Artist. To the extent allowed by law, the costs to Artist of sales, use, and possessory interest taxes arising out of the Work performed under this Agreement are Reimbursable Expenses.
- b. Artist 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 Artist to possession, occupancy, or use of City property for private gain. Only agencies with jurisdiction over tax matters have the authority to determine if a possessory interest has been created; the Commission and SFMTA have no authority to make such determination. If a taxing authority determines that a possessory interest is created, then the following shall apply:
 - (1) Artist, on behalf of himself and any permitted successors and assigns, recognizes and understands that Artist, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
 - (2) Artist, on behalf of himself 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. Artist accordingly agrees on behalf of itself and its permitted successors and

assigns to report on behalf of City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Artist, on behalf of himself 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). Artist accordingly agrees on behalf of himself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

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

(5) The Commission and the SFMTA consider Artist's presence on SFMTA property while performing Work under this Contract to be necessary to the Work and a convenience to the Project. Taxes for any possessory interest created by the Artist's presence on SFMTA property will be considered a Reimbursable Expense.

11. Payment Does Not Imply Acceptance of Work; Approval and Final Acceptance.

a. Payment Does Not Imply Acceptance of Work. The issuance of any payment for Milestone(s), other progress payment or final payment by the City or the receipt thereof by the Artist shall in no way lessen the liability of the Artist to correct unsatisfactory Work or materials, although the unsatisfactory nature of such Work may or may not have been apparent or detected at the time such payment was made. Work that does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced or performed again by Artist without delay.

b. Correction of Errors. Upon notice from Commission, the Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in such plans, designs, drawings, specifications, reports, and other services; and, in the event of any deficiencies in such plans, designs drawings, specifications, reports, or other services resulting from the Artist's professional negligence, whether or not said deficiencies have been brought to the attention of the Commission, the Artist shall indemnify and reimburse the City for the cost of the corrective remedial work (including, without limitation, design, demolition, and construction) necessary to correct any such deficiencies and the consequences of such deficiencies caused by said professional negligence.

c. Approval and Final Acceptance.

(1) Approval. The granting or withholding of any approval by the Commission shall be determined by the Commission in its sole and reasonable discretion. However, the Commission shall approve all deliverables if they conform to plans or Contract Documents previously approved by the Commission. If the Commission withholds approval of any deliverables or Phase, in addition to other rights or remedies available to the Commission under the Agreement or applicable law, the Commission shall have the right to terminate this Agreement immediately and shall have no further obligations under this Agreement.

(2) Final Acceptance. Artist shall advise the Commission in writing when Artist has completed all obligations, services and deliverables under this Agreement and all modifications. The Commission promptly shall send a Notice of Response? identifying in writing any obligations, services or deliverables that Artist has not satisfactorily met, any defects in Artist's performance, and the requirements for Artist to cure any such default. Artist shall have **30** days from dispatch of the Notice of Response to cure any defects in Artist's performance identified in the Commission's Notice of Response. The Artwork shall not be finally accepted by City unless the Commission has issued a resolution of Final Acceptance. City shall make a good faith effort to make a determination as to Final Acceptance promptly.

(3) Civic Art Collection. Upon Final Acceptance, the Commission shall accession the Artwork into the Civic Art Collection.

11A. Bonds.

a. Labor and Materials (Payment) and Performance Bonds: If the Artist or a subcontractor to the Artist performs work that constitutes construction or a "Public Work" as defined by San Francisco Administrative Code Section 6.1(I), and any contract amount, including any subcontract amount, for such fabrication or installation exceeds \$25,000, the Artist or Artist's sub-contractors shall provide performance and payment bonds from a City-approved surety under San Francisco Administrative Code Section 6.22(A). The bonds shall each be in an amount of not less than one hundred percent of the agreement for project-specific work. The performance bond shall name the City and County of San Francisco as sole obligee if provided by the Artist. The bonds shall be on a City-approved form provided by the City to the Artist. The Artist shall submit the bonds to the Arts Commission for approval.

b. Bonds Provided by Subcontractors: Bonds provided by the Artist's sub-contractor shall identify the project and name as dual obligees the Artist and the City and County of San Francisco. Upon written request by the City, in the event of any of Artist's subcontractors' failure to perform, Artist shall assign all rights under any Performance and Payment or Labor and Materials bond in favor of City. The bonds shall be on a City-approved form provided by the City to the Artist. The Artists shall submit the bonds to the for approval.

c. Labor and Materials (Payment) and Performance Bonds required at Commission's Discretion: To the extent that the fabrication and/or installation of any Artwork and the contract amount, including any subcontract amount for such fabrication or installation exceeds \$25,000, the Commission may, at the Commission's sole discretion, require Payment and Performance Bonds, whether or not the fabrication and or installation of the Artwork is defined as a "Public Work" by the San Francisco Administrative Code. In such event, all the above requirements shall apply.

11B. Licensed Contractor Requirements.

The parties do not intend that the design and fabrication of the Artwork is a Public Work, as the Artwork will be erected, installed and incorporated into the Project by the Construction Contractor, not the Artist. Artist's responsibilities as to installation of the Artwork shall be limited to consultation with the City and the Construction Contractor only. The parties intentions notwithstanding, if any part of the Artist's Work is deemed by an agency having jurisdiction constitute a "Public Work" as defined by San Francisco Administrative Code Section 6.1 (I) and requires a licensed contractor, Artist shall be solely responsible for ensuring that Artist and Artist's subcontractors (if any) have valid

appropriate licenses under California law or the applicable jurisdiction. If the Artist and/or any of Artist's subcontractors are unlicensed during any Phase of the project under this Agreement, the City shall have the right to bar Artist from receiving any payment for Artist's services. If Artist is not a licensed contractor, Artist shall not subcontract with licensed contractors for fabrication and/or installation of the Artwork or any portion of the Artwork under this Agreement.

12. Qualified Personnel.

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Artist. Artist will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Artist. Artist shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment.

City is not responsible for any damage to persons or property, including Artwork, as a result of the use, misuse or failure of any equipment used by Artist, or by any of its employees, even though such equipment be furnished, rented or loaned to Artist by City. Artist, rather than City, is responsible for site conditions of any site or work area that is under the control of the Artist, the health and safety of Artist's employees, subcontractors and agents, and of all other persons that work on or visit at the invitation of Artist at the site or work area that is under the control of the Artist.

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

a. Independent Contractor. Artist shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which Artist performs the services and work requested by City under this Agreement. Artist is liable for the acts and omissions of itself, its employees and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Artist.

Any terms in this Agreement referring to direction from City or the Commission shall be construed as providing for direction as to policy and the result of Artist's work only, and not as to the means by which such a result is obtained.

b. Payment of Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Artist 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 Artist 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 Artist for City, upon notification of such fact by City, Artist shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Artist under this Agreement (again, offsetting any credits for amounts already paid by Artist which can be applied against this 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, Artist shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Artist is an employee for any other purpose, then Artist 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 Artist was not an employee.

15. Insurance.

a. Required Insurance. Without in any way limiting Artist's liability pursuant to Section 16, the "Indemnification and General Liability" section of this Agreement, Artist shall maintain, or cause to be maintained, in force insurance in the following amounts and coverages, or as modified in Appendix B. Artist shall obtain such insurance on or before the time specified below; if no time is specified below, Artist shall obtain such insurance when required to do so by Appendix B or a modification to this Agreement. Except for required insurance under claims-made form (see Section 15 (d) (2), Artist shall maintain all required insurance continuously from the time originally specified, throughout the term of this Agreement until Final Acceptance of the Work by resolution of the Arts Commission. The Director of Cultural Affairs, with the approval of the City's Risk Manager, may authorize in writing the release of an interest in such insurance at an earlier date.

(1) **Workers Compensation**, in statutory amounts with Employers' Liability Limits not less than \$1,000,000 each accident, injury or illness. Artist shall obtain such insurance prior to certification of this Agreement. To the extent Artist warrants, in writing, that Artist is not an employer and has no employees as defined by the California Labor Code Sections 3351-3351.1, Artist need not provide to the City proof of Workers Compensation insurance.

(2) **Professional Liability Insurance** for all design professionals (such as architects, landscape architects or engineers), applicable to any of the Artist's subcontractors who is a licensed engineer or architect. Such insurance shall have limits not less than \$1,000,000 each claim with respect to negligent acts, errors and omissions. Artist or Artist's subcontractors shall obtain such insurance when Artist subcontracts for any work from such a design professional, and prior to the submittal of Construction Documents. Any design professional required to obtain professional liability insurance shall maintain such insurance, and proof thereof, for the term of this Agreement.

(3) **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. Artist shall obtain such insurance prior to commencing the fabrication of the Artwork and shall maintain through the transportation and installation of the Work at the Site.

(4) **Automobile Liability Insurance**: If Artist is an *individual*, Personal Automobile Liability Insurance with limits not less than \$100,000/\$300,000 each occurrence. If Artist is a corporation or other legal entity, Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable, unless a lesser amount is approved by City's Risk Manager. Artist shall obtain such insurance prior to certification of this Agreement.

(5) **Risk of Loss insurance** in an amount equal to the total payment specified under Section 5 (Compensation) of the contract. Artist shall obtain such insurance prior to commencing fabrication of the Artwork.

(6) Transportation and/or Installation Coverage, as required by the Commission.

b. Required Policy Language.

(1) Commercial General Liability and Commercial Automobile Liability Insurance shall be endorsed to provide:

(a) Endorse the policy to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees;

(b) Professional Liability policies shall name the specific project as a covered project; and

(c) State that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits.

(d) Regarding Workers' Compensation, Artist hereby agrees to waive subrogation which any insurer of Artist may acquire from Artist by virtue of the payment of any loss. Artist agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Artist, its employees, agents and subcontractors.

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

Jennifer Lovvorn, Project Manager
San Francisco Arts Commission
25 Van Ness Avenue, Suite 240
San Francisco, CA 94102

and to

Shahnam Farhangi, Contracts Manager
SFMTA Capital Projects and Construction Division
1 South Van Ness, 3rd floor
San Francisco, CA 94103

c. Miscellaneous Insurance Requirements.

(1) All insurance policies required under this Agreement shall be issued by insurance companies reasonably acceptable to City and authorized to do business in the State of California. Before commencing any operations under this Agreement, Artist shall do the following: (a) furnish to City certificates of insurance; and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, and that

are satisfactory to City, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon City request.

(2) Should any of the required insurance be provided under a claims-made form, Artist shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of four years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. This tail coverage requirement may be waived by the City's Risk Manager in writing where appropriate.

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

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

(5) Approval of the insurance by City shall not relieve or decrease the liability of Artist hereunder.

(6) In the event of loss or damage and where any insurance proceeds are paid to City, the Commission shall make a determination, in its sole discretion, as to whether the Work shall be restored, reconstructed or abandoned. If the Commission determines that Artist shall restore or reconstruct the Work, all insurance proceeds received by City shall be paid to Artist to the extent the proceeds are used for such restoration or reconstruction.

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

16. Indemnification.

a. Artist shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Artist or loss of or damage to property, arising directly or indirectly from Artist's performance of this Agreement, including, but not limited to, Artist's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Artist, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

c. Artist shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Intentionally left blank by Agreement of Parties

18. Liability.

a. The City's payment obligations under this agreement shall be limited to the payment of the compensation provided for in this Agreement.

b. Artist shall be responsible for damages resulting in whole or in part from Artist's acts or omissions, but such liability for damages incurred by the City shall be limited to the value of the Contract. Nothing in this Agreement shall constitute further waiver or limitation of any rights, which City may have under applicable law.

c. Notwithstanding any other provision of this Agreement, neither party shall be liable to the other (regardless of whether any claim is based on contract or tort) for any special, consequential, indirect or incidental damages (including, but not limited to, lost profits) arising out of or in connection with this Agreement or the Work performed in connection with this Agreement.

19. Timely Provision of Services; Damages for Delayed Performance

a. Time. Time is of the essence in the Artist's performance of the Work. Artist agrees to provide all deliverables in accordance with the timelines contained herein unless changes to those timelines are approved in writing by the Commission. All changes to schedule must be approved by the Commission in writing.

b. Damages for Delayed Performance.

(1) Generally. Artist shall be liable for all incidental and consequential damages resulting, directly or indirectly, from delays in performance caused by Artist's acts or omissions. Artist shall not be liable to City for damages resulting from delays caused by Force Majeure or by acts or omissions of City, Architect or the Construction Contractor, except to the extent Artist failed to act reasonably to mitigate such damages.

(2) Illness, Injury, Death or Incapacity. Should Artist die, become ill, injured or otherwise incapacitated (collectively, "incapacitated") such that Artist is unable to work for any period exceeding 30 days (whether consecutive or non-consecutive), any delay arising out of such incapacity will be allowed by City whenever it is practicable to do so, considering the facts and circumstances of the Work, the Project, the Architect, the Construction Contractor and the SFMTA. City may require Artist to provide medical certification of any claimed incapacity. In the event Artist is incapacitated such that

Artist is unable to work for a period exceeding a total of 30 days (whether consecutive or non-consecutive), City may, at its option, undertake to complete and install the Work in Artist's absence, so long as the final Artwork is substantially similar to that designed by Artist. If City undertakes to complete the Work, City shall give due consideration to Artist's suggestions and the Artist may disclaim authorship of the Work. If City exercises its option to implement the Artwork in Artist's absence, any compensation paid or payable to Artist shall be reduced by the costs and expenditures of City in completion and installation of the Work. In case of incapacity exceeding 30 days, the following person shall be Artist's representative vis-à-vis the City for purposes of this Section 19: **Jason Karas, Paramedia LLC, 6738 Country Road #2, Swanton, OH 43558; 419-575-4351**, unless otherwise directed in writing by the Artist.

c. Delivery of Artwork. Following final approval of the fabricated Artwork by the Arts Commission, the Artist shall deliver the Artwork to a designated City storage site no earlier than September 30, 2014, but no later than September 30, 2015. Following inspection and approval by the Arts Commission of the delivered Artwork at the City's storage site, the Arts Commission will store the Artwork at no cost to the Artist. The Artist shall be responsible for the storage and safekeeping of the Artwork prior to the delivery of the Artwork to the City's storage site.

d. Delay. In case of delay in Artist's services through no fault of Artist, including construction delay, Artist shall store the Work at no additional cost to City for up to 6 months. If Artist's work is delayed due to construction delays at the Site or other delays caused by City or its contractors, so that Artist suffers documented direct cost impacts in the form of increased costs of materials and/or labor, Artist may apply to the City for reimbursement of those expenses, which City may award in its sole discretion.

20. Artist's Default; Remedies.

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

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

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| 8. Submitting False Claims;
Monetary Penalties | 29. Subcontracting |
| 10. Taxes | 29A. Prevailing Wages |
| 11A. Bonds | 30. Assignment or Transfer |
| 11B. Licensed Contractor
Requirements | 37. Drug-Free Workplace Policy |
| 15. Insurance | 53. Compliance with Laws |
| 22A. Artist's Warranties | 57. Protection of Private
Information |
| 24. Proprietary or Confidential
Information of City | 58. Graffiti Removal |

(2) Artist's failure or refusal to perform or do any act required of Artist in this Agreement, including unexcused failure to meet the delivery deadlines or to conform the Work to the Contract Documents approved by the Commission;

(3) Artist (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 Artist or of any substantial part of Artist's property or (e) takes action for the purpose of any of the foregoing;

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Artist or with respect to any substantial part of Artist'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 Artist;

b. Termination in the Case of Default. On or after any event of Artist default, City shall have the right to exercise its legal and equitable remedies. City's remedies include the right to terminate this Agreement upon written notice to Artist (setting forth with specificity the basis for the Commission's termination), or to seek specific performance of all or any part of this Agreement. Upon termination by the Commission, this Agreement shall be of no further force or effect. The date of termination shall be 5 calendar days from the Commission's dispatch of notice of termination, unless a later termination date is specified in the notice of termination. The Commission may rescind the notice of termination or extend the date for termination, but no rescission or extension is valid unless it is in writing and approved by resolution of the Commission.

c. Opportunity to Cure. In its sole discretion, the Commission may give Artist a grace period and opportunity to cure any default. Such grace period may be up to 35 calendar days after dispatch of written notice from the Commission setting forth the nature of the default and the requirements to cure.

d. No Obligation to Pay. Except as specifically provided in this Agreement, City shall have absolutely no payment or other obligations to Artist for any work or service completed, begun or contemplated by Artist subsequent to termination of this Agreement for any reason.

e. Remedies are Cumulative. These remedies are in addition to all other remedies available to either party under this Agreement or under applicable federal, state or local laws should the other party fail to comply with the terms of this Agreement.

21. Termination for Convenience.

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Artist written notice of termination. The notice shall specify the date on which termination shall become effective. As described below in subsection c., City shall pay Artist for services rendered prior to the date of termination.

b. Upon receipt of the notice, Artist shall commence and perform, with diligence, all actions necessary on the part of Artist to effect the termination of this Agreement on the

date specified by City and to minimize the liability of Artist 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 Artist'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 Artist and in which City has or may acquire an interest.

c. Within 30 days after the specified termination date, Artist shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Artist, without profit, for all services and other work City directed Artist 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 Artist's direct costs for services or other work. Any overhead allowance shall be separately itemized. Artist 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 Artist can establish, to the satisfaction of City, that Artist 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 Artist 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 Artist, 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 Artist 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 Artist under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Artist's final invoice; (2) any claim which City may have against Artist in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties Upon Termination or Expiration.

If the Commission terminates this Agreement for any reason, City shall be automatically vested with title to any Work produced under this Agreement up to the date of termination. Artist shall deliver any such Work to City in the manner, at the times, and to the extent directed by City. If termination is due to the default of Artist, City may, at its option, require Artist to refund to City any interim payments received under the Agreement; in such case, City may transfer title to the Work to Artist. This Section and the following sections shall survive termination or expiration of this Agreement:

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| 8. | Submitting False Claims;
Monetary Penalties | | Anticipated Life Span of
Artwork |
| 9. | Disallowance, Disputed
Amounts, and Debarment | 22C. | Artist's Moral Rights; City's
Ownership Rights |
| 10. | Taxes | 24. | Proprietary or Confidential
Information of City |
| 11. | Payment Does Not Imply
Acceptance of Work;
Approval and Financial
Acceptance | 26. | Ownership of Results and
Risk of Loss |
| 11A. | Bonds | 27. | Intellectual Property and
Publicity Rights |
| 11B. | Licensed Contractor
Requirements | 28. | Audit and Inspection of
Records; Reports |
| 13. | Responsibility for Equipment | 28A. | City Access to
Artwork/Work and
Inspection; Status Reports;
Artist's Availability |
| 14. | Independent Contractor;
Payment of Taxes and Other
Expenses | 29A. | Prevailing Wages |
| 15. | Insurance | 48. | Modification of Agreement |
| 16. | Indemnification | 49. | Administrative Remedy for
Agreement Interpretation |
| 17. | Incidental and Consequential
Damages | 50. | Agreement Made in
California; Venue |
| 18. | Liability of City | 51. | Construction |
| 22A. | Artist's Warranties | 52. | Entire Agreement |
| 22B. | Instructions for Maintenance;
Variable Media Guidelines; | | |

56. Severability
57. Protection of Private Information

58. Graffiti Removal

Subject to the immediately preceding sentence, 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. Artist 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.

22A. Artist's Warranties.

a. Warranty of Title. Artist represents and warrants that Artist is the sole author of the Artwork and that Artist is the sole owner of any and all copyrights pertaining to the Artwork. Artist further represents that the Artwork is free and clear of any liens and that there are no outstanding disputes in connection with property rights, intellectual property rights or any other rights in the Artwork or any parts of the Artwork.

b. Warranty of Workmanship. If the Artist fabricates the Artwork or subcontracts for fabrication of the Artwork, then Artist represents and warrants that, for a period of three years after final acceptance, the Artwork will be free of defects in workmanship or materials, including Inherent Defects (as defined below), and that the Work will be executed in permanent, non-fugitive materials that will not tend to degrade or fade over long-term installation at the Site. "Inherent Defect" refers to a quality within the material or materials, which comprise the Work which, either alone or in combination, results in the tendency of the Work to destroy itself. "Inherent Defect" does not include any tendency to deteriorate that is specifically identified in the Contract Documents approved by the Commission. Artist shall, at Artist's sole cost and expense, remedy any defects in workmanship or materials that appear within a period of three years from the date of final acceptance of the Artwork by City.

c. Warranty of Public Safety. Artist represents and warrants that the Work will not pose a danger to public health or safety in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement.

d. Warranty of Acceptable Standard of Display and Operation. Artist represents and warrants that:

(1) The Artwork will conform with design specifications and, where Artwork involves electronic, digital, video, mechanical, living, variable, moving or other dynamic components, the Artwork will also operate, function or perform in accordance with Artist's representations to the City without any costs beyond the final Budget for the Artwork or any additional staff assistance.

(2) Occasional or minimal cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Work within an acceptable standard of public display;

(3) Foreseeable exposure to the elements and general wear and tear will cause the Work to experience only minor repairable damages and will not cause the Work to fall below an acceptable standard of public display; and

(4) With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Work will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.

e. Manufacturer's Warranties. To the extent the Work incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to City.

22B. Instructions for Maintenance; Variable Media Guidelines; Anticipated Life Span of Artwork.

Unless specifically provided in this Agreement, Artist shall not be responsible for ongoing maintenance of the Artwork. Artist shall provide the Commission with a General Maintenance Plan for the Artwork, with a detailed description of future anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating Artwork and the frequency of such staff involvement; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork. Artist shall also provide Commission and with a description of all equipment and or machinery needed to operate the project (if applicable) and any anticipated or required staffing, supervision or operational needs. The Artwork shall be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, dirt, dust, vibration, and considerable movement of people and equipment. Artist shall ensure that all maintenance requirements of the Artwork will be reasonable in terms of time and expense, and no specialized equipment will be required.

With respect to Artwork involving or incorporating electronic, digital, video, mechanical, living, variable, moving or other dynamic components ("Variable Media"), the Artist shall also provide the Commission with a written recommendations for translating the Artwork into new media or replacing elements of the Artwork in the event that the original medium, components and/or the Artist's installation plan become obsolete ("Variable Media Guidelines."). Although the City is not required to comply with such Variable Media Guidelines, the City may take such Guidelines into account when maintaining the Artwork or trying to preserve the integrity of the Artwork.

Although City strives to maintain the Civic Art Collection in good repair and condition, City is not required by this Agreement to maintain the Artwork to any particular standard. City may determine to allow the Artwork to deteriorate in accordance with the Artwork's temporary life span, if deemed appropriate by City or if City lacks sufficient funds for required maintenance and/or conservation. If the Artwork suffers deterioration, City shall have sole discretion to determine whether to remove the Artwork from display as a result of deterioration, whether to replace any portion of the Artwork or translate any component into new media, or whether to maintain the Artwork on display despite its deteriorated condition.

The anticipated life span of the Artwork is twenty five (25) years from the date of final acceptance by the Commission. After that time, the Commission in its sole discretion may re-evaluate the Artwork to determine if it retains its identity as a work of art and, if

not, whether to take appropriate action, including the possibility of destroying the Artwork. If the Commission determines that, through decay, vandalism or other forces, the Artwork has lost its integrity to the point where it should be destroyed, the Commission shall first offer the Artwork to Artist free of charge.

22C. Artist's Moral Rights; City's Ownership Rights.

a. The Commission, having expended considerable public funds to commission the Artwork, and pursuant to its Charter responsibilities, intends to display the Artwork at the Site as originally created by Artist and to maintain the Artwork in good condition. Public Artworks commissioned by the Commission are sometimes integrated into their site, such that they become an integral, permanent and site-specific part of the building's architecture or landscaped environment and removal of the Artwork would result in significant changes to the Artwork and the building's architecture. City, however, shall preserve complete flexibility to operate and manage City property in the public's interest. Therefore, City retains the absolute right to Alter the Artwork in City's sole judgment. For example, City may Alter the Artwork to eliminate hazard, to comply with the ADA, to otherwise aid City in the management of its property and affairs, or through neglect or accident. If, during or after the term of this Agreement, City finds the Site to be inappropriate, City has the right to install the Artwork at an alternate location that City chooses in its sole discretion. If the Artwork is free-standing such that it can be removed without significant damage to the Artwork or the Site, and if the Commission authorizes the removal of the Artwork, the Commission shall take reasonable precautions to minimize Alteration of the Artwork during removal.

b. With respect to the Artwork produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, Artist waives any and all claims, arising at any time and under any circumstances, against City, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the Artwork is incorporated into a building such that the Artwork cannot be removed from the building without Alteration of the Artwork, Artist waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for Alteration of the Artwork.

c. If City intends to take any action with respect to the Site or the Artwork that would Alter the Artwork, other than routine cleaning and maintenance, the following procedures shall apply:

(1) Notice. Where time permits, Commission shall make reasonable good faith efforts to notify Artist at least 20 calendar days prior to authorizing any Alteration of the Artwork, at the last phone number or address provided by Artist to the Commission's Collections Manager. Where time does not permit prior to Alteration of the Artwork – for example, in cases of public hazard, accident or unauthorized Alteration – Commission shall notify Artist within 30 calendar days after such Alteration.

(2) Consultation. After receiving such notice, Artist shall consult with City to determine whether the Artwork can be restored or relocated, and to attempt to come to a mutually agreeable plan for disposition of the Artwork. Such consultation shall be without charge by Artist unless otherwise specifically agreed in writing. If City intends to remove the Artwork, Artist shall consult regarding methods to minimize or repair any

Alteration to the Artwork caused by such removal and the potential costs of such removal.

(3) Restoration. If the Artwork is Altered, with or without prior notice to Artist, and City intends to maintain the Artwork on display, City shall make a reasonable good faith effort to engage Artist in the restoration of the Artwork and to compensate Artist for Artist's time and efforts at fair market value, which may be the subject of a future Agreement between Artist and City. However, City has no obligation under this Agreement to restore the Artwork to its original condition, to compensate Artist for any restoration work, or to maintain the Artwork on display. If Artist fails or refuses to negotiate with City in good faith with respect to any restoration, City may contract with any other qualified art conservator or Artist for such restoration. During Artist's lifetime, City shall make best efforts not to display or deaccession only a portion of the Artwork without Artist's consent.

(4) Removal by Artist. Where time permits, if City intends to take action that will destroy or significantly Alter the Artwork, such as destruction of all or part of the Site, and City determines that it will not remove the Artwork itself, City shall allow Artist to remove the Artwork at Artist's expense within 60 days of notice from the City of the need to remove the Artwork, in which case title shall revert to Artist. If Artist fails to remove the Artwork within that 60 day period, City may Alter the Artwork in any manner, including destroying it, in City's sole discretion.

(5) Remedies. If City breaches any of its obligations under this Section, Artist's remedies shall be limited as follows: If City inadvertently fails to provide a required prior notice of Alteration, City will provide notice as soon as it discovers the omission, and before Alteration of the Artwork if that remains possible. If City Alters the Artwork without providing Artist a required prior notice of Alteration, Artist shall be given the first right of refusal to restore the Artwork at the same location and City shall make reasonable efforts to provide funding for the restoration. If City funds cannot be made available after reasonable efforts are made to secure such funding, Artist may, but is not obligated to, restore the Artwork at Artist's expense. If Artist elects not to restore the Artwork, City may retain another Artist or conservator to restore it, or may Alter the Artwork in any manner, at City's sole discretion.

d. If City Alters the Artwork without Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Artwork in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

e. Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of City, Artist retains Artist's moral rights in the Artwork, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and 989), or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent Artist from pursuing a claim for Alteration of the Artwork against a third party who is not an officer, employee, agent, successor or assign of City. City has no obligation to pursue claims against third parties to remedy or prevent Alteration of the Artwork. However, as owner of the Artwork, City may pursue claims against third parties for damages or to restore the Artwork if the Artwork has been altered without City's authorization.

23. Conflict of Interest.

Through its execution of this Agreement, Artist acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City.

Artist understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Artist 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. Artist agrees that all information disclosed by City to Artist shall be held in confidence and used only in performance of the Agreement. Artist shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties; Department Liaison.

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

To Commission:

San Francisco Arts Commission
25 Van Ness Avenue, Suite 240
San Francisco, CA 94102
Attn: Jennifer Lovvorn
Phone: (415) 252-xxxx
Fax: (415) 252-2595
Email: jennifer.lovvorn@sfgov.org

To Artist:

Paramedia LLC
425 Napoleon Road #5
Bowling Green, OH 43402
Phone: 917-536-6541
Email: EJR@Paramedia.net

Any notice of default shall be sent by registered mail.

Any change in the designation of the person or address to which submittals, requests, notices and reports shall be delivered is effective when the other party has received written notice of the change.

b. Department Liaison. In performing the services provided for in this Agreement, Artist's liaison with the Arts Commission will be the designated Public Art Project Manager for the Central Subway Project.

26. Ownership of Results and Risk of Loss.

a. Title Transfer. Except in the case of early termination of this Agreement, title to the Artwork shall transfer from Artist to City upon the Commission's Final Acceptance of the Artwork. Title transfer shall be self-executing upon Commission's Final Acceptance. Artist will cooperate in providing to City any title transfer documents, confirmation of payment of subcontractors, lien releases, and other documents as the City may request or require during or after the Term of this Agreement.

b. Risk of Loss. The risk of loss or damage to the Artwork shall be borne solely by Artist during all times that the Artwork is under the control of the Artist. Artist shall take steps to protect the Artwork from loss or damage during such time as it is stored. Artist shall be responsible for any damage to the Artwork or its components during storage that result from inadequate packaging. The Commission staff shall make a good faith effort to inspect the Artwork within 15 days after completion so that the Commission can approve the Artwork by resolution in a timely fashion.

c. Ownership of Documents. Conceptual Design, Design Development Documents, Construction Documents, Samples, Mock-ups and all other documents prepared and submitted by Artist to the Commission pursuant to this Agreement shall belong to the Commission. Artist may retain originals of such documents and items and provide copies to City.

27. Intellectual Property and Publicity Rights.

a. Copyright. Subject to usage rights and licenses granted to City hereunder, Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. Artist's copyright shall not extend to predominantly utilitarian aspects of the Work, such as landscaping elements, furnishings, or other similar objects. If Artist is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the Work.

b. City's Intellectual Property License. Artist grants to City, and to City's agents, authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to the Work, the Artwork, and any original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital) throughout the universe:

(1) Implementation, Use and Display. City may use and display the Work (to the extent the Work includes graphic representations or models) and the Artwork. To the extent the Work involves design elements that are incorporated by City into the design of the Site, City may implement such elements at the Site.

(2) Reproduction and Distribution. City may make and distribute, and authorize the making, display and distribution of, photographs and other 2-dimensional reproductions. City may use such reproductions for any City-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, gifts for the Commission benefactors, documentation of City's Civic Art Collection, and catalogues or similar publications. City shall ensure that such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of the Commission. The proceeds from the sale of any such reproductions shall be used to maintain and support City's Civic Art Collection or for any other public purposes that City deems appropriate. The license granted hereunder does not include the right to create 3-dimensional reproductions on items such as tote-bags, T-shirts, coffee mugs and similar merchandise.

Such reproductions may only be created pursuant to separate license agreements with Artist.

(3) Public Records Requests. Any documents provided by Artist to City are public records and City may authorize third parties to review and reproduce such documents pursuant to public records laws, including the San Francisco Sunshine Ordinance and California Public Records Act.

c. Third Party Infringement. The Commission is not responsible for any third party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.

d. Credit. Artist hereby agrees that all formal references to the Artwork and any reproductions of the Artwork in any form shall include the following credit: "Collection of the City and County of San Francisco, San Francisco Arts Commission." City shall credit Artist for the Artwork upon publication of any two dimensional reproductions of the Artwork. Wherever the City finds practicable, the City shall make an effort to ensure that all reproductions by City shall contain a copyright notice substantially in the following form: "Copyright (c), Artist's name, date," in such a manner and location as shall comply with the U.S. Copyright laws.

e. Publicity. City shall have the right to use Artist's name, likeness, and biographical information, in connection with the display or reproduction and distribution of the Artwork including all advertising and promotional materials regarding City or the Commission. Artist shall be reasonably available to attend any inauguration or presentation ceremonies relating to the public dedication of the Artwork.

f. Trademark. In the event that City's use of the Artwork creates trademark, service mark or trade dress rights in connection with the Artwork, City shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

g. Unique. Artist warrants that the design of the Artwork as expressed in the Proposal is an edition of one, and that neither Artist nor Artist's agents will execute or authorize another to execute another work of the same or substantially similar image, design, dimensions and materials as the Artwork. Artist may create works that utilize or incorporate various individual art elements that comprise the Artwork, so long as the work utilizing or incorporating such individual elements (1) does not consist predominantly of such elements (2) is not the same or substantially similar in image, design, dimensions and materials as the Artwork, and (3) is not displayed in an environment that is the same or substantially similar to the environment in which the Artwork is to be displayed at the Site. This warranty shall continue in effect for a period consisting of the life of Artist plus 70 years or for the duration of the Artwork's copyright protected status, whichever is longer, and shall be binding on Artist and Artist's heirs and assigns. In the case where Artist Team is comprised of two or more individual persons or a group of people, the measuring life shall be the life of the last surviving individual person comprising Artist Team. Recognizing that City has no adequate remedy at law for Artist's violation of this warranty, Artist agrees that, in the event Artist breaches this warranty, City shall be entitled to enjoin Artist's breach. Nothing hereunder shall be construed to constrain Artist from creating posters, note cards, or other reproductions of the Artwork with appropriate credit to the Commission.

h. Resale Royalty. If City sells the Artwork as a fixture to real property, and if the resale value of the Artwork is not itemized separately from the value of the real property, the parties agree that the resale price of the Artwork shall be presumed to be less than the

purchase price paid by City under this Agreement. Thus, City has no obligation to pay resale royalties pursuant to California Civil Code §986 or any other law requiring the payment of resale royalties. If City sells the Artwork as an individual piece, separate from or itemized as part of a real property transaction, City shall pay to Artist a resale royalty to the extent required by law, based upon the sale price of the Artwork.

28. Audit and Inspection of Records; Reports.

a. Audit and Inspection of Records. Artist agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Artist 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. Artist shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

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

28A. City Access to Artwork/Work and Inspection; Status Reports; Artist's Availability.

a. City Access to Artwork; Inspection of Work and Artwork. City shall have the right to inspect the Work, including the Artwork, at the Site at which the Artwork is located during any Phase of the project at any time. In the event that all or part of the Work is created in a location other than the Site, the City shall have the right to inspect the Work, including the Artwork, at any Phase of the project following ten Working Days written notice from the City to the Artist. The Artist shall be responsible for facilitating City's prompt access to Artist's property or the property of the Artist's subcontractors where the Work or portions of the Work are being fabricated or installed.

b. Status Reports. Artist shall submit written reports regarding the status of the Work, including the Artwork, as requested by the Commission. The Commission shall determine the format for the content of such reports. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

c. Artist Availability. Artist or Artist's authorized agent shall be available to meet in San Francisco with the Architect, SFMTA and Commission staff, and others as the SFMTA and the Commission may require to ensure the proper installation and operation of the Artwork. The costs of such meetings are within the Contract Sum, as provided in Appendix C ("Calculation of Charges"). During each visit to San Francisco from a location outside the nine counties of the San Francisco Bay Area, unless otherwise agreed upon by the Arts Commission and the SFMTA. Artist's visits shall last for at least a full 8 hour day.

29. Subcontracting.

a. Approval Required. Artist is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by the Commission in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. Any approved subcontracts shall be itemized in Appendix B (or amendment thereto), and Artist shall provide a copy of each approved subcontract to the City with copies of the insurance documents required herein.

b. Documentation of Subcontracts. Artist shall provide a description of the Work to be performed under any subcontract and the amount of the subcontract, and shall provide the Commission with written copies of Artist's agreements with each subcontractor. Artist shall include by reference, and include in each and every contract, the requirements of this Agreement relating to the following: submitting false claims; inspection and audit of records; Administrative Code Chapters 12B (non-discrimination), SBE participation requirements, 12P (minimum compensation of employees), 12Q (Health Care Accountability Ordinance); indemnity provisions; bond and insurance requirements; earned income credit form provisions; provisions regarding City Access to Artwork/Inspection of Work and Artwork; required deliverables and City's right to use and implement the Work. Artist shall include a statement in the subcontract requiring that the subcontractor shall comply with all Agreement requirements applicable to the Artist, including compliance with applicable Federal, State and local laws, including any City contracting requirements applicable to the Artist.

c. Subcontract Requirements. If the Artist subcontracts any portion of the Work under this Agreement (including but not limited to engineering, architecture and/or fabrication of the Artwork), the City must grant prior approval of such subcontractors and the Artist shall require such subcontractors to:

(1) Name the City and County of San Francisco as a third-party beneficiary to the subcontract by expressly stating that "the parties agree that the City and County of San Francisco shall be a third-party beneficiary to this agreement" and Artist shall provide the City with a copy of each such subcontract.

(2) Name the City and County of San Francisco as an additional insured on the subcontractor's general liability insurance policy.

(3) The Subcontractor shall agree to indemnify and hold harmless the City and County of San Francisco (consistent with the "Indemnification and General Liability" provisions contained herein as Section 16.)

(4) The subcontractor shall also be responsible for providing any performance and payment (labor and materials) bonds required under this Agreement on the City's form and shall name the City and Artist as dual obligees of such bonds. In the event of Artist or any of Artist's subcontractors' failure to perform, Artist shall assign all rights under any such bonds in favor of the City.

(5) Subcontractor shall certify that he or she has all applicable licenses required by the State for subcontractor to perform any required engineering and/or fabrication specified in the subcontract and that subcontractor warrants that such licenses are valid for the full term of this Agreement and during the period in which the subcontractor performed work under this Agreement.

(6) If Artist does not have an appropriate license issued by the State of California, any subcontract between Artist and any firm engaged to perform a Public

Work under this Agreement is void and the City shall have no liability whatsoever for any costs incurred under said subcontract.

d. Responsibility. The Artist shall be responsible for the professional standards, performance, and actions of all persons and firms performing subcontract work under this Agreement at any and all tiers.

e. Substitutions of Subcontractors. Artist may substitute any Approved Subcontractor listed in Appendix B for: (a) failure to perform to a reasonable level of professional competence; (b) inability to provide sufficient resources to the Project; or (c) unwillingness to negotiate reasonable contract terms or compensation. Artist may only substitute subcontractors with the prior written approval of the SFMTA and the Commission.

f. Prompt Payment of Subcontractors. In accordance with SFMTA's SBE Program, no later than three (3) working days from the date of Artist's any payments by the City for the Work or any portion thereof, the Artist shall pay any subcontractors for work that has been satisfactorily performed by said subcontractors, unless the Artist notifies the CCO in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between the Artist and the subcontractor. Within ten (10) working days following receipt of payment from the City, Artist shall provide City with a declaration under penalty of perjury that it has promptly paid such subcontractors for the work they have performed and stating the amounts paid. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

g. Interest on Unpaid Amounts. If the Artist does not pay its subcontractor as required under the above paragraphs, it shall pay interest to the subcontractor at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure. This Section shall not impair or limit any remedies otherwise available to the Artist or a subcontractor in the event of a dispute involving late payment or nonpayment by the Artist or deficient subcontractor performance or nonperformance by the Artist.

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

i. Substitutions of SBE Firms. If Artist wishes to substitute a subcontractor that is a SBE, the Artist must make good faith efforts to use another SBE as a substitute. The Artist shall notify Commission in writing of any request to substitute a SBE subcontractor or supplier and provide the Commission with any documentation requested to support the substitution. The SFMTA and the Commission and the SFMTA's CCO must approve the request in writing for the substitution to be valid.

j. Addition of Subcontractors. The City reserves the right to require the Artist to retain a subcontractor that possess specific expertise to provide services under this Agreement, if the City determines that the Artist does not have specific expertise necessary for the timely and successful completion of the Artwork.

k. Flowdown Requirements. Artist shall fully inform all subcontractors, and shall require each of its subcontractors to warrant that it has fully informed each of its respective lower tier subcontractors (if any), of the terms and conditions of this Agreement. Artist shall ensure that all services performed and material furnished and the manner by which those services and materials are provided shall conform to the requirements of this Agreement. The terms and conditions of the Artist's subcontracts shall conform to the requirements of this Agreement. Each subcontract and a cost summary of each of those agreements shall be subject to review by the and the SFMTA prior to the subcontractor proceeding with the Work. Artist shall provide the City copies of any written agreements between a first tier subcontractor and any lower tier subcontractor prior to proceeding with the Work.

l. Privity. Contractor shall include in every subcontract for architecture and/or engineering services a requirement that to the maximum extent provided by California law, the City may rely upon and bring action for errors and omissions in the designs, calculations and other work performed for the Artist under this Contract as if the City had directly contracted with the architect or engineer. Notwithstanding the preceding provision, the Artist shall be fully responsible for the errors and omissions of its engineers and architects and other subcontractors under this Agreement.

m. Availability. Artist's subcontracted engineer(s) and architect(s) must be available to provide Construction Support through the completion of the installation of the Artwork.

29A. Prevailing Wages.

Section 6.1(J) of the San Francisco Administrative Code defines a Public Work as follows:

A public work . . . or improvement, as used in this Chapter, is any erection, construction, renovation, alteration, improvement, demolition, excavation, installation, or repair of any public building, structure, infrastructure, bridge, road, street, park, dam, tunnel, utility or similar public facility performed by or for the City and County of San Francisco, the cost of which is to be paid wholly or partially out of moneys deposited in the Treasury of the City and County.

Section 6.1(I) defines the Prevailing Wage or Prevailing Rate of Wage as follows:

The prevailing wage, as used in this Chapter, is the highest general prevailing rate of wage plus "per diem wages" and wages paid for overtime and holiday work paid in private employment in the City and County of San Francisco for the various crafts and kinds of labor employed in the performance of any public work or improvement under this Chapter. "Per diem wages" are defined pursuant to (California) Labor Code section 1773.1, as amended from time to time.

Notwithstanding that the parties do not intend that the Work performed under this Agreement to be a Public Work, if the Work performed by Artist under this Agreement is determined by any administrative agency having jurisdiction to be a "Public Work", as that term is defined by San Francisco Administrative Code Section 6.1(I), , Artist agrees to pay to all persons performing labor on the Work, in San Francisco, who are under

Artist's direction and control, and who are subject to prevailing wage requirements, not less than the highest general prevailing rate of wages, as such prevailing wages are established according to Section 6.22(E) of the San Francisco Administrative Code, as may be amended from time to time. Artist further agrees to include, in any such subcontract a requirement that the subcontractor shall pay to all persons performing labor under such contract not less than the highest general prevailing rate of wages for the labor so performed. Artist shall provide, and shall require any subcontractor to provide, upon request, certified payroll reports with respect to all persons performing labor in the fabrication and/or installation of the Work.

30. Assignment or Transfer.

- a. Artist guarantees that Artist will consistently give personal attention to the faithful execution of this Agreement, including any work performed by employees, agents or subcontractors. Artist shall keep the Work under Artist's control and shall not assign or subcontract the Work, in whole or in part, except as provided in this Agreement and authorized by the Commission. All transactions with subcontractors shall be made through Artist, and no subcontract, assignment or other transfer by Artist Team shall relieve Artist of any of Artist's liability or obligations under this Agreement.
- b. City may assign this Agreement to the Construction Contractor on such terms and conditions as are acceptable to City.
- c. As an alternative to the Artist's selection and contracting with a fabricator to produce the Artwork, the city may, in its sole discretion, select and contract with the fabricator for the Artwork, with the advice and assistance of the Artist, and assign the fabrication contract to the Artist.

31. Non-waiver of Rights.

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

32. Earned Income Credit (EIC) Forms.

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

Artist shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Artist 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 Artist; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Artist of the terms of this Agreement. If, within thirty days after Artist receives written notice of such a breach, Artist fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days,

Artist fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, City may pursue any rights or remedies available under this Agreement or under applicable law.

Any Subcontract entered into by Artist shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

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

33. Small Business Enterprise Program.

The City is committed to a Small Business Enterprise Program ("SBE Program") for the participation of SBEs in contracting opportunities. In addition, the Artist must comply with all applicable federal regulations regarding Disadvantaged Business Enterprise (DBE) participation, as set out in Title 49, Part 26 of the Code of Federal Regulations (49 C.F.R. Part 26), with respect to DBEs performing work under this Agreement. More information on federal DBE requirements can be found on the internet at: <http://www.fta.dot.gov/library/admin/BPPM/ch7.html>.

34. Nondiscrimination; Penalties.

a. Artist Shall Not Discriminate. In the performance of this Agreement, Artist 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 Artist, in any of Artist'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 Artist.

b. Subcontracts. Artist shall incorporate by reference in all subcontracts the provisions of §12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Artist's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits. Artist does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract. As a condition to this Agreement, Artist 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 HRC.

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. Artist shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Artist understands that pursuant to §§12B.2(h) and 12C.3(g) of the 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 Artist and/or deducted from any payments due Artist.

35. MacBride Principles—Northern Ireland.

Pursuant to San Francisco Administrative Code §12.F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, Artist acknowledges and agrees that Artist Team has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban.

Artist shall not import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Agreement.

37. Drug-Free Workplace Policy.

Artist 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. Artist agrees that any violation of this prohibition by Artist, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation.

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

39. Compliance with Americans with Disabilities Act.

Artist acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through Artist, shall be accessible to the disabled public. Artist shall provide the services specified in this Agreement in a manner that complies with the ADA. Artist shall not 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 Artist, its employees, agents or assigns will constitute a material breach of this Agreement.

Artist shall cooperate with City and allow City to take reasonable steps to ensure that the Artwork is accessible to the disabled, with respect to the elimination of both architectural and programmatic barriers. Such cooperation shall include assisting with modifications

to the Artwork, or preparing or authorizing tactile models, reproductions, or other materials necessary to provide access to the Artwork. If requested by City, Artist shall engage a consultant, as part of the project Budget, to review the Artwork for compliance with the ADA.

40. Sunshine Ordinance.

Pursuant to San Francisco Administrative Code §67.24(e), contracts, Artist's bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person'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 paragraph will be made available by City to the public upon request.

41. Public Access to Meetings and Records.

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

42. Limitations on Contributions.

Through execution of this Agreement, Artist acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Artist acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Artist further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Artist's board of directors; Artist's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Artist; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Artist. Additionally, Artist acknowledges

that Artist must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Artist further agrees to provide to City the names of each person, entity or committee described above.

43. Requiring Minimum Compensation for Employees.

- a. Artist 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 Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Artist's obligations under the MCO is set forth in this Section. Artist is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.
- b. The MCO requires Artist to pay Artist's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Artist is obligated to keep informed of the then-current requirements. Any subcontract entered into by Artist shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Artist'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 Artist.
- c. Artist shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.
- d. Artist shall maintain employee and payroll records as required by the MCO. If Artist fails to do so, it shall be presumed that the Artist paid no more than the minimum wage required under State law.
- e. The City is authorized to inspect Artist's job sites and conduct interviews with employees and conduct audits of Artist
- f. Artist's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Artist fails to comply with these requirements. Artist agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Artist's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

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

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

i. If Artist is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Artist later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Artist 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 Artist and this department to exceed \$25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees.

Unless exempt, Artist 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 section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Artist shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Artist 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 Artist 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. Artist's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Artist 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, Artist fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Artist 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 Artist 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. Artist 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 Artist 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 Artist based on the Subcontractor's failure to comply, provided that City has first provided Artist with notice and an opportunity to obtain a cure of the violation.
- e. Artist shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Artist'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. Artist 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. Artist 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. Artist shall keep itself informed of the current requirements of the HCAO.
- i. Artist 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. Artist 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. Artist shall allow City to inspect Artist's job sites and have access to Artist's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Artist to ascertain its compliance with HCAO. Artist agrees to cooperate with City when it conducts such audits.
- m. If Artist is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Artist later enters into an agreement or agreements that cause Artist'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 Artist and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program.

Intentionally left blank by Agreement of Parties.

46. Prohibition on Political Activity with City Funds.

In accordance with San Francisco Administrative Code Chapter 12.G, Artist 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. Artist 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 Artist 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 Artist from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Artist's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic.

Artist 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 Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" means 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. Artist 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 Artist from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement.

- a. Except as provided herein, this Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.
- b. Artist shall cooperate with the Arts Commission and the SFMTA's Office of Contract Compliance to submit to the OCC 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%.
- c. The Commission and Artist, by written agreement signed by both parties, may clarify provisions of Appendix A ("Artists Proposal") and/or Appendix B ("Services to be Provided by Artist), by further outlining, correcting, clarifying and refining the substance of each of the Phases of the Work as to the date(s) of deliverables (including modifying or changing the order of the due date(s) for deliverables), the costs associated with each Phase and the Performance and Payment Schedule. Such changes shall be kept on file at the Commission. Such clarifications shall not alter the total maximum term or maximum compensation allowed in Section 2 (Term of the Agreement) and section 5 (Compensation), respectively.

49. Administrative Remedy for Agreement Interpretation.

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue.

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

51. Construction.

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

52. Entire Agreement.

This Contract and the documents incorporated by reference herein sets forth and memorializes the entire agreement between the Parties, and supersedes all other oral or written understandings or provisions. This contract may be modified only as provided in Section 48 (Modification of Agreement).

53. Compliance with Laws.

Artist 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 shall at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Services Provided by Attorneys.

Any services to the Project to be provided by a law firm or attorney (engaged by the Artist) must be reviewed and approved in writing by the City Attorney in advance of the Artist's engagement of the attorney. No invoices for services to the Artist provided by law firms or attorneys to the Artist, including, without limitation, as subcontractors of Artist, will be reimbursed by the City unless the provider received advance written approval from the City Attorney and such amount is within the Artist's approved Budget. The City Attorney will not review or approve an attorney who only provides confidential advice to the Artist, but the City will not reimburse the Artist for those expenses.

55. Priority of Documents.

The services and Work that Artist shall provide and perform for the Project are described in this Agreement, the RFP, and the Proposal. All requirements of the RFP and the representations made in the Artist's Proposal that are not in conflict with provisions of this Contract are hereby incorporated by reference and made an integral part of the contract as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or the Proposal, this Agreement shall control except where the RFP or the Proposal refers to services not otherwise mentioned in this Agreement, in which case and to such extent the RFP shall control. The Proposal shall control only where an issue or subject is not addressed in either the RFP or this

Agreement. A modification to the Agreement shall control over all other documents. In case of conflict among modifications to the Agreement, the latest modification shall have precedence over any earlier modification.

56. Severability.

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

57. Protection of Private Information.

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

58. Graffiti Removal.

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

Artist shall remove all graffiti from any real property owned or leased by Artist in the City and County of San Francisco within forty eight (48) hours of the earlier of Artist'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 an Artist 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 Artist to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements.

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

60. Cooperative Drafting.

This Agreement is the product of negotiations between the City and the Artist, each of which has opportunity to consult with legal counsel of its choosing as to the terms and conditions set out herein. No statute or rule of construction or interpretation that would require that an ambiguity in this Agreement be construed against the drafter shall apply to this Agreement, but the Agreement shall be construed to implement the intent of the parties.

61. Dispute Resolution Procedure.

If agreed to by both Parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

62. Federal Requirements.

a. Federal Contract Requirements and Applicable Law. The provisions set out in this Section 62 are required by federal law. If there is any conflict between said provisions or any federal law, regulation or requirement, including such limitations and requirements as the FTA may impose, such federal requirements, terms and conditions shall take precedence over any terms and conditions set out in this Agreement. The City and County of San Francisco is a chartered City and County with home rule powers under the Constitution of the State of California. The terms of this Agreement are governed by California Law and the ordinances and Charter of the City and County of San Francisco. Except as expressly provided for in this Agreement, the Federal Acquisition Regulations (FAR) shall not apply to this Agreement, except as to provide guidance as to accounting and auditing standards, including but not limited to calculation of compensable costs and overhead.

b. Incorporation of Federal Transit Administration (FTA) Terms.

(1) All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, (http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html), as amended and the Master Grant Agreement (<http://www.fta.dot.gov/documents/15-Master.pdf>), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Artist shall not perform any act, fail to perform any act, or refuse to comply with any City request that would cause the City to be in violation of the FTA terms and conditions.

(2) The FTA Master Agreement obligates SFMTA to incorporate certain provisions into this Agreement and any lower tier subcontracts at any level and to take appropriate measures to ensure that Artist and its lower tier subcontractors at any level comply with certain applicable requirements set forth in the Master Agreement. The FTA Master Agreement is hereby incorporated by reference into this Agreement, and Artist shall comply with all such requirements.

(3) Copies of the FTA Master Agreement are available from the Commission.

c. Applicability of Federal Grant Contract.

(1) This procurement may be subject to one or more financial assistance contracts between SFMTA and the U.S. Department of Transportation, which incorporate the current FTA Master Agreement and Circular 4220.1F as amended. U.S. Department of Transportation's level of financial assistance may be between zero and eighty percent (0-80%). The Artist is required to comply with all terms and conditions prescribed for third party contracts in these documents.

(2) Federal laws, regulations, policies and administrative practices may be modified or codified after the date this Agreement is established and may apply to this Agreement. To assure compliance with changing federal requirements, Contract Award indicates that the Artist agrees to accept all changed requirements that apply to this Agreement.

d. Federal Funding Limitation. Artist understands that funds to pay for Artist's performance under this Agreement are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All funds must be approved and administered by FTA. The City's obligation hereunder is payable from funds that are appropriated and allocated by FTA for the performance of this Agreement. If funds are not allocated, or ultimately are disapproved by FTA, the City may terminate or suspend Artist's services without penalty. The Commission shall notify Artist promptly in writing of the non-allocation, delay, or disapproval of funding.

e. No Federal Government Obligation to Third Parties. Artist agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party contractor, or any other person not a party to the Grant Agreement in connection with this Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including a subrecipient or third party contractor.

f. Federal Lobbying Restrictions.

(1) This Agreement is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 C.F.R. Part 20, which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an office or employee of Congress or an employee of any Member of Congress in connection with the awarding of any federally funded contract, the making of any Federal grant or loan, or entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Consultants and Subcontractors at any time who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Artist shall submit the "Certification Regarding Lobbying" included in this document. The Artist's signature on this certification shall certify that: a) it has not engaged in the prohibited activity and b) the language of the certification shall be included in all lower tier subcontracts, which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly. SFMTA is responsible for keeping the certification form of the Artist, who is in turn responsible for keeping the certification forms of subcontractors. Further, by executing the Agreement, the Artist agrees to comply with these laws and regulations.

(2) If the Artist has engaged in any lobbying activities to influence or attempt to influence the awarding of this Agreement, the Artist must disclose these activities. In such a case, the Artist shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities". SFMTA must also receive all disclosure forms.

(3) The Artist and any subcontractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Agreement; or

(b) A change in the person(s) influencing or attempting to influence this federally funded Agreement; or

(c) A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Agreement.

g. Lobbying Certification and Disclosure. Pursuant to 49 C.F.R. Part 20 (which is by this reference incorporated herein), the Artist shall execute and return the Certification Regarding Lobbying by Artist form set forth in Attachment H with the execution of this agreement.

h. Certification Regarding Debarment, Suspension And Other Responsibility

Matters.

(1) Pursuant to Executive Order 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 and federal regulations in 49 C.F.R. 29, entities and individuals who are debarred or suspended by the federal government are excluded from obtaining federal assistance funds under this Contract. To assure that such entities and individuals are not involved as participants on this FTA-financed contract, if the contract exceeds \$25,000 each Artist shall complete and submit, as part of its Proposal, the certification form, contained in these documents. The inability of a Artist to provide a certification will not necessarily result in denial of consideration for contract award. A Artist that is unable to provide a certification must submit a complete explanation attached to the certification form. Failure to submit a certification or explanation may disqualify the Artist from participation under this Contract. SFMTA, in conjunction with FTA, will consider the certification or explanation in determining contract award. No contract will be awarded to a potential third-party contractor submitting a conditioned debarment or suspension certification, unless approved by the FTA.

(2) The certification is a material representation of fact upon which reliance is placed in determination of award of contract. If at any time the Artist learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately provide written notice to SFMTA. If it is later determined that the Artist knowingly rendered an erroneous certification, or failed to notify SFMTA immediately of circumstances which made the original certification no longer valid, SFMTA may disqualify the Artist. If it is later determined that the Artist knowingly rendered an erroneous certification, or failed to notify SFMTA immediately of circumstances which made the original certification no longer valid, SFMTA may terminate the contract, in addition to other remedies available including FTA suspension and/or debarment.

(3) Further, the Artist shall not knowingly enter into any subcontract with an entity or person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds. As such, the Artist shall require all subcontractors seeking subcontracts to complete and submit the same certification form contained in these documents before entering into any agreement with said subcontractor.

i. Exclusionary Or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, the Artist agrees that it will comply with the requirement of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

j. Conservation. The Artist shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State Energy Action plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.).

k. Clean Water. The Artist agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Artist agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Artist also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

l. Clean Air. The Artist agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Artist agrees to report each violation to the City and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Artist also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

m. Buy America. The Artist agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include microcomputer equipment, software, and small purchases (\$100,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j) (2) (C) and 49 C.F.R. 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

n. Fly America. International air transportation of any persons involved in or property acquired for the Project must be provided by U.S. flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, in accordance with U.S. GAO regulations, "Uniform Standards and Procedures for Transportation Transactions," 4 C.F.R. Part 52, and U.S. GAO Guidelines for Implementation of the "Fly America Act" B-138942, 1981 U.S. Comp. Gen. LEXIS 2166. March 31, 1981.

o. Seismic Safety. The Artist agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Artist also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

p. National Intelligent Transportation Systems Consultanture and Standards. The Artist agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Consultanture and Standards as required by Section 5206(e) of TEA-21, 23 U.S.C. § 502-, and with FTA Notice, "Federal Transit Administration National ITS Consultanture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other subsequent Federal directives that may be issued.

q. Electronic and Information Technology. When providing reports or other information to the SFMTA, or to the Federal Transit Administration (FTA), among others, on behalf of the SFMTA, the Artist agrees to prepare such reports or information using electronic or information technology capable of assuring that the reports or information delivered will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

r. Nondiscrimination. In addition to the provisions prohibiting discrimination set out in Section 34, above, the Artist shall ensure compliance by it and its subcontractors with all requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d),

federal Executive Order No. 11246, regulations of the U. S. Department of Labor issued thereunder, the regulations of the federal Department of Transportation issued thereunder, and the Americans with Disabilities Act, as they may be amended from time to time. Accordingly, during the performance of this Agreement, the Artist, for itself, its assignees, and successors in interest (hereinafter referred to as the "Artist"), agrees as follows:

(1) The Artist shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter "DOT"), Title 49, Code of Federal Regulations, Part 21 ("Nondiscrimination in Federally-Assisted Programs of the Dept. of Transportation"), as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

(2) In all solicitations either by competitive bidding or negotiation made by the Artist for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Artist of the Artist's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, creed, sex, sexual orientation, disability, age, or nationality.

(3) The Artist shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SFMTA or FTA to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information is required of a contractor or subcontractor that is in the exclusive possession of another who fails or refuses to furnish this information, the Artist shall so certify to SFMTA, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(4) In the event of the Artist's noncompliance with the nondiscrimination provisions of this Agreement, SFMTA shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:

- (a) Requiring the Artist to take remedial action to bring the Artist into compliance;
- (b) Withholding of payments to the Artist under the Agreement until the Artist complies; and/or
- (c) Cancellation, termination, or suspension of the Agreement, in whole or in part.

(5) The Artist shall include the provisions of these Subsections 62.r(1) to 62.r(4) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Artist shall take such action with respect to any subcontract or procurement as SFMTA or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Artist becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Artist may request SFMTA to enter into such litigation to protect the interests of SFMTA and, in addition, the Artist may request the United States to enter into such litigation to protect the interest of the United States.

s. Title VI Compliance. During the performance of this Agreement, Artist, for itself, its assignees, and its successors in interest agrees as follows:

(1) **Compliance with Regulations:** Artist shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made part of this Agreement.

(2) **Nondiscrimination:** Artist, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Artist shall not participate either directly or indirectly in the discrimination prohibited by 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Artist for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Artist of Artist's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.

(4) **Information and Reports:** Artist shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SFMTA or the FTA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Artist is in the exclusive possession of another who fails or refuses to furnish this information, Artist shall so certify to SFMTA, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of Artist's noncompliance with the nondiscrimination provisions of this Agreement, SFMTA shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

(a) Withholding of payments to Artist under the Agreement until Artist complies, and/or,

(b) Cancellation, termination or suspension of the Agreement, in whole or in part.

(6) **Incorporation of Provisions:** Artist shall include the provisions of Subsection 62.18.1 through 62.18.5 of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Artist shall take such action with respect to any subcontract or procurement as SFMTA or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event Artist becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Artist may request SFMTA to enter into such litigation to protect the interests of SFMTA, and, in addition, Artist may request the United States to enter into such litigation to protect the interests of the United States.

t. Requirements of Americans with Disabilities Act. The Artist is required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

(1) U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 27;

(3) U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(4) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(5) U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(6) U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(7) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. Part 64, Subpart F; and

(8) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

(9) Any implementing requirements that the FTA may issue.

u. Recycled Products. To the extent practicable and economically feasible, the Artist agrees to provide a competitive preference for recycled products to be used in the Project pursuant to the U.S. Environmental Protection Agency Guidelines at 40 C.F.R. Parts 247, implementing Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962. If possible, the Artist shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical at the fulfillment of this Agreement.

v. Privacy.

(1) Should the Artist, or any of its subcontractors, or their employees administer any system of records on behalf of the federal government, the Privacy Act of 1974, 5 USC § 552a, imposes restrictions on the party administering the system of records.

(2) For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, SFMTA and any Consultants, third-party contractors, subcontractors, and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for

violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Agreement will make this Agreement subject to termination.

(3) The Artist agrees to include this clause in all subcontracts awarded under this Agreement that require the design, development, or operation of a system of records on individuals subject to the Act.

w. False or Fraudulent Statements and Claims.

(1) The Artist recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Accordingly, by signing this Agreement, the Artist certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered Grant Agreement, Cooperative agreement, Contract or Project. In addition to other penalties that may be applicable, the Artist acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Artist, to the extent the Federal Government deems appropriate.

(2) The Artist also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Artist the penalties of 18 U.S.C. § 1001, 31 USC §§ 3801, et seq., and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

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

x. Drug-Free Workplace Policy. Artist acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, 41 U.S.C. 702, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Artist agrees that any violation of this prohibition by Artist, its employees, agents or assigns will be deemed a material breach of this Agreement.

63. Approval by Counterparts.

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

64. Included Appendices.

The Appendices listed below are incorporated to the Agreement by reference.

- A: Artist's Proposal
- B: Services to be Provided by Artist
- C. Artist's Approved Costs
- D. Payment Schedule
- E. Civic Art Collection Forms

[The remainder of this page has been intentionally left blank.]

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

CITY

APPROVED:

Luis R. Cancel
Director of Cultural Affairs
San Francisco Arts Commission

APPROVED

SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY

Nathaniel P. Ford Sr.
Executive Director/CEO
San Francisco Municipal
Transportation Agency
Date _____

AUTHORIZED BY:

SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY
BOARD OF DIRECTORS

Resolution No:

Adopted:

Attest:

Roberta Boomer, Secretary to the
SFMTA Board of Directors

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Robert K. Stone
Deputy City Attorney

ARTIST

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

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

Erwin Redl
Paramedia LLC
425 Napoleon Road #5
Bowling Green, OH 43402,

City vendor number: 78725

APPENDIX A

CENTRAL SUBWAY UNION SQUARE/MARKET STREET STATION LANDMARK ARTWORK

ARTIST PARAMEDIA INC

CONCEPTUAL ARTWORK PROPOSAL

Proposal approved by Arts Commission Resolution 0802-10-215 on August 10, 2010, to be developed under this Agreement and subject to ongoing revisions, reviews and approvals by the Commission and the SFMTA.

LUCY IN THE SKY

The artist proposes creating an artwork that will span the entire ceiling of the concourse level of the Union Square/Market Street Station. The ceiling will be covered with approximately 1750 proprietary, translucent 10" x 10" squares ("light pixels") aligned in a diamond grid. The distance between the light pixels is approximately six feet measured along the diagonal lines of the grid. Each light pixel consists of a framed, clear, 1/2" acrylic panel, each with surface holes on both sides. The holes will reflect light from RGB-LEDs embedded in the metal or plastic frame.

The individual light units are computer controlled and display simple patterns and animations. Individual light panels slowly change color in synch, creating an ever-changing, dazzling spectacle for the station users.

The panels are clear acrylic (flammability UL94) with either a metal (stainless steel or aluminum) or plastic frame, side lighted with RGB LEDs controlled with an industry standard DMX lighting controller. All electrical elements are electrical code compliant and for equipment using more than 100 W UL – listed if available.

The LED lighting elements are:

- Low power consumption compared to conventional lighting.
- No ultra-violet output
- Radiate very little heat
- Have a long lamp life of approximately 100,000 hours
- Light weight
- Easy to replace

The title is derived from the Beatles' song *Lucy in the Sky with Diamonds*.

Conceptual Proposal Display Board Image Attached

Appendix B
Services to be Provided by Artist Paramedia LLC

**Design, Fabrication, Transportation and Consultation during Installation of Landmark
Artwork for
The Central Subway Union Square/Market Street Station**

Authorization: Phases I, II and III of this Agreement have been authorized by Arts Commission Resolution Number 1206-10-339. The Commission must approve Artist's submittals at the completion of each Phase of the Work before the Artist proceeds to the next Phase.

PHASE I - DESIGN

1. Scope of Work.

a. General

(1) Artist has delivered a Conceptual Proposal for the Artwork ("Proposal") approved by the Arts Commission, Resolution 0802-10-215. The scope of work under this Phase includes the development of the Proposal through all Phases of design, including Conceptual Design, Design Development that meets the SFMTA's construction document requirements, Final Design of the Artwork, and Construction Documents for the fabrication and installation of the Artwork.

(2) The Commission must approve changes to the Proposal at each Phase of development before the Artist proceeds to the next Phase. If the Commission does not accept the Proposal at any design Phase, the Artist agrees to submit one alternate proposal or design alternative at no additional cost to the City.

(3) The Proposal shall reflect the requirements of the SFMTA, Architect and Commission, as expressed in the Request for Qualifications and as further directed and discussed in communications with the Commission, SFMTA and Architect.

(4) Artist or Artist representative shall attend Project meetings and make presentations to City staff, the Architect, Commissions, and other individuals and organizations, as directed by the Commission.

(5) Artist agrees to collaborate closely with Architect through in-person meetings and other necessary means of communication to allow the Architect to thoroughly integrate the Proposal into architectural and engineering drawings and plans throughout all Phases of design of the Artwork. **Artist shall coordinate his/her communications with the Architect and the SFMTA through the Arts Commission Project Manager.**

(6) Prior to directing any subcontractor to perform Work, the Artist shall deliver to the City copies of the Artist's subcontracts and required insurance documents. The Artist shall also submit as required by the City documentation establishing that all employees, subcontractors and suppliers have been paid in a timely manner.

b. Design Development

1) Design Development Documents and materials shall incorporate the further development and refinement of the Proposal, Budget and Maintenance Report developed

under Conceptual Design.

2) Design Development Documents shall include presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, feasibility studies and final cost estimates at design completion. Design Development Documents shall fix and describe the size and character of the Artwork with respect to its relationship to the Site, including architectural, structural, mechanical and electrical systems, lighting design, materials and other elements as may be appropriate. Artist shall provide submittals as listed, but not limited to, the submittals below.

- (a) Signed and stamped drawings by an electrical engineer of all wiring and interface elements.
- (b) Signed and stamped drawings by a mechanical engineer.
- (c) Shop Drawings of art panels
- (d) Full-scale mock-up of a panel
- (e) Partial full-scale mock-up of a small section of the Artwork, to include all necessary elements, to be installed and presented for the Arts Commission's review and approval in the Artist's studio.

3) Artist and Artist's subcontractor structural engineer or architect shall review all Design Development Documents for consistency and constructability, and report any engineering, structural concerns, or constructability concerns to the City. Modifications to the design necessitated by this review shall be completed, submitted and approved by the City prior to beginning the production of Construction Documents.

4) Maintenance Plan. At the time Artist submits Artist's amended Proposal for review by the Arts Commission as part of the Design Development Documents, Artist shall provide the Commission with a General Maintenance Plan for the Artwork, with a detailed description of future anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating Artwork and the frequency of such staff involvement; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork. Artist shall also provide the Commission with a description of all equipment and or machinery needed to operate the Artwork and any anticipated or required staffing, supervision or operational needs. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment, and may also be subject to graffiti and vandalism. Artist shall ensure that all maintenance requirements will be reasonable in terms of time and expense. The Artist shall be responsible for making any updates or clarifications to this Maintenance Plan if the maintenance requirements and estimates change over the course of the Project.

c. Construction Documents:

1) The plans for the construction and/or installation of the proposed Artwork as set out in the Construction Documents must conform to the California Uniform Building

Code and any San Francisco amendments to the Building Code as approved, and must be signed and stamped by design professionals licensed in the State of California.

2) Artist shall deliver Mock-ups and Samples, as required by Commission or its staff.

3) Artist and its subcontractor architect or engineer shall review the Architect's plans, designs and specifications to ensure they accurately reflect the agreed installation of the Artwork at the Site, and Artist shall provide the Commission and Architect with written comments and/or corrections.

4) If the maintenance requirements and estimates change at any time during the design process, Artist shall provide the Commission with a revised Maintenance Plan.

5) Artist shall deliver an updated schedule describing Artist's specific timelines for completing the Work.

d. Schedule of Deliverables. See Appendix D.

e. Compensation and Payment Schedule. Artist's compensation for Phase I shall be in accordance with Appendix C, Project Budget, and Appendix D, Payment and Performance Schedule, which are both incorporated herein by reference. Such compensation shall cover all of Artist's costs and fees for Phase Ia, 1b and 1c.

f. Approved Subcontractors and corresponding insurance requirements
The Arts Commission shall approve the Artist's subcontracts to provide structural engineering documents and other design development deliverables, and other consultants as necessary to provide project assistance. Subcontractors are subject to the same insurance requirements as listed in Section 15: Insurance in the main body of this Agreement unless waived by the City Risk Manager.

g. Total City Costs. Artist shall design the Artwork so that it can be designed, fabricated and installed for an amount not to exceed Eight Hundred Thousand Dollars (\$800,000). Said amount includes but is not the compensation to the Artist, but is the total cost to the City for the Artwork. This Budget must cover all costs associated with the Artwork, whether or not the Work is performed (that is, designed, fabricated, and installed) by the Artist, Artist's subcontractors, or by another contractor under a separate agreement with City. Said costs include, but are not limited to: Artist fees, employees, consultants, fabrication, including but not limited to design fees charged by the Artist's subcontracted architects and engineers. In the event that cost estimates indicate that the Artist's Proposal cannot be executed within the approved Budget, the Artist hereby agrees to redesign or modify the Proposal so that the Artwork can be fabricated within the approved Budget.

PHASE II - FABRICATION OF ARTWORK

1. Scope of Work.

a. Fabrication. Artist shall fabricate the Artwork following Notice to Proceed from the Commission, to include all elements and attachment hardware, according to the Design Documents approved by the Arts Commission, the SFMTA and its architects and engineers.

b. Shop Drawings. Artist and Artist's engineer shall generate Shop Drawings as needed to fabricate the Artwork, to include, but not limited to all interfaces between the Artwork and the UMS Station, attachment and electrical systems, to be reviewed and approved by the Arts Commission and the SFMTA architects and engineers.

c. Inspection of Artwork.

1) Artist shall send photo documentation of Artwork fabrication at 25% and 50% completion. Documentation is to be sent to the Arts Commission Project Manager at each stage for review and approval prior to advancing with next Phase of fabrication.

2) Artist shall notify the Commission 30 days in advance of 100% completion of all the Artwork elements so that the Arts Commission can do a field inspection of the Artwork at the Artists' Studio.

2. Schedule of Deliverables. See Appendix D. Following final approval of the fabricated Artwork by the Arts Commission, the Artist shall deliver the Artwork to a designated City storage site no earlier than September 30, 2014, but no later than September 30, 2015. Following inspection and approval by the Arts Commission of the delivered Artwork at the City's storage site, the Arts Commission will store the Artwork at no cost to the Artist. The Artist shall be responsible for the storage and safekeeping of the Artwork prior to the delivery of the Artwork to the City's storage site.

3. Compensation and Payment Schedule. Artist's total compensation for Phase II and the payment schedule for said Work shall be in accordance with Appendix A, Project Budget, and Appendix D, Performance and Payment Schedule. Such compensation shall cover all of Artist's costs and fees for Phase II.

PHASE III - CONSULTATION DURING TRANSPORTATION AND INSTALLATION OF ARTWORK

1. Scope of Work.

- a. The Artwork shall be transported to the City storage site by Artist and installed at the Site by the Construction Contractor. The Artist shall review and provide written comments and recommendations concerning the Construction Contractor's plans for transportation and installation of the Artwork, and the Artist shall consult with the City and the Construction Contractor as to the means and methods of installing the Artwork. The preparation of the Site for installation of the Artwork shall be the responsibility of the Construction Contractor.
- b. Artist shall prior to installation of the Artwork visit the Site and confer with the Commission, the SFMTA and Construction Contractor to verify that the preparation of the installation space(s) designated for the Artwork is in conformance with the Artist's design intent as expressed in the SFMTA's construction contract documents and the Artist's Contract Documents as approved in Phase I. Artist shall be present in San Francisco to provide on-Site consulting services on the installation of the Artwork, with a Commission staff person present at all times, and as directed by the Commission. Artist shall respond to requests for information from the City within 72 hours of the request. Artist shall coordinate Artist's activities on-Site with the General Contractor through Commission staff and the SFMTA Construction Management Team.
- c. Approval of Site. Artist shall examine the work of the Construction Contractor and report in writing to the Commission any visible defect or condition that may interfere with the installation of the Artwork as depicted in the Artist's approved design documents. If Artist fails to measure, inspect and/or report defects that are reasonably discoverable, all additional costs of installing the Artwork shall be borne by Artist. The forgoing does not apply to latent construction defects. Artist shall report to City any defects in another Contractor's work at any time such defects become known to the Artist. Any difference or conflict that may arise between Artist and the Construction Contractor, or other Contractors engaged by City to perform work on the Site, shall be adjusted as determined by City, its agents, or its authorized representatives when necessary to facilitate the completion of the Project.
- d. Maintenance Documents. Artist shall deliver all information necessary for the Commission to properly care for and maintain the Artwork, including information regarding the physical make-up of the Artwork, methods and materials, and information about the Artistic intent of Artist in the Design, Fabrication and Installation of the Artwork in the forms attached as Appendix E: Civic Art Collection Forms.
- e. Photographic Documentation. Artist shall deliver a CD Rom containing both high resolution and low resolution digital images of the Artwork from various perspectives.

2. Alternate Scope of Work.

At the City's option, which shall be exercised in the sole and absolute discretion of the City, if the Artist so requests, the City may authorize the Artist to install the Artwork by amending and assigning this Contract to the Construction Contractor as a subcontract under the Construction Contractor's contract to construct the station. Such agreement must be memorialized in an approved amendment to this Contract approved by the Construction Contractor, City, and Artist. Under such amendment, this Contract would be considered a design build construction contract as authorized under Chapter 6 of the San Francisco Administrative

Code. To install the Artwork, the Artist must hold a C-10 California Contractor's License and meet all other general contract requirements of a City construction contractor.

3. Schedule of Deliverables. See Appendix D.

4. Compensation and Payment Schedule. Artist's total compensation for Phase III shall be as set forth in Appendix C, Project Budget and Appendix D, Performance and Payment Schedule. Such compensation shall cover all of Artist's costs and fees for Phase III.

**Appendix C
ARTIST'S APPROVED COSTS**

Central Subway Artist Budget Appendix C PARAMEDIA LLC	Project Costs
Phase Ia Conceptual Design	
Submittal of drawings and data for SFMTA's 65% construction documents	
Contractor Fee	
Artist Fee	\$20,000.00
Subconsultants	
Architect	\$1,000.00
Lighting	\$250.00
Direct Costs	
Material samples	\$1,000.00
Drawings	\$4,000.00
Total Phase 1a Costs	\$26,250.00
Phase Ib Design Development	
Submittal of any additional drawings and data for SFMTA's 100% construction documents	
Contractor Fee	
Artist Fee	\$20,000.00
Subconsultants	
Architect	\$1,000.00
Direct costs	
Drawings	\$6,000.00
Total Phase 1b costs	\$27,000.00
Phase 1c Final Design	
Artwork construction docs and shop drawings	
Contractor Fee	
Artist Fee	\$40,000.00
Subconsultants	
Architect	\$3,000.00
Electronic engineer	\$7,000.00
Direct costs	
Material samples	\$2,000.00
Prototype electronic components	\$2,000.00
Prototype mechanical components	\$2,000.00
Preparatory materials: models, template, drawings	\$30,000.00
Total Phase 1c costs	\$86,000.00
Phase II Fabrication	
Contractor Fee	

Central Subway Artist Budget Appendix C PARAMEDIA LLC	Project Costs
Artists Fee	\$55,000.00
Assembly technicians	\$90,000.00
Direct Costs	
Materials for light elements	
LED spools (170 @ \$30 each)	\$5,100.00
Frames (750 @ \$40 each)	\$30,000.00
Safety glass (1450 @ \$9 each)	\$13,050.00
Acrylic (750 @ \$60)	\$45,000.00
Connectors (1500 @ \$1)	\$1,500.00
Hardware	\$1,000.00
Electronics	
Power supplies (45 @ \$50)	\$2,250.00
DMX drivers (670 @ \$110)	\$73,000.00
DMX boosters (40 @ \$200)	\$8,000.00
DMX master controller (2@ \$1200)	\$2,400.00
Storage	\$5,000.00
Total Fabrication Costs	\$331,300.00
Phase III-Installation Consultation	
Contractor Fee	
Artist Fee	\$20,000.00
Direct Costs	
Install materials	
Conduit	\$9,000.00
Wires	\$7,000.00
Connectors	\$5,000.00
Suspension hardware	\$12,000.00
Shipping/crating	\$9,000.00
Travel (artist)	\$4,000.00
Total Installation Consult Costs	\$66,000.00
TOTAL	\$536,550.00

Appendix D
ARTIST'S PAYMENT SCHEDULE

Appendix D Payment Schedule PARAMEDIA	Project Costs	Submit by
Payment 1: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to drawings, data, specifications, samples, mock-ups, required to the SFMTA's 65% construction documents. Subcontracts and documentation subcontractors and other pre-approved expenditures have been paid.	26,250.00	No later than June 15, 2011
Payment 2: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to, additional drawings, data, specifications, samples, mock-ups required for the SFMTA's 100% construction documents. Subcontracts and documentation all subcontractors and other pre-approved expenditures have been paid.	27,000.00	No later than July 15, 2011
Payment 3: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to, artwork drawings, construction documents, specifications, data, shop drawings, material samples, material data sheets, mock-ups, required tests for ease of maintenance and durability required for final approval and fabrication of the artwork.	86,000.00	No later than July 15, 2012
Payment 4: Invoice may be submitted upon approval of completed fabrication of the artwork and required installation attachment materials by the SFAC and SFMTA, and approval of all required documents, and documentation that all subcontractors have been paid.	331,300.00	Artwork must be delivered to the City no later than September 30, 2015
Payment 5: Invoice may be submitted upon approval of transported and installed artwork by the SFAC and the SFMTA, and approval of all remaining required submittals, and documentation that all subcontractors have been paid.	66,000.00	TBD
Payment Schedule Notes:		
1. All payments are not-to-exceed amounts.		
2. All due dates are subject to change by the Arts Commission or the SFMTA.		
3. Artist shall not proceed to the next Phase, as indicated above, without written permission from the Arts Commission.		
4. Artist may request approval in writing by the Arts Commission in advance to submit invoices for additional interim payments for Work completed and approved within each phase.		

Appendix E
CIVIC ART COLLECTION FORMS

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets

BRIEF DESCRIPTION:

Authorizing the Department of Public Works (DPW) to award construction Contract No. 1500J: Parking Guidance System and Pavement Renovation Project to Ghilotti Bros., Inc., 525 Jacoby Street, San Rafael, CA 94901, for a total contract amount not to exceed \$4,287,785, and not to exceed 270 calendar days.

SUMMARY:

- On April 18, 2011, DPW issued a bid call for DPW Contract No. 1500J, Parking Guidance System and Pavement Renovation Project.
- This contract combines two portions of work including installing variable message signs (VMS) and related communications infrastructure under the *SFpark* - Parking Guidance System Project initiated with the San Francisco Municipal Transportation Agency (SFMTA), and the street repaving and curb ramp installations, which is a DPW project.
- Combining the two efforts will minimize disruption to the public and reduce construction costs since the work will take place on several of the same streets in the South and North of Market Areas. The contract duration will be 270 calendar days.
- The Parking Guidance System portion of the contract will be funded through a grant from the Federal Highway Administration (FHWA) Urban Partnership Program, and through development fees from the Westfield mall project. The street repaving and curb ramp work are funded through State and local sources.
- Among the five bids received, DPW has identified Ghilotti Bros., Inc. as the lowest responsive and responsible bidder.
- The Contract Compliance Office has confirmed DPW’s determination that Ghilotti Bros., Inc. meets the contract’s 9.5 percent Underutilized Disadvantaged Business Enterprise (UDBE) participation goal, in compliance with FHWA contracting guidelines.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
TO BE RETURNED TO

_____ Tony Young _____

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

SFMTA staff requests that the SFMTA Board authorize DPW to award DPW Contract No. 1500J: Parking Guidance System and Pavement Renovation Project, to Ghilotti Bros., Inc., for a total contract amount not to exceed \$4,287,785, and not to exceed 270 calendar days.

GOAL

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

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.

- 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: To get customers where they want to go, when they want to be there.

- 2.1 Transit reliability: Improve on-time performance to 85%
- 2.4 Reduce congestion through major corridors
- 2.5 Manage parking supply to align with SFMTA and community goals

Goal 3 – External Affairs/Community Relations: To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry.

- 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits.
- 3.4 Enhance proactive participation and cooperatively strive for improved regional transportation.

Goal 6 – Information Technology: To improve service and efficiency, the SFMTA must leverage technology.

- 6.1 Information and Technology Leadership: Identify, develop, and deliver the enhanced systems and technologies required to support SFMTA's 2012 goals.

DESCRIPTION

Scope of Work

This contract combines SFMTA's Parking Guidance System Project, and DPW's Pavement Renovation Project. The Parking Guidance System Project portion of the contract includes installation of variable message signs (VMS) and related communications infrastructure. The VMS will display real-time space information for the City-owned parking garages and disseminate street event information. The Parking Guidance System is a component of the SF*park* Program. The pavement renovation portion of the contract includes asphalt grinding, concrete base repairs, and curb ramp installations initiated by DPW. Combining these two efforts will minimize disruption to the public and reduce construction costs since the work will take place along several of the same streets in the South and North of Market Street areas. Specific locations of the work are listed below:

PAGE 3.

Variable Message Signs (VMS) – SFMTA Portion (VMS face direction in parenthesis)

1. 3rd Street, south of Folsom Street (northbound)
2. 6th Street, between Folsom and Harrison Streets (northbound)
3. 6th Street, between Howard and Mission Streets (northbound)
4. 7th Street, between Harrison and Folsom Streets (northbound)
5. 8th Street, between Market and Mission Streets (southbound)
6. Folsom Street, between 5th and 6th Streets (eastbound)
7. Fremont Street, north of Howard Street (northbound)
8. Howard Street, between 2nd and 3rd Streets (westbound)
9. Kearny Street, between Pine and California Streets (Northbound)
10. King Street, between 2nd and 3rd Streets (westbound)
11. King Street, between 4th and 5th Streets (eastbound)

Pavement Renovation and Curb Ramp Upgrades – DPW Portion

12. 8th Street, between Market and Townsend Streets
13. Howard Street, between Spear and 4th Streets
14. Hawthorne Street, between Howard and Folsom Streets

For the Parking Guidance System portion of the project, SFMTA staff performed the initial conceptual design and some of the detailed design. DPW staff completed the final design, prepared the contract documents, and advertised the contract for bid. For the paving renovation project, DPW conducted the design work. Construction management for the contract will be provided by DPW. The Engineer's Estimate for the combined contract is \$4,805,945.

Solicitation for Bids and Bid Opening

The Federal Highway Administration (FHWA), as the funding agency, requires an open and competitive bidding process for construction contracts on Federal-aid projects, and selection of the lowest responsive and responsible bidder. On April 18, 2011, the City began soliciting bids for this contract through public advertisements in the San Francisco Chronicle and the Small Business Exchange. In addition, the public advertisement was listed until the day of the bid opening on the City's internet website.

On May 18, 2011, the Department of Public Works received the following bids for DPW Contract No. 1500J:

1. Ghilotti Bros., Inc.
525 Jacoby Street
San Rafael, California 94901
Bid Amount: \$4,287,785
2. A. Ruiz Construction Co. & Assoc., Inc.
1601 Cortland Avenue
San Francisco, California 94110
Bid Amount: \$4,487,397.35

PAGE 4.

3. Interstate Grading & Paving, Inc.
128 So. Maple Avenue
South San Francisco, California 94080
Bid Amount: \$4,498,828
4. Proven Management, Inc.
712 Sansome Street
San Francisco, California 94111
Bid Amount: \$4,671,105
5. NTK Construction, Inc.
501 Cesar Chavez Street, Suite 123
San Francisco, California 94124
Bid Amount: \$5,511,615

Ghilotti Bros., Inc. is a responsible contractor with extensive experience in pavement resurfacing and curb ramp reconstruction projects. Ghilotti Bros., Inc. has completed the following recent pavement renovation contracts: DPW Contract No. 1324J: Mission Street and Otis Street Pavement Renovation; DPW Contract No. 1533J: Bush Street Pavement Renovation Phase I Federal Aid Project No. ESPL-5934(152) Funded by ARRA; and DPW Contract No. 1573J: Williams Avenue Pavement Renovation.

The SFMTA Contract Compliance Office has confirmed DPW's determination that Ghilotti Bros., Inc. meets the Underutilized Disadvantaged Business Enterprise (UDBE) participation goal of 9.5 percent established for this contract.

In its bid, Ghilotti Bros., Inc. listed the following participating subcontractors and their Underutilized Disadvantaged Business Enterprise (UDBE) status:

- Bay Area Lightworks, Inc. (San Francisco, California) – UDBE
- CJC Trucking, Inc. (Oakland, California) – UDBE

The time allotted for substantial completion of the work is 270 calendar days from the written Notice to Proceed. Liquidated damages are \$1,500 per day for contractor's delays that result in failure to complete the work on time.

ALTERNATIVES CONSIDERED

Aside from contracting out using the competitive bid process for this work, the following alternatives were also considered:

- No-Build Option – This option was not chosen because this contract was found to promote several of SFMTA's goals; in particular, the customer focus goal of improving safety across all modes of transportation.

PAGE 5.

- Rebidding and/or Renewing an Existing Contract – This option does not apply since there is no existing contract.
- Use of SFMTA In-House Staff – Installation of the variable message sign and related infrastructure work through in-house staff is not feasible because SFMTA does not have the staff resources to perform such work. SFMTA facilities such as the SFMTA Traffic Signal Shop are primarily staffed and equipped to maintain and repair existing systems and equipment, and are not prepared for larger-scale construction projects.

Staff concluded that contracting out through the competitive bidding process is the best alternative for the execution of DPW Contract No. 1500J. Historically, competitive bidding has been the City's primary means of awarding transportation infrastructure construction contracts, and the SFMTA has found this method to be the most efficient and cost-effective.

FUNDING IMPACTS

The Parking Guidance System portion of the contract is jointly funded through a grant from the Federal Highway Administration (FHWA) Urban Partnership Program, and Westfield Development fees. The pavement renovation and curb ramp work is paid for by various state and local funds managed by DPW. The project funding plan is attached as Enclosure #2.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The variable message signs (VMS) is also an element of the SFgo Program, which was determined, on August 20, 2008, to be categorically exempt under the California Environmental Quality Act.

The City Attorney's Office has reviewed this report.

RECOMMENDATION

Staff recommends that the SFMTA Board authorize DPW to award DPW Contract No. 1500J: Parking Guidance System and Pavement Renovation Project, to Ghilotti Bros., Inc., 525 Jacoby Street, San Rafael, California 94901, for a total contract amount not to exceed \$4,287,785, and not to exceed 270 calendar days.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, SFMTA has identified various locations in the City for new variable message signs (VMS) to disseminate real-time space information for the City-owned garages (Parking Guidance System); and,

WHEREAS, The Department of Public Works (DPW) has identified pavement renovation work to replace deteriorating roadway infrastructure (Pavement Renovation) at locations near to the SFMTA VMS locations; and,

WHEREAS, SFMTA and DPW have combined the Parking Guidance System and Pavement Renovation projects so that the City can benefit by minimizing disruption to the public and by reducing construction costs; and,

WHEREAS, Funding for the Parking Guidance System portion of the work will be provided through a grant from the Federal Highway Administration (FHWA) Urban Partnership Program and Westfield development fees, and funding for the Pavement Renovation portion of the work will be provided by various local and state funds managed by DPW; and,

WHEREAS, On April 18, 2011, DPW received and publicly opened five bids for DPW Contract No. 1500J; and,

WHEREAS, DPW has determined that Ghilotti Bros., Inc. is the lowest responsive and responsible bidder, with a bid of \$4,287,785; and,

WHEREAS, The SFMTA Contract Compliance Office has confirmed DPW's determination that Ghilotti Bros., Inc. has demonstrated that it meets the Underutilized Disadvantaged Business Enterprise (UDBE) participation goal of 9.5 percent established for this contract, in compliance with FHWA contracting guidelines; now therefore, be it,

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Department of Public Works to award DPW Contract No. 1500J: Parking Guidance System and Pavement Renovation Project, to Ghilotti Bros., Inc., 525 Jacoby Street, San Rafael, California 94901, for installation of variable message signs and related communication infrastructure; and for pavement renovation and curb ramp work, for a total contract amount not to exceed \$4,287,785, and not to exceed 270 calendar days.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE #2

**DEPARTMENT OF PUBLIC WORKS
CONTRACT NO. 1500J: PARKING GUIDANCE SYSTEM AND PAVEMENT
RENOVATION PROJECT**

Project Budget and Financial Plan

PROJECT BUDGET

Category	SFMTA	DPW	Total
Design	\$66,500		
Construction Contract	\$1,990,961	\$2,296,824	\$4,287,785
10% Contingency	\$199,096	\$229,682	\$428,778
Subtotal:	\$2,190,057	\$2,526,506	\$4,716,563
City-Furnished Materials and Equipment	\$1,100,000		
Force Accounts (Shops and Other City Departments)	\$1,142,943		
Construction Support to be provided by DPW and SFMTA	\$600,500		
TOTAL (DESIGN AND CONSTRUCTION PHASES)	\$5,100,000		

SFMTA FINANCIAL PLAN

Funding Source	Amount	Percentage
FHWA Urban Partnership Program	\$3,600,000	71%
Westfield Development Fees	\$1,500,000	29%
TOTAL	\$5,100,000	100%

THIS PRINT COVERS CALENDAR ITEM NO. 10.6

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorize the Executive Director/CEO to execute an Industrial Lease (Lease) with the SFMTA as tenant and Yosemite Investment, LLC and DLAI Investment, LLC as landlord for approximately 35,021 square feet located in eight commercial units at 1590 Yosemite Avenue, San Francisco, for certain SFMTA Sustainable Streets Division’s Paint Shop activities and to provide indoor parking for vehicles and equipment, with an initial five-year term expected to commence on July 15, 2011, plus two extension options (three years and eighteen months, respectively) and a purchase option.

SUMMARY:

- Sustainable Streets’ Paint Shop paints 900 miles of striping, plus 10 miles of colored curbs, and responds to 2,000 requests for curb painting per year. Street striping with thermoplastic generates unpleasant odors when melted. To isolate this unpleasant odor from other shop staff, the trucks must be located in an independently enclosed facility with adequate ventilation and fresh air circulation. Sustainable Streets Division’s four shops also maintain a fleet of work trucks that must be parked indoors to protect valuable equipment and supplies on the trucks.
- Staff requests approval to lease premises (Premises) consisting of eight commercial units at 1590 Yosemite Ave, (approx. 35,021 square feet) from Yosemite Investment, LLC and DLAI Investment, LLC, for an initial five-year term commencing on approximately July 15, 2011, to house the Sustainable Streets Division’s Paint Shop and to provide indoor parking for SSD four shops’ vehicles and equipment, and at the discretion of SFMTA’s Executive Director/CEO, to exercise either or both extension options (three years and eighteen months, respectively).
- The initial total annual rent expenditure for the Lease will be \$420,252 per year (\$35,021 per month), adjusted annually by the lesser of 3% and the CPI increase over the previous lease year. The rent has been included in the FY 2011-2012 Operating Budget.
- The Landlord will expend an estimated \$200,000 for necessary tenant improvements at its sole cost prior to the Lease commencement date to upgrade the Premises for SFMTA’s permitted uses.
- The Lease provides SFMTA with an option to purchase the Premises if they are subdivided into separate commercial condominiums and a form of purchase agreement is successfully negotiated. If staff wishes to pursue this option in the future, it will submit a request for approval to exercise the purchase option at that time, along with its analysis and recommendation to the Board.

ENCLOSURES:

1. Resolution
2. 1590 Yosemite Avenue Industrial Lease and Exhibits

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION BE RETURNED TO: Ken Yee

ASSIGNED MTAB CALENDAR DATE: _____

PURPOSE

Authorize the Executive Director/CEO of the SFMTA to execute an Industrial Lease (Lease), with Yosemite Investment, LLC and DLAI Investment, LLC, a California limited liability company, to relocate part of the Sustainable Streets Division's Paint Shop operations and park 88 of the four SSD Shops' vehicles at approximately 35,021 square feet located in eight units at 1590 Yosemite Avenue.

GOAL

This item will meet the following goals and objectives of the SFMTA Strategic Plan:

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

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

Objective 4.2 Ensure efficient and effective use of resources.

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

Objective 5.1 Increase resources available to employees in performing their jobs (tools, staff hours).

Objective 5.2 Improve facilities in which people are working.

BACKGROUND

The SFMTA Sustainable Streets Division has four Shops – Paint, Sign, Meter and Signal – to serve the public on the San Francisco busy streets by maintaining, repairing and/or replacing the 200,000 street signs, 24,000 parking meters, 1,150 traffic signals, and 900 miles of striping, plus painting 10 miles of colored curbs and responding to 2,000 requests for curb painting per year. These vital functions are critical to keep transit and traffic moving efficiently and safely, protect and encourage pedestrians and bicyclists, collect parking revenues, and enhance the quality of life in San Francisco.

The current facilities housing the four shops are inadequate for current and future needs. SFMTA leased (with an option to purchase) the property located at 1508 Bancroft Avenue to consolidate the four shops into one centralized location to maximize operational effectiveness and efficiency, but the Paint Shop paints street striping with thermoplastic, which generates an unpleasant odor and smell when melted. In order to isolate this unpleasant odor and smell from other SFMTA staff located at 1508 Bancroft Avenue, certain Paint Shop activities must be located in an independently enclosed facility with adequate ventilation and fresh air circulation. The four shops also maintain a fleet of work trucks that must be parked indoors to provide security and waterproofing for their loads and equipment. The Landlord has agreed to expend additional capital improvements and necessary tenant improvements to upgrade the proposed premises to accommodate the Paint Shop's special needs and effective use of the premises.

Industrial Lease Terms

The proposed Lease has an initial term of five years expected to commence on July 15, 2011, with an initial rental rate of \$1.00/square foot (s.f.) for 35,021 square feet. The premises (Premises) would consist of eight units located at 1590 Yosemite Avenue, and the initial total annual rent expenditure for the Premises is \$420,252 per year (\$35,021 per month), adjusted annually by the lesser of 3% and the CPI increase over the previous lease year. Landlord will expend, at its sole cost, an additional

estimated \$200,000 for necessary tenant improvements to upgrade the Premises for SFMTA's special needs and effective use.

The Lease includes two extension options (three years and eighteen months, respectively) and, if the Premises is subdivided into commercial condominiums during the initial three-year Lease term, a purchase option. If the Premises is subdivided into commercial condominiums and a satisfactory purchase price and form of purchase agreement is negotiated with the Landlord, staff will seek approval to exercise the purchase option, along with its analysis and recommendation to the Board.

If the SFMTA Board authorizes SFMTA to enter into the Lease and the Landlord subdivides the Premises into commercial condominium units in compliance with the Subdivision Map Act, the SFMTA will commission a fair market value appraisal to determine the fair market value of the Premises. If SFMTA staff and Landlord successfully negotiate a purchase price and a form of purchase and sale agreement for the Premises, staff's financial analysis and recommendation will be presented to the SFMTA Board along with the proposed purchase and sale agreement.

ALTERNATIVES CONSIDERED

The four SSD shops are currently consolidated at 1508 Bancroft that is leased by SFMTA (with an option to purchase). The SSD Paint Shop paints street striping with thermoplastic which generates unpleasant odor when melted. In order to isolate this unpleasant odor from other SFMTA staff at 1508 Bancroft, certain Paint Shop operations must be located in a nearby, independently enclosed facility with adequate ventilation and fresh air circulation. The four SSD shops also maintain a fleet of trucks and vehicles that must be parked indoors to provide sufficient security and waterproofing for their loads and equipment. The Premises is the closest nearby available space that fits these Paint Shop operational needs and the SSD shops' indoor parking needs. In addition, the Landlord agrees to expend an additional estimated \$200,000 for necessary tenant improvements to upgrade the Premises for effective use at its own cost. Furthermore, the Lease is recommended pursuant to and in compliance with the aforementioned goals and objectives of the SFMTA Strategic Plan.

Other considered alternatives, including using the Muni Metro East facilities, are proven to be inefficient and ineffective due to great potential of lost of work time and productivity.

FUNDING IMPACT

The proposed Lease payments have been budgeted in the FY 2011-2012 Operating Budget. If SFMTA is authorized to enter into the Lease and the Landlord subdivides the Premises into commercial condominiums, the SFMTA will commission a fair market appraisal to determine the value of the Premises. If SFMTA staff successfully negotiates a price and form of purchase agreement for the Premises with the Landlord, its financial analysis and recommendation will be presented to the Board along with the proposed purchase agreement for approval. If additional funding has been secured at that time for the purchase of the Property, SFMTA staff expects to recommend to the Board that the Agency exercise the option to purchase the Property for the appraised and negotiated purchase price.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed this Calendar Item. This Lease does not require additional approval.

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RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize and direct the Executive Director/CEO of the SFMTA to execute this Lease Agreement.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) Sustainable Streets Division (SSD) has four shops (Paint, Sign, Meter and Signal) responsible for maintaining, repairing and replacing the street signs, parking meters, traffic signals, and 900 miles of striping, painting 10 miles of colored curbs and responding to 2,000 requests for curb painting per year. These vital functions are critical to keep transit and traffic moving efficiently and safely, protect and encourage pedestrians and bicyclists, collect parking revenues, and enhance the quality of life in San Francisco; and

WHEREAS, The SFMTA seeks to relocate part of the SSD Paint Shop's operations and park the four SSD shops' vehicles at premises comprised of 35,021 square feet in eight units at 1590 Yosemite Avenue (Premises); and

WHEREAS, The SFMTA is prepared to enter into an Industrial Lease (Lease), with Yosemite Investment, LLC and DLAI Investment, LLC, each a California limited liability company (Landlord); and,

WHEREAS, The Lease has an initial term of five years anticipated to commence on July 15, 2011, with at an initial total annual rent expenditure of \$420,252 per year (\$35,021 monthly), adjusted annually by the lower of 3% or the CPI increase over the past lease year, and Landlord will expend an estimated \$200,000 for necessary tenant improvements to upgrade the Premises for SFMTA's permitted uses; and

WHEREAS, The Lease includes a three-year extension option followed by an eighteen-month extension option (Extension Options) to allow for the extension of the initial five-year Lease term; and

WHEREAS, The Lease grants City an purchase option for the Premises on the terms and conditions set forth in the Lease, including the subdivision of the Premises into commercial condominiums and the successful negotiation of a purchase price and a form of purchase agreement; and,

WHEREAS, Rental expenditures for the initial Lease year have been included and budgeted in SFMTA's Fiscal Year 2011-2012 operating budget; now therefore, be it

RESOLVED, That the SFMTA Board of Directors authorize the Executive Director/CEO to execute an Industrial Lease (Lease) with the SFMTA as tenant and Yosemite Investment, LLC and DLAI Investment, LLC as landlord for approximately 35,021 square feet located at 1590 Yosemite Avenue, San Francisco, for certain SFMTA Sustainable Streets Division's Paint Shop activities and to provide indoor parking for vehicles and equipment, with an initial five-year term, plus two extension options (three years and eighteen months, respectively) and a purchase option at an initial total annual rent expenditure of \$420,252 per year (\$35,021 monthly), adjusted annually by the lower of 3% or the CPI increase over the past lease year.

FURTHER RESOLVED, That the SFMTA Board of Directors authorize the Executive

Director/CEO to execute either or both of the Extension Options at the discretion of the Executive Director/CEO of the SFMTA, and to obtain an appraisal of the fair market value of the Premises if the Landlord subdivides the Premises into commercial condominiums during the initial five-year term.

I 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 of Directors

Industrial Lease and Exhibits

INDUSTRIAL LEASE

between

YOSEMITE INVESTMENT, LLC and DLAI INVESTMENT, LLC,
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,
as Tenant

For the lease of the Premises
1590 Yosemite Avenue
Unit Nos. 1530, 1533, 1536, 1553, 1555, 1569, 1571, 1577
San Francisco, California

June 15, 2011

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LIST OF EXHIBITS AND SCHEDULE

- EXHIBIT A – Legal Description of Real Property
- EXHIBIT B – Depiction of Premises and Building
- EXHIBIT C – Notice of Commencement Date
- EXHIBIT D – Janitorial Services
- EXHIBIT E – Form of Subordination, Nondisturbance and Attornment Agreement
- EXHIBIT F – Hazardous Materials List
- EXHIBIT G – Appraisal Procedure
- EXHIBIT H – Form of Memorandum of Lease

Schedule 1 – Leasehold Improvements

INDUSTRIAL LEASE

THIS INDUSTRIAL LEASE (this "**Lease**"), dated for reference purposes only as of June 15, 2011, is by and between YOSEMITE INVESTMENT, LLC, a California limited liability company, and DLAI INVESTMENT, LLC, a California limited liability company (together, "**Landlord**"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Tenant"), acting by and through the San Francisco Municipal Transportation Agency ("**SFMTA**").

Landlord and City hereby agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "**Basic Lease Information**"). Each item below shall be deemed to incorporate all of the terms in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	June 15, 2011
Landlord:	YOSEMITE INVESTMENT, LLC and DLAI INVESTMENT, LLC
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Building; Property (<u>Section 2.1</u>):	The building commonly known as 1590 Yosemite Avenue, San Francisco, and located on the real property designated as Lot 015, Block 4830 and more particularly described on <u>Exhibit A</u>
Premises (<u>Section 2</u>):	Building Unit Numbers 1530, 1533, 1536, 1553, 1555, 1569, 1571, 1577, and an approximate 12'x20' exterior parking space adjacent to the Building (the " Outside Storage Space "), all as further depicted on <u>Exhibit B</u>
Rentable Area of Premises (<u>Section 2</u>):	Approximately 35,021 rentable square feet in the Building
Initial Term (<u>Section 3</u>):	Estimated Commencement Date: July 15, 2011 Expiration Date: The fifth (5 th) anniversary of the Commencement Date, subject to the Extension Options (as defined in <u>Section 3.3</u>)
Extension Options (<u>Section 3.3</u>):	One extension term of three (3) years (the " First Extension Option ") followed by one extension term of eighteen (18) months (the " Second Extension Option ")
Base Rent (<u>Section 4.1</u>):	Initial annual Base Rent: \$420,252.00

Initial monthly payments: \$35,021.00 (comprised of \$1.00/sf for 35,021 square feet of space within the Building)

If City exercises the Expansion Option pursuant to Section 23, Base Rent shall be modified pursuant to such Section

Adjustment Dates (Section 4.2):

The first day of the thirteenth (13th) full calendar month of the Term and each annual anniversary of such date.

Use (Section 5.1):

Warehouse uses, vehicle parking within the Premises, and light industrial uses such as a sign shop, paint shop, meter shop and similar uses.

Leasehold Improvements (Section 6):

Landlord to perform, at its sole cost, the leasehold improvements described in Section 6 (the "**Leasehold Improvements**")

Utilities (Section 9.1):

City to arrange for provision of utilities to the Premises at its sole cost, provided that Landlord shall provide the utility connections described in Section 9.1(b) at Landlord's sole cost

Services (Section 9.2):

Landlord to provide the janitorial and garbage removal services described in Section 9.2

Notice Address of Landlord (Section 24.1):

Yosemite Investment, LLC
DLAI Investment, LLC
220 South Linden Ave.
South San Francisco CA 94080

Key Contact for Landlord:

David Lai

Landlord Contact Telephone No.:

(650) 588-8800 or (650) 333-1288

Notice Address for Tenant (Section 24.1):

San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Attn: Real Estate Section
Fax No.: (415) 701-4341

with a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Real Estate/Finance Team
Fax No.: (415) 554-4755

Key Contact for Tenant:

Senior Manager
SFMTA Real Estate Section
Finance and Information Technology Division
1 South Van Ness, 8th Floor
San Francisco, CA 94103

Tenant Contact Telephone No.: (415) 701-4323

Alternate Contact for Tenant: Manager
SFMTA Real Estate Section
Finance and Information Technology Division
1 South Van Ness, 8th Floor
San Francisco, CA 94103

Alternate Contact Telephone No.: (415) 701-4794

Brokers (Section 24.8): Landlord: None
Tenant: None

Purchase Option (Section 22): City shall have the option to purchase the Premises on the terms and conditions set forth in Section 22

Expansion Option (Section 23): City shall have the option to expand the Premises on the terms and conditions set forth in Section 23

2. PREMISES

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, the premises identified in the Basic Lease Information and depicted on Exhibit B (the "**Premises**"). The Building, land upon which the Building is located and all other improvements on or appurtenances to such land are referred to collectively as the "**Property**." Landlord shall deliver the Premises to City vacant and broom clean, free of any tenancies, and free of the personal property of Landlord or any previous tenant or occupant, and with the Leasehold Work (as defined in Section 6.1) substantially completed and accepted by the Senior Manager of SFMTA's Real Estate Section.

3. TERM

3.1 Term of Lease

The Premises are leased for a term (the "**Initial Term**") commencing on the date specified in the Basic Lease Information as the estimated commencement date or such later date as Landlord shall have delivered the entire Premises to City vacant and free of other tenancies and occupants. Notwithstanding the foregoing, in no event shall the Term commence prior to the Effective Date, as defined in Section 24.30 below. The Initial Term shall end on the Expiration Date specified in the Basic Lease Information, or such earlier date on which this Lease terminates pursuant to the provisions of this Lease; provided that City shall have the right to extend the Initial Term pursuant to Section 3.4 below. The word "**Term**" as used herein shall refer to the Initial Term and any Extended Terms if City exercises the Extension Options as provided below.

3.2 Commencement Date and Expiration Date

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date." Promptly after the Commencement Date, Landlord shall deliver to City a notice substantially in the form of Exhibit C attached hereto confirming the Commencement Date, but Landlord's failure to do so shall not affect the commencement of the Term.

3.3 Delay in Delivery of Possession

Landlord shall use its best efforts to deliver possession of the Premises in the condition required by this Lease on or before the Estimated Commencement Date. However, if Landlord is unable to deliver possession of the Premises as provided above, then, subject to the provisions of this Section below, the validity of this Lease shall not be affected by such inability to deliver possession except that City's obligations to pay Base Rent or any other charges shall not commence until such time as Landlord has delivered the entire Premises as required under this Lease, and City shall receive a rent credit equal to one (1) day of Base Rent for each day during the period which commences on the later of the Effective Date or the Estimated Commencement Date and ends on the date immediately preceding the Commencement Date. Further, if Landlord is unable to deliver possession of the Premises to City as required hereunder within one hundred twenty (120) days after the Estimated Commencement Date, then City may, at its option, terminate this Lease, without any further liability under this Lease, upon written notice to Landlord. In the event of such termination, Landlord shall promptly reimburse City any and all costs paid or incurred by SFMTA or City in connection with the negotiation of this Lease, inspection or testing of the Premises, the construction of Alterations or the performance of repairs or other improvements to the Building, including, without limitation, CEQA and General Plan referral fees, costs incurred during the course of negotiating any exclusive negotiation agreement between City and Landlord, any negotiating fee, services of real estate and economic consultants (including, without limitation, experts within the City that are paid by SFMTA) and legal services (including, without limitation, costs for the City Attorney's office and outside counsel).

3.4 Extension Options

City shall have the right to extend the Initial Term of this Lease (the "**Extension Options**") for the additional terms specified in the Basic Lease Information (the "**Extended Terms**"); provided, however, that City shall not exercise the Second Extension Option unless City timely exercises the First Extension Option. Such Extension Options shall be on all of the terms and conditions contained in this Lease, provided that the initial annual Base Rent for an Extended Term shall be the Base Rent payable during the twelve (12) month period immediately preceding such Extended Term, as adjusted pursuant to Section 4.2. City may exercise an Extension Option, if at all, by giving written notice to Landlord no later than ninety (90) days prior to expiration of the Term to be extended; provided, however, if City is in material default under this Lease on the date of giving such notice and fails to cure such default as provided in this Lease, Landlord may reject such exercise by delivering written notice thereof to City promptly after such failure to cure. Notwithstanding anything to the contrary in the foregoing, if City does not timely exercise the First Extension Option at least ninety (90) days prior to expiration of the Initial Term (the "**Initial Extension Date**"), the Second Extension Option shall be automatically void as of the Initial Extension Date.

4. RENT

4.1 Base Rent

Beginning on the Commencement Date, City shall pay to Landlord during the Term the annual Base Rent specified in the Basic Lease Information (the "**Base Rent**"). The Base Rent shall be payable in equal consecutive monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice. City shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise provided in this Lease. If the Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30)-day month.

4.2 Adjustments in Base Rent

On each date specified in the Basic Lease Information for the adjustment of Base Rent (each, an "**Adjustment Date**"), the Base Rent payable under Section 4.1 shall be adjusted to equal the lesser of (a) one hundred three percent (103%) of the Base Rent for the twelve (12) month period immediately preceding such Adjustment Date and (b) the Base Rent for the twelve (12) month period immediately preceding such Adjustment

Date multiplied by a fraction, the numerator of which is the applicable Adjustment Index (defined as follows) and the denominator of which is the applicable Base Index (defined as follows).

The Consumer Price Index for All Urban Consumers (base years 1982-1984 = 100) for the San Francisco-Oakland-San Jose area, published by the United States Department of Labor, Bureau of Labor Statistics (the "**Index**") that is published most immediately preceding an Adjustment Date (the "**Adjustment Index**") shall be compared with the Index published most immediately preceding the Commencement Date in the case of the first Adjustment Date or, in the case of any subsequent Adjustment Date, the Index published most immediately preceding the prior Adjustment Date (the "**Base Index**"). If the Index is changed so that the base year differs from that used as of the date most immediately preceding the Commencement Date, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised during the Term, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised

5. USE

5.1 Permitted Use

City may use the Premises for general warehouse uses, vehicle parking, and light industrial uses such as a sign shop, paint shop, meter shop and similar uses and for no other use without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. Notwithstanding anything to the contrary in the foregoing sentence, City may only use the Outside Storage Space to store a recycling container for ferrous and non-ferrous metals, to fill such container with such metals, and to empty such container, unless any other use of the Outside Storage Space is consented to by Landlord in writing, which shall not be unreasonably withheld or delayed.

5.2 Interference with Access or Use

Landlord shall not restrict access to the Premises; provided, however, that Landlord may, after consultation with the Senior Manager of SFMTA's Real Estate Section, interrupt City's access to the Premises in the event of an immediate threat of the Premises or any portion of the Building being rendered unsafe for human occupancy. If City's use of any of the Premises or access thereto is interrupted as a result of the Premises being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any reason other than damage caused by fire or other casualty event (which shall be governed by Section 12) or City's default hereunder, then Landlord shall immediately undertake all necessary steps to correct such condition. In the event such condition continues for two (2) business days and impairs City's ability to carry on its business in the Premises, the Rent payable hereunder shall be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises. If any such default by Landlord shall continue for thirty (30) days or more after City's use is interrupted and impairs City's ability to carry on its business in the Premises, then City shall have the right, without limiting any of its other rights under this Lease to terminate this Lease, unless Landlord supplies City with evidence reasonably satisfactory to City that City's normal and safe use will be restored within sixty (60) days of the date City's use was interrupted, and such use is actually restored within such 60-day period. Nothing in this Section shall limit City's rights with respect to any disruption due to casualty pursuant to Section 12 (Damage and Destruction) hereof.

6. LEASEHOLD IMPROVEMENTS

6.1 Landlord's Obligation to Construct Improvements

Landlord, through its general contractor approved by City, shall perform the work and make the installations in the Premises described in the attached Schedule 1 at Landlord's sole cost (the "**Leasehold Improvement Work**") and further depicted in any supplemental written

specifications or drawings provided by SFMTA for the Leasehold Improvement Work prior to the Commencement Date ("**Approved Plans**") in accordance with the provisions of this Section below. Any new improvements installed as part of the "**Leasehold Improvement Work**" shall be referred to as the "**Leasehold Improvements.**"

(a) **Permits.** Landlord shall secure and pay for any building and other permits and approvals, government fees, licenses and inspections necessary for the proper performance and completion of the Leasehold Improvement Work shown on the Approved Plans and shall provide copies to City promptly following receipt thereof. Landlord shall be responsible for arranging for all inspections required by City's Bureau of Building Inspection.

City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after the SFMTA adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Landlord shall enter into a First Source Hiring Agreement that meets the applicable requirements of Section 83.9 of the First Source Hiring Ordinance in connection with certain building permit applications.

(b) **Construction.** Landlord shall cause the Leasehold Improvements to be completed in a good and professional manner in accordance with sound building practice. Landlord shall comply with and give notices required by all laws, rules, regulations, ordinances, building restrictions and lawful orders of public authorities bearing on construction of the Leasehold Improvements. Without limiting the foregoing, construction of the Leasehold Improvements shall comply with all applicable disabled access laws, including, without limitation, the most stringent requirements of the Americans With Disabilities Act of 1990, Title 24 of the California Code of Regulations (or its successor) and City's requirements for program accessibility. Landlord shall pay prevailing wages in connection with construction of the Leasehold Improvement Work as further provided in Section 24.24 (Prevailing Wages), below, and shall not use tropical hardwood wood products, or virgin redwood wood products as further provided in Section 24.26 (Tropical Hardwood and Virgin Redwood Ban).

(c) **Construction Schedule; Substantial Completion.** Landlord shall keep City apprised on a regular basis of the status of plan preparation, permit issuance and the progress of construction. From time to time during the construction of the Leasehold Improvements, City shall have the right upon reasonable advance oral or written notice to Landlord to enter the Premises at reasonable times to inspect the Premises, provided such inspections do not unreasonably interfere with the construction. Landlord or its representative may accompany City during any such inspection. When construction progress so permits, but not less than fifteen (15) days in advance of completion, Landlord shall notify City of the approximate date on which the Leasehold Improvement Work will be substantially completed in accordance with the Approved Plans. Landlord shall revise such notice of the approximate substantial completion date as appropriate from time to time and shall immediately notify City when the Leasehold Improvement Work is in fact substantially completed, with all necessary certificates of occupancy for the Premises, and the Premises are ready for occupancy by City. On such date or other mutually agreeable date as soon as practicable thereafter, City and its authorized representatives shall have the right to accompany Landlord or its architect on an inspection of the Premises.

The Leasehold Improvement Work shall be deemed to be "substantially completed" for purposes of this Lease when the Leasehold Improvements are sufficiently completed in accordance with the Approved Plans so that City can occupy the Premises and conduct its business for its intended uses, Landlord has procured a temporary or final certificate of occupancy for the Premises and City, through the Senior Manager of SFMTA's Real Estate Section, has approved the Leasehold Improvements. City may, at its option, approve the Leasehold Improvements even though there may remain minor details that would not interfere with City's use. Landlord shall diligently pursue to completion all such details. Notwithstanding the foregoing, City shall have the right to present to Landlord within thirty (30) days after

acceptance of the Premises, or as soon thereafter as practicable, a written punchlist consisting of any items that have not been finished in accordance with the Approved Plans. Landlord shall promptly complete all defective or incomplete items identified in such punchlist, and shall in any event complete all items within thirty (30) days after the delivery of such list. City's failure to include any item on such list shall not alter the Landlord's responsibility hereunder to complete all Leasehold Improvement Work in accordance with the Approved Plans, nor constitute any waiver of any latent defects.

No approval by City or any of its Agents of the Approved Plans or completion of the Leasehold Improvement Work for purposes of this Lease shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises, and nothing herein shall limit Landlord's obligations to obtain all such approvals.

6.2 Installation of Telecommunications and Other Equipment

Landlord and City acknowledge that the Leasehold Improvement Work shall be completed by Landlord exclusive of the installation of telecommunications, data and computer cabling facilities and equipment. City shall be responsible for installing such facilities and equipment, provided that Landlord shall furnish access to City and its consultants and contractors to the main telephone service serving the floor(s) on which the Premises are located and all other parts of the Building for which access is needed for proper installation of all such facilities and equipment including, but not limited to, wiring. City shall have the right to enter the Premises and such other portions of the Building at reasonable times during the course of construction of the Leasehold Improvements in order to install such facilities and equipment. City and Landlord shall use their good faith efforts to coordinate any such activities to allow the Leasehold Improvements and the installation of such facilities and equipment to be completed in a timely and cost-effective manner.

6.3 Construction of Improvements that Disturb or Remove Exterior Paint

Landlord, on behalf of itself and its successors, assigns and agents, shall comply with all requirements of the San Francisco Building Code Chapter 34 and all other applicable local, state, and Federal laws, including but not limited to the California and United States Occupational and Health Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior or interior lead-based or "presumed" lead-based paint (as defined below). Landlord and its Agents shall give to City three (3) business days' prior written notice of any disturbance or removal of exterior or interior lead-based or presumed lead-based paint. Landlord acknowledges that the required notification to the Department of Building Inspection regarding the disturbance or removal of exterior lead-based paint pursuant to Chapter 34 of the San Francisco Building Code does not constitute notification to City as Tenant under this Lease and similarly that notice under this Lease does not constitute notice under Chapter 34 of the San Francisco Building Code. Further, Landlord and its Agents, when disturbing or removing exterior or interior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydroblasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Landlord covenants and agrees to comply with the requirements of Title 17 of the California Code of Regulations when taking measures that are designed to reduce or eliminate lead hazards. Under this Section, paint on the exterior or interior of buildings built before January 1, 1979 is presumed to be lead-based paint unless a lead-based paint test, as defined by Chapter 34 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the interior or exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on a surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface.

7. ALTERATIONS

7.1 Alterations by City

City shall not make or permit any alterations, installations, additions or improvements (collectively, "**Alterations**") to the Premises without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold or delay; provided, however, that the installation of furnishings, fixtures, equipment or decorative improvements that do not affect the Building Systems (as defined in Section 8.2) or structural integrity of the Building, and the repainting and recarpeting of the Premises, shall not constitute Alterations requiring Landlord's consent, and the Leasehold Improvements shall not be deemed to be Alterations. Any Alterations permitted hereunder shall be made at City's cost in compliance with applicable Laws (as defined in Section 10.1). Landlord shall, without cost to itself, cooperate with City in securing building and other permits and authorizations needed in connection with any permitted Alterations. Landlord shall not be entitled to any construction or other administrative fee in connection with any Alteration. Any written consent granted by Landlord for a proposed Alteration shall state whether such proposed Alteration can remain at the Premises after the expiration or sooner termination of this Lease (each, a "**Remaining Alteration**"). Landlord may require City to remove any Alteration that is not a Remaining Alteration before the expiration or sooner termination of this Lease by delivering written notice of such removal requirement to City no earlier than 90 days and no later than 30 days prior to such expiration or termination.

7.2 Title to Improvements

Except for City's Personal Property (as defined in the next Section), all appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in the Premises as of the Commencement Date, including the Leasehold Improvements shall be and remain Landlord's property, and all appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in the Premises during the Term shall be City's property until the end of the Lease Term or such earlier date designated by Landlord in written notice to Tenant. City may not remove such property unless Landlord consents thereto.

7.3 City's Personal Property

All furniture, furnishings, equipment, trade fixtures and articles of movable personal property installed in the Premises by or for the account of City and that can be removed without structural damage to the Premises (collectively, "**City's Personal Property**") shall be and remain City's property. At any time during the Term or at the expiration thereof, City may remove any of City's Personal Property, provided City shall repair any damage to the Premises resulting therefrom. Upon the expiration or earlier termination of this Lease, City shall remove City's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises), below. Landlord acknowledges that some of City's Personal Property may be financed by an equipment lease financing otherwise subjected to a security interest, or owned by an equipment company and leased to City. Landlord, upon City's reasonable request, shall execute and deliver any document required by any supplier, lessor, or lender in connection with the installation in the Premises of any items of City's Personal Property, pursuant to which Landlord waives any rights it may have or acquire with respect to City's Personal Property, so long as the supplier, equipment lessor or lender agrees that it (i) will remove the City's Personal Property from the Premises within thirty (30) days after the Expiration Date (but if it does not remove City's Personal Property within such time it shall have waived any rights it may have had to City's Personal Property), and (ii) will repair any damage caused by the removal of City's Personal Property. Landlord shall recognize the rights of any supplier, lessor or lender who has an interest in any items of City's Personal Property to enter the Premises and remove such property at any time during the Term or within thirty (30) days after the Expiration Date.

7.4 Alteration by Landlord

Landlord shall use its best efforts to minimize interference with or disruption to City's use and occupancy of the Premises during any alterations, installations, additions or improvements to the Building. Landlord shall promptly remedy any such interference or disruption upon receiving City's notice thereof.

8. REPAIRS AND MAINTENANCE

8.1 Landlord's Repairs

Landlord shall repair and maintain, at its sole cost and in the same condition as of the Commencement Date, ordinary wear and tear excepted, the exterior and structural portions of the Building, including, without limitation, the roof, foundation, bearing and exterior walls and subflooring, and the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems of the Building (collectively, the "**Building Systems**") and the Property parking lot and paved areas, except to the extent that any such item is damaged solely by City's negligence or intentional wrongful misconduct. Without limiting the foregoing, Landlord shall maintain the Building in a clean, safe and attractive manner, shall comply with all applicable Laws regarding the removal of exterior graffiti, and shall not permit any other tenants of the Building to disturb or interfere with City's use of the Premises pursuant to this Lease or permit to be done in or about the Building anything that is illegal, is dangerous to persons or property or constitutes a nuisance.

8.2 City's Repairs

Subject to Landlord's warranty under Section 10.1 (Premises Condition), any construction warranties or guaranties received in connection with Landlord's completion of the Leasehold Improvements, and Landlord's repair and maintenance obligations hereunder, City shall repair and maintain the interior portions of the Building and shall keep the Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty. City shall perform any such required repairs, maintenance and replacements that are City's responsibility hereunder **(i)** at City's cost, **(ii)** by contractors or mechanics selected by City and reasonably approved by Landlord, **(iii)** so that same shall be at least substantially equal in quality, value and utility to the original work or installation prior to damage thereof, **(iv)** in a manner and using equipment and materials that will not materially interfere with or impair the operations, use or occupation of the Building or the Building Systems, and **(v)** in compliance with all applicable Laws, including, without limitation, any applicable contracting requirements under City's Charter and Administrative Code. At all times during the Term of this Lease, Landlord shall, upon reasonable notice by City, afford City and its Agents with access to those portions of the Building which are necessary to maintain or repair the telecommunications and data and computer cabling facilities and equipment installed by City.

8.3 Standards for Landlord's Performance; City's Remedies

In performing its obligations hereunder, Landlord shall undertake commercially reasonable measures in accordance with good construction practices to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise, fumes, odors and other effects of such work shall be controlled using commercially reasonable methods customarily used to control deleterious effects associated with similar projects in occupied buildings (i.e., after-hours core drilling). On written or telephonic notice from City that any repair or replacement is required which is Landlord's obligation hereunder, or otherwise becoming aware of the necessity of such repair, Landlord shall proceed with reasonable diligence to perform such repair or replacement as promptly as possible and shall keep City apprised of its efforts. Without limiting the foregoing, Landlord shall in all events provide City with a written acknowledgement to a written repair or replacement request within five (5) business days of receipt thereof. During any period when City's use of the Premises is impaired by the necessity for or performance of repairs or replacements which are Landlord's obligation hereunder, Rent shall abate in proportion to the

extent to which the unrepaired condition or work disrupts City's conduct of its business at the Premises. The prior sentence is inapplicable to repairs to the Premises that are necessitated due to damage caused by fire or other casualty, which shall be governed by Section 12.

8.4 Liens

City shall keep the Premises free from liens arising out of any work performed, material furnished or obligations incurred by City during the Term. Landlord shall have the right to post on the Premises any notices permitted or required by law or that are needed for the protection of Landlord, the Premises, or the Building, from mechanics' and material suppliers' liens. City shall give Landlord at least ten (10) days' prior written notice of commencement of any repair or construction by City on the Premises.

9. UTILITIES AND SERVICES

9.1 Utilities

Landlord shall, at its sole cost, furnish the following utilities and services to the Premises: (a) heating, air conditioning and ventilation in amounts required for City's comfortable use and occupancy of the Premises, during the period from 8:00 a.m. to 6:00 p.m., Monday through Friday, except holidays generally recognized in San Francisco; (b) electric current and natural gas pressure in amounts required for normal lighting and for the operation of personal computers and other machines and equipment used as part of the uses specified in Section 5.1 on a twenty-four (24) hours-a-day, three hundred sixty-five (365) days-a-year basis ("**Daily Basis**"); and (c) water for lavatory and drinking purposes on a Daily Basis. Notwithstanding anything to the contrary to the foregoing, Tenant shall separately arrange for the provision of electricity to the Premises and directly pay the provider of such electrical services.

9.2 Services

Landlord, at its sole cost, shall provide janitorial and garbage removal services in accordance with the specifications contained in Exhibit D attached hereto.

9.3 Disruption in Essential Utilities or Services

Landlord shall not be liable for any failure or interruption of any utilities or services furnished to the Premises, and no such failure or interruption shall entitle City to any abatement in Rent or to terminate this Lease, unless such interruption is due to the negligence or willful misconduct of Landlord. Notwithstanding the foregoing, if any interruption in services or utilities is (i) within Landlord's reasonable control and continues for three (3) or more consecutive business days, or (ii) outside Landlord's reasonable control and continues for sixty (60) or more consecutive days, and Tenant is unable to and does not use a material portion of the Premises for Tenant's business purposes as a result thereof, then Tenant shall be entitled to an abatement of rent hereunder, which abatement shall be based on the extent of Tenant's inability to use the Premises.

10. COMPLIANCE WITH LAWS; PREMISES CONDITION

10.1 Premises Condition and Landlord's Compliance with Laws; Indemnity

Landlord represents and warrants to City, and covenants with City, as follows: (a) the physical structure, fixtures and permanent improvements of the Premises (including, without limitation, the Leasehold Improvements) and all portions of the Property and the Building along the path of travel to the Premises (including, but not limited to, the Building entrances, Common Areas, restrooms, elevators, lobbies, telephone banks and drinking fountains and parking areas) are now, and as of the Commencement Date will be, in compliance with the requirements of the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities (collectively, "**Disabilities Laws**"); (b) the Building is not an unreinforced

masonry building, and is now, and as of the Commencement Date will be, in compliance with all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to seismic safety (collectively, "**Seismic Safety Laws**"); (c) the Building, the Common Areas and Building Systems serving the Premises are now, and as of the Commencement Date will be, in full compliance with all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to fire and life safety (including, without limitation, the San Francisco High-Rise Sprinkler Ordinance) (collectively, "**Life Safety Laws**"); (d) the Building, the Common Areas and Building Systems serving the Premises are now, and as of the Commencement Date will be, in compliance with all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements; and (e) there are not now, and as of the Commencement Date will not be, any material physical or mechanical defects in the Premises, Building or the Building Systems that would materially adversely affect City's intended use of the Premises. Landlord shall at all times during the Term maintain, at its cost, the Property, Building, Common Areas and the Building Systems serving the Premises in compliance with applicable present or future federal, state, local and administrative laws, rules, regulations, orders and requirements (collectively, "**Laws**"), including, without limitation, Disabilities Laws, Seismic Safety Laws, and Life Safety Laws. If any Law is enacted after the Commencement Date and requires the construction of an addition to or an alteration of the Building, the remediation of any Hazardous Substance, or the reinforcement or any other physical modification of the Building (a "**Capital Expenditure**"), and such Capital Expenditure is not required due to City's specific and unique use of the Premises pursuant to this Lease as compared with uses by other Building tenants or any Alterations made by City to the Premises, Landlord shall be obligated for making such Capital Expenditure at its sole cost. Without limiting Section 16.2 (Landlord's Indemnity), Landlord shall Indemnify City against any and all Claims arising out of any failure of the Property, Building, Common Areas, Building Systems, or any portion thereof, to comply with applicable Laws as provided in this Section or any misrepresentation by Landlord under this Section.

10.2 City's Compliance with Laws; Indemnity

City shall use the Premises during the Term in compliance with applicable Laws, except that City shall not be required to make any structural alterations, additions or other modifications in order to comply therewith unless such modifications are necessary solely because of any Alterations to the Premises made by City pursuant to Section 7 hereof and such modifications are not otherwise Landlord's responsibility under this Lease. City shall be responsible for complying with any requirement of the Disabilities Laws relating to the placement of City's furniture or other City Personal Property and the operation of any programs in the Premises, other than any requirement relating to the physical structure, fixtures and permanent improvements of the Premises or portions of the Property or Building along the path of travel to the Premises, which are Landlord's obligation as provided in Section 10.1 above. If any Capital Expenditure is required due to City's specific and unique use of the Premises pursuant to this Lease as compared with uses by other Building tenants or any Alterations made by City to the Premises, City shall be obligated for making such Capital Expenditure at its sole cost; provided, however, that if the cost of such Capital Expenditure would exceed six (6) months of Base Rent (at the rate then payable under this Lease), City shall have the right to terminate this Lease by delivering no less than thirty (30) days written notice of such termination unless Landlord notifies City in writing, within ten (10) days of receiving such termination notice, that Landlord has elected to pay the amount by which the cost of such Capital Expenditure exceeds six (6) months of Base rent. Without limiting Section 16.1 (City's Indemnity), City shall Indemnify Landlord against any and all Claims arising out of City's failure to comply with all applicable Laws as provided in this Section.

10.3 City's Compliance with Insurance Requirements

City shall not conduct any use in or about the Premises that would: **(a)** invalidate or be in conflict with any fire or other casualty insurance policies covering the Building or any property located therein, **(b)** result in a refusal by fire insurance companies of good standing to insure the Building or any such property in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering the Building, **(c)** cause an increase in the fire insurance premium for the Building unless City agrees to pay such increase, or **(d)** subject

Landlord to any liability or responsibility for injury to any person or property by reason solely of any business operation being conducted by City in the Premises; provided, however, Landlord shall provide City with reasonable prior written notice of any applicable insurance requirements and no such insurance requirements shall materially and adversely interfere with City's normal business in the Premises.

11. SUBORDINATION

(a) Without the necessity of any additional document being executed by City for the purpose of effecting a subordination, and subject in all events to subsection (b) below, this Lease shall be subject and subordinate at all times to the following (each an "Encumbrance"): (a) any reciprocal easement agreements, ground leases or other underlying leases that may hereafter be executed affecting Landlord's interest in the Property, or any portion thereof, and (b) the lien of any mortgages or deeds of trust and renewals, modifications, consolidations, replacements and extensions of any of the foregoing that may hereafter be executed by Landlord in any amount for which any part of the Property, any ground lease or underlying lease, or Landlord's interest or estate therein the subject. Notwithstanding the foregoing, if the ground lessor, mortgagee, trustee, or holder of any such mortgage or deed of trust elects to have City's interest in this Lease be superior to any such instrument, then upon notice thereof to City, this Lease shall be deemed superior, whether this Lease was executed before or after the date of said instrument or the recording thereof. At City's request, the holder of the Encumbrance shall enter into a subordination and nondisturbance agreement with City in a form reasonably acceptable to City evidencing such subordination or superiority of this Lease. Landlord warrants that as of the date of this Lease the only existing Encumbrance is held by First Commercial Bank (USA) ("**Lender**"). Concurrently with the execution of this Lease, Landlord shall provide City with a written subordination and nondisturbance agreement in the form attached hereto as Exhibit E, duly executed and acknowledged by Landlord and Lender.

(b) In the event any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or in the event any ground lease or underlying lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, cut off, or foreclosed nor shall the rights and possession of City hereunder be disturbed if City shall not then be in default in the payment of rental or other sums due hereunder or otherwise be in default under the terms of this Lease beyond any applicable notice and cure period. City shall attorn to and become the tenant of the successor-in-interest to Landlord, provided that City has received proper written notice of such succession and the name and address of the successor landlord. City's covenant under subsection (a) above to subordinate this Lease to any Encumbrance or other hypothecation hereafter executed is conditioned upon each such senior instrument containing the commitments specified in this subsection (b). The provisions of this Section shall be self-operative and no further instrument shall be required other than as provided in this Section. City agrees, however, to execute upon request by Landlord and in a form reasonably acceptable to City, any additional documents evidencing the priority or subordination of this Lease with respect to any such Encumbrance as provided herein.

12. DAMAGE AND DESTRUCTION

If the Premises, the Building or any Building Systems are damaged by fire or other casualty, Landlord shall repair the same without delay, provided that such repairs can be made under applicable laws before the date (the "**Repair Date**") that is ninety (90) days after (i) the date of such damage or (ii) the date of receiving any approvals needed from the City's Planning Department to make such repairs. If such repairs require the prior approval of City's Planning Department, Landlord shall apply for such approval within thirty (30) days after the date of such damage. In such event, Landlord shall diligently pursue any City Planning Department approvals for such repairs and shall diligently commence and pursue such repairs to completion. In such event, this Lease shall remain in full force and effect, except that City shall be entitled to an abatement of Rent while such repairs are being made. Such abatement in Rent shall be based

upon the extent to which such damage and the making of such repairs interfere with City's business in the Premises. Landlord's repairs shall not include, and the Rent shall not be abated as a result of, any damage by fire or other cause to City's property or any damage caused by the negligence or willful misconduct of City or its Agents.

Within twenty (20) days after the date of such damage, Landlord shall notify City whether or not, in Landlord's reasonable judgment made in good faith, such repairs can be made within the Repair Period. If such repairs cannot be made within the Repair Period, then either party hereto may, by written notice to the other given within thirty (30) days after the date of such damage, terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Landlord. In case of termination, the Rent shall be reduced by a proportionate amount based upon the extent to which such damage interferes with the conduct of City's business in the Premises, and City shall pay such reduced Rent up to the date of termination. Landlord shall refund to City any Rent previously paid for any period of time subsequent to such date of termination.

Notwithstanding the foregoing, in the event the Premises are damaged or destroyed by reason of flood or earthquake, and the cost of repairing the damage or destruction which is not covered by insurance proceeds payable under the insurance policies Landlord is required to carry hereunder (excluding any deductible, for which Landlord shall be responsible), as reasonably estimated by Landlord's contractor, exceeds the insurance proceeds available for the repair by ten percent (10%) of the cost of replacing the Building in its entirety, Landlord may terminate this Lease by written notice to City within thirty (30) days of the date Landlord receives written notice that such damage is not fully covered by insurance. Such notice from Landlord shall include adequate written evidence of the denial of insurance coverage. If Landlord does not elect to terminate this Lease as provided above, this Lease shall remain in full force and effect, and Landlord shall repair and restore the Premises as provided above.

If at any time during the last six (6) months of the Term of this Lease there is substantial damage that Landlord would be required to repair hereunder, Landlord or City may, at the respective option of each, terminate this Lease as of the date such damage occurred by giving written notice to the other party of its election to do so within thirty (30) days after the date of such damage; provided, however, Landlord may terminate this Lease only if it would take more than thirty (30) days to repair such damage and City has not timely delivered an Extension Notice during such six (6) month period.

The parties intend that the provisions of this Section govern fully their rights and obligations in the event of damage or destruction, and Landlord and City each hereby waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

13. EMINENT DOMAIN

13.1 Definitions

(a) "**Taking**" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

(b) "**Date of Taking**" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

(c) "**Award**" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

13.2 General

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and Landlord intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

13.3 Total Taking; Automatic Termination

If there is a total Taking of the Premises, then this Lease shall terminate as of the Date of Taking.

13.4 Partial Taking; Election to Terminate

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety if all of the following exist: (i) the partial Taking, in City's reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by City for its intended purposes or otherwise materially adversely affects City's normal operations in the Premises, (ii) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but Landlord is unwilling or unable to cure such condition, and (iii) City elects to terminate.

(b) In the case of a partial taking of a substantial portion of the Building, and if subsection (a) above does not apply, City and Landlord shall each have the right to terminate this Lease by written notice to the other within thirty (30) days after the Date of Taking, provided that, as a condition to City's right to terminate, the portion of the Building taken shall, in City's reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City's normal operations in the Premises.

(c) Either party electing to terminate under the provisions of this Section 13.4 shall do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

13.5 Rent; Award

Upon termination of this Lease pursuant to an election under Section 13.4 above, then: (a) City's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 13.6 below for any period during which this Lease continues in effect after the Date of Taking, and (b) Landlord shall be entitled to the entire Award in connection therewith, except that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

13.6 Partial Taking; Continuation of Lease

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 13.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Rent shall be reduced by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (b) Landlord shall be entitled to the entire

Award in connection therewith, provided that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

13.7 Temporary Taking

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and City shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, City shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by City for the period of the Taking.

14. ASSIGNMENT AND SUBLETTING

Except as provided in this Section below, City shall not directly or indirectly sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises, without Landlord's prior written consent in each instance, which shall not be unreasonably withheld or delayed (subject to Landlord's rights under Section 22.1(e)). City shall have the right from time to time, upon notice to but without the consent of Landlord, to transfer this Lease or use and occupancy of all or any of the Premises to any department, commission or agency of the City and County of San Francisco for uses permitted under this Lease.

15. DEFAULT; REMEDIES

15.1 Events of Default by City

Any of the following shall constitute an event of default by City hereunder:

(a) City's failure to make any timely payment of Rent and to cure such nonpayment within five (5) business days after receipt of written notice thereof from Landlord, provided that for the first two (2) monthly payments of Rent at the beginning of the Term, City shall have twenty (20) days to cure any such nonpayment after written notice thereof from Landlord;

(b) City's abandons the Premises (within the meaning of California Civil Code Section 1951.3); or

(c) City's failure to perform any other covenant or obligation of City hereunder (not involving the payment of money) and to cure such non-performance within thirty (30) days of the date of receipt of notice thereof from Landlord, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if City commences such cure within such period and diligently prosecutes such cure to completion.

15.2 Landlord's Remedies

Upon the occurrence of any event of default by City that is not cured within the applicable grace period as provided above, Landlord shall have all rights and remedies available pursuant to law or granted hereunder, including the following:

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate City's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount

of rental loss for the same period that City proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2.

(b) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as Landlord does not terminate City's right to possession, if City has the right to sublet or assign, subject only to reasonable limitations.

15.3 Landlord's Default

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of City's other cure rights under this Lease) City may, at its sole option, perform such obligation at Landlord's expense if such failure continues after ten (10) days from the date City gives notice to Landlord of City's intention to perform such cure. However, in the case of a default which for causes beyond Landlord's control (excluding any financial inability to perform) cannot with due diligence be cured within such ten (10)-day period, such ten (10)-day period shall be extended if Landlord, promptly upon receipt of City's notice, advises City of Landlord's intention to take all steps required to cure such default, and Landlord promptly commences such cure and diligently prosecutes the same to completion. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the cure period provided above, then, whether or not City elects to cure Landlord's default as provided herein, the Base Rent and any other charges hereunder shall be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises. Notwithstanding the foregoing, if any such default by Landlord continues for sixty (60) days and impairs City's ability to carry on its business in the Premises, then City shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days after the expiration of such sixty (60)-day period. City's rights hereunder shall not limit in any way any of its other rights and remedies hereunder or at law or in equity.

16. INDEMNITIES

16.1 City's Indemnity

City shall indemnify, defend and hold harmless ("**Indemnify**") Landlord and its Agents from and against any and all claims, costs and expenses, including, without limitation, reasonable attorneys' fees (collectively, "**Claims**"), incurred as a result of (a) City's use of the Premises, (b) any default by City in the performance of any of its material obligations under this Lease, or (c) any negligent acts or omissions of City or its Agents in, on or about the Premises or the Property; provided, however, City shall not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. City's obligations under this Section shall survive the termination of the Lease.

16.2 Landlord's Indemnity

Landlord shall Indemnify City and its Agents against any and all Claims incurred as a result of (a) any default by Landlord in the performance of any of its obligations under this Lease or any breach of any representations or warranties made by Landlord under this Lease, or (b) any negligent acts or omissions of Landlord or its Agents in, on or about the Premises or the Property; provided, however, Landlord shall not be obligated to Indemnify City or its Agents to the extent any Claim arises out of the negligence or willful misconduct of City or its Agents. In

any action or proceeding brought against City or its Agents by reason of any Claim Indemnified by Landlord hereunder, Landlord may, at its sole option, elect to defend such Claim by attorneys selected by Landlord. Landlord shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. Landlord's obligations under this Section shall survive the termination of this Lease.

17. INSURANCE

17.1 City's Self-Insurance

Landlord acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Lease. City assumes the risk of damage to any of City's Personal Property and any Alterations constructed by City resulting from those causes for which Landlord is not required to indemnify City hereunder.

17.2 Landlord's Insurance

At all times during the Term, Landlord shall keep the Building (excluding the land upon which it is located) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under a cause of loss-special form property insurance policy in an amount equal to one hundred percent (100%) of the full insurance replacement value (replacement cost new, including, debris removal and demolition) thereof. Landlord shall, upon request by City, provide to City a certificate of insurance issued by the insurance carrier, evidencing the insurance required above. The certificate shall expressly provide that the policy is not cancelable or subject to, reduction of coverage or otherwise subject to modification except after thirty (30) days prior written notice to City. Landlord hereby waives any rights against City for loss or damage to the Premises or any other part of the Property, to the extent covered by Landlord's property insurance.

In addition, Landlord, at no cost to City, shall procure and keep in effect at all times during the Term insurance as follows: (a) Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU), and (b) Worker's Compensation Insurance with Employer's Liability Limits not less than One Million Dollars (\$1,000,000) each accident. All insurance policies required to be maintained by Landlord hereunder shall be endorsed to provide for thirty (30) days' prior written notice of cancellation for any reason, intended non-renewal, or reduction in coverage to Landlord.

17.3 Waiver of Subrogation

Notwithstanding anything to the contrary contained herein, Landlord hereby waives any right of recovery against City for any loss or damage sustained by Landlord with respect to the Building or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of City, to the extent such loss or damage is covered by insurance which Landlord is required to purchase under this Lease or is otherwise actually recovered from valid and collectible insurance covering Landlord. Landlord agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Building or the Premises; provided, Landlord's failure to do so shall not affect the above waiver.

Notwithstanding anything to the contrary contained herein, City hereby waives any right of recovery against Landlord for any loss or damage sustained by City with respect to City's Personal Property or Alterations, to the extent such loss or damage is covered by insurance

purchased by City or would have been covered by insurance which would have been considered to be commercially available to City, had City not elected to self-insure.

18. ACCESS BY LANDLORD

Landlord reserves for itself and any designated Agent the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord shall give any reasonable notice), after giving City at least twenty four (24) hours' advance written or oral notice, for the purpose of **(a)** inspecting the Premises, **(b)** supplying any service to be provided by Landlord hereunder, **(c)** showing the Premises to any prospective purchasers, mortgagees or, during the last six (6) months of the Term of this Lease, tenants, **(d)** posting notices of non-responsibility, and **(e)** altering, improving or repairing the Premises and any portion of the Building, and Landlord may for that purpose erect, use and maintain necessary structures in and through the Premises where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, and further provided that City's use shall not be interfered with.

19. ESTOPPEL CERTIFICATES

Either party, from time to time during the Term upon not less than ten (10) days' prior written notice from the other party, may reasonably request the other party to execute, acknowledge and deliver to such persons or entities designated by such other party a certificate stating: **(a)** the Commencement Date and Expiration Date of this Lease, **(b)** that this Lease is unmodified and in full force and effect (or, if there have been modifications, this the Lease is in full force and effect as modified and stating the modifications), **(c)** that there are no defaults under this Lease (or if so, specifying the same), and **(d)** the date to which Rent has been paid.

20. SURRENDER OF PREMISES

Upon the expiration or sooner termination of this Lease, City shall surrender the Premises to Landlord in good order and condition, reasonable use and wear and damage by fire or other casualty excepted, and remove all of City's Personal Property and any Alterations City is required to remove pursuant to Section 7.1 (Alterations by City). City shall repair or pay the cost of repairing any damage to the Premises or the Building resulting from such removal. Notwithstanding anything to the contrary in this Lease, City shall not be required to demolish or remove any Leasehold Improvements from the Premises. City's obligations under this Section shall survive the expiration or earlier termination of this Lease.

21. HAZARDOUS MATERIALS

21.1 Definitions

As used in this Lease, the following terms shall have the meanings hereinafter set forth:

(a) "Environmental Laws" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Material, whether now in effect or hereafter adopted.

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended (42 U.S.C. Section 9601 *et seq.*), or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing

materials whether or not such materials are part of the structure of the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "**Release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Building, or in, on, under or about the Property.

21.2 Landlord's Representations and Covenants

Landlord represents and warrants to City that, to the best of Landlord's knowledge, the following statements are true and correct and will be true and correct as of the Commencement Date: (a) the Property is not in violation of any Environmental Laws; (b) the Property is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited quantities as are customarily used in offices, which limited use has been and is in compliance with Environmental Laws; (c) the Property does not consist of any landfill or contain any underground storage tanks; (d) the Building does not consist of any asbestos-containing materials or building materials that contain any other Hazardous Material, nor do the Premises contain any lead-based paints; (e) there has been and is no Release of any Hazardous Material in the Building or in, on, under or about the Property; and (f) the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in the Building or in, on, under or about the Property, or the migration of Hazardous Material from or to other real property. Subject to City's obligations under this Section below, Landlord shall maintain the Property throughout the Term in compliance with all Environmental Laws that could affect the health, safety and welfare of City's employees or City's use, occupancy or enjoyment of the Premises for their intended purposes.

21.3 Landlord's Environmental Indemnity

Without limiting Landlord's Indemnity in Section 16.2 (Landlord's Indemnity), above, Landlord shall Indemnify City and its Agents against any and all Claims arising during or after the Term of this Lease (a) as a result of any breach of any of Landlord's representations, warranties or covenants in the preceding Section, or (b) in connection with any presence or Release of Hazardous Material in the Building or on, under or about the Property, unless City or its Agents caused such Release.

21.4 City's Covenants

Neither City nor its Agents shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property, in violation of any Environmental Laws. Without limiting the uses which are permitted under the terms of this Lease, Landlord acknowledges that City may use the Premises for office purposes, to store vehicles and to operate a sign shop, meter repair shop and paint shop, and connection with such uses may use substances such as cleaning fluids, gasoline, diesel and other vehicle fluids, paints and solvents, including the materials listed on the attached Exhibit F, so long as such use is in compliance with all applicable Environmental Laws.

21.5 City's Environmental Indemnity

If City breaches its obligations contained in the preceding Section 21.4, or if City or its Agents cause the Release of Hazardous Material from, in, on or about the Premises or the

Property, then City shall Indemnify Landlord against any and all Claims arising during or after the Term of this Lease as a result of such Release, except to the extent Landlord or its Agents is responsible for the Release. The foregoing Indemnity shall not include any Claims resulting from the non-negligent aggravation by City, its Agents or Invitees of physical conditions of the Premises, or other parts of the Property, existing prior to City's occupancy.

22. PURCHASE OPTION

22.1 Exercise; Purchase Price

Landlord has submitted an application (the "**County Subdivision Application**") with the City's Department of Public Works ("**DPW**") for the subdivision of the Building into commercial condominiums that satisfy the provisions of California Government Code Sections 66410 *et seq.* (the "**Subdivision Map Act**"), which includes causing the Premises to be comprised of one or more separate legal parcels (the "**Subdivision Action**"). Landlord hereby certifies and warrants to City that approval from the State of California Department of Real Estate is not required to convert the Building into commercial condominiums.

Landlord shall diligently provide any additional materials and pay all fees required by DPW to process the County Subdivision Application pursuant to the City and County of San Francisco Subdivision Code. Landlord shall deliver written notice to City of DPW's approval of the County Subdivision Application within thirty (30) days of receiving such approval (the "**Approval Notice**"), together with all documents and materials to be recorded in connection with effecting the Subdivision Action, including any final map, reciprocal easement agreement and operating or management agreement that would govern the collective operation and maintenance of the Building or the Property.

If the Subdivision Action is approved by DPW during the Initial Term, City shall have the right (the "**Purchase Option**") to purchase the Premises for the Fair Market Purchase Price (as defined in Exhibit G) pursuant to the terms and conditions set forth in this Section and a form of purchase and sale agreement mutually approved by Landlord and City (the "**Purchase Agreement**"), and Landlord shall diligently submit all materials and pay all fees required by DPW to record the final map necessary to effect the Subdivision Action in the Official Records of San Francisco County (the "**Final Map**"). City shall exercise the Purchase Option, if at all, by delivering to Landlord written notice of such exercise (the "**Purchase Option Notice**") to Landlord during the thirty-six (36) month period immediately following the date the Final Map is recorded in the Official Records of San Francisco County (the "**Option Period**"). Promptly following the City's delivery of the Purchase Option Notice, the Parties shall commence to determine the Fair Market Purchase Price (as defined in Exhibit G) in accordance with the provisions of the attached Exhibit G.

22.2 Approval of Option Exercise; Execution of Purchase Agreement

If City timely delivers the Purchase Option Notice and the Parties timely determine the Fair Market Purchase Price and the form of Purchase Agreement, promptly following such determination, SFMTA shall (i) timely request approval of the Proposed Purchase (defined as follows) from the SFMTA Board of Directors and, to the extent required, the City's Board of Supervisors and Mayor, or (ii) timely provide Landlord with written notice that SFMTA is withdrawing the Purchase Option Notice because the Senior Manager of SFMTA's Real Estate Division does not believe the SFMTA Board of Directors will approve of the Fair Market Purchase Price or, if the proposed purchase of the Premises would require the approval of the City's Board of Directors and Mayor, the City's Director of Property does not believe the City's Board of Supervisors or the Mayor will approve of the Fair Market Purchase Price. The "**Proposed Purchase**" shall mean the proposed purchase of the Premises by SFMTA for the Fair Market Purchase Price and pursuant to the Purchase Agreement. Landlord acknowledges and agrees that approval of a Proposed Purchase is subject to the sole and absolute discretion of the

SFMTA Board of Directors and, if the Proposed Purchase would require approval from the City's Board of Supervisors and Mayor, of the City's Board of Supervisors and Mayor. Landlord further acknowledges and agrees that, within five (5) days following the determination of the Fair Market Purchase Price and the form of Purchase Agreement, Landlord shall deliver a duly executed, original copy of the Purchase Agreement (the "**Landlord Approval Copy**") to include in the approval package for the Proposed Purchase submitted by SFMTA to the SFMTA Board (and, to the extent applicable, the City's Board of Supervisors and Mayor).

If SFMTA receives approval of the Proposed Purchase from the SFMTA's Board of Directors and, to the extent required, the City's Board of Supervisors, then within five (5) business days following such final approval, City shall execute and deliver one original copy of the Purchase Agreement to Landlord, duly executed by City, and Landlord shall duly execute and deliver three original copies of the Purchase Agreement to SFMTA to supplement the Landlord Approval Copy. If the SFMTA Board of Directors or, to the extent required, the City's Board of Supervisors, fails to approve the Proposed Purchase on or before the Approval Deadline (as defined below), the Purchase Option Notice shall automatically be void and SFMTA shall return the Landlord Approval Copy to Landlord and City shall have no obligation to purchase the Premises from Landlord, and Landlord shall have no obligation to sell the Premises to City, pursuant to this Lease. As used herein, the "**Approval Deadline**" shall be the date which is six (6) months after the City's delivery of the Purchase Option Notice to Landlord. The Approval Deadline may be extended only by written agreement of Landlord.

22.3 Expiration of Option Exercise or Purchase Option

City's exercise of the Purchase Option shall be void and of no further force and effect if (i) City withdraws the Purchase Option Notice as provided in Section 22.2 above, (ii) the Parties fail to timely determine the Fair Market Purchase Price, (iii) the Board of Directors of SFMTA or, to the extent required, the City's Board of Supervisors, fails to approve the purchase transaction by the Approval Deadline, or (iv) the SFMTA Board of Directors or, to the extent required, the City's Board of Supervisors, fails to approve the Proposed Purchase on or before the date that is the six (6) month anniversary of City's delivery of the Purchase Option Notice to Landlord.

If a Purchase Option Notice is voided as provided above, City shall have no further right to purchase, and Landlord shall have no further obligation to sell, the Premises under this Section. City's rights under this Section shall be null, void and of no force of effect if City fails to deliver the Purchase Option Notice to Landlord prior to the expiration of the Option Period.

22.4 Due Diligence Deliveries

Within fifteen (15) days following the delivery of the Approval Notice, Seller covenants to deliver to City all of the Documents (as defined below) pertaining to the condition and operation of the Premises, to the extent such documents exist and are in the possession or control of Landlord, its property manager or its asset manager and have not been previously delivered to City prior to the Commencement Date. Landlord further agrees to promptly deliver to City any such Documents thereafter discovered, created or received by Landlord, its property manager or its asset manager (each, a "**Newly Discovered Document**") at any time before the expiration of the Option Period. If City does not timely deliver the Purchase Option Notice, City shall promptly return to Landlord the originals of all Documents previously delivered to City by or on behalf of Landlord.

"**Documents**" shall mean the following documents, all to the extent such documents exist and are in the possession or control of any of Landlord, any member of Landlord, Landlord's property manager or its asset manager: (i) structural calculations for the Buildings; (ii) site plans, digital copies of the as-built plans and specifications for the Buildings and measurement of the Building, recent inspection reports by Landlord; (iii) existing service contracts, utility

contracts, maintenance contract, employment contracts, management contracts, brokerage and leasing commission agreements with respect to the Premises, the obligations of which may continue following the closing contemplated by the Form Purchase Agreement (hereafter, the "Closing"); (iv) presently effective warranties or guaranties received by Landlord or Landlord's predecessors in interest from any contractors, subcontractors, suppliers or materialmen in connection with any construction, repair or alteration of the Premises; (v) current certificates of insurance for carriers insuring the Premises, as well as any information or reports relative to the claims history of the Premises; (vi) any environmental reports, studies, surveys, tests and assessments; (vii) any soils and geotechnical reports, including without limitation, any reports relating to the presence of asbestos or asbestos containing materials located at the Premises; and (viii) any other contracts or documents necessary for the operation of the Premises or which will be binding on the Premises after the Closing.

22.5 Inspections and Inquiries

From and after the Commencement Date and continuing through the Exercise Date (the "**Due Diligence Period**"), City shall be permitted to make such examinations, tests, analyses, investigations, surveys, inquiries and other inspections in connection with City's examination of the Premises as City deems necessary or desirable. Notwithstanding the forgoing, City shall not perform any borings, samplings, soils tests, groundwater tests or other intrusive physical environmental audit procedures on the Premises without first providing Landlord a detailed work plan describing with specificity the nature, scope, location and purpose of all of such activities to be performed on the Premises and thereafter obtaining Landlord's prior written consent to such activities, which Landlord shall not unreasonably withhold, condition or delay. City, at its sole expense, shall repair any and all damage resulting from any of the tests, studies, inspections and investigations performed by or on behalf of City that are permitted under this Section. Landlord hereby irrevocably authorizes City and its agents to make all inquiries with and applications to any regulatory authority with jurisdiction over the Premises as City may reasonably require to complete its due diligence investigations on the Premises; provided, however, that no such inquiry or application shall be made prior to the Commencement Date and no such application shall impact Landlord's ownership of or title to the Premises in the event the Closing fails to occur.

22.6 Representations and Warranties.

Landlord represents and warrants as follows: (i) Landlord has not received any written notice of pending or threatened litigation that would have a material and adverse affect on the use, operation or value of the Premises or the ability of Landlord, as seller, to perform its obligations under the Purchase Agreement, (ii) Landlord has not granted any option or right of first refusal or first opportunity to any third party to acquire any fee interest in any of the Premises which right or option is either superior to the rights granted to City in this Lease or would be in effect or enforceable following the transfer of the Premises to City at Closing, (iii) Landlord has not received any written notice from any governmental authority having jurisdiction that the Premises are in violation of any applicable law, ordinance or regulation, including, without limitation, any Environmental Laws, which remains uncured and which could reasonably have a material adverse effect on the operation of the Premises following the Closing; (iv) during the ownership of the Premises by Landlord, the Premises has not been used in any manner for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material; (v) during the ownership of the Premises by Landlord there has been no Release of any Hazardous Material in, on, or under the Premises; and (vi) the reports, studies, assessments, investigations and other materials to be made available to City for its review pursuant to Section 22.5 above, constitute all written materials in the possession, custody or control of Landlord or its property manager relating to the presence of Hazardous Materials at, on or under the Premises, and the compliance of the Premises with Environmental Laws; provided that, without limiting any other provision hereof, Landlord makes no representation or warranty as to whether City is entitled to rely on any such reports, studies, assessments,

investigations or other materials, and if City desires to rely on the same, City shall be responsible for obtaining, at its sole cost and expense, written permission from the preparer of any such item.

22.7 Purchase Option Personal.

City's Purchase Option is personal to City, and shall not be assignable to any other person under any circumstances, unless Landlord consents to the assignment of such Purchase Option in writing, which consent may be granted or withheld in Landlord's sole and absolute discretion.

23. EXPANSION OPTION

During the Term (including any Extension Term), Landlord shall not lease any part of any of the space in the Building (the "**First Offer Space**") that is or becomes available for lease without first offering the same for lease to City (the "**Right of First Offer**") on the terms and conditions set forth in this Article. For purposes hereof, space shall be deemed "available" if it is not under lease to any third-party tenant, including any tenant whose term has expired and which has no option to renew in its original lease.

At any and each time during the Term that any of the First Offer Space is or becomes available and provided City is not then in default under this Lease, Landlord shall notify City in writing (the "**First Offer Notice**") of the annual Rent (which shall not exceed the amount per square foot being charged at such time for the Premises), improvement work and other terms and conditions upon which Landlord is willing to lease the First Offer Space, or portion thereof, described in the First Offer Notice. If City, within twenty (20) days after receipt of a First Offer Notice, indicates in writing its agreement to lease the First Offer Space or portion thereof described in such First Offer Notice, then such space shall be included in the Premises and leased to City on the same terms and conditions contained in this Lease, provided that the Base Rent payable under this Lease shall be increased by the amount of rent payable in connection with the First Offer Space or portion thereof described in the First Offer Notice and such space shall be delivered in a broom clean condition. On the delivery of possession of any portion of the First Offer Space to City pursuant to this Article, the Parties shall promptly execute an amendment to this Lease stating the terms and conditions of the addition of the First Offer Space or portion thereof to the Premises. Notwithstanding the foregoing, unless City's exercise of its Right of First Offer with respect to the First Offer Space or any portion thereof is within the delegated authority level of SFMTA's Executive Director/CEO or other authorized SFMTA officer, such exercise shall be subject to approval thereof by the SFMTA Board of Directors, the City's Board of Supervisors and the City's Mayor, each acting in their respective sole discretion, within forty (40) days after such exercise.

If City does not deliver written notice of its agreement to lease the First Offer Space or portion thereof described in a First Offer Notice within thirty (30) days after City's receipt thereof, Landlord thereafter shall have the right to lease the First Offer Space or portion thereof described in such notice to any third party at the same or higher rent as the Base Rent (adjusted to reflect the square footage of such First Offer Space or portion thereof) and on the other terms stated in this Lease or on other terms more favorable to Landlord than stated in such notice. If Landlord leases the First Offer Space or portion thereof to a third party and such space subsequently becomes available during the Term, the provisions of this Section shall apply to any determination by Landlord to release such space. Landlord shall not grant a right of first refusal to any party on any of the First Offer Space.

24. GENERAL PROVISIONS

24.1 Notices

Except as otherwise specifically provided in this Lease, any notice given under this Lease shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, to: **(a)** City at Tenant's address set forth in the Basic Lease Information; or **(b)** Landlord at Landlord's address set forth in the Basic Lease Information; or **(c)** such other address as either Landlord or City may designate as its new address for such purpose by notice given to the other in accordance with this Section. Any notice hereunder shall be deemed to have been given and received two (2) days after the date

when it is mailed if sent by first-class, certified mail, one day after the date when it is mailed if sent by Express Mail, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile.

24.2 No Implied Waiver

No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. No acceptance of full or partial Rent by Landlord while City is in default hereunder shall constitute a waiver of such default by Landlord. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Landlord or City given in one instance under the terms of this Lease shall not relieve the other party of any obligation to secure the consent to any other or future instance under the terms of the Lease.

24.3 Amendments

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, the Director of Property, or his or her designee, shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter of the City and County of San Francisco. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Landlord, and City's agreement may be made upon the sole approval of the Executive Director/CEO of the SFMTA, or his or her designee; provided, however, material amendments or modifications to this Lease **(a)** changing the legal description of the Premises, **(b)** increasing the Term, **(c)** increasing the Rent, **(d)** changing the general use of the Premises from the use authorized under Section 5.1 of this Lease, and **(e)** any other amendment or modification which materially increases City's liabilities or financial obligations under this Lease shall additionally require the approval of the Board of Directors of SFMTA.

24.4 Authority

Landlord represents and warrants to City that the execution and delivery of this Lease by Landlord has been duly authorized and does not violate any provision of any agreement, law or regulation to which Landlord or the Property is subject.

24.5 Parties and Their Agents; Approvals

If applicable, the word "Landlord" as used in this Lease shall include the plural as well as the singular. As used in this Lease, the term "Agents" when used with respect to either party shall include the agents, employees, officers and contractors of such party, and the term "Invitees" when used with respect to City shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of City. All approvals, consents or other determinations permitted or required by City under this Lease, including but not limited to the exercise of any option granted to City, shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject to any applicable limitations in the City's Charter.

24.6 Interpretation of Lease

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intent and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Except as otherwise specifically provided herein, wherever in this Lease Landlord or City is required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval of consent shall be stated in reasonable detail in writing. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

24.7 Successors and Assigns

Subject to the provisions of Section 14 relating to assignment and subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and City and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Lease.

24.8 Brokers

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the transactions contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

24.9 Severability

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law.

24.10 Governing Law

This Lease shall be construed and enforced in accordance with the laws of the State of California and the City's Charter.

24.11 Entire Agreement

The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever

(including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease.

24.12 Attorneys' Fees

In the event that either Landlord or City fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

24.13 Holding Over

Should City hold over in possession of the Premises after the expiration of the Term with Landlord's consent, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a month-to-month tenancy. Such tenancy shall be on all the terms and conditions set forth in this Lease and at one hundred ten percent (110%) of the monthly Base Rent in effect during the last month of the Term of this Lease or such other rental as Landlord and City may mutually agree in writing as a condition to Landlord's consent to such holding over, and City shall continue as a month-to-month tenant until the tenancy shall be terminated by Landlord giving City or City giving Landlord at least thirty (30) days' prior written notice of termination. Should City hold over without Landlord's consent, the rent payable by City during the period of such holding over shall be one hundred twenty-five percent (125%) of the monthly Base Rent in effect during the last month of the Term of this Lease, and such tenancy shall otherwise be on the terms and conditions contained herein.

24.14 Cumulative Remedies

All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

24.15 Time of Essence

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

24.16 Survival of Indemnities

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation

arises at the time such claim is tendered to the indemnitor by the indemnitee and continues at all times thereafter.

24.17 Signs

City may erect or post signs on or about the Premises subject to Landlord's prior approval. Landlord reserves the right to review the placement, design, and plan for any such sign prior to its erection or posting and agrees that the approval thereof shall not be unreasonably withheld or delayed.

24.18 Quiet Enjoyment and Title

Landlord covenants and represents that it has full right, power and authority to grant the leasehold estate hereunder, and covenants that City, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term of this Lease as against all persons or entities claiming by and through Landlord or on account of any action, inaction or agreement of Landlord or its Agents. Without limiting the provisions of Section 16.2 (Landlord's Indemnity), Landlord agrees to Indemnify City and its Agents against Claims arising out of any assertion that would interfere with City's right to quiet enjoyment as provided in this Section.

24.19 Bankruptcy

Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. Landlord and City agree that City's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services, facilities and amenities of the Premises and the Building as provided herein, and that if any of such services, facilities or amenities are terminated, or materially limited or restricted on account of any such case or proceeding, or for any other reason, City shall have the right to (a) contract directly with any third-party provider of such services, facilities or amenities to obtain the same, and (b) offset against the Base Rent or other charges payable hereunder any and all reasonable costs and expenses incurred by City in obtaining such services, facilities or amenities.

24.20 Transfer of Landlord's Interest

Landlord shall have the right to transfer its interest in the Property, the Building or this Lease to any other financially responsible person or entity. In the event of any such transfer, Landlord shall be relieved, upon notice to City of the name and address of Landlord's successor, of any obligations accruing hereunder from and after the date of such transfer and upon delivering to City an express assumption by the transferee of all of Landlord's obligations hereunder.

24.21 Non-Liability of City Officials, Employees and Agents

Notwithstanding anything to the contrary in this Lease, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Landlord, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Landlord, its successors and assigns, or for any obligation of City under this Lease.

24.22 MacBride Principles – Northern Ireland

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1 *et seq.*

The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Landlord acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

24.23 Controller's Certification of Funds

The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by City under this Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Lease commences, sufficient funds for the payment of Rent and any other payments required under this Lease are not appropriated, then City may terminate this Lease, without penalty, liability or expense of any kind to City, as of the last date on which sufficient funds are appropriated. City shall use its reasonable efforts to give Landlord reasonable advance notice of such termination.

24.24 Prevailing Wages for Construction Work

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

24.25 Non Discrimination in City Contracts and Benefits Ordinance

(a) Covenant Not to Discriminate

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

(b) Subcontracts

Landlord shall include in all subcontracts relating to the Premises a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Landlord 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. Landlord's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) Non-Discrimination in Benefits

Landlord does not as of the date of this Lease and will not during the term of this Lease, in any of its operations in San Francisco, on real property owned by City, 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) HRC Form

As a condition to this Lease, Landlord 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 (the "HRC"). Landlord hereby represents that prior to execution of the Lease: **(a)** Landlord executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and **(b)** the HRC approved such form.

(e) Incorporation of Administrative Code Provisions by Reference

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

24.26 Tropical Hardwood and Virgin Redwood Ban

(a) Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, neither Landlord nor any of its contractors shall provide any items to City in the construction of any leasehold improvements or otherwise in the performance of this Lease which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

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

(c) In the event Landlord fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Landlord shall be liable for liquidated damages for each violation in an amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Landlord from any contract with the City and County of San Francisco.

24.27 Bicycle Storage Facilities

Article 1.5, Section 155.1, of the San Francisco Planning Code (the "**Planning Code**") requires the provision of bicycle storage at City-leased buildings at no cost to Landlord and if

funds are available. In the event public and/or private donations, grants or other funds become available, at any time during the Term of this Lease including any extension thereof, City may, by giving a 60-day advanced written notice to Landlord, install compliant bicycle storage in the Building garage or City may install bicycle racks in other location(s) in front of the Building, which are required to meet the Class 1 and/or Class 2 requirements of the Planning Code. Landlord, at no cost to Landlord, shall reasonably cooperate with City regarding the location of such spaces in furtherance of the implementation of such requirements of the Planning Code.

24.28 Resource-Efficient City Buildings and Pilot Projects

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Landlord hereby agrees that it shall comply with all applicable provisions of such code sections.

24.29 Counterparts

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

24.30 Effective Date

The date on which this Lease shall become effective (the "Effective Date") is the date upon which (a) SFMTA's Board of Directors, in its sole and absolute discretion, adopts a resolution approving this Lease in accordance with all applicable laws, and (b) this Lease is duly executed by each of the Parties.

24.31 Certification by Landlord

By executing this Lease, Landlord certifies that neither Landlord nor any of its officers or members have been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Landlord or any of its officers or members have been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, disbarment, discipline or prohibition may result in the termination or suspension of this Lease. Landlord acknowledges that this certification is a material term of this Lease.

24.32 Memorandum of Lease

On the Effective Date, Landlord and City shall execute the memorandum of lease in the form attached hereto as Exhibit H (the "**Memorandum of Lease**"), and City shall cause the Memorandum of Lease to be recorded in the Official Records of the City and County of San Francisco within two (2) business days thereafter. Upon termination of the Purchase Option, City shall execute in recordable form such documents as reasonably requested by Landlord to establish that the Property is no longer subject to the option.

24.33 Sunshine Ordinance

In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between City and persons or firms seeking contracts will 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, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

24.34 Conflicts of Interest

Through its execution of this Lease, Landlord acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 *et seq.* and Section 1090 *et seq.* of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provisions, and agrees that if Landlord becomes aware of any such fact during the Term of this Lease, Landlord shall immediately notify City.

24.35 Notification of Limitations on Contributions

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Landlord acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Landlord further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Landlord's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Landlord; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Landlord. Additionally, Landlord acknowledges that Landlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Landlord further agrees to provide to City the names of each person, entity or committee described above.

24.36 Preservative-Treated Wood Containing Arsenic

Landlord may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code, Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment 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, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Landlord may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Landlord 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.

24.37 Cooperative Drafting

This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL THE BOARD OF DIRECTORS OF CITY'S SFMTA SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS THE BOARD OF DIRECTORS OF CITY'S SFMTA APPROVES THIS LEASE, IN ITS SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Landlord and City have executed this Lease as of the date first written above.

LANDLORD: YOSEMITE INVESTMENT LLC,
a California limited liability company

By: _____
Its: _____

By: _____
Its: _____

DLAI INVESTMENT LLC, a California limited liability company

By: _____
Its: _____

By: _____
Its: _____

CITY: CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation, acting by and through its Municipal Transportation Agency

By: _____
NATHANIEL P. FORD SR.
Executive Director/CEO
San Francisco Municipal Transportation Agency

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No: _____
Adopted: _____
Attest:
Secretary, SFMTA Board of Director

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

By: _____
Carol Wong, Deputy City Attorney

EXHIBIT A

LEGAL DESCRIPTION OF REAL PROPERTY

THAT CERTAIN REAL PROPERTY SITUATION IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEGINNING AT THE INTERSECTION OF THE SOUTHWESTERLY LINE OF WALLACE AVENUE WITH THE SOUTHEASTERLY LINE OF KEITH STREET; THENCE FROM SAID POINT OF BEGINNING, SOUTHEASTERLY ALONG SAID LINE OF WALLACE AVENUE, 525 FEET; THENCE AT RIGHT ANGLES, SOUTHWESTERLY 200 FEET TO THE NORTHEASTERLY LINE OF YOSEMITE AVENUE; THENCE AT RIGHT ANGLES, NORTHWESTERLY ALONG THE LAST-MENTIONED LINE, 75 FEET; THENCE AT RIGHT ANGLES, NORTHEASTERLY 100 FEET; THENCE AT RIGHT ANGLES, NORTHWESTERLY 225 FEET; THENCE AT RIGHT ANGLES, SOUTHWESTERLY 100 FEET TO THE AFOREMENTIONED LINE OF YOSEMITE AVENUE; THENCE AT RIGHT ANGLES, NORTHWESTERLY ALONG THE LAST-MENTIONED LINE, 225 FEET TO THE SOUTHEASTERLY LINE OF KEITH STREET; THENCE AT RIGHT ANGLES, NORTHEASTERLY ALONG THE LAST-MENTIONED LINE, 200 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF BLOCK 456, SOUTH SAN FRANCISCO HOMESTEAD AND RAILROAD ASSOCIATION, AND PORTION OF LOT 456, BAY VIEW HOMESTEAD ASSOCIATION.

PARCEL TWO:

COMMENCING AT A POINT ON THE NORTHEASTERLY LINE OF YOSEMITE AVENUE, DISTANT THEREON 150 FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF JENNINGS STREET; RUNNING THENCE NORTHWESTERLY AND ALONG SAID LINE OF YOSEMITE AVENUE, 225 FEET; THENCE AT A RIGHT ANGLE, NORTHEASTERLY 100 FEET; THENCE AT A RIGHT ANGLE, SOUTHEASTERLY 225 FEET; THENCE AT A RIGHT ANGLE, SOUTHWESTERLY 100 FEET TO THE POINT OF COMMENCEMENT.
BEING LOTS 5, 6 AND 7 IN BLOCK NO. 456, BAY VIEW HOMESTEAD ASSOCIATION.

PARCEL THREE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF JENNINGS STREET AND THE NORTHEASTERLY LINE OF YOSEMITE AVENUE; RUNNING THENCE NORTHWESTERLY ALONG SAID LINE OF YOSEMITE AVENUE, 75 FEET; THENCE AT A RIGHT ANGLE, NORTHEASTERLY 200 FEET TO THE SOUTHWESTERLY LINE OF WALLACE AVENUE; THENCE AT A RIGHT ANGLE, SOUTHEASTERLY ALONG SAID LINE OF WALLACE AVENUE, 75 FEET TO THE NORTHWESTERLY LINE OF JENNINGS STREET; THENCE AT A RIGHT ANGLE, SOUTHWESTERLY ALONG SAID LINE OF JENNINGS STREET, 200 FEET TO THE POINT OF BEGINNING.

BEING LOTS 1 AND 9, IN BLOCK NO. 456, BAY VIEW HOMESTEAD ASSOCIATION.

APN: Lot 15 and 1, Block 4830

Commonly known as 1590 Yosemite Avenue, San Francisco, California 94124.

EXHIBIT B

DEPICTION OF PREMISES AND BUILDING

[See attached]

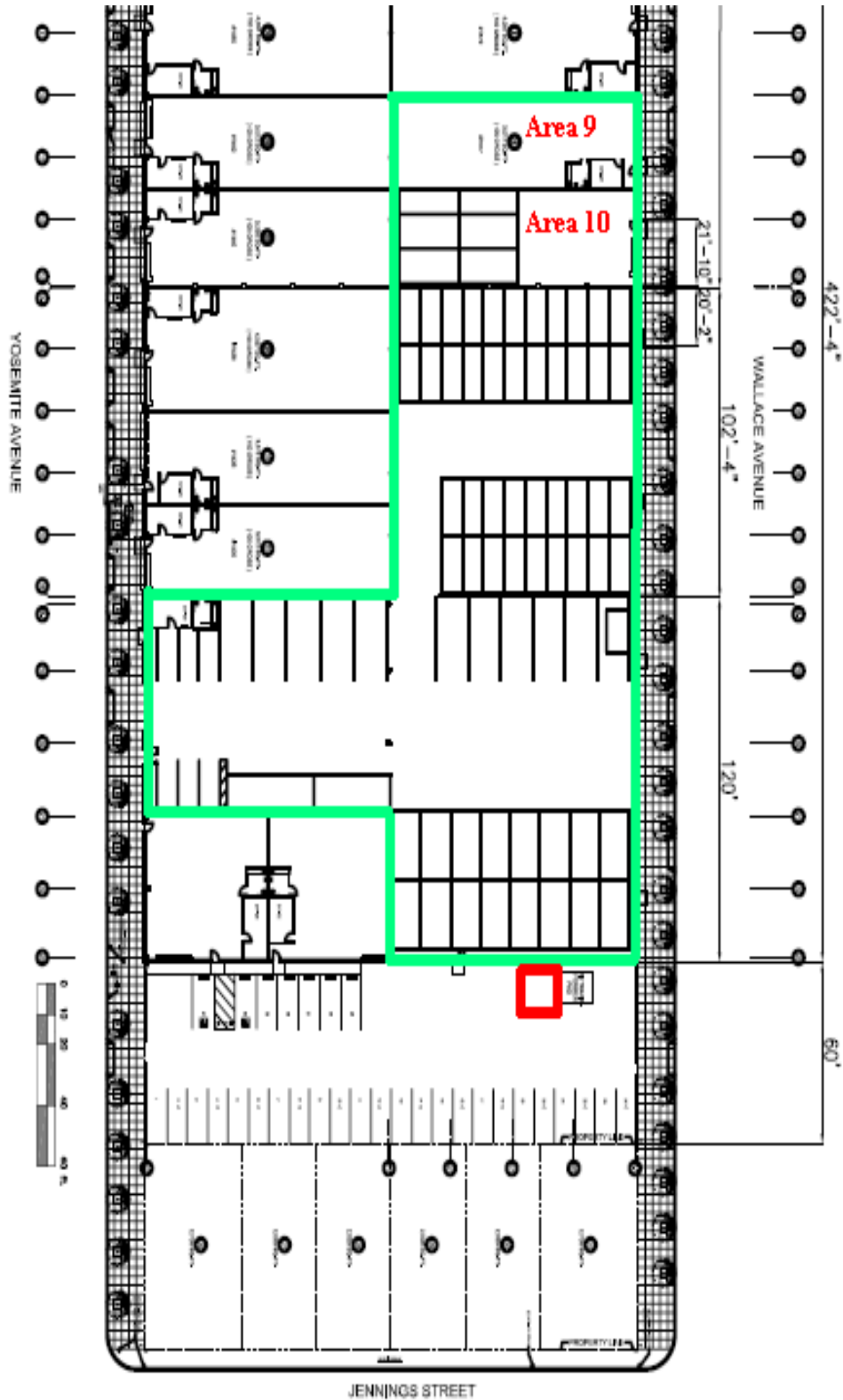


EXHIBIT C

NOTICE OF COMMENCEMENT DATE

[Date]

Mr. Nathaniel P. Ford Sr.
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

RE: Acknowledgement of Commencement Date
Lease for Units _____, 1590 Yosemite Avenue
San Francisco, California

Dear Mr. Ford:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is _____, 2011.

Please acknowledge your acceptance of this letter by signing and returning a copy of this letter.

Very truly yours,

By: _____
Title: _____

Accepted and Agreed:

By: _____
Nathaniel P. Ford Sr.
Executive Director/CEO
San Francisco Municipal Transportation Agency

Dated: _____

EXHIBIT D

JANITORIAL SERVICES
1590 Yosemite Avenue, San Francisco, California

I. SPECIFICATION OF SERVICES TO BE PERFORMED - SCOPE OF WORK

- A. Landlord shall furnish all labor, materials and equipment required to perform exterior and interior janitorial service five days a week, Monday through Friday, excluding holidays, at the above location in accordance with these specifications:
- B. All windows and glass broken by any employee or contractor performing Landlord's janitorial service obligations ("Landlord's Contractor") will be replaced at Landlord's expense.
- C. Landlord's Contractor must, at all times, maintain adequate staffing that meets these specifications. All employees must wear identification (see Section II below). Tenant may request Landlord to remove Landlord's Contractor from the Premises at any time it desires and for any reason whatsoever, and an immediate replacement will be provided. All written notices are to be submitted to:

City and County of San Francisco
Municipal Transportation Agency
Finance – Real Estate Section
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Attn.: Real Estate Manager

- D. All services must be performed during regular business hours.
- E. All employees of Landlord's Contractor shall be fully trained and experienced in the custodial service trade.
- F. No janitorial supplies or equipment will be stored in the Premises without the prior approval of Tenant.
- G. Tenant's Recycling Program includes recycling materials from offices in the Building. Bins for recyclable materials can be obtained from Tenant.
- H. Landlord's Contractor will provide a schedule for all periodic services specified herein on or before the Commencement Date.
- I. Janitorial Service Specifications for Offices and Common Areas.
 - 1. Daily Services
 - a. Vacuum all carpets in offices.
 - b. Dust mop all resilient and composition floors with treated dust mops. Damp mop to remove spills and water stains as required.
 - c. Spot clean any stains on carpet.
 - d. Dust all desks and office furniture with treated dust cloths.
 - e. Papers and folders on desks are not to be moved.
 - f. Sanitize all telephone receivers.
 - g. Empty trash containers and remove all trash from occupied spaces. Recycling and composing bins must be properly emptied as per city requirements.

- h. Remove fingerprints, dirt smudges, graffiti, etc., from all doors, frames, glass partitions, windows, light switches, and walls when needed.
 - i. Return chairs and waste baskets to proper positions.
 - j. Clean, sanitize and polish drinking fountains.
 - k. Dust and remove debris from all metal door thresholds.
 - l. Service all walk-off mats as required.
 - m. Check for burned out lights and replace from building stock (supplied by Landlord).
- 2. Monthly Services
 - a. Dust all high reach areas including, but not limited to, tops of door, frames, structural and furniture ledges, air conditioning diffusers and return grilles, tops of partitions, picture frames, etc.
 - b. Vacuum upholstered furniture.
- 3. Annual Services
 - a. Shampoo carpets in offices (schedule to be approved in advance), using products and methods recommended by manufacturer and/or carpet installation contractor.

J. Rest Room Service Specifications

- 1. Daily Service
 - a. Re-stock all rest rooms with supplies from the Landlord's stock, including paper towels, toilet tissue, seat covers and hand soap, as required.
 - b. Re-stock all sanitary napkin and tampon dispensers from Landlord's Contractor's stock, as required.
 - c. Wash and polish all mirrors, dispensers, faucets, flushometers and brightwork with non-scratch disinfectant cleaner. Wipe dry all sinks.
 - d. Wash and sanitize all toilets, toilet seats, urinals and sinks with non-scratch disinfectant cleaner.
 - e. Remove stains, scale toilets, urinals and sinks, as required.
 - f. Mop all rest room floors with disinfectant, germicidal solution, include scrubbing of all base, inside corners and hard to reach areas.
 - g. Empty and sanitize all waste and sanitary napkin and tampon receptacles.
 - h. Remove all rest room trash.
 - i. Spot clean fingerprints, marks and graffiti from walls, partitions, glass, aluminum and light switches as required.
 - j. Check for burned out lights and replace from building stock (supplied by Landlord).
 - k. Ventilate rest rooms.
- 2. Weekly Services
 - a. Dust all low reach and high reach areas, including but not limited to, structural ledges, mirror tops, partition tops and edges, air conditioning diffusers and return air grilles.
- 3. Monthly Services
 - a. Wipe down all walls and metal partitions. Partitions shall be left clean and not streaked after this work.

- b. Clean all ventilation grilles.
- c. Dust all doors and door jambs.

K. Exterior Structure and Grounds Services Specifications

- 1. Daily Service
 - a. Clean sidewalk, steps and landscaped area, walks and benches; including gum removal.
- 2. Annual Services
 - a. Steam clean exterior sidewalk and walk way areas if needed.

II. IDENTIFICATIONS

All janitorial service personnel must wear sufficient identification whenever on duty to identify the personnel as Landlord's Contractor.

III. EMPLOYEE SAFETY

Landlord's Contractor shall accept responsibility for determining that all necessary safeguards for protection of Landlord's Contractor's employees are available, or will be furnished. All work performed must conform to CAL-OSHA standards.

IV. SUPPLIES

Landlord or Landlord's Contractor shall supply floor wax, wax stripper, and other expendable supplies required for daily cleaning and maintenance, as well as janitorial supplies such as hand soap, paper hand towels, paper toilet tissue, paper seat covers and deodorants. Furthermore, Landlord or Landlord's Contractor shall supply all equipment including, but not limited to, ladders, vacuum cleaners, extractors, floor machines, mops and buckets.

V. APPROVAL OF PRODUCTS

Tenant shall have the right to prohibit the use of any product proposed or being used by Landlord's Contractor should the Tenant deem the product to be unsafe or harmful to those items being cleaned or to Tenant's staff. In this regard, Landlord must provide upon request a complete list of products to be used in the course of the Lease, together with Material Safety Data Sheets for each cleaning chemical.

VI. DISPOSITION OF REFUSE

All trash and refuse collected by the custodians shall be deposited in a debris box as designated by the Landlord. (Landlord will pay for debris box service).

VII. MAINTENANCE PROBLEMS

Employees of Landlord's Contractor shall note maintenance problems (such as broken glass, light bulbs missing or burned out, inoperative fixtures, etc.) and report them to Landlord. Any problem which prevents performance must be noted in the log (see Section VIII below) before the end of the shift. Landlord's Contractor shall not claim, and Tenant will not entertain, any claim that such problems prevented Landlord's Contractor performance if said claim is not entered in the log.

VIII. JANITORIAL LOG

Landlord's Contractor shall provide, and Tenant shall keep, a janitorial log on which deficiencies in performance, special problems or instructions shall be noted. Landlord's Contractor shall check the log daily, as arranged with Tenant, and correct any deficiencies in service within twenty-four (24) hours of the log entry. Landlord's Contractor shall initial and date each entry when deficiency has been corrected.

IX. EMERGENCY CONTACT

Landlord's Contractor shall provide Tenant with an emergency telephone number where Landlord's Contractor may be reached at any time during normal business hours (Monday - Friday, 8:00 a.m. - 5:00 p.m.). Landlord's Contractor must respond to emergency calls relating to deficiency of service by correcting said deficiency within two hours of receipt of the call.

X. PERFORMANCE

Landlord and Landlord's Contractor shall guarantee that workmanship required for the performance of this Contract shall be in accordance with the highest level of workmanship and accomplished according to the highest professional standards. The determination as to the adequacy of performance shall be made by Tenant or the Executive Director/CEO of SFMTA. Landlord's Contractor or its agent must be available at reasonable intervals during regular business hours as requested by Tenant, to participate in inspection walk throughs. Landlord's Contractor will supervise all of its employees or contractors in the Premises during all shifts.

XI. VERIFICATION OF SERVICE

Tenant may provide, install, or establish a system of sign off slips, service receipts, or room service sign off cards. Landlord's Contractor shall faithfully comply with same by initialing, dating, and indicating time at which service was completed. It is agreed that no such service has been completed unless signed off by Landlord's Contractor and countersigned by Tenant if said system so requires.

XII. HOLIDAY SCHEDULE FOR TENANT

New Year's Day
Martin Luther King Day
President's Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veteran's Day
Thanksgiving Day
Friday after Thanksgiving Day
Christmas Day

EXHIBIT E

FORM OF SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT

RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:

City and County of San Francisco
Real Estate Division
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property

**SUBORDINATION, NON-DISTURBANCE,
ATTORNMENMENT AND ESTOPPEL AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE, ATTORNMENMENT AND ESTOPPEL AGREEMENT (this "Agreement") is entered into as of _____, 2011, by and between CITY AND COUNTY OF SAN FRANCISCO ("City" or "Lessee"), _____ ("Bank"), and YOSEMITE INVESTMENT, LLC and DLAI INVESTMENT, LLC (referred to together herein as "Borrower" and "Lessor"), as follows.

RECITALS

A. Bank extended credit to Borrower secured, in whole or in part, by a deed of trust, dated _____ and recorded in the Official Records of San Francisco County as Instrument No. _____ on _____ (the "Deed of Trust"), which encumbers that certain real property commonly known as 1590 Yosemite Avenue, San Francisco, California, and further described on the attached Exhibit A (the "Property").

B. Lessor and Lessee are entering into a lease dated on or about the date hereof for premises ("Premises") comprised of eight units at the Property (Unit Nos. 1530, 1533, 1536, 1553, 1555, 1569, 1571, 1577) for an initial five (5) year term, with a three (3) year extension option, an eighteen (18) month extension option, and an option to purchase (the "Lease").

C. Bank has approved the form of the Lease, and a memorandum of the Lease will be recorded in the Official Records of San Francisco County contemporaneously with the recordation of this Agreement.

D. It is a condition precedent to Lessee's entering into the Lease that Bank agree not to disturb Lessee's possessory rights and rights to purchase the Premises pursuant to the Lease if Bank exercises its rights under the Deed of Trust.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **SUBORDINATION.**

(a) **Subordination of Lease.** Subject to the terms of this Agreement, the Deed of Trust and any and all extensions, renewals, modifications or replacements thereof shall be and at all times remain a lien or charge on the Property prior and superior to the Lease. Subject to the terms of this Agreement, Lessee intentionally and unconditionally waives, relinquishes and subordinates the priority and superiority of the Lease and Lessee's right and interest to the

Property thereunder to the lien or charge of the Deed of Trust, and any and all extensions, renewals, modifications or replacements thereof.

(b) Reliance. Bank acknowledges that Lessee is entering into the Lease in material reliance on this Agreement.

(c) Entire Subordination Agreement. This Agreement constitutes the whole and only agreement between the parties hereto with regard to the subordination of the Lease to the lien or charge of the Deed of Trust; there are no agreements (written or oral) outside or separate from this Agreement other than the Lease with respect to the subject matter hereof; and all prior negotiations with respect thereto, if any, are merged into this Agreement. This Agreement shall supersede and cancel, but only insofar as would affect the priority between the Deed of Trust and the Lease, any prior agreements as to such subordination, including without limitation those provisions, if any, contained in the Lease which provide for the subordination thereof to the lien of a deed of trust or mortgage affecting all or any portion of the Property.

2. PURCHASE OPTION. Bank understands and agrees that the Lease includes a purchase option for the Premises and for the benefit of Lessee. If Bank (or any successor) acquires title to the Property through foreclosure under the Deed of Trust or otherwise prior to Lessee's exercise of the purchase option or Lessor's conveyance of the Premises to Tenant following such exercise, then Bank shall recognize the Lease, including Lessee's purchase option, and shall comply with Lessor's obligations to convey the Premises to Lessee upon Lessee's exercise of the purchase option and Lessee's completion of its obligations under the purchase agreement for the Premises negotiated by Lessee and Lessor pursuant to the Lease.

3. ATTORNMENT. If Bank or any other transferee acquires Lessor's right, title and interest in and to the Property pursuant to a judicial or non-judicial foreclosure of the Deed of Trust or a deed in lieu thereof or in any other manner whereby Bank or such transferee succeeds to the interest of Lessor under the Lease, Lessee agrees as follows for the benefit of Bank or such transferee:

(a) Payment of Rent. Lessee shall pay to Bank or such transferee all rental payments required to be made by Lessee pursuant to the terms of the Lease for the remaining term thereof.

(b) Continuation of Performance. Lessee shall be bound to Bank or such transferee for the remaining term thereof in accordance with all of the terms of the Lease, and Lessee hereby attorns to Bank or such transferee as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Bank or such transferee succeeding to Lessor's interest in the Lease and giving written notice thereof to Lessee.

(c) Limit on Offset. Neither Bank nor such transferee shall be subject to any offsets or defenses which Lessee may have by reason of any act or omission of Lessor as the prior lessor under the Lease (except to the extent that (A) such offset or defense is expressly provided for in the Lease, (B) Bank has been notified in writing of the situation giving rise to such offset or defense, and (C) Bank has failed to remedy such default of conditions within the same period of time given Lessor under the Lease), nor for the return of any sums which Lessee may have paid to Lessor as the prior lessor under the Lease as security deposits, advance rentals paid more than one month in advance, or otherwise, except to the extent that such sums are actually delivered by Lessor to Bank or such transferee. Under no circumstance shall Bank or its transferee have liability to Lessee exceeding any offset to the payment of rent by reason of any act of omission of Lessor as the prior lessor under the Lease. The foregoing shall not relieve Bank or such transferee of the obligation to cure any conditions of the Property the existence of which constitute a lessor default under the Lease and which continue at the time of succession or acquisition by Bank or such transferee, or deprive Lessee of the right to terminate the Lease for a

breach of a lessor covenant which is not cured as provided for herein or in the Lease and as a result of which there is a material interference with Lessee's permitted use and occupation of the Premises.

(d) Subsequent Transfer. If Bank or such transferee, by succeeding to Lessor's interest under the Lease, becomes obligated to perform the covenants of a lessor thereunder, then, upon any further transfer by Bank or such transferee of its interest as a lessor under the Lease, all of such obligations shall terminate as to Bank or such transferee, provided that further transferee assumes all such obligations.

4. NON-DISTURBANCE. In the event of a foreclosure of the Deed of Trust, or a transfer of the Property in lieu thereof or in any other manner whereby Bank or such transferee succeeds to the interest of Lessor under the Lease, so long as there shall then exist no breach, default or event of default by Lessee under the Lease beyond any applicable notice, grace and cure period, (a) the leasehold interest of Lessee shall not be extinguished or terminated by reason of such foreclosure, (b) the Lease shall continue in full force and effect, and (c) Bank and its successors-in-interest shall recognize and accept Lessee as the tenant under the Lease, subject to the terms and conditions of the Lease as modified by this Agreement.

5. ESTOPPEL. From time to time during the term of the lien of the Deed of Trust, within thirty (30) days after written request from Bank, City shall execute and deliver to Bank a certificate stating: (a) the commencement date and expiration date of the Lease, (b) that the Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that to its knowledge, there are no defaults under the Lease (or if so, specifying the same), (d) the date to which rent has been paid, and (e) any other information that may be reasonably required. From time to time during the term of the lien of the Deed of Trust, within thirty (30) days after written request from City, Bank shall execute and deliver to City a certificate stating that to its knowledge there are no defaults under the Deed of Trust or the loan documents secured thereby.

6. INSURANCE AND CONDEMNATION PROCEEDS. Anything in this Agreement or the Deed of Trust to the contrary notwithstanding, Bank agrees that it shall permit any insurance or condemnation proceeds to be used for the purpose of reconstructing the improvements located on the Property, unless Bank, under a standard of good faith and fair dealing, believes its security is impaired by the casualty or condemnation giving rise to such proceeds and, in the case of an insurance award, the insurance proceeds (together with a commercially reasonable deductible) are insufficient to reconstruct the improvements and building to at least the same condition prior to the casualty resulting in the claim for which the insurance proceeds are paid.

7. MISCELLANEOUS.

(a) Remedies Cumulative. All remedies provided herein are cumulative, not exclusive, and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Bank and Borrower, Lessor or any other person or entity.

(b) Costs, Expenses and Attorneys' Fees. If any party hereto institutes any judicial or administrative action or proceeding to enforce any rights or obligations under this Agreement, or seeking damages or any other judicial or administrative remedy, the prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of the prevailing party's in-house counsel), whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Bank or any other person) relating to Borrower, Lessee or any other person or entity. For purposes of this Agreement, fees allocated for attorneys of the City's Office of the City

Attorney or in-house attorneys of the Bank shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the attorney's services were rendered who practice law in the City of San Francisco in law firms with approximately the same number of attorneys as employed by, respectively, the Office of the City Attorney or the Bank's in-house legal department.

(c) Notices. All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to each party at the address set forth below its signature, or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid. For the convenience of the parties, copies of notices may also be given by telefacsimile to the telefacsimile number, if any, provided from time to time; however, no party may give official or binding notice by telefacsimile.

Notices to Lessee shall be delivered to:

San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Attn: Real Estate Section
Re: 1590 Yosemite

with a copy to:

City and County of San Francisco
Real Estate Department
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

and a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102
Attn: Real Estate/Finance Team

Notices to the Bank shall be delivered to:

(d) Further Assurances. At the request of any party hereto, each other party shall execute, acknowledge and deliver such other documents and/or instruments as may be reasonably required by the requesting party in order to carry out the purpose of this Agreement, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein, and provided further that any document to be signed by the City must be approved as to form by the San Francisco City Attorney and must not violate the City's Charter or Administrative Code.

(e) Borrower; Lessor. If Borrower and Lessor are the same, each reference in this Agreement to Borrower or Lessor shall be deemed a reference to said person or entity in its respective capacity.

(f) Successors, Assigns; Governing Law. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, legal representatives, successors, assigns and other transferees of the parties hereto, and shall be governed by and construed in accordance with the laws of the State of California.

(g) Conflicts. In the event of any inconsistency between the terms of this Agreement and the Lease, the terms of this Agreement shall control.

(h) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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

BANK: _____

BORROWER/LESSOR: YOSEMITE INVESTMENT LLC, a California limited liability company

By: _____
Its: _____

By: _____
Its: _____

DLAI INVESTMENT LLC, a California limited liability company

By: _____
Its: _____

By: _____
Its: _____

LESSEE: CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Municipal Transportation Agency

By: _____
NATHANIEL P. FORD SR.
Executive Director/CEO
San Francisco Municipal Transportation Agency

San Francisco Municipal Transportation Agency
Board of Directors

Resolution No: _____
Adopted: _____
Attest:
Secretary, SFMTA Board of Directors

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

By: _____
Carol Wong, Deputy City Attorney

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A

DESCRIPTION OF PROPERTY

THAT CERTAIN REAL PROPERTY SITUATION IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEGINNING AT THE INTERSECTION OF THE SOUTHWESTERLY LINE OF WALLACE AVENUE WITH THE SOUTHEASTERLY LINE OF KEITH STREET; THENCE FROM SAID POINT OF BEGINNING, SOUTHEASTERLY ALONG SAID LINE OF WALLACE AVENUE, 525 FEET; THENCE AT RIGHT ANGLES, SOUTHWESTERLY 200 FEET TO THE NORTHEASTERLY LINE OF YOSEMITE AVENUE; THENCE AT RIGHT ANGLES, NORTHWESTERLY ALONG THE LAST-MENTIONED LINE, 75 FEET; THENCE AT RIGHT ANGLES, NORTHEASTERLY 100 FEET; THENCE AT RIGHT ANGLES, NORTHWESTERLY 225 FEET; THENCE AT RIGHT ANGLES, SOUTHWESTERLY 100 FEET TO THE AFOREMENTIONED LINE OF YOSEMITE AVENUE; THENCE AT RIGHT ANGLES, NORTHWESTERLY ALONG THE LAST-MENTIONED LINE, 225 FEET TO THE SOUTHEASTERLY LINE OF KEITH STREET; THENCE AT RIGHT ANGLES, NORTHEASTERLY ALONG THE LAST-MENTIONED LINE, 200 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF BLOCK 456, SOUTH SAN FRANCISCO HOMESTEAD AND RAILROAD ASSOCIATION, AND PORTION OF LOT 456, BAY VIEW HOMESTEAD ASSOCIATION.

PARCEL TWO:

COMMENCING AT A POINT ON THE NORTHEASTERLY LINE OF YOSEMITE AVENUE, DISTANT THEREON 150 FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF JENNINGS STREET; RUNNING THENCE NORTHWESTERLY AND ALONG SAID LINE OF YOSEMITE AVENUE, 225 FEET; THENCE AT A RIGHT ANGLE, NORTHEASTERLY 100 FEET; THENCE AT A RIGHT ANGLE, SOUTHEASTERLY 225 FEET; THENCE AT A RIGHT ANGLE, SOUTHWESTERLY 100 FEET TO THE POINT OF COMMENCEMENT.
BEING LOTS 5, 6 AND 7 IN BLOCK NO. 456, BAY VIEW HOMESTEAD ASSOCIATION.

PARCEL THREE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF JENNINGS STREET AND THE NORTHEASTERLY LINE OF YOSEMITE AVENUE; RUNNING THENCE NORTHWESTERLY ALONG SAID LINE OF YOSEMITE AVENUE, 75 FEET; THENCE AT A RIGHT ANGLE, NORTHEASTERLY 200 FEET TO THE SOUTHWESTERLY LINE OF WALLACE AVENUE; THENCE AT A RIGHT ANGLE, SOUTHEASTERLY ALONG SAID LINE OF WALLACE AVENUE, 75 FEET TO THE NORTHWESTERLY LINE OF JENNINGS STREET; THENCE AT A RIGHT ANGLE, SOUTHWESTERLY ALONG SAID LINE OF JENNINGS STREET, 200 FEET TO THE POINT OF BEGINNING.

BEING LOTS 1 AND 9, IN BLOCK NO. 456, BAY VIEW HOMESTEAD ASSOCIATION.

APN: Lot 15 and 1, Block 4830

Commonly known as 1590 Yosemite Avenue, San Francisco, California 94124.

EXHIBIT F

HAZARDOUS MATERIALS LIST

Paint Shop Materials

1. Used oils: motor oil, heating oil for thermoplastic kettles, used paint thinners
2. Used spray paint aerosol cans (empty are put in 55 gallon drums)
3. Block form Thermoplastic used for striping i.e. lane lines, crosswalks etc
4. Methacrylate
5. Two part epoxy for stencil work
6. Latex and oil base paints that are used for curb and bus zone painting
7. Propane
8. Paint Thinners
9. Gasoline

EXHIBIT G

APPRAISAL PROCEDURE

1. Initial Appraisal. As part of its due diligence prior to exercise of the Purchase Option or prior to seeking approval of the Board of Directors of the SFMTA or the City's Board of Supervisors, SFMTA may obtain an appraisal of the current fair market value of the Premises (an "**Initial Appraisal**"). SFMTA shall bear the fees, costs and expenses of the appraiser and of any experts and consultants used by the appraiser. The fair market value of the Premises as established by the Initial Appraisal shall not be binding on Landlord.

2. Joint Appraisal. To determine the Fair Market Value for the Purchase Price, as provided in Section 22.2 of the Lease, SFMTA shall select an appraiser (the "**Proposed Appraiser**") meeting the qualifications set forth in Section 6 below. SFMTA shall send Landlord written notice (the "**Proposed Appraiser Notice**") of SFMTA's selection of the Proposed Appraiser, together with proposed joint appraisal instructions for the Proposed Appraiser and a copy of the Proposed Appraiser's resume. If Landlord agrees to the Proposed Appraiser and the parties agree to the joint appraisal instructions for the Proposed Appraiser within 15 days following Landlord's receipt of the Proposed Appraiser Notice, the appraisal prepared by the Proposed Appraiser pursuant to such joint appraisal instructions shall be referred to as the "**Joint Appraisal**", and the current fair market value determination in the Joint Appraisal shall be the "**Fair Market Purchase Price**".

3. Separate Appraisals. If Landlord does not agree to the Proposed Appraiser or the parties do not timely agree on the joint appraisal instructions for the Proposed Appraiser within 15 days following Landlord's receipt of the Proposed Appraiser Notice, Landlord shall have the right to select an alternate appraiser ("**Landlord's Appraiser**") meeting the qualifications set forth in Section 6 below. Landlord shall provide SFMTA with written notice of Landlord's selection of Landlord's Appraiser ("**Landlord's Appraiser Selection Notice**"), together with a copy of Landlord's Appraiser's resume, within 15 days of the expiration of the 15 day period specified above. If Landlord does provide Landlord's Appraiser Selection Notice within such 15 day period, the Proposed Appraiser shall be the sole appraiser and shall prepare an appraisal of the fair market value of the Premises, which shall be the Fair Market Purchase Price. If Landlord timely delivers the Landlord's Appraiser's Selection Notice, the Proposed Appraiser and Landlord's Appraiser shall each make an independent determination of fair market value of the Premises. The appraisers may share and have access to objective information in preparing their appraisals, but will independently determine the appropriate assumptions to make based on the provisions of Section 22 of the Lease, this Section and each appraiser's own assessment of the market. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither party shall communicate with the appraiser appointed by the other party regarding the instructions contained in this Section before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this Section or the interpretation of this Lease, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretive guidance received from the party appointing such appraiser. There shall not be any arbitration or adjudication of the instructions to the appraisers contained in this Section. Each appraiser shall complete, sign and submit its written appraisal setting forth the fair market value to the Parties within 30 days after the appointment of the last of such appraisers. If the higher appraised fair market value is not more than one hundred ten percent (110%) of the lower appraised fair market value, then the Fair Market Purchase Price shall be an average of such two (2) appraised values.

4. Third Appraiser. If the fair market value specified in the two appraisals differ by more than ten percent (10%) of the higher of the two, then first two (2) appraisers shall attempt

to appoint a disinterested and independent third appraiser meeting the qualifications stated in Section 6 below within 10 days after the first two (2) appraisals have been submitted to the parties. Such appraiser shall consider the appraisals submitted by the parties as well as any other relevant written evidence which the parties may choose to submit. If a party chooses to submit any such evidence, it shall deliver a complete and accurate copy thereof to the other party at the same time it submits the same to the appraiser. Neither party shall conduct ex parte communications with the appraiser regarding the subject matter of the appraisal. If the first two (2) appraisers are unable to agree on the third appraiser, either appraiser, by giving ten (10) days' notice to the other appraiser, may file a petition with the American Arbitration Association solely for the purpose of selecting a third appraiser who meets the qualifications stated in this Section. If an appraiser suggests the name of a third appraiser to the arbitration service, the appraiser shall also submit a declaration by the proposed third appraiser disclosing any work performed by such appraiser for either party, any entity related to either party, or their attorneys, principals, or officers, and any relationship between the third appraiser and either party that could reasonably be construed as a conflict of interest. The parties hereby waive any right to challenge the selection of the third appraiser, whether by the agreement of the first two arbitrators, or by the American Arbitration Association, for any reason other than fraud, corruption or undue influence, and expressly waives any right to challenge the third appraiser based upon a conflict of interest by reason of work the third appraiser has performed for either party, any entity related to either party, or their respective attorneys, principals, or officers, and any relationship between the third appraiser and either party that could be reasonably construed as a conflict of interest. Notwithstanding the foregoing, neither party waives any challenge for a conflict of interest based on work performed by the third appraiser for either party, any entity related to either party, or their respective attorneys, principals, or officers, and any relationship between the third appraiser and either party that could be construed as a conflict of interest, if the third appraiser fails to disclose such work to both parties in the declaration. Each party shall bear one-half (1/2) of the cost of any fee charged by the American Arbitration Association for appointing the third appraiser.

Within thirty (30) days after his or her appointment, the third appraiser shall conduct a hearing at which City and Landlord may each make supplemental oral and/or written presentations, with an opportunity for testimony by the first two (2) appraisers and questioning by the parties and the third appraiser. Within 10 days following the hearing, the third appraiser shall select the appraised fair market value determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the third appraiser, to the actual fair market value. The determination of the third appraiser shall be limited solely to the issue of deciding which of the appraisals of the two (2) appraisers is closest to the actual fair market value. The third appraiser shall have no right to propose a middle ground or to modify either of the two (2) appraisals, or any provision of the Lease or the Purchase Agreement. The fair market value so determined shall be the "**Fair Market Purchase Price.**"

5. Fees and Expenses. SFMTA shall bear the fees, costs and expenses of the Proposed Appraiser and of any experts and consultants used by such Proposed Appraiser and Landlord shall bear the fees, costs and expenses of Landlord's Appraiser and of any experts and consultants used by such Landlord's Appraiser. Landlord shall pay the cost of the third appraiser, if any, and City shall reimburse Landlord for one half the actual and reasonable cost of such third appraiser.

6. Qualifications. All appraisers specified above shall be competent, licensed, qualified by training and experience in the City of San Francisco, and shall be a member in good standing of the Appraisal Institute (MAI), or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding professional designations. Without limiting the foregoing, each appraiser shall have extensive experience valuing commercial real estate development sites in the City of San Francisco.

EXHIBIT H

FORM OF MEMORANDUM OF LEASE

<p>RECORDING REQUESTED BY, AND WHEN RECORDED, MAIL TO:</p> <p>City and County of San Francisco Real Estate Division 25 Van Ness Avenue, Suite 400 San Francisco, California 94102 Attn: Director of Property</p>	<p>FOR RECORDER'S USE ONLY</p>
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MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum"), dated for reference purposes as of _____, 2011, is by and among YOSEMITE INVESTMENT, LLC, a California limited liability company, and DLAI INVESTMENT, LLC, a California limited liability company (together, "Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Municipal Transportation Agency ("City").

Recitals

Concurrently herewith, Landlord and City have entered into that certain Lease, dated _____, 2011 (the "Lease"), pursuant to which Landlord leased to City and City leased from Landlord a portion of real property more particularly described in the attached Exhibit A (the "Property"), which is incorporated by this reference.

The Lease provides City an option to purchase the Property (the "Purchase Option") on the terms specified in Section 22 of the Lease.

Landlord and City desire to execute this Memorandum to provide constructive notice of the Lease and the Purchase Option to all third parties, and all of the terms and conditions of the Lease are incorporated herein by reference as if they were fully set forth herein and reference is made to the Lease itself for a complete and definitive statement of the rights and obligations of Landlord and Tenant thereunder.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

Term. Pursuant to the terms of the Lease, Landlord leased the Property to City for a term commencing on the date Landlord delivers possession of the Property to City as set forth in the Lease. The Term of the Lease shall expire on the date that is nine (9) years and six (6) months after the Commencement Date (as such term is defined in the Lease), unless earlier terminated in accordance with the terms of the Lease.

Lease Terms. The lease of the Property to City is made pursuant to the Lease, which is incorporated in this Memorandum by reference. This Memorandum shall not be deemed to modify, alter or amend in any way the provisions of the Lease. In the event any conflict exists between the terms of the Lease and this Memorandum, the terms of the Lease shall govern. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Lease.

Successors and Assigns. This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease.

IN WITNESS WHEREOF, Landlord and City have executed this Memorandum of Lease as of the day and year first above written.

<p>LANDLORD:</p>	<p>YOSEMITE INVESTMENT LLC, a California limited liability company</p> <p>By: _____ Its: _____</p> <p>By: _____ Its: _____</p> <p>DLAI INVESTMENT LLC, a California limited liability company</p> <p>By: _____ Its: _____</p> <p>By: _____ Its: _____</p>
<p>CITY:</p>	<p>CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Municipal Transportation Agency</p> <p>By: _____ NATHANIEL P. FORD SR. Executive Director/CEO San Francisco Municipal Transportation Agency</p>
<p>APPROVED AS TO FORM:</p> <p>DENNIS J. HERRERA, City Attorney</p> <p>By: _____ Deputy City Attorney</p>	

State of California)
)
County of _____)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
)
County of _____)

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

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Signature _____ (Seal)

State of California)
)
County of _____)

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

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WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT A
to
Memorandum of Lease

Legal Description of Property

THAT CERTAIN REAL PROPERTY SITUATION IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL ONE:

BEGINNING AT THE INTERSECTION OF THE SOUTHWESTERLY LINE OF WALLACE AVENUE WITH THE SOUTHEASTERLY LINE OF KEITH STREET; THENCE FROM SAID POINT OF BEGINNING, SOUTHEASTERLY ALONG SAID LINE OF WALLACE AVENUE, 525 FEET; THENCE AT RIGHT ANGLES, SOUTHWESTERLY 200 FEET TO THE NORTHEASTERLY LINE OF YOSEMITE AVENUE; THENCE AT RIGHT ANGLES, NORTHWESTERLY ALONG THE LAST-MENTIONED LINE, 75 FEET; THENCE AT RIGHT ANGLES, NORTHEASTERLY 100 FEET; THENCE AT RIGHT ANGLES, NORTHWESTERLY 225 FEET; THENCE AT RIGHT ANGLES, SOUTHWESTERLY 100 FEET TO THE AFOREMENTIONED LINE OF YOSEMITE AVENUE; THENCE AT RIGHT ANGLES, NORTHWESTERLY ALONG THE LAST-MENTIONED LINE, 225 FEET TO THE SOUTHEASTERLY LINE OF KEITH STREET; THENCE AT RIGHT ANGLES, NORTHEASTERLY ALONG THE LAST-MENTIONED LINE, 200 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF BLOCK 456, SOUTH SAN FRANCISCO HOMESTEAD AND RAILROAD ASSOCIATION, AND PORTION OF LOT 456, BAY VIEW HOMESTEAD ASSOCIATION.

PARCEL TWO:

COMMENCING AT A POINT ON THE NORTHEASTERLY LINE OF YOSEMITE AVENUE, DISTANT THEREON 150 FEET NORTHWESTERLY FROM THE NORTHWESTERLY LINE OF JENNINGS STREET; RUNNING THENCE NORTHWESTERLY AND ALONG SAID LINE OF YOSEMITE AVENUE, 225 FEET; THENCE AT A RIGHT ANGLE, NORTHEASTERLY 100 FEET; THENCE AT A RIGHT ANGLE, SOUTHEASTERLY 225 FEET; THENCE AT A RIGHT ANGLE, SOUTHWESTERLY 100 FEET TO THE POINT OF COMMENCEMENT.
BEING LOTS 5, 6 AND 7 IN BLOCK NO. 456, BAY VIEW HOMESTEAD ASSOCIATION.

PARCEL THREE:

BEGINNING AT THE POINT OF INTERSECTION OF THE NORTHWESTERLY LINE OF JENNINGS STREET AND THE NORTHEASTERLY LINE OF YOSEMITE AVENUE; RUNNING THENCE NORTHWESTERLY ALONG SAID LINE OF YOSEMITE AVENUE, 75 FEET; THENCE AT A RIGHT ANGLE, NORTHEASTERLY 200 FEET TO THE SOUTHWESTERLY LINE OF WALLACE AVENUE; THENCE AT A RIGHT ANGLE, SOUTHEASTERLY ALONG SAID LINE OF WALLACE AVENUE, 75 FEET TO THE NORTHWESTERLY LINE OF JENNINGS STREET; THENCE AT A RIGHT ANGLE, SOUTHWESTERLY ALONG SAID LINE OF JENNINGS STREET, 200 FEET TO THE POINT OF BEGINNING.

BEING LOTS 1 AND 9, IN BLOCK NO. 456, BAY VIEW HOMESTEAD ASSOCIATION.

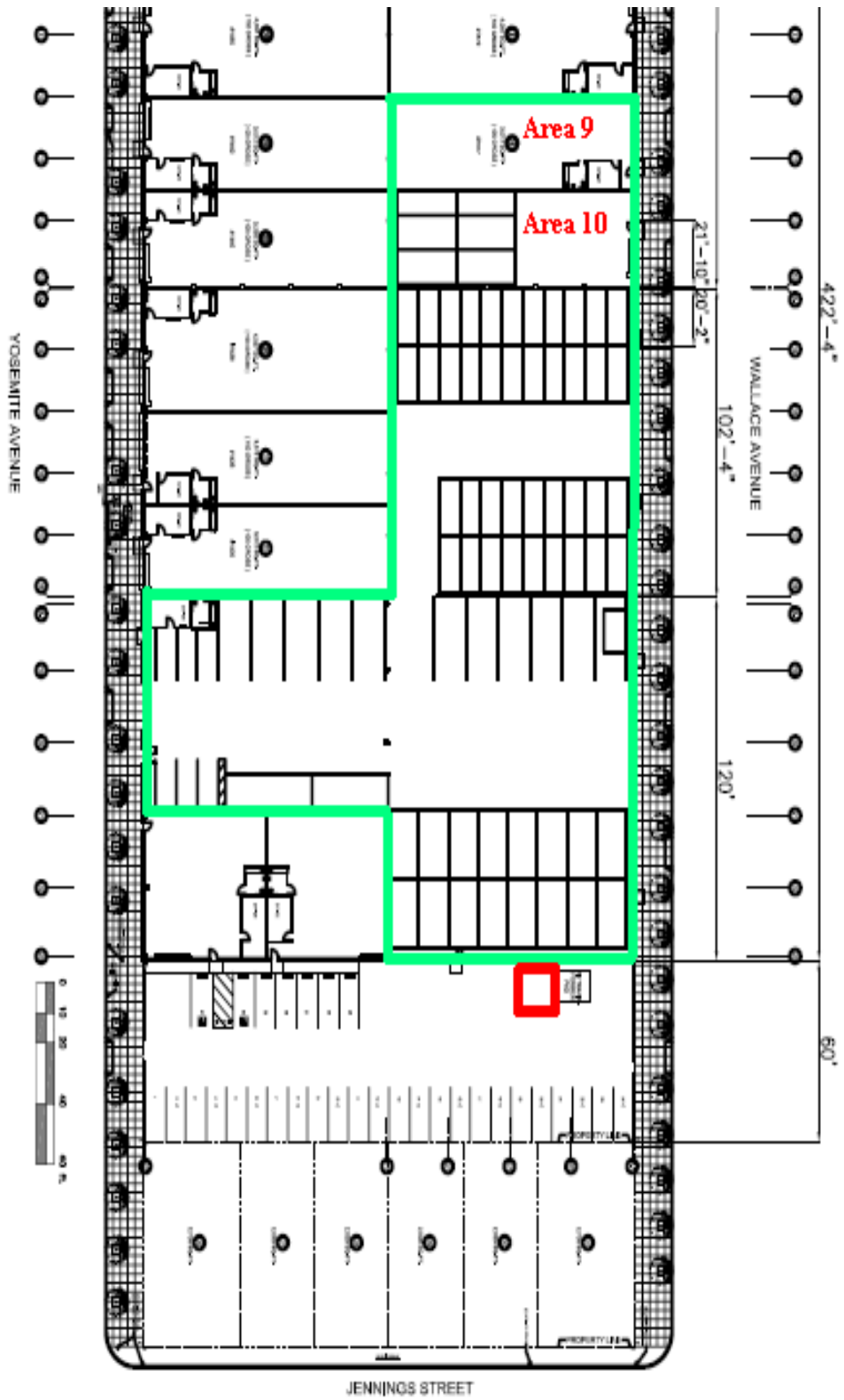
APN: Lot 15 and 1, Block 4830

Commonly known as 1590 Yosemite Avenue, San Francisco, California 94124.

SCHEDULE 1

Leasehold Improvements

1. Install five (5) additional roof top exhaust fans in the Premises, each with a minimum capacity of 15,000 cubic ft./min. and spaced approximately one fan/7,000 sq.ft., to accommodate vehicle parking needs and requirements.
2. Install one (1) additional low capacity roof top exhaust fan at the portion of the Premises depicted as "Area 9" on the attached drawing of the Premises.
3. Demolish the existing framing and rough ins located in the Premises and remove all debris caused by such demolition.
4. Install paving in the unpaved interior sections of the Premises to match existing paving located in the Premises.
5. Install additional electrical outlets and plumbing faucets at the portions of the Premises depicted as "Area 9" and "Area 10" on the attached drawing of the Premises.
6. Demolish twenty-five (25) feet of the existing non-load bearing wall between the portions of the Premises depicted as "Area 9" and "Area 10" on the attached drawing of the Premises.



**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Administration, Taxi and Accessible Services

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO authority to execute an amendment to the Senior and Disabled Fast Pass® Pilot Program Agreement between the San Francisco Bay Area Rapid Transit District (BART) and the City and County of San Francisco through the SFMTA to extend the pilot program through January 31, 2012.

SUMMARY:

- On August 19, 2008, the SFMTA Board of Directors authorized the Executive Director/CEO to enter into an agreement with BART for an 18-month pilot program to provide a discount pass for senior and disabled customers for service on Muni and BART within San Francisco (Pilot).
- The Pilot program requirements were developed with a focus on customer needs, pricing sensitivity, fare policy and equity, ease and cost of implementation and fraud prevention.
- Approximately 2,000 customers signed up for the Pilot; however, only 500 customers are regularly purchasing the pass. While customer feedback has been positive, the demand has been lower than expected and changing the original Pilot participation requirements and broadening the availability of the pass may better assess the true demand for the pass.
- BART and SFMTA staff are proposing to extend the Pilot to offer 1,000 Senior and Disabled Pilot Fast Passes®, on a first-come, first-served basis, without requiring pre-registration and vouchers and providing more locations to purchase the pass. Eligibility would be open to all senior or disabled customers with either possession of a Regional Transit Connection Photo ID Card (RTC Card) or valid ID.

ENCLOSURES:

1. SFMTAB Resolution
2. Amendment to Agreement

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION BE RETURNED TO Annette M. Williams

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2

PURPOSE

Requesting approval to amend the Senior and Disabled Fast Pass® Pilot Program Agreement between BART and the SFMTA to extend the pilot program through January 31, 2012, and improve the accessibility of the pass to customers by adding additional sales locations and remove the original participation requirements to register and obtain a voucher.

GOAL

Extending this agreement supports the following goals and objectives of the SFMTA's 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.

1.1 – Improve accessibility across transit services.

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

2.2 – Ensure efficient transit connectivity and span of service.

DESCRIPTION

Background

In August of 2008, the SFMTA Board of Directors authorized a Senior and Disabled Pilot Pass Program (Pilot) for an 18-month period to assess the functionality, popularity, and potential costs of implementing a new pass type for senior and disabled customers. This Pilot was recommended by senior and disabled Muni monthly Fast Pass® customers who wished to have the same access to BART within San Francisco on their Muni monthly Fast Pass® as adult customers. If the Pilot was deemed successful the pass would transition to Clipper®.

This Pilot was segmented into three six-month periods. During each six-month period, customers were required to pre-register for the program on either the SFMTA website or through 311. Once customers pre-registered, their names were entered into a lottery. If their names were chosen, they were then sent coupon booklets valid for six months of P pass purchases. P passes could only be purchased during the third week of the month prior, and were only available at two locations (with a third being added for final six-month phase of the pilot).

While program participants have provided positive feedback on the Pilot, demand for the P pass has been low, with only 500 of the 2,000 registered participants actually purchasing the P pass. The lower than expected demand could be due to several factors, including but not limited to:

PAGE 3

- The original demand may have been overestimated and the actual participation levels reflect the true demand; and/or
- The registration and lottery process may have included the perception that the pass would be difficult to obtain; and/or
- The premium surcharge which was implemented for all passes that allow the customer to access both BART and Muni. For the P pass, the surcharge was set at 50 percent of the adult pass or \$5; and/or
- The restricted number of vendor locations.

Broadening availability of the P pass and removing the registration and lottery process should allow a better assessment of the true demand for this pass during the six-month proposed extension of the Pilot. Additionally, this will allow the cost/benefit evaluation of incorporating the P pass into Clipper® given the \$280,000 estimated development costs required to upgrade the system and an estimated additional \$109,000 in costs incurred by BART to modify its fare collection equipment to accept the P pass which the SFMTA will be responsible for funding.

Pilot Extension Overview

BART and SFMTA are jointly proposing a six-month extension of the Pilot program, through January 31, 2012 to offer the P pass to any eligible disabled or senior customer through a wider variety of vendors. This extension will provide more data to gauge customer demand for the product and to help determine whether demand warrants the additional expenditure of approximately \$400,000 for Clipper® software and BART fare gate modifications required to transition this pass over to the Clipper® program as well as the prioritization of this effort amongst all other Clipper® program tasks.

P passes would be limited to the 1,000 available passes and would be available for purchase by any individual who has a valid proof of eligibility. Eligibility would be the same as required for the existing Senior or Disabled Fast Pass®, either a valid ID with proof of age or the RTC Card. The P pass cost will be \$26 per month, \$5 more than the regular Senior/Disabled Fast Pass® and consistent with the Adult Fast Pass® structure.

Senior and Disabled Fast Pass® Use

All participants in the expanded Pilot will continue to be required to carry both their purchased P pass and a valid form of ID at all times to verify age or disability when using the Muni or BART systems. SFMTA Transit Fare Inspectors, operators and station agents on both systems are trained to validate and verify the P pass, and report any violations. P passes are programmed for use in fare gates operated by both SFMTA and BART.

ALTERNATIVES CONSIDERED

The existing Agreement between BART and SFMTA allows for an 18-month pilot. Without additional action by the SFMTA and BART Boards of Directors, the program would end on July 31, 2011. After reviewing the preliminary findings from the Pilot Program, SFMTA and BART feel that by relaxing entrance requirements, improving access and availability of the pass for an additional six months will better identify the true demand of the P Pass and support the decision whether to continue the pass and incorporate it into Clipper®.

FUNDING IMPACT

Pursuant to the original Agreement, ongoing operating and maintenance expenses for the Senior and Disabled Fast Pass® Pilot Program will be borne by BART. The SFMTA will continue to reimburse BART for each trip taken with a P Pass at a rate of \$0.535 per trip. In the first 18 months of the Pilot an average of 17 trips per month were taken on each P pass. If all 1,000 P passes were sold for each of the six months of the extension and usage remained constant, payments to BART would be approximately \$54,060 for the six-month expanded Pilot. The SFMTA will collect \$5 per pass to offset this cost bringing the total net expense to approximately \$24,060 for six months. This expenditure was not included in the Fiscal Year 2012 budget; however, the cost will be absorbed in the operating budget.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

This proposal must be approved by the BART Board of Directors. Tentative action by the BART Board of Directors is scheduled for June 2011.

The City Attorney's Office has reviewed this report.

RECOMMENDATION

SFMTA staff recommends authorizing the Executive Director/CEO the authority to amend the Senior and Disabled Fast Pass® Pilot Program Agreement between BART and SFMTA to extend the pilot program through January 31, 2012, with changes to entrance requirements and access.

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

RESOLUTION No. _____

WHEREAS, The full-fare Premium Muni Fast Pass® (A Pass) allows customers unlimited rides on the San Francisco Bay Area Rapid Transit District system (BART) within San Francisco; and,

WHEREAS, On August 19, 2008, the SFMTA Board of Directors adopted Resolution No. 08-148, which authorized the Executive Director/CEO to enter into an agreement with BART for an 18-month pilot program to provide a discount pass for senior and disabled customers for service on Muni and BART within San Francisco; and ,

WHEREAS, The 18-month pilot program expires on July 31, 2011; and,

WHEREAS, SFMTA and BART have collaboratively designed an extension to the pilot program in order to better provide a measure of total customer demand by expanding the vendor outlets and expanding eligibility to all senior and disabled customers with valid identification, up to a total of 1000 passes, so as to better determine demand; and,

WHEREAS, the information gathered from the extension of the pilot will assist in in the decision of adding this product to the Clipper® program; and,

WHEREAS, SFMTA and BART have agreed to extend this pilot program keeping all terms and conditions intact in regards to program and reimbursement costs; now, therefore be it

RESOLVED, That the SFMTA Board of Directors authorizes the Chief Executive Director/CEO to execute an amendment to the Senior and Disabled Fast Pass® Pilot Program Agreement between the San Francisco Bay Area Rapid Transit District and the City and County of San Francisco, through the SFMTA, to extend the pilot program through January 31, 2012.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**FIRST AMENDMENT
TO
SENIOR AND DISABLED FAST PASS[®]
PILOT PROGRAM AGREEMENT
BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO AND
THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

This FIRST AMENDMENT (“First Amendment”) is made as of _____, 2011 (the “Effective Date”) between the City and County of San Francisco (“City”), a Municipal corporation, by and through its San Francisco Municipal Transportation Agency (“SFMTA”) and the San Francisco Bay Area Rapid Transit District (“BART”), either of which may be referred to singularly as the "Party" or collectively as "the Parties."

RECITALS

1. On December 3, 2008, the Parties entered into the Senior and Disabled Fast Pass[®] Pilot Program Agreement (the “2008 Agreement”). The Pilot Program was intended to assess the financial and operational feasibility of extending SFMTA’s Senior Fast Pass[®] and Disabled Fast Pass[®] programs to include unlimited trips on BART within San Francisco.
2. The Pilot Program commenced on February 1, 2010, the first day that Senior and Disabled Fast Pass[®] (the “Senior and Disabled Fast Pass” or “Pass”) tickets were accepted on BART for trips within San Francisco.
3. The 2008 Agreement provided for SFMTA to select Pilot Program participants by registering potential participants, assigning each participant a number, and then selecting from this pool, at random, up to 2,000 registrants who were to receive a coupon book containing six (6) months’ worth of coupons, with their name and address printed on the front of each coupon book. Each month, these participants could redeem a coupon for a Senior and Disabled Fast Pass[®] ticket. Passes could only be purchased during the third week of the month prior to the

month of use, and were only available at two locations (SFMTA added a third location in February 2011).

4. While participants have provided positive feedback regarding the program, demand for the Pass has been low, with only 500 of the 2,000 registered participants actually purchasing a Pass. It is possible that SFMTA's implementing a \$5.00 "premium" price differential between the Muni-only Fast Passes[®] for seniors and people with disabilities and the Senior and Disabled Fast Pass[®], which is also good on BART, may have dissuaded many of the original registrants from participating, since this increase occurred after registration began. Low demand may also be due to the restricted number of locations (currently three) where the pass can be purchased.
5. The Parties now wish to broaden the availability of the Senior and Disabled Fast Pass[®] so that the Pass would be easier for eligible individuals to obtain, and thus the Parties could gain a better measure of the true demand for it. To accomplish this end, the Parties wish to amend the Agreement to extend the 2008 Agreement for an additional six (6) months from August 1, 2011 through January 31, 2012. During this period, SFMTA will provide for sale each month up to one thousand (1,000) Senior and Disabled Fast Pass[®] tickets to eligible individuals on a first-come, first-serve basis at a limited number of additional sales locations.
6. Once the six-month extension of the Pilot Program is over, the Parties will evaluate the Pilot Program and present findings and recommendations to their respective Boards regarding whether the demand for the Senior and Disabled Fast Pass[®] warrants the investment required to make the Pass a permanent fare product available on the regional Clipper[®] smart card.

AGREEMENT

NOW, THEREFORE, BART and SFMTA, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. Section 1.C. is deleted in its entirety and the following Section 1.C is added in its place:
"Pilot Program" is defined to mean that portion of the program beginning with the first day that Senior and Disabled Fast Pass[®] tickets valid for trips on BART within San Francisco are sold by SFMTA or its retail vendors to patrons who are

either senior citizens aged 65 years or older or persons with verified disabilities, through completion of the program for a period up to twenty-four (24) months, exclusive of the Implementation Period.

2. Section 2 is deleted in its entirety and the following Section 2 is added in its place:

SECTION 2: PILOT PROGRAM SIZE, PASS DISTRIBUTION AND ELIGIBILITY VERIFICATION

A. Pilot Program Size: For the first eighteen (18) months of the Pilot Program, SFMTA will sell up to a total of 2,000 Senior and Disabled Fast Pass[®] tickets, good for one calendar month to eligible individuals, as defined in Section 2.C, below. If agreed to by both Parties, the Senior and Disabled Fast Pass[®] Pilot Program may be expanded up to 5,000 participants following evaluation as set forth in Section 8.C, below.

For the final six (6) months of the Pilot Program, SFMTA will make available for sale up to a total of one thousand (1,000) Senior and Disabled Fast Pass[®] tickets, good for one calendar month to eligible individuals, as defined in Section 2.C, below.

B. Pilot Program Participation:

1. For the first eighteen (18) months of the Pilot Program, SFMTA will conduct a pre-registration drive for prospective program participants via telephone, U.S. mail, internet, and in-person registration. Each registrant will be assigned a number and selected for participation at random using a random number generator.
 - a. Registration will be continuous and random drawings will be conducted once every six (6) months during the first eighteen (18) months of the Pilot Program to vary participation during the course of the Pilot Program.
 - b. Selected participants will be notified via U.S. mail of their selection at the address given for registration, and will be provided with a coupon book containing six (6) months worth of coupons, with their name and address printed on each coupon.

2. For the final six (6) months of the Pilot Program, SFMTA will make available up to one thousand (1,000) Senior and Disabled Fast Passes on a first-come, first-serve basis at the locations described in 2.C below.

C. Pass Distribution and Eligibility Verification:

For the first eighteen (18) months of the Pilot Program, SFMTA will distribute Senior and Disabled Fast Pass[®] tickets only at SFMTA retail locations. For the last six (6) months of the Pilot Program, SFMTA will distribute Senior and Disabled Fast Pass[®] tickets at the same SFMTA retail locations, as well as a limited number of retail vendors of SFMTA fare products, and/or at San Francisco community-based organizations that serve seniors and people with disabilities. Pilot Program eligibility will be verified at the point of sale utilizing the following forms of identification to verify senior or disabled eligibility.

1. Age will be verified with any government issued photo identification card, including drivers license, passport, government identification card, or a valid Regional Transit Connection (“RTC”) card.
 2. Disability will be verified using only the RTC card.
3. Section 8.B.1.b is deleted in its entirety and the following Section 8.B.1.b is added in its place.
 - b. Pilot Program. The Pilot Program shall commence on the first day that SFMTA distributes Senior and Disabled Fast Pass[®] tickets to customers and shall run for a minimum of six (6) months and a maximum of twenty-four (24) months, unless earlier terminated as provided below.”

4. Section 8.C is deleted in its entirety and the following Section 8.C is added in its place.

C. Evaluation: SFMTA and BART will evaluate the Pilot Program performance twice during the term of this Pilot Program Agreement as follows: (1) six (6) months after commencement of the Pilot Program; and (2) twenty-four (24) months after the commencement of the Pilot Program, analyzing available data including usage, sales,

and rider response to the Pilot Program. The findings of both evaluations will be brought to the BART and SFMTA Board of Directors.

1. Findings from the six (6) month evaluation will be used to jointly determine if the Pilot Program should continue at 2,000 Senior and Disabled Fast Pass® tickets sold per month, be expanded up to 5,000 Senior and Disabled Fast Pass® tickets sold per month, or be terminated. Until that joint evaluation has been approved by both Parties, SFMTA will continue to make available Senior and Disabled Fast Pass® tickets in accordance with this Pilot Program Agreement, unless the program is terminated pursuant to Section 8.B.2, above. If both Parties approve continuation of the Pilot Program after the initial six-month period, the Program shall continue for the remainder of the 18-month term, unless terminated earlier pursuant to Section 8.B.2, with sales of either 2,000 or 5,000 Senior and Disabled Fast Pass® tickets per month, depending on the evaluation.
2. Findings from the evaluation after the twenty-four (24) month pilot program has ended, which will include data from the modified distribution procedure as described in Section 2.B above, will be used to jointly determine if the Senior and Disabled Fast Pass® product should be made permanently available only on the Clipper® regional smart card. The parties will enter into a new agreement if, based on the second evaluation performed after the end of the pilot program, both parties agree that the demand is sufficient to warrant the investment required to make the Senior and Disabled Fast Pass® a permanent fare product on the Clipper® regional smart card. However, whether or not the parties agree to make the Senior and Disabled Fast Pass® permanent on the Clipper® card, the paper Senior and Disabled Fast Passes® will no longer be available after January 31, 2012.
5. Except as expressly amended, all other terms and conditions of the original Agreement, including all documents referenced therein, shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment to the Agreement by their duly authorized officers on or before the Effective Date.

SAN FRANCISCO BAY AREA RAPID
TRANSIT DISTRICT

CITY AND COUNTY OF SAN
FRANCISCO
MUNICIPAL TRANSPORTATION
AGENCY

By: _____
Sherwood Wakeman
Interim General Manager

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

APPROVED AS TO FORM:
Office of the General Counsel

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

By: _____
Patricia McCoy Smith
Attorney, Office of the General
Counsel

By: _____
Robin M. Reitzes
Deputy City Attorney

THIS PRINT COVERS CALENDAR ITEM NO. : 10.8

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

DIVISION: Administration, Taxis and Accessible Services

BRIEF DESCRIPTION:

Approving the amendment to the Collective Bargaining Agreement (CBA) between the San Francisco Municipal Transportation Agency (SFMTA) and Transport Workers Union (TWU) Local 200 Service Critical Employees

SUMMARY:

- Charter Section 8A.104 provides that SFMTA shall negotiate labor agreements with employee organizations representing employees in service critical classifications.
- The SFMTA Board of Directors approved the terms of the prior Memorandum of Understanding ("MOU") between the SFMTA and TWU, Local 200 on June 26, 2009. That MOU expired on June 30, 2010 after the membership of TWU Local 200 failed to ratify a successor agreement. As a result, the wages, hours, and terms and conditions of employment for those employees remained the same in the intervening year. The SFMTA and TWU, Local 200 representatives have reached a tentative agreement on a successor MOU.
- The agreement will result in a net savings of \$1,222,689 over three years.

ENCLOSURES:

1. SFMTA Board Resolution
2. Labor Cost Analysis
3. Proposed Memorandum of Understanding

APPROVALS:

DATE

DEPUTY OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR

SECRETARY

ADOPTED RESOLUTION

BE RETURNED TO: Rumi Ueno

ASSIGNED SFMTA BOARD MEETING CALENDAR DATE: _____

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PURPOSE

The SFMTA and TWU, Local 200 representatives reached a tentative agreement on a number of issues, including: no wage increase for three years, reduction of five floating holidays to three days, elimination of floating holiday buyback program and related agreement to include floating holiday payout in the calculation of pensionable income, dependent care: SFMTA will contribute toward dependent care premiums at the following levels: FY 2011-12: \$692.02/month, FY 2012-13: \$719.70/month and FY 2013-14: \$748.49/month and language updates to a number of issues including the following: No Strike, Management Rights, Union Rights (Release Time), Grievance and Discipline, Committees, and elimination of Performance and Attendance Incentive Program.

GOAL

The proposed agreement meets the following goals:

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

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

DESCRIPTION

Charter Section A8.104 gives SFMTA authority to negotiate labor agreements covering wage, hours, working conditions, and benefits with labor organizations representing employees at SFMTA in service critical classifications.

The SFMTA Board of Directors approved the terms of the prior Memorandum of Understanding ("MOU") between the SFMTA and TWU, Local 200 on June 26, 2009. That MOU expired on June 30, 2010 after the membership of TWU Local 200 failed to ratify a successor agreement. As a result, the wages, hours, and terms and conditions of employment for those employees remained the same in the intervening year.

The SFMTA and TWU, Local 200 representatives reached a tentative agreement on a number of issues, including: no wage increase for three years, reduction of five floating holidays to three days, elimination of the floating holiday buyback program and related agreement to include floating holiday payout in the calculation of pensionable income, dependent care: SFMTA will contribute toward dependent care premiums at the following levels: FY 2011-12: \$692.02/month, FY 2012-13: \$719.70/month and FY 2013-14: \$748.49/month and language updates to a number of issues including the following: No Strike, Management Rights, Union Rights (Release Time), Grievance and Discipline, Committees, and elimination of Performance and Attendance Incentive Program.

The agreement will result in a three year potential savings of \$514,614 for the elimination of two floating holidays; \$195,000 for the elimination of the floating holiday buyback program and related agreement to include floating holiday payout in the calculation of pensionable income;

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\$266,901 for the elimination of the performance and attendance incentive program; and due to the open enrollment period for health benefits there will be no cost savings in year one of the agreement with a cost savings of \$78,908 in year two and \$167,266 in year three, totaling \$246,174 for changes in the health plan benefits (these savings are computed against a eight percent projected increase by HSS and could be higher or lower depending on the actual increase). The agreement will result in a net savings of \$1,222,689 over three years.

The City Attorney has reviewed this item.

ALTERNATIVES CONSIDERED:

If the CBA is not approved, the cost savings that this agreement provides will not be realized and SFMTA would not have a labor contract for employees represented by TWU Local 200.

FUNDING IMPACT:

If the amendment is not approved, the three year potential savings of \$514,614 for the elimination of two floating holidays; \$195,000 for the elimination of floating holiday buyback program and related agreement to include floating holiday payout in the calculation of pensionable income; \$266,901 for the elimination of the performance and attendance incentive program; and \$246,174 for changes in the health plan benefits will not be realized if the eight percent projected increase by HSS is realized..

The Labor Cost Analysis is attached.

RECOMMENDATION

Staff recommends that the SFMTA Board approve the tentative agreement regarding the CBA between SFMTA and TWU Local 200.

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

WHEREAS, Under Section A8.104 of the Charter, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors succeeded to the powers of the Board of Supervisors with respect to collective bargaining for employees in service critical classifications; and,

WHEREAS, The SFMTA Board of Directors approved the terms of the prior Memorandum of Understanding ("MOU") between the SFMTA and TWU, Local 200 on June 26, 2009. That MOU expired on June 30, 2010 after the membership of TWU Local 200 failed to ratify a successor agreement. As a result, the wages, hours, and terms and conditions of employment for those employees remained the same in the intervening year; and,

WHEREAS, Pursuant to the provisions of Charter Section A8.104(r), before adopting any tentative agreement with an employee organization, the Agency shall disclose in writing the contents of such tentative agreement, a detailed analysis, a comparison of the differences between the agreement reached and the prior agreement, an analysis of all costs for each year of the term of such agreement, and whether funds are available to cover these costs; and,

WHEREAS, The parties have reached a tentative agreement providing for no wage increase for three years, reduction of five floating holidays to three days, elimination of the floating holiday buyback program and related agreement to include floating holiday payout in the calculation of pensionable income, dependent care: SFMTA will contribute toward dependent care premiums at the following levels: FY 2011-12: \$692.02/month, FY 2012-13: \$719.70/month and FY 2013-14: \$748.49/month and language updates to a number of issues including the following: No Strike, Management Rights, Union Rights (Release Time), and Discipline, Committees, and elimination of the Performance and Attendance Incentive Program; and,

WHEREAS, The Union membership ratified the tentative agreement on May 24, 2011; and,

WHEREAS, The proposed amendment of the CBA, which shall be in effect July 1, 2011 through June 30, 2014, and all other required information was publicly disclosed in accordance with Charter Section A8.104(r) on June 7, 2011 and are now on file with the Secretary of the SFMTA Board of Directors; now therefore, be it

RESOLVED, That the SFMTA Board of Directors hereby approves the amendments to the Collective Bargaining Agreement between the SFMTA and the Transport Workers Union (TWU) Local 200, effective July 1, 2011.

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

Secretary, Municipal Transportation Agency Board

TWU, LOCAL 200

Effective July 1, 2011

Prop. #	Issue	SFMTA Proposals	Comments	Three-Year Savings
A-3 III.E	Floating Holidays	Reduce floating holidays from five to three days		\$514,614
A-3 Paragraphs 230-231	Floating Holiday Buy back	Eliminate floating holiday buy back and related agreement to include floating holiday payout in the calculation of pensionable income		\$195,000
Appendix A	Performance & Attendance Incentive Program	Elimination of the performance & attendance incentive program		\$266,901
Article-3 III.	Health Plan Benefits	Changes in the health plan benefits. (* These savings are computed against an eight percent projected increase by HSS and could be higher or lower depending on the actual increase).	Year One: No cost savings Year Two: \$78,908 Year Three: \$167,266	\$246,174 *
Net Savings				\$1,222,689

SFMTA//TWU LOCAL 200

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

**THE SAN FRANCISCO MUNICIPAL TRANSPORTATION
AGENCY**

AND

**THE TRANSPORT WORKERS' UNION, AFL-CIO
LOCAL 200**

**FOR SERVICE CRITICAL CLASSIFICATIONS
AT THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY**

July 1, 2011- June 30, 2014

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PREAMBLE

1. This Collective Bargaining Agreement (herein referred to as “CBA”), has been developed jointly by the San Francisco Municipal Railway (herein referred to as “MUNI”), under the authority of the San Francisco Municipal Transportation Agency (hereinafter referred to as SFMTA), and the Transport Workers Union of America, AFL-CIO, Local #200 (hereinafter referred to as “Local 200”).

ARTICLE I: REPRESENTATION

I.A. RECOGNITION

2. The SFMTA acknowledges that Local 200 has been certified as the recognized employee representative pursuant to the provisions of the Employee Relations Operating Resolution (EROR) for the following classifications and bargaining units:

- 1773 Media Training Specialist
- 7412 Automotive Service Worker Assistant Supervisor
- 8121 Fare Inspections Supervisor/Investigator
- 9135 Passenger Service Specialist
- 9139 Transit Supervisor I
- 9140 Transit Manager I
- 9141 Transit Manager II
- 9150 Train Controller
- 9160 Transit Operations Specialist
- 9520 Transportation Safety Specialist

3. The terms and provisions of this CBA shall also be automatically applicable to any classification which is accreted to an existing unit covered by this CBA during its term. This Agreement shall not automatically extend to new bargaining units for which Local 200 has gained representation or established a representative status through affiliations or service agreements. Said employees covered by the terms and provisions of this CBA are hereinafter referred to as “employee(s),” singular or plural as the context so indicates. The term “employee” as used hereinafter in this agreement refers to a person included in the above defined bargaining unit. Employees are presumed to have either supervisory and/or managerial positions.

I.B. NO STRIKE

4. The Union and each member of the bargaining unit covenant and agree not to threaten to initiate, engage in, cause, instigate, encourage, or condone a strike, work stoppage, slowdown, or absenteeism. The Union and each member of the bargaining unit covenant and agree not to engage in any form of sympathy strike including, but not limited to, observing or honoring the picket line of any other union or person.

5. Union's Duty

If unit members engage in any of the activities described above, SFMTA shall inform the Union and the Union shall affirmatively advise all employees that such activity is in violation of this Agreement, and may result, among other, in damages being assessed against the Union and discipline, up to and including dismissal, being implemented against the employees engaged in such activities.

I.C. OBJECTIVE OF THE SFMTA AND ESSENTIAL ROLE PERFORMED BY SERVICE-CRITICAL CLASSES IN THE LOCAL 200 BARGAINING UNIT

6. The most efficient, effective, and courteous delivery of MTA services is of paramount importance to the MTA and its employees, and is recognized to be a mutual obligation of the parties to this CBA within their respective roles and responsibilities.

I.D. MANAGEMENT RIGHTS

7. Nothing herein shall be construed to restrict the rights of SFMTA and the City to manage their operations and to exercise all management prerogatives, including but not limited to the right:

- a. to determine the merits, necessity, and organization of any service or activity the SFMTA may provide;
- b. to determine the type, kind, and level of service to be provided, and the equipment and technology to be used;
- c. to maintain an efficient operation;
- d. to determine the procedures and standards for the selection, continued employment and promotion of employees;
- e. to direct, transfer, assign, discharge, and discipline employees, as provided in Article II of this agreement;
- f. to determine the content of job classifications;
- g. to fix operating and personnel schedules;
- h. to implement layoffs;
- i. to determine work loads;

- j. to carry out their managerial responsibility to operate the transit system safely, efficiently and economically; and
 - k. to take all necessary actions to carry out its mission during emergencies.
8. Although the management rights listed above may be limited otherwise by the Meyers-Milias-Brown Act, the San Francisco Charter, the San Francisco Civil Service Rules, the San Francisco Administrative Code, and other applicable laws and regulations, for purposes of this Agreement, the management prerogatives listed above shall only be circumscribed by the specific limitations contained in other sections of this Agreement. Nothing in this Agreement shall be construed as to make any management right, or the exercise thereof, subject to the grievance procedure.
9. All classifications included in the Local 200 bargaining unit are “service critical” as defined by Charter section 8.104(e).
10. It is understood and agreed that except as specifically set forth in this agreement the MTA retains all of its powers and authority to manage municipal services and the work for performing those services.
11. The exercise of these rights shall not be subject to the grievance procedure. However, the exercise of such rights does not preclude employees from utilizing the grievance procedure to process grievances regarding the practical consequence of any such actions on wages, hours, benefits or other terms and conditions of employment specified in this Agreement.

I.E. UNION RIGHTS

12. Local 200 may select one steward and/or alternate steward in each department or bureau or facility in which employees covered by this CBA are working. A steward shall only deal with grievances within or related to the steward's department, bureau or facility.
13. Local 200 shall furnish the MTA with an accurate list of shop stewards. Local 200 may submit amendments to this list at any time because of the permanent absence of a designated shop steward. If a shop steward is not officially designated in writing, by Local 200, none will be recognized. When employees are selected, substituted, or replaced as stewards, the organization's duly authorized representative shall inform in writing the department head or officer under whom each selected employee member is employed.
14. Local 200 and the MTA recognize that it is the responsibility of the shop steward to assist in the resolution of grievance or disputes at the lowest possible level.

15. Official Representatives and Executive Board Members shall be allowed time off from their duties without loss of pay for the purpose of meeting and conferring in good faith or consulting with representatives of the SFMTA and the SFMTA Board on matters within the scope of representation.
16. Release time shall be provided for TWU local 200 Executive Board Members and official representatives to participate in disciplinary meetings, handle grievances meet and confer sessions, and other labor relations matters within the scope of representation with SFMTA, Civil Service, and the City and County of San Francisco.
17. Release time shall not unreasonably be denied. Approval of release time will be from the Labor Relations staff assigned to TWU Local 200; final approval will be from the Director, Transit Operations.
18. In handling grievances or disciplinary matters, the shop steward shall have the right to:
 19. Consult with the affected employee regarding the presentation of a grievance after the employee has requested the assistance or presence of the shop steward.
 20. Present to a supervisor a grievance, which has been requested by an employee or group of employees, for resolution or adjustment.
 21. Investigate any such grievance so that such grievance can be properly discussed with the supervisor or the designated representative.
 22. Attend meetings with supervisors or other MTA representatives when such meetings are necessary to adjust grievances or represent employees in disciplinary matters. In scheduling meetings, TWU Local 200 shall give reasonable consideration to the operating needs of SFMTA and the public we serve and the respective responsibilities of service. TWU Local 200 shall notify the direct supervisor of the scheduled meetings in advance of the meetings. Except for emergencies, notification shall be no less than two (2) working days.
23. In emergency situations, where immediate disciplinary action may be taken because of violation of law or a MTA or departmental rule (theft, etc.), the shop steward shall, if possible, be granted immediate permission to leave his/her post of duty to assist the employee.
24. Shop stewards shall not interfere with the work of any employee.
25. Stewards shall receive timely notice of departmental orientation sessions, and shall be permitted to make appearances at departmental orientation sessions, in order to distribute Local 200 materials and to discuss employee rights and obligations under this CBA. Local 200 and the

Department may agree to other arrangements for contact between stewards and new employees.

26. Employee Representatives. Pursuant to the Meyers-Milias-Brown Act and Employee Relations Operating Resolution (EROR):
27. A reasonable number of officers, stewards and representatives of Local 200 may attend during working hours with no loss of pay, meetings scheduled with representatives of the MTA Appointing Officer for the purpose of meeting and conferring required by law.
28. Release time for meetings with MTA on other matters of employer/employee relations shall be limited to matters within the scope of negotiations or matters on which MTA has agreed to meet and consult.

Information Requests

29. In response to TWU, Local 200's written request for information, the SFMTA will provide to the TWU Local 200 all necessary and relevant information. The Public Employment Relations Board ("PERB") standards shall define both the meaning of "necessary and relevant" and the parties' duty to negotiate over the mechanics and cost of providing the necessary and relevant information.

I.F.: GRIEVANCE PROCEDURE AND THE DISCIPLINE PROCESS

30. The authorized Grievance Procedure is as follows:

The following procedures are adopted by the Parties to provide for the orderly and efficient disposition of grievances. These shall be the sole and exclusive procedures for resolving grievances as defined in this Agreement.

Definition Of A Grievance

31. A grievance shall be defined as any dispute or allegation by an employee, a group of employees or the Union involving the interpretation or application of this Agreement, including discipline and discharge of employees. The employee, group of employees or the Union shall be referred to as the "grievant."

32. A grievance does not include the following:

All civil service rules excluded pursuant to Charter Section A8.409-3.

The SFMTA's exercise of its management rights.

33. Time Limits And Extensions

The number of days indicated at each level should be considered as a maximum and every effort should be made to expedite the process.

The time limits in this grievance procedure may be extended by mutual agreement of the parties. Any such extension must be confirmed in writing. A "working day" shall be defined as any Monday through Friday, excluding legal holidays granted by the City and County of San Francisco and SFMTA.

34. The time between the steps of the grievance procedure may be extended by mutual agreement. The parties agree that if either party misses a time limit delineated in this Section, the grievance shall progress immediately to the next step of the Grievance Procedure. At the arbitration, either party may present evidence of any failure on the other party's part to comply with the grievance deadlines.
35. The Parties may mutually agree that a grievance may be filed at Step 3 of the grievance procedure. Any such agreement must be confirmed in writing.

36. Statement Of A Grievance

A grievance shall specify:

- the specific section(s) of this Agreement that is alleged to have been violated;
- the facts giving rise to the alleged violation; and
- the remedy requested for the alleged violation.

Grievance Initiation

37. Within 20 working days after the event that was the basis for the grievance, or within 20 working days of the time when the grievant reasonably should have known of the event that gave rise to the grievance, the grievant shall file the grievance at Step 1 of the grievance procedure.
38. Union Rights In Individual Employee Filed Grievances
When an individual employee grievant is not represented by the Union, SFMTA shall send the Union a copy of the grievance. In addition, SFMTA shall notify the Union about grievance meetings scheduled between the grievant and SFMTA, inform the Union about any SFMTA responses to the grievance, and shall allow a Union representative to attend all grievance meetings. The Union shall have the right to present its views on the grievance, in writing, at all steps of the procedure. Only the Union, not individual employee(s) may move a grievance (including a grievance regarding disciplinary action) to Step 4.

39. Procedural Steps In Processing a Grievance
40. Informal Discussion With Immediate Supervisor
Before filing a formal written grievance, the grievant shall attempt to resolve it by scheduling an informal conference with the grievant's immediate supervisor.
41. Step 1: Formal Written Grievance (Senior Operation Manager)
Within 20 working days after the event that was the basis for the grievance, or within 20 working days of the time when the grievant reasonably should have known of the event that gave rise to the grievance, the grievant shall present a grievance, in writing to the Senior Operation Manager or designee. A representative of the Union shall be permitted to be present when the grievance is presented. If the grievant requests a meeting, the Senior Operation Manager or designee shall schedule a meeting within the five (5) working days and a representative of the Union shall be permitted to be present. The Senior Operation Manager or designee shall communicate the decision in writing to the grievant and to the Union, within ten (10) working days after receiving the grievance.
42. Step 2: Appeal to Manager Designated By Director of Transportation
The grievant or the Union may appeal from the decision at Step 1 within fifteen (15) working days after the Step 1 decision. This appeal shall be in writing and shall set out fully the basis of the grievance. The appeal shall be made to a Manager designated by the Director of Transportation. The Designated Manager shall conduct a meeting on the grievance. Within fifteen (15) working days of receiving the grievance the Designated Manager shall render his/her written decision, sending it to the Union representative and the grievant.
43. Step 3: Appeal to Manager, Employee & Labor Relations
At any time within five (5) working days after the Step 2 decision, the grievant or the Union may appeal the Step 2 decision, in writing, to the Manager, Employee & Labor Relations or designee. Manager, Employee & Labor Relations or designee shall conduct a meeting on the grievance within fifteen (15) working days after receipt of the appeal, and the grievant and the Union shall be given notice of the meeting and an opportunity to be heard. Within fifteen (15) working days after the meeting, the Manager, Employee & Labor Relations or designee shall render a written decision and deliver a copy of the decision to the grievant and to the Union.
44. Step 4: (Binding Arbitration Level)
The Union may, at any time within fifteen (15) working days after the mailing of the Step 3 decision, appeal from such decision to an arbitrator by filing written notice of the appeal with the Manager, Employee & Labor

Relations or designee and arbitrator, except where the appeal is from a proposed disciplinary dismissal, in which event the appeal must be initiated within ten (10) working days of the Step 3 decision. The arbitrator shall conduct a hearing on the grievance or grievances submitted to him/her within thirty (30) working days after receipt by him/her, or such reasonable time as the arbitrator's schedule permits. The arbitrator shall have thirty (30) working days after the close of the hearing to render a decision. The parties to the binding arbitration are the SFMTA and the Union. Only the Union, not individual employee(s), may move a grievance (including a grievance regarding disciplinary action) to Step 4.

45. The arbitrator's final and binding decision shall be in writing, shall contain a factual summary of the grievance or grievances, the evidence, and his/her decision.
46. Economic Claims. Any claim for monetary relief shall not extend more than thirty (30) working days prior to the filing of a grievance. Though the resolution of disputes outside the Grievance Procedure is desired, it is understood by Local 200 that, in order to preserve its claims for monetary relief, it will file a grievance upon having knowledge of the aggrieved event and, should resolution outside the Grievance Procedure appear probable, request an abeyance of the Grievance Procedure time limits, as set forth in section 2, above. SFMTA will not unreasonably refuse a request for abeyance where settlement of an economic claim appears probable.
47. The Manager, Employee & Labor Relations or designee, and the Union shall endeavor to agree upon an arbitrator. Should the parties fail to reach such agreement within twenty (20) working days after the Union appeals the decision to an arbitrator, then, upon the written request of either party, the State Mediation and Conciliation Service shall send a list of five (5) arbitrators, and the parties shall select from the list by alternately striking arbitrators from the list until one arbitrator remains. The cost of the services of the impartial hearing officer shall be shared equally by the Union and SFMTA.
48. Each party shall bear its own expenses in connection with the grievance procedure, including arbitration. All fees and expenses of the arbitrator and court reporter and report, if any, shall be borne and paid in full and shared equally by the parties.

49. Expedited Arbitration Procedures
By mutual agreement, the parties may agree to submit any grievance to expedited arbitration. If the parties agree to expedited arbitration, the arbitrator shall be selected as follows:
- By agreement of the parties, or,
50. The parties may request a list of five (5) arbitrators from the State Mediation and Conciliation Service and alternately strike an arbitrator until one arbitrator remains. The decision of which party shall strike first shall be determined by a coin toss.
51. If the parties elect to submit a grievance to expedited arbitration, closing arguments shall be presented orally, unless the parties agree to submit written briefs. For expedited arbitration, the parties agree that neither SFMTA nor the Union shall be represented by legal counsel. The parties acknowledge, however, that an SFMTA labor relations manager or union representative who also happens to be an attorney shall not be prohibited from participating in an expedited arbitration. The parties agree that the arbitrator shall issue a bench decision and subsequently provide a written decision memorializing his/her decision provided that the parties, by mutual agreement, may elect to obtain written decision following the parties' submission of written briefs.
52. The arbitrator shall have no power to add to or subtract from the provisions of this Agreement.

The Discipline Process

53. Discipline for Just Cause
For just cause, SFMTA's Executive Director/CEO or designee may discipline any non-probationary permanent employee. "Discipline" is defined to include disciplinary suspension without pay, or discharge. Changes in assignment and reassignments made for the purpose of improving service or addressing performance problems shall not constitute discipline and shall not be subject to the grievance procedure in Article I.F. above. SFMTA shall initiate discipline no later than thirty (30) days after the completion of a timely and diligent investigation. SFMTA shall initiate discipline by providing written notice to the employee of the basis for discipline and proposed penalty.
54. Probationary Unit Members
The Executive Director/CEO or designee may release or discipline a unit member during the unit member's probationary period without cause, and such decisions shall not be subject to the grievance procedure in this Agreement.

55. Reprimands And Warnings
Written reprimands, written warnings, and oral warnings shall constitute elements of progressive discipline, but shall not be subject to the grievance procedures in this Article. If a unit member submits a written rebuttal within thirty (30) calendar days from the date of the written reprimand or warning to the Office of Employee and Labor Relations, SFMTA shall attach the unit member's written rebuttal to any written reprimand or warning and shall place both the written reprimand or warning and the rebuttal in the unit member's official personnel file.
56. Unpaid Leave During Investigations
Placement of an employee on unpaid leave pending an investigation shall not constitute discipline, and shall not be subject to the grievance procedures in above.
57. Performance Evaluations
Performance evaluations shall not constitute discipline and shall not be subject to the grievance procedure. If a unit member submits a written rebuttal within thirty(30) calendar days from the date of the performance evaluation to the Office of Employee and Labor Relations, SFMTA shall attach the written rebuttal to the unfavorable performance evaluation and shall place both the performance evaluation and the written rebuttal in the unit member's official personnel file.
58. No interview of an employee that may result in disciplinary action or at which discipline is to be imposed will be undertaken unless the employee is first advised of his/her right to representation. If requested by the employee, such representation must be secured within the succeeding twenty-four (24) hour period, excluding holidays and weekends. If the employee does not secure representation within such period, the right is waived.
59. Pre-Discipline Due Process Rights (Skelly Meeting)
Employees shall be entitled to a Skelly meeting prior to discipline being imposed. During the Skelly meeting an employee shall be entitled to:
- A notice of the proposed action;
 - The reasons for the proposed discipline;
 - A copy of the charges and the materials upon which the action is based;
and
 - The right to respond, either orally or in writing, to the authority initially bringing charges.

- SFMTA retains the right to implement discipline upon completion of Step 2 of the grievance procedure in this Article or, if no grievance is initiated within that time, twenty (20) days after the post-Skelly notice.
- The SFMTA Employee Labor Relations section shall conduct Skelly meetings.

60. Progressive Discipline: For most offenses, management is expected to use a system or progressive discipline under which the employee is given increasingly more severe discipline each time an offense is committed. Management is not bound by progressive discipline in cases of serious offenses where no specific warning or prior disciplinary action need precede separation for cause. A common pattern may include oral warning, written warning, suspension, and finally, separation for cause.

Appeal of Discipline

61. A permanent non-probationary employee who alleges that the discipline has been imposed in violation of this Article shall challenge the discipline by using the grievance procedures in this Article.

I.G. DUES DEDUCTION / AGENCY SHOP

62. Payroll deductions from the pay of employee(s) covered by this CBA for dues to be paid to Local 200 shall be made by the Controller in accordance with the Controller's regulations and the provisions of San Francisco Administrative Code Section 16.90 et seq. (Article V). The MTA agrees to transmit said funds to Local 200 once monthly to Local 200 headquarters. The MTA further agrees that it will check off and transmit to Local 200 Special Fund the amount specified monthly from the wages of those employee(s) who voluntarily authorize such contributions on the forms provided for that purpose by said fund. These transmittals shall occur monthly and shall be accompanied by a list of the employee(s) from whom such deductions have been made and the amounts deducted.

Application

63. For the term of this Agreement, all current and future employees of the MTA subject to the terms and conditions of this Agreement, except set forth below, shall, as a condition of continued employment, become and remain a member of the Union or in lieu thereof, shall pay an agency fee to the Union. Such agency fee shall not exceed the standard initiation fee, periodic dues and general assessments (hereinafter collectively termed membership fees) of the Union representing the employee's classification. The agency fee payment shall be established annually by the Union, provided that such agency shop fee will be used by the Union only for the purposes of collective bargaining, contract administration and pursuing matters affecting wages, hours and other terms and conditions of employment, to the extent allowed by law.

Religious Exemptions

64. If an employee in a classification covered by this Agreement sincerely holds religious beliefs that include conscientious objections to joining or financially supporting a labor organization, the employee shall not be required to pay the service fee. In lieu of paying the service fee, the employee shall pay a charitable contribution equal to the service fee to one of the three following charitable organizations: (1) United Way of the Bay Area, (2) Community Health Charities of California (San Francisco/East Bay Branch), or (3) Local Independent Charities. The charitable contribution shall be paid in the amounts and at the times the service fee would otherwise be paid if the employee were not exempt under this paragraph. The employee shall provide the MTA and Union with an acknowledgement of receipt from the charitable organization or other satisfactory evidence that the charitable contribution has been paid.

Payroll Deductions

65. a. The Union shall provide the MTA Human Resources Director and the City Controller with a complete list of the classifications subject to this Section represented by the Union and a current statement of membership fees. Such list of represented classifications and statement of membership fees shall be amended as necessary. The Controller may take up to 30 days to implement such changes. The Controller shall make required membership fee or service fee payroll deductions for the Union. Each pay period, the Controller shall make membership fee or service fee deductions, as appropriate, from the regular periodic payroll warrant of each affected employee.
66. b. Effective with the first complete pay period worked by an employee newly employed and subject to this Agreement and each pay period thereafter, the Controller shall make membership fee or service fee and initiation deductions, as appropriate, from the regular payroll warrant of each such employee. Nine (9) working days following payday the Controller will promptly pay over the Union all sums withheld for membership or service fees.
67. c. The Union shall be entitled to collect, through the payroll deduction method, membership dues, and any special membership assessments, and through that system, may make changes as may be required from time-to-time. The Union shall give the Controller appropriate written notice of any changes in existing deductions, or the establishment of new bases for deduction.

Service Fees

68. Service fees from nonmembers shall be collected by payroll deduction pursuant to Administrative Code Section 16.90. Failure to comply with this Section shall be grounds for termination. The Union, at its option, may elect

to waive its right to demand termination and instead utilize judicial process to compel payment.

Employee Lists

69. The Controller shall also provide with each payment a list of employees paying service fees. All such lists shall contain the employee's name, employee number, classification, department number and the amount deducted.
70. If during the course of this agreement the Controller becomes capable of doing so, upon request by the Union, the MTA shall provide such list on computer diskette or other electronic medium. All reasonable costs associated with such request shall be paid to the MTA by the Union.
71. A list of all employees in represented classes shall be provided to the Union monthly. Nothing in this Section shall be deemed to have altered the MTA's current obligation to make insurance program or political action deductions when requested by the employee.

Financial Reporting

72. Annually, the Union will provide an explanation of the fee and sufficient financial information to enable the service fee payer to gauge the appropriateness of the fee. The Union will provide a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker not chosen by the Union and will make provision for an escrow account to hold amounts reasonably in dispute while challenges are pending.

Indemnification

73. The Union agrees to indemnify and hold the SFMTA and the City harmless for any loss or damage arising from the operation of this section.

New Hires

74. The MTA agrees to provide the Union with the names and classifications of newly hired employees on a quarterly basis. The MTA will provide such new employees with information regarding the Union and agency shop.

Data

75. The MTA will provide the Union the following data, for each employee in the covered classifications, on a quarterly basis within legal and reasonable administrative constraints.
1. Name;
 2. Employee Number;
 3. Current Classification.

76. Upon written request, the MTA agrees to provide to the Union, on an annual basis, gender information by job classification.
77. The Union shall comply with the requirements set forth in Chicago Teachers Union v. Hudson, 475 U.S. 292 (1986) for the deduction of agency shop fees. Annually, the Union shall certify in writing to the City that the content of the written notice meets the requirements set forth in this section and in Hudson.

1.H. GENERAL INFORMATION

78. As provided under Article III.D., the SFMTA shall maintain all records of overtime worked by employee(s) in their respective divisions/departments. Copies of said records shall be made available to the representative of Local 200 upon request.
79. Notice of Occurrence of Industrial Accidents. Timely notice of the occurrence of an injury to any employee sustained in the course of his or her employment shall be given to Local 200. Information supplied may include the date of the accident or injury, corrective action taken, current status of employee, and the work location of the accident or injury. When an employee is hospitalized, Local 200 will be notified by telephone.

ARTICLE II: EMPLOYMENT CONDITIONS

II.A. NON DISCRIMINATION

80. The SFMTA and Local 200 agree that this Agreement shall be administered in a nondiscriminatory manner. Specifically, no employee covered by this Agreement shall be discriminated against because of race, color, creed, religion, sex, sexual orientation, gender identity, national origin, physical or mental disability, age, political affiliation or opinion or Local 200 membership or activity. Discrimination as used herein shall mean discrimination as defined by Title VII of the 1964 Civil Rights Act, as amended, the Civil Rights Act of 1991, the California Fair Employment and Housing Act, the Americans with Disabilities Act, the California and United States Constitutions, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Civil Rights Act of 1866, Meyers-Miliias-Brown Act and any other laws and regulation relating to employment discrimination.
81. A complaint of discrimination may, at the employee's option, be processed through the SFMTA's Equal Employment Opportunity complaint process, or federal or state administrative or judicial processes. If the employee elects to pursue a non-contractual remedy for discrimination, it shall constitute a waiver of the right to pursue that complaint through the grievance and arbitration procedure.

II.B. AMERICANS WITH DISABILITIES ACT

82. The parties agree that they are required to provide reasonable accommodations for employees with disabilities in order to comply with the provisions of the Americans with Disabilities Act, the Fair Employment and Housing Act, and all other applicable federal, state and local disability anti-discrimination statutes and further agree that this agreement will not be interpreted, administered or applied in any manner which is inconsistent with said Act. The SFMTA reserves the right to take any action necessary to comply therewith.

II.C. ASSIGNMENT OF WORK

A. Assignments

83. For the purpose of this Agreement, "assignment" shall mean the designation of a 9139 employee to a specific position or set of responsibilities at a designated division or work location.
84. SFMTA shall assign employees based on the employee's training, experience, documented strengths or weaknesses, seniority, special skills, compliance with applicable law, and SFMTA's assessment of its staffing needs.

B. Initial Assignment

85. For the purpose of this Agreement, "initial assignment" shall mean "the designation of a newly appointed 9139 employee to a specific position or responsibility within a division or work location for a period of time not less than one hundred eighty (180) working days." Effective the first weekday after a newly appointed 9139 employee has completed SFMTA training and has met all regulatory requirements, including all licenses and medical certifications, SFMTA shall place each 9139 employee in an initial assignment at Street Operations. After successful completion of the initial assignment, the 9139 employee may participate in the Employee-Initiated Change of Assignment described in Section C. below.

C. Change Of Assignment

86. For the purpose of this Agreement, a "change of assignment" shall mean a change in a 9139 employee's assignment as defined in Section A. Changes of assignment can be either an Employee-Initiated Change of Assignment or an SFMTA-Initiated Change of Assignment.
87. 1. Employee-Initiated Change Of Assignment

If SFMTA determines to fill a vacancy, it shall post the assignment, place a notice on the SFMTA Intranet, post on the bulletin board in facilities where 9139s are assigned, and send an email to the TWU Local 200 Executive Board members at the email address on record ten (10) working days before selecting an employee to fill the vacancy. For purpose of this Agreement, a “vacancy” refers to an open 9139 assignment within Transit Operations.

88. In selecting a employee to fill vacancies in a 9139 assignment, including employees within the classification who have requested a employee-initiated change of assignment within the 9139 classification, SFMTA shall consider the criteria listed in paragraph D. below for each assignment, and select the employee on the basis of qualifications and skills. However, If two or more employees for the vacant assignment are equally qualified, SFMTA shall select the employee with the greatest seniority.

2. SFMTA-Initiated Change Of Assignment Within 9139 Classification

89. SFMTA may initiate a change of assignment of employees within the 9139 classification. If SFMTA determines to fill a vacancy, posts the vacancy for ten (10) days, and no employee requests a change of assignment to the vacancy, SFMTA shall assign the least senior qualified 9139 employee to the vacancy.

D. Qualifications and Skills for Assignment and Change of Assignment

90. The qualifications and skills required for specialty shall be those described in the following paragraphs.

1. Condition Of Assignment Of 9139 To Training

91. As a condition of assignment to training, employees shall obtain and maintain all regulatory requirements, including all licenses or medical certifications required to train operators on the equipment to which operators are assigned.

92. SFMTA will provide training to all affected employees in order to maintain all regulatory requirements required to train operators on the equipment to which operators are assigned. Each employee remains solely responsible for attending and satisfactorily completing all regulatory requirements, including all licenses, medical certifications, and training. In addition, each employee shall submit a validated copy of any

required certificate(s), license(s), or other documentation to SFMTA.

93. Failure to meet the requirements of this section will result in reassignment to a non-training assignment in the affected employee's classification.

2. Condition Of Assignment Of 9139 To Schedule Maker

94. As a condition of assignment to schedule maker, employees shall demonstrate proficiency in Trapeze or current scheduling software, payroll systems, and mapping programs; demonstrate ability to develop and validate transit route schedules; demonstrate ability to coordinate schedules with other groups such as operations planning, operations, and vehicle maintenance; demonstrate ability to create detailed and efficient schedules based on operations planning service needs by applying work rules, hours of service, ridership and other data; demonstrate mathematical aptitude, spatial aptitude – i.e., ability to estimate driving time for streets and distances; demonstrate ability to work independently with minimal supervision; and demonstrate ability to work effectively with detailed charts and spreadsheets over long period of time.

95. SFMTA will provide training to all affected employees in order to maintain all conditions of assignment to schedule maker division. Each employee remains solely responsible for attending and satisfactorily completing all conditions of assignment. In addition, each employee shall submit a validated copy of any required certificate(s), license(s), or other documentation to SFMTA.

96. Failure to meet the requirements of this section will result in reassignment to a non-schedule making assignment in the affected employee's classification.

3. Condition Of Assignment Of 9139 To Dispatcher

97. As a condition of assignment to Dispatch, employees shall demonstrate proficiency in the use of the Trapeze Ops dispatch program; strong verbal communications skills; ability to interact effectively with a broad variety of personalities; strong organizational and analytical skills, detailed knowledge of SFMTA's Agreements and related work assignment policies; experience with complex filing procedures; SFMTA will provide training to all affected

employees in order to maintain all conditions of assignment to dispatch. Each employee remains solely responsible for attending and satisfactorily completing all conditions of assignment. In addition, each employee shall submit a validated copy of any required certificate(s), license(s), or other documentation to SFMTA.

98. Failure to meet the requirements of this section will result in reassignment to a non-dispatcher assignment in the affected employee's classification.

4. Condition Of Assignment Of 9139 To Central Control

99. As a condition of assignment to Central Control, employees shall demonstrate at least two (2) years of experience as street supervisor or dispatcher or similar position in comparable transit agency; proficiency in Trapeze or current scheduling software, strong verbal communications skills; ability to interact effectively with a broad variety of personalities; strong organizational and analytical skills, detailed knowledge of SFMTA's Agreements and related work assignment policies. SFMTA will provide training to all affected employees in order to maintain all conditions of assignment to Central Control. Each employee remains solely responsible for attending and satisfactorily completing all conditions of assignment. In addition, each employee shall submit a validated copy of any required certificate(s), license(s), or other documentation to SFMTA.

100. Employees returning to class 9139 from a promotive class will go in place on the relief board in their previous unit. The returning employee will maintain his/her sign up seniority if he/she returns within a one-year time limit.

101. Annual Voluntary Transfer Process : SFMTA shall conduct an annual Intra Divisional Voluntary Transfer Process in each of the following classifications:

1773 Media Training Specialist
7412 Automotive Service Worker Assistant Supervisor
8121 Fare Inspections Supervisor/Investigator
9135 Passenger Service Specialist
9150 Train Controller
9160 Transit Operations Specialist
9520 Transportation Safety Specialist

102. 9139 Voluntary Transfer Process (Classification 9139): There shall be a voluntary transfer process within the 9139 classification once every three (3) years. Movement among specialty assignments as a result of the voluntary transfer process will be phased in over a one year period.
103. 9139 Specialty Assignments:
Schedules, Safety and Training, and Central Control shall be limited to a turnover of thirty percent (30%). Movement as a result of change of assignments in the period between Voluntary Transfer Process will be considered as part of the 30% limitation at the time of the Voluntary Transfer Process.
104. H. Voluntary Transfer Process:
At least twenty-five (25) calendar days prior to the scheduled date of the voluntary transfer process, SFMTA shall provide TWU Local 200 with descriptions and all assignments for the voluntary transfer process. Regularly occurring special assignments will be included as part of the shift details prepared for the Voluntary Transfer Process. No later than ten (10) days prior to the scheduled date of the voluntary transfer process, TWU Local 200 shall meet with SFMTA to clarify the assignments and descriptions.
105. Assignments. All assignments will be posted at least ten (10) days prior to the voluntary transfer process. At the same time, duties and responsibilities related to the assignments will be posted along with the assignments to which they refer.
106. Assignment Premiums. Those assignments that have pay premiums shall be so marked.
107. Voluntary Transfer Requests: Voluntary Transfer requests for an assignment shall be limited to qualified employees, and shall be in direct seniority order..
108. Voluntary Transfer Procedures. Each employee shall have five (5) minutes to select a voluntary transfer assignment. If an employee will not be present, she or he can leave five (5) choices of assignment on the prescribed form or designate in writing a Local 200 representative to select her/him. If no choices have been made known, the following procedures will govern assignments:
109. a. The employee will be assigned to the same assignment as occupied before the sign-up if that assignment is still open.
110. b. The employee will be assigned the most similar available assignment in the same group with similar hours and days off.

111. c. The employee will be assigned to another group for which the employee is qualified with similar hours and days off.
112. d. The employee will be assigned to the group where now working but to a shift with different hours and/or days off.
113. e. The employee will be assigned by Management to any open position for which the employee is qualified, preferably with similar type of equipment.
114. On Leave and Scheduled For Voluntary Transfer Process. Employees on personal leave, sick leave, workers compensation , or special duty, who are scheduled to return to work on or before thirty (30) days following the date of the voluntary transfer process will be allowed to take part. Employees who are currently on leave must present a doctor's note of the projected date of return to work in person to the Appointing Officer or its designee within five (5) working days of the posting of the sign-up. Management will notify by mail all employees entitled to take part who are off on extended leaves of absence. Employees on leave who are not scheduled to return to duty within the prescribed time may not participate in the voluntary transfer process. When such employees return to work, they will be assigned to an open position in any group or division for which they are qualified, with preference given to seniority and to the same or like position from which they came.
115. Changing Assignments. Employees changing work assignments to another group will be trained in required aspects of the work of the new group..
116. Accepted Performance Levels. An employee who has signed up for a change of assignment in another group and does not meet accepted performance levels within three (3) months, but has worked satisfactorily in another previous assignment , shall be allowed to return to the previously assigned group .
117. Relief Assignments. Relief assignments shall be filled as they become available by the most senior qualified employee in the classification within the group on the Vacation Relief list requesting the reassignment, consistent with the terms of Article II.H. Employees in relief assignments shall be offered, by seniority order, the reassignment to any permanent opening for which they are qualified as it becomes available, providing the SFMTA elects to fill the opening.
118. a. On Wednesday of each week, the shifts requiring relief assignments lasting at least one week starting the following week will be posted for assignment from among those qualified employees who have bid for relief assignments.

Such employee signing up for an assignment shall maintain his/her RDO.

119. b. When, in the opinion of the Appointing Officer or its designee, exceptional circumstances require that the most senior qualified employee who bid for a particular assignment is not allowed to cover that assignment, the Appointing Officer or its designee shall inform Local 200, and at the request of Local 200, an immediate meeting will be held to review the reasons why the most senior qualified employee is not allowed to work the assignment.
120. Minimum Break between Relief Shifts and Block Shifts. SFMTA and Local 200 agree that changing work hours from day to night work during the course of a work week can affect the health and safety of employees and should be minimized to the extent possible. Except in emergencies, the SFMTA shall make a best effort to arrange breaks of not less than nine (9) hours between the end of an assigned shift and the beginning of the next assigned shift within each week of five (5) consecutive work days.
121. Central Control Dispatchers will be entitled to one (1) forty five (45) minute break during an eight (8) hour shift. Breaks will be scheduled on the needs of service and staggered throughout the day.
122. Central Control Dispatchers will be entitled to one (1) twenty (20) minute break after each four (4) hours of overtime worked.
123. Short Term Reassignments for classifications 9139 and 9140. Short term temporary or emergency reassignments within a classification necessary to maximize public service may not exceed 100 calendar days. The selection of qualified employees for such reassignments shall be by seniority, provided the employee has the capacity to perform in that assignment, or can be trained for such assignment in fifteen (15) working days or less. In the event the employee is not fully trained within fifteen (15) working days after training has been provided, the SFMTA may reassign the next senior employee.
124. The duration of short term reassignments will be defined Voluntary Transfer Process and included in the bulletin.
125. No employee covered by this Agreement may assign classification 9163 Transit Operators to perform the work of classification 9139 Transit Supervisor, except in emergencies and then only for the duration of such emergency.
126. Assignment of 9140 Transit Manager I. Assignment of employees in classification 9140 to particular work duties and/or shifts shall be made by the Appointing Officer or its designee based on the skills, experience,

good interpersonal relations and work record of each employee. Seniority shall be considered in the assignment, however seniority shall not control the assignment, or be the single determining factor, if the skills, types of experience, good interpersonal relations and work record of the less senior candidate are considerably better suited, based upon these criteria, to achieve important operational objectives, the Appointing Officer or its designee may reassign persons at any time based on these criteria.

127. Reassignments may also occur as a result of vacancies in the 9140 class. Any 9140 employee interested in an open position shall request in writing that he or she be considered. Such reassignments shall be made within the criteria stated above.
128. Central Control Staffing. SFMTA shall provide adequate staffing at Central Control on weekends to permit an employee working the 10:00 a.m. to 6:00 p.m. assignment to take breaks. Central Control Dispatchers rotate their consoles on a weekly basis.
129. Assignment of 7412 Automotive Service Worker Assistant Supervisor. Automotive Service Worker Assistant Supervisors may bid for shifts or locations by seniority, including newly created or vacant assignments. When a 7412 is assigned as a result of a bid, he or she may not bid for another position until one year has elapsed, except when the SFMTA, at its discretion, decides to change the assigned position to another location or shift. A 7412 whose assignment is changed would have an opportunity to bid into any other 7412 assignment based upon seniority.
130. As appropriate, and, in the sole discretion of the Appointing Officer or its designee, a 7412 shall be assigned to each shift and shop where five (5) or more 7410's are working.
131. Street Inspectors may have their mail delivered to their corners upon request.
132. Street Inspectors assigned MTA vehicles that are shared by more than one shift are allowed to leave their assigned districts fifteen (15) minutes early for travel time to return to the vehicle pool location.
133. Street Inspectors will be allowed to take break between calls, except during rush hours and delays, upon notification and approval of Central Control.

II.D. PERSONNEL FILES AND OTHER PERSONNEL MATTERS

134. There shall be maintained only one official personnel file for an employee, and the employee shall have access to the file to review the file during normal working hours, upon reasonable request. The personnel files for employees covered by this CBA shall be maintained at the Personnel Office.

135. No material may be entered into the official personnel file without knowledge of the employee and a copy being given to him/her. An employee will have the option to sign, date and attach a response to material entered in his/her personnel file within thirty (30) days of his/her having knowledge of the entry. Discipline involving less than a suspension may not be considered for subsequent disciplinary actions after twelve (12) months. Discipline involving a suspension of five (5)-days or less may not be considered for subsequent disciplinary actions after eighteen (18) months. Discipline involving a suspension of greater than five (5)-days may not be considered for subsequent disciplinary actions after thirty-six (36) months. Discipline resulting from a chemical dependency violation may not be considered for subsequent disciplinary actions after sixty (60) months. Subject to the approval of the Civil Service Commission, the employee may request, in writing, that any disciplinary documents that may no longer be considered, as described above, be removed from his/her personnel file. In addition, this provision shall not apply to employees disciplined for: misappropriating public funds or property, misusing or destroying public property, using illicit drugs at work or being under the influence of illicit drugs or alcohol at work, mistreating other persons, engaging in acts that would constitute a felony or misdemeanor involving moral turpitude, engaging in acts that present an immediate danger to the public health and safety, or engaging in immoral acts.
136. Standards of Performance. Local 200 recognizes the SFMTA's right to establish and/or revise performance levels, norms, or standards. Such standards, developed by usual work measurement procedures, may be used to determine acceptable performance levels, prepare work schedules, and to measure the performance of each employee or group of employees.
137. Employee(s) who work at less than acceptable levels of performance may be subject to disciplinary measures.
138. Consistent with the Meyers-Milias-Brown Act and Article I.B., herein, the SFMTA agrees to meet and confer with Local 200 to discuss the effect of an implementation of revised performance levels, norms or standards. However, employee performance evaluations may not be grieved or submitted to arbitration.

II.E. PERSONAL SERVICES CONTRACT

139. Personal Services Contracts. No personal service contracts shall be approved by the SFMTA for work which normally is, or which can be, performed by employees or eligibles for Civil Service classifications covered by this CBA without first meeting and conferring with Local 200,

consistent with Article I.B. herein, and subject to approval of the Civil Service Commission.

II.F. EDUCATION AND CAREER DEVELOPMENT

140. Equal Access to Training Opportunities. Other than training required by management, access to training opportunities shall be provided equitably to all employees who indicate their willingness to participate in such training.
141. Notice of Training Opportunities. The Appointing Officer, or its designee, shall post announcements of all optional training opportunities affecting positions within Local 200's jurisdiction in accessible locations.
142. Review of Training and Promotional Opportunities. Any employee(s), with the assistance of Local 200, may discuss the issue of training opportunities and future potential promotion with the appropriate representative of the SFMTA.
143. EEO Training. The SFMTA will offer training to managers who supervise staff in the area of equal employment opportunity and discrimination per SFMTA's EEO requirements.
144. SFMTA Employees shall be offered a minimum of twenty (20) hours of job related training each year. Training will be at the discretion of the Appointing Officer. Annual training will be created in concert with the annual performance plan. SFMTA will share with Local 200 the training outline 10 working days in advance of training for comments and suggestions.

II.G. JOINT COMMITTEES

Joint Labor Management Board (JLMB)

Union/SFMTA Relations Committee

145. The parties agree to establish a Union/SFMTA Relations Committee with equal representation from both SFMTA and the Union. The Union/SFMTA Relations Committee shall meet on a quarterly basis. The Union/SFMTA Relations Committee shall identify best practices and methods to reduce costs, improve efficiency in the delivery of services, increase accountability, and enhance employee skills and job satisfaction.

Joint / Union Management Health And Safety Committee

Committee Composition

146. Three (3) representatives selected by Management and three (3) employee representatives selected from the Union shall constitute a Joint Union/Management Health and Safety Committee. The Joint Union Management Health and Safety Committee shall meet on a quarterly basis.

Committee Purpose

147. The committee shall consider best practices and legal mandates and shall recommend health and safety regulations, guidelines, training programs and necessary corrective action concerning conditions associated with the work environment. Health and safety issues to be considered by the Union/SFMTA shall include, but not be limited to, ergonomics, use of SFMTA non-revenue vehicles, shelters for street corner locations, use and inspection of video display terminals, chemical compounds, and use of personal vehicles for shelters during inclement weather. Local 200 and SFMTA agree to work to address the ongoing Street Supervisor and Central Control on-street parking challenges.

Committees' Recommendations

148. Neither the Union/SFMTA Relations Committee's recommendations nor the Joint Union Management Committee's recommendations shall supersede or invalidate any portion of this Agreement.

II.H. SENIORITY

149. Seniority, for the purpose of this Article, is defined as the length of continuous service determined from the day of certification to a permanent position in a classification as described in Article I.A.
150. For classification 7412, seniority shall control in the filling of vacancies within a classification by reassignment and the assignment of shifts, days off and overtime. Seniority for classification 9139 in respect to assignment and reassignment is addressed in Article II.C.
151. Employees covered by this CBA permanently promoted to another classification or receiving any non-permanent appointment may retain their seniority in their original classification in case of return to that position within one (1) year. After one year, promoted employees returning to their original classification shall return to the level of seniority reached at the time of their promotion.
152. Seniority for the purposes of vacation sign-ups shall be computed on the basis of the date of hire with the City and County of San Francisco. Where there are more than one employee with the same date of hire, the

date of hire in the classification and the position on the Civil Service list shall determine the order for change of assignments and voluntary transfer process.

153. Vacation sign-ups shall be conducted by the end of January of each year for that calendar year unless important operational concerns require a delay. Seniority shall be based on date of hire with the City and County of San Francisco. When more than one employee has the same hire date with the City and County of San Francisco, the date of hire in the classification and the position on the civil service list shall determine the order for sign up

II.I. PROBATIONARY PERIOD

154. The probationary period shall be one year, as defined and administered by the Civil Service Commission.

II.J. ANTI-NEPOTISM

155. No employee of the San Francisco Municipal Transportation Agency shall knowingly request a change of assignment or a voluntary transfer to a position that reports directly to or directly supervises the employee's spouse, domestic partner, parent or child. SFMTA management shall not knowingly assign an employee to such a position. If an employee is in such a position on July 1, 2001, or, if changes occur that cause an employee to be in such a position during the term of this Agreement (including but not limited to organizational restructuring, changes in familial relationships, or changes in reporting relationships caused by operation of the Civil Service rules), the following shall occur: the first represented employee of the two affected employees who has an opportunity to be assigned to a different assignment for which he or she possesses the appropriate qualifications shall be required to do so. This provision is not intended to affect the rights of any employee under the Civil Service rules.

ARTICLE III: PAY, HOURS AND BENEFITS

III.A. WAGES

First Fiscal Year 2011-2012: Base Hourly Rate Of Pay:

156. Effective July 1, 2011 and continuing until June 30, 2012, the base hourly rate of pay for bargaining unit members shall remain the same as the FY 2010-211 base rate of pay stated on Appendix A, attached to this Agreement, and incorporated by reference into this Agreement. In other words, the FY 2011-2012 base rate of pay shall remain the same as the 2010-2011 base rate of pay.

Second Fiscal Year 2012-2013: Base Hourly Rate Of Pay

157. Effective July 1, 2012 and continuing until June 30, 2013, the base hourly rate of pay for bargaining unit members shall remain the same as the FY 2011-2012 base rate of pay stated on Appendix A, attached to this Agreement, and incorporated by reference into this Agreement. In other words, the FY 2012-2013 base rate of pay shall not be increased over the 2011-2012 rate of pay.

Third Fiscal Year 2013-2014: Base Hourly Rate Of Pay

158. Effective July 1, 2013 and continuing until June 30, 2014, the base hourly rate of pay for bargaining unit members shall remain the same as the FY 2011-2012 base rate of pay stated on Appendix A, attached to this Agreement, and incorporated by reference into this Agreement. In other words, the FY 2013-2014 base rate of pay shall not be increased over the 2011-2012 rate of pay.

III.B. COMPENSATION FOR VARIOUS WORK SCHEDULES

159. Normal Work Schedule. The normal work day is a tour of eight (8) hours to be completed in nine (9) hours. The normal work week is a tour of duty on each of five (5) consecutive days. Employees working eight (8) hours within an eleven (11) hour range will receive an additional one (1) hour of pay at the straight time rate of pay for a total of nine (9) hours of pay.
160. Any employee(s) may choose to work a daily shift, where such a shift may be offered, consisting of not more than ten (10) hours. Said employee(s) must then have a tour of duty consisting of four (4) consecutive days of work and three (3) consecutive days off. Overtime shall be paid for all work in excess of ten (10) hours daily and/or forty (40) hours weekly.
161. Compensation fixed herein on a per diem basis is for a normal eight hour work day; and on a bi-weekly basis for a bi-weekly payroll period of service consisting of a normal work schedule.
162. For the purpose of computing hours of work, work time will include: (1) all regularly scheduled work required by the job; (2) in addition to (1), above, all work performed at the request of the employee(s)' supervisor or manager; (3) pursuant to Employee Relations Ordinance Section 16.219; (4) time spent by a designated representative of Local 200 representing employee(s) covered by this CBA in the grievance procedure; (5) time spent in court appearances while conducting business related to the Department; (6) time spent on jury duty.
163. An employee who is required to serve on a jury or report to Court for jury duty on her/his regular day off shall be considered to have the following Saturday as an assigned day off if the regular day off lost was Monday or

Tuesday, and shall be considered to have Sunday as an assigned day off if the regular day off lost was Wednesday, Thursday or Friday.

- 164. Statutory holidays shall be counted as hours actually worked.
- 165. All compensation shall be calculated upon the hours actually worked proportionate to the compensation for a normal work schedule.
- 166. Fulltime MTA employees on approved sick pay, vacation or compensatory time off shall be given the option of receiving either eight (8) hours pay or an amount equivalent to their regularly scheduled shift hours, from their sick or vacation credits or compensatory time earned balances.

III.C. ADDITIONAL COMPENSATION

- 167. The MTA and Local 200 agree that the following rates of premium pay shall apply to those positions agreed by the parties to be eligible for premium pay. All premium pay shall be for hours actually worked. Premiums shall be calculated against the employee's base rate of pay and may not be pyramided.

1. Night Duty

- 168. NIGHT DUTY EMPLOYEES shall be paid eight and one half (8.5%) more than the base rate for each hour actually worked between 5:00 p.m. and 12:00 a.m. (swing), except for those employees working a normal shift in excess of eight (8) hours per day that requires work between the hours of 5:00 p.m. and 12:00 a.m. Employees working at least five (5) hours of their regular shift between 5:00 p.m. and 12:00 a.m. shall receive the 4% differential for the entire shift. Night shift premium shall be paid only for days and hours actually worked, as set forth above, except for statutory holidays and vacation days.

- 169. Employees shall be paid ten percent (10%) more than the base rate for each hour actually worked between 12:00 a.m. and 7:00 a.m. (graveyard), except for those employees working a normal shift in excess of eight (8) hours per day that requires work between the hours of 12:00 a.m. and 7:00 a.m. Employees working at least five (5) hours of their regular shift between 12:00 a.m. and 7:00 a.m. shall receive the 10% differential for the entire shift. Night shift premium shall be paid only for days and hours actually worked, as set forth above, except for statutory holidays and vacation days.

2. Standby Pay And Pager Pay

- 170. Employees who, as part of the duties of their positions are required by the Appointing Officer to stand by when normally off duty to be instantly available on call for immediate emergency service for the performance of

their regular duties, shall be paid twenty-five (25%) percent of their regular straight time rate of pay for the period of such standby service, except that employees shall be paid five (5%) percent of their regular straight time rate of pay for the period of such standby service when outfitted by the Department with an electronic paging device. When such employees are called on to perform their regular duties in emergencies during the period of such standby service, they shall be paid while engaged in such emergency service the usual rate of pay for such service as provided herein. Notwithstanding the general provisions of this section, standby pay shall not be allowed in classes whose duties are primarily administrative in nature.

171. No employee shall be compensated for standby service unless the Appointing Officer or its designee assigns said employee to such standby service.

3. Special Skills / Duties

172. a. Central Control Pay. After certification, all employees working in Central Control shall receive an increase of one-half step on the salary grade (2.5%).

173. b. Safety and Training Division and Scheduling Division Premium Pay. Employees in classification 9139 assigned to the Safety and Training Department and Scheduling Department shall receive a training premium of One Dollar and Fifty cents (\$1.50) per hour but such premium shall be payable only for days and hours actually worked.

174. c. Saturday and Sunday Premium for Class 7412 Automotive Service Worker Assistant Supervisors. When Saturday is worked as part of the scheduled forty (40) hour work week, it shall be paid at the straight time rate, with an additional premium of six percent (6%) of the base rate. When Sunday is worked as part of the scheduled forty (40) hour work week, it shall be paid at the straight time rate, with an additional premium of ninety-four percent (94%) of one-half (1/2) of the base rate.

175. In the Safety and Training Department the lead instructor for new operator classes will be rotated.

4. Lead Person Pay

176. Employees occupying positions designated by the Appointing Officer, or its designee, as a lead person position shall receive a Lead Person premium of one dollar and fifty cents (\$1.50) per hour, payable only for days and/or hours actually worked.

5. Shift Differential (For Class 7412 only)

177. For any shift immediately following a regular day shift or commencing during any period of a day shift shall be considered a night shift and employees working on such shift shall be paid ten percent (10%) above the regular day shift as set forth herein. A subsequent shift shall be known as a midnight shift and shall be paid fifteen percent (15%) above the regular day rate. Night and midnight Shift Differential premiums shall be paid only for days and hours actually worked except for statutory holidays and vacation days.

6. Bilingual Pay

178. Employees who are assigned by their Department to a "designated bilingual position" for ten (10) or more hours biweekly shall be granted additional compensation of \$35.00 biweekly. Any employee assigned to a "designated bilingual position" who translates forty (40) or more hours biweekly shall be granted an additional \$15.00 biweekly, making a total of \$50.00 biweekly. A "designated bilingual position" is a position designated by the Department which requires translating to and from a foreign language including sign language used by the hearing impaired and Braille for the visually impaired.

7. Automobile Allowance And Transportation

179. Employees at the San Francisco Municipal Transportation Agency (SFMTA) who are required in writing to use their personal vehicle for SFMTA business (including employees who have received written authorization to utilize their personal vehicle as a street corner shelter) and who receive parking tickets for overtime parking at parking meters when they are unable to place money in the parking meters while on duty in the field shall be reimbursed for no more than three (3) parking tickets per covered employee per fiscal year of this agreement. Employees requesting reimbursement shall be required to submit documentation in a form designated by Department management demonstrating that: (1) the citation was issued for overtime parking at a parking meter; (2) the citation was issued at a time and location when the employee was acting in the course and scope of his/her employment in the field; (3) the reason why the employee was precluded by his/her job duties from putting change into the meter in a timely manner.

Employees required to use their own vehicles for MTA Business shall be reimbursed for mileage at the rate allowed by the IRS during the term of this CBA.

Driver's License Reimbursement

180. MTA employees in service for one year or more and whose job assignments include maintaining a valid Class B California Driver's License and/or a Verification of Transit Training (VTT) Certificate shall be reimbursed for the renewal fees of such licenses.

8. Acting Assignment Pay

181. Employees assigned by the Appointing Officer or its designee to perform a substantial portion of the duties and responsibilities of a higher classification shall receive compensation at a higher salary if all of the following conditions are met:
182. a. the assignment shall be in writing;
183. b. the position to which the employee is assigned must be a budgeted position.
184. c. the employee is assigned to perform the duties of a higher classification for longer than eleven (11) consecutive working days, retroactive to the first day of the assignment.
185. d. Upon written approval by the Appointing Officer or its designee, an employee shall be paid at a step of the established salary grade of the higher class which is at least five percent (5%) above the employee's base salary but which does not exceed the maximum step of the salary grade of the class to which temporarily assigned. Premiums based on percent of salary shall be paid at a rate which includes out of class pay.
186. e. Requests for classification or reclassification review shall not be governed by this provision.
187. Where the above requirements are satisfied but an employee does not receive a premium, the employee must file a grievance within thirty days of written notice of the assignment.
188. Emergency Transit Manager I Assignments. In case of an emergency (a situation occurring unexpectedly and which cannot be planned for), a 9139 supervisor may be assigned to fill the shift of a 9140 Manager. She or he shall receive the pay of a 9140 retroactive to the first day if in the position for five (5) consecutive days or more.

9. Supervisory Differential Adjustment

189. The MTA Department of Human Resources may adjust the compensation of a supervisory employee whose compensation grade is set herein subject to the following conditions:
190. The supervisor, as part of the regular responsibilities of his/her class, supervises, directs, is accountable for and is in responsible charge of the work of a subordinate or subordinates.
191. The supervisor must actually supervise the technical content of subordinate work and possess education and/or experience appropriate to the technical assignment.
192. The organization is a permanent one approved by the Department, Board or Commission, where applicable, and is a matter of record based upon review and investigation by the MTA Department of Human Resources.
193. The classifications of both the supervisor and the subordinate are appropriate to the organization and have a normal, logical relationship to each other in terms of their respective duties and levels of responsibility and accountability in the organization.
194. The compensation grade of the supervisor is less than one full step (approximately 5%) over the compensation grade, exclusive of extra pay, of the employee supervised.
195. The adjustment of the compensation grade of the supervisor shall not exceed five (5%) percent over the compensation exclusive of extra pay, of the employee supervised.
196. If the application of this section adjusts the compensation grade of an employee in excess of his/her immediate supervisor, the pay of such immediate supervisor shall be adjusted to an amount one dollar (\$1) bi-weekly in excess of the base rate of his/her highest paid subordinate, provided that the applicable conditions of this section are also met.
197. In no event will the MTA Department of Human Resources approve a supervisory salary adjustment in excess of two (2) full steps (approximately 10%) over the supervisor's current basic compensation. If in the following fiscal year a salary inequity continues to exist, the MTA Department of Human Resources may again review the circumstances and may grant an additional salary adjustment not to exceed two (2) full steps (approximately 10%).
198. The MTA Human Resources Department shall review any changes in the conditions or circumstances that were and are relevant to the request for

salary adjustment under this section either acted upon by or pending before the MTA Human Resources Director.

10. Other Additional Compensation

199. On-the-job and Ride-Along Training. Employees assigned to perform on-the-job training for other employees in their classification shall receive a training premium of \$3.00 per hour but such premium shall be payable only for days and hours actually worked. Employees who have volunteered to perform ride-along training for 9163 Transit Operators shall receive the \$3.00 per hour premium for the days and hours actually worked on such assignment.
200. Corner Books. If corner books are required of supervisors working at street locations and are not provided by Department, Department and LOCAL 200 shall meet & confer upon request of LOCAL 200 within thirty (30) days of the ratification of this CBA by the Board of Supervisors as to the reasonable compensation to be paid to supervisors for the time necessary to prepare such corner books.
201. Employee(s) covered by this CBA, their spouses/registered domestic partners and legally dependent children under nineteen (19) years of age who are living with said employee(s), shall be furnished with system passes pursuant to rules presently in effect at Department covering Department operators. Retired employee(s) shall be provided with system passes for the remainder of their lives.

11. Safety Division Instructor Premium

202. Safety Division Instructors shall receive a premium of \$5.00 per day when required to perform accident determinations.

III.D. OVERTIME COMPENSATION & COMP. TIME

203. 1. Overtime and Comp Time Calculation. Except as set forth in Article III.B., time worked in excess of eight (8) hours per day or forty (40) hours per week shall be designated as overtime and shall be compensated at one-and-one-half times the base hourly rate which may include a night differential if applicable. Employees shall not be entitled to overtime compensation for work performed in excess of specified regular hours until they exceed eight (8) hours per day or forty (40) hours per week; provided that employees, if any, working in an alternative work schedule shall be entitled to overtime as provided by III. B. 2. Overtime shall be calculated and paid on the basis of the total number of straight-time hours actually worked in a day and week except that statutory holidays, including floating holidays and furlough days, shall be considered time worked.

204. One (1) day of vacation taken within a scheduled workweek shall be considered as time worked for the purposes of calculating overtime earnings. Multiple days vacation taken within a scheduled workweek shall not be considered as time worked for the purposes of calculating overtime earnings.
205. a. Employees occupying Fair Labor Standards Act (“FLSA”) exempt positions, including positions designated by the CITY as “Z” classifications in the Annual Salary Ordinance, shall not be paid for overtime worked but shall be granted compensatory time off at the rate of one and a half times the hours worked, only if the overtime worked has been approved in advance.
206. b. Employees covered by the FLSA (non-Z) who are required to work overtime shall be paid at a rate of one and one-half times the regular base rate, unless the employee and the Appointing Officer mutually agree that in lieu of paid overtime, the employee shall be compensated with compensatory time off.
207. c. No Appointing Officer shall require an employee not designated by a “Z” symbol in the Annual Salary Ordinance to work overtime when it is known by said Appointing Officer that funds are legally unavailable to pay said employee, provided that an employee may voluntarily work overtime under such conditions in order to earn compensatory time off at the rate of time and one-half, pursuant to the provisions herein. NOTE: Clarify Language.
208. d. Compensatory time shall be earned at the rate of time and one half. Employees occupying non “Z” designated positions shall not accumulate a balance of compensatory time earned in excess of 240 hours calculated at the rate of time and one half.
209. e. Employees working overtime during premium pay time shall receive overtime pay based on the premium rate.
210. f. Non-emergency overtime shall be distributed equitably among employee(s) who have current experience in and capacity for the work required, and who indicate their willingness to participate in such work.
211. g. Recordation Of Overtime. All overtime worked which is authorized by the Appointing Officer shall be recorded on separate timerolls. Compensation for overtime worked as provided in this Section shall be paid on an hourly basis. When improved methods of payroll processing are implemented and with the approval of the MUNI Human Resources Director and the Controller, such overtime may be recorded on the regular timerolls. The Department shall maintain all records of overtime worked by employee(s) in their respective divisions/Departments. Copies of said

records shall be made available to the representative of Local 200 upon request.

212. h. Overtime Earned ("O.E."). When an employee covered by this CBA is transferred from one group to another within Department, the accumulated "overtime earned" time shall be transferable by the employee to be used in his or her new position.
213. 1). Employees wishing to use OE time must submit the request for the time off in writing not later than 12 noon of the fifth working day preceding the employee's regular start of shift of the day for which time off is requested.
214. 2). A roster of those employees requesting days off will be maintained by the Department or group manager and will be available to Local 200 for review.
215. 3). The request shall be granted unless an emergency situation exists or the time off would cause severe personnel shortages as determined by the Appointing Officer or its designee.
216. 4). Up to ten percent (10%), but not more than two (2) non "Z" employees per group or Department may be granted time off at the same time, and no more than one "Z" employee per group or Department may be granted time off at any one time. However, "Z" employees may not take time off under this section without the agreement of the Appointing Officer or its designee, if the time off would cause more than fifty percent (50%) of the normal complement of employees in the group or Department to be absent.
217. 5). The first employee to submit a request in a group or Department will take precedence if more than one employee has requested time off at the same time.
218. 6). Requests for time off lasting more than three (3) days must be approved by the group or Department manager.
219. 2. Working on Regular Day Off ("RDO"): Employees desiring to work on their regular day off must indicate their availability by signing up on the RDO list. Employees shall first be called from the RDO list, based upon a rotational selection process giving all signees equal opportunity.
220. An employee called in to work on a regular day off from the RDO list shall be paid for each hour actually worked, but in no instance will (s)he be provided with less than eight (8) hours of work on that day.

221. If an employee is passed over incorrectly in the RDO rotation pursuant to procedures established by the Department, (s)he will be moved to the top of the list established for their next RDO.
222. An employee called in to work on a regular day off who did not elect to sign the RDO list shall be paid for each hour actually worked, but in no instance will (s)he be provided with less than eight (8) hours of work on that day.

RDO Procedures:

223. a. Supervisors shall be offered RDO overtime by equal rotation.
224. b. Supervisors requesting work shall submit request for work form no later than 48 hours prior to day desiring to work.
225. c. The RDO overtime log shall be kept up to date detailing requests and shifts worked. The overtime log will be posted and a copy sent to Local 200.
226. d. Employees requesting 6th day of work on RDO will be given priority in the same group over employees requesting 7th day of work.
227. e. Rotations shall be computed on a sign-up to sign-up basis and include all 9139's in that section. All work in sections will be rotated.
228. f. All personnel in a section who indicate their willingness to work RDO overtime shall be trained in each different aspect of the group policies, type of work and shifts, including special events. Training will take place commencing with the 9139 General Sign-up or within ninety (90) days.
229. g. Supervisors requesting to work a type of RDO work and later refusing to work the shift offered within that time frame shall go to the bottom of the list for that type of work, i.e., night work, special events, etc.
230. h. No overtime work shall be assigned to a person in another section if there are people in that section willing to work.
231. i. These procedures are intended to cover the equal opportunity for RDO overtime work. The appropriate logs shall be kept for each type of work. No supervisor shall be moved to the bottom of the list for refusing to work any shift other than that in the time frame requested.
232. j. The Department can fill any shift of five (5) or more hours but less than eight hours in its sole discretion. In the event that the shift is to be filled from the RDO, such opportunities shall be distributed equally and fairly.

III.E. HOLIDAYS AND HOLIDAY PAY

233. The following paid holidays shall be observed:

New Year's Day
Martin Luther King, Jr.'s Birthday
President's Day
Memorial Day
Independence Day
Columbus Day
Labor Day
Thanksgiving Day
Day After Thanksgiving
Veterans Day
Christmas Day

234. Provided further, if January 1, July 4, November 11, or December 25 falls on a Sunday, the Monday following is a holiday, and if it falls on a Saturday, the Friday before is a holiday as defined herein. In addition, any day declared to be a holiday by proclamation of the Mayor after such day has heretofore been declared a holiday by the Governor of the State of California or the President of the United States shall be deemed a holiday for this purpose.

235. The MTA shall accommodate religious belief or observance of employees as required by law.

236. Eligibility for Payment. Employee(s) not scheduled to work on a paid legal holiday as listed above will be paid for that holiday provided that he/she is on paid status the work day immediately preceding and the work day immediately following the holiday. Payment shall consist of eight (8) hours straight time.

237. Holiday Worked. Employee(s) (in non-Z classifications) scheduled to work on a paid legal holiday as listed above shall receive time and one-half for the hours worked, plus the rate of pay as stated in Article III.E.3. herein. Employee(s) may elect to receive compensatory time off, computed at the rate of time and one-half in lieu of monetary payment for time worked on paid holidays.

238. Employees in "Z" classifications shall receive eight hours holiday pay and in addition shall receive compensatory time off at the rate of one-and-a-half (1-1/2) times for work on the holiday.

239. Assignment of Class 9139. On holidays, if the 9139 shift is scheduled to work that day (dependent on the holiday tables used: Saturday, Sunday or Weekday), the 9139 assigned to work that shift shall work on that holiday. If that shift is not scheduled to work, the 9139 assigned to that shift will be off

for the holiday. Vacation relief and block personnel who are detailed on holidays shall be considered to be off on holidays.

240. MUNI may excuse any 9139 scheduled to work under the following conditions:
 241. a. Unit managers will poll their units to determine who wants to work and who does not. Unit managers will attempt to accommodate 9139's desiring to be excused from work and to fill their shifts with relief or block supervisors who are scheduled to work and want to work the shift. Seniority shall control if there are more 9139's wanting to be excused, or wanting to work, than slots available.
 242. b. Block personnel who are detailed on holidays shall be scheduled for holiday work ahead of the relief board.
 243. c. Block and relief supervisors will be assigned holiday shifts that become open in seniority order, giving preference to those who want to work.
 244. d. When departments or groups normally scheduled to be closed on holidays have work that needs to be performed on a holiday, that work will be offered in seniority order to the 9139 supervisors wanting to work that holiday.
245. Holidays That Fall On A Saturday. For those employees assigned to a work week of Monday through Friday, and in the event a legal holiday falls on Saturday, the preceding Friday shall be observed as a holiday; provided, however, that except where the Governor declares that such preceding Friday shall be a legal holiday, each Department head shall make provision for the staffing of public offices under his/her jurisdiction on such preceding Friday so that said public offices may serve the public. Those employees who work on a Friday which is observed as a holiday in lieu of a holiday falling on Saturday shall be compensated as provided in Article III.E.3., herein.
246. Holiday Pay For Employees Laid Off. An employee who is laid off at the close of business the day before a holiday who has worked not less than five (5) previous consecutive work days shall be paid for the holiday.
247. Employees who regularly work a minimum of twenty (20) hours in a bi-weekly pay period shall be entitled to holidays as provided herein on a proportionate basis.
248. Floating Holidays. In addition to the holidays listed herein, the employees covered by this CBA will receive three (3) floating holidays. Only employees working a Normal Work Schedule, as described in Article

III.B., will receive three (3) floating holidays. The three (3) floating holidays may be taken on days selected by the employee subject to prior scheduling approval of management. Employees must complete six (6) months continuous MTA service to establish initial eligibility for the three (3) floating holidays. The three (3) floating holidays may not be carried forward from one fiscal year to the next. No compensation of any kind shall be earned or granted for the three (3) floating holidays if not taken off. The three (3) floating holidays shall not be considered holidays for purposes of calculating holiday compensation for time worked.

III.F. SALARY STEP PLAN AND SALARY ADJUSTMENTS

249. Appointments to positions in the MTA shall be at the entrance rate established for the position except as otherwise provided herein.

1. Promotive Appointment In A Higher Class

250. An employee or officer who is a permanent appointee following completion of the probationary period or 2,080 hours of permanent service, and who is appointed to a position in a higher classification, either permanent or temporary, deemed to be promotive by the MTA's Department of Human Resources shall have his/her salary adjusted to that step in the promotive class as follows:

251. a. If the employee is receiving a salary in his/her present classification equal to or above the entrance step of the promotive class, the employee's salary in the promotive class shall be adjusted to two steps in the compensation grade over the salary received in the lower class but not above the maximum of the salary range of the promotive classification.

252. b. If the employee is receiving a salary in his/her present classification which is less than the entrance step of the salary range of the promotive classification, the employee shall receive a salary step in the promotive class which is closest to an adjustment of 7.5% above the salary received in the class from which promoted. The proper step shall be determined by the bi-weekly compensation grade and shall not be above the maximum of the salary range of the promotive class.

253. c. If the appointment deemed promotive described above is a temporary appointment, and the employee, following a period of continuous service at least equal to the prescribed probationary period is subsequently given another appointment either permanent or temporary, deemed promotive from the prior temporary appointment class, the salary step in the subsequent promotive appointment shall be deemed promotive in accordance with sections herein.

254. For purpose of this Section, appointment of an employee as defined herein to a position in any class the salary grade for which is higher than the salary grade of the employee's class shall be deemed promotive.

2. Non-Promotive Appointment

255. An employee or officer who is a permanent appointee following completion of the probationary period or 2,080 hours of permanent service, and who accepts a non-promotive appointment in a classification having the same salary grade, or a lower salary grade, the appointee shall enter the new position at that salary step which is the same as that received in the prior appointment, or if the salary steps do not match, then the salary step which is immediately in excess of that received in the prior appointment, provided that such salary shall not exceed the maximum of the salary grade. Further increments shall be based upon the seniority increment anniversary date in the prior appointment.

3. Appointment Above Entrance Rate

256. Upon the request of the Appointing Officer, appointments may be made at any step in the compensation grade upon recommendation of MTA Human Resources Director under the following conditions:

257. a. A former permanent MTA employee, following resignation with service satisfactory, is being reappointed to a permanent position in his/her former classification; or

258. b. Loss of compensation would result if appointee accepts position at the normal step; or

259. c. A severe, easily demonstrated and documented recruiting and retention problem exists, such that all city appointments in the particular class should be above the normal step; and

260. d. The Controller certifies that funds are available. To be considered, request for adjustment under the provisions of this Section must be received in the offices of the MTA Department of Human Resources not later than the end of the fiscal year in which the appointment is made.

261. e. When the MTA Human Resources Director approves appointments of all new hires in a classification at a step above the entrance rate, the MTA Human Resources Director may advance to that step incumbents in the same classification who are below that step.

4. Reappointment Within Six Months

262. A permanent employee who resigns and is subsequently reappointed to a position in the same classification within six (6) months of the effective date of

resignation shall be reappointed to the same salary step that the employee received at the time of resignation.

5. Compensation Adjustments

263. a. Prior Fiscal Year. When an employee promoted to a higher class during a prior fiscal year receives a lesser salary than if promoted in the same class and from the same grade step during the current fiscal year his/her salary shall be adjusted on July 1, to the rate he/she would have received had he/she been promoted in the current fiscal year.
264. The MTA Department of Human Resources is hereby authorized to adjust the salary and anniversary increment date of any employee promoted from one class to a higher classification who would receive a lesser salary than an employee promoted at a later date to the same classification from the same salary step in the same base class from which the promotional examination was held.
265. b. Salary Increase in Next Lower Rank. When a classification that was formerly a next lower rank in a regular civil service promotional examination receives a salary grade higher than the salary grade of the classification to which it was formerly promotive, the MTA Department of Human Resources shall authorize a rate of pay to an employee who was promoted from such lower class equivalent to the salary he/she would have received had he/she remained in such lower class, provided that such employee must file with the MTA Department of Human Resources an approved request for reinstatement in accordance with the provisions of the Civil Service Commission rule governing reinstatements to the first vacancy in his/her former classification, and provided further that the increased payment shall be discontinued if the employee waives an offer to promotion from his/her current classification or refuses an exempt appointment to a higher classification. This provision shall not apply to offers of appointment which would involve a change of residence.
266. The special rate of pay herein provided shall be discontinued if the employee fails to file and compete in any promotional examination for which he/she is otherwise qualified, and which has a compensation grade higher than the protected salary of the employee.
267. c. Continuation of Salary Step Plan Earned Under Temporary Appointment. When an employee is promoted under temporary appointment to a higher classification during a prior fiscal year and is continued in the same classification without a break in service in the current fiscal year, or is appointed to a permanent position in the same classification, such appointment shall be in accordance with the provisions of this agreement, provided that the salary shall not be less than the same step in the salary grade the employee received in the immediately prior temporary appointment.

268. d. Credit for Temporary Service. A temporary employee, one with no permanent status in any class, certified from a regular civil service list who has completed six months or more of temporary employment within the immediately preceding one year period before appointment to a permanent position in the same class shall be appointed at the next higher step in the salary grade and to successive steps upon completion of the six months or one year required service from the date of permanent appointment. These provisions shall not apply to temporary employees who are terminated for unsatisfactory services or resign their temporary position.
269. e. Salary Anniversary Date Adjustment. Permanent employees working under provisional, exempt or temporary appointments in other classifications shall have their salary adjusted in such other classifications when such employees reach their salary anniversary date in their permanent class.

6. Compensation Upon Transfer Or Re-Employment

270. a. Transfer. An employee transferred in accordance with Civil Service Commission rules from one Department to another, but in the same classification, shall transfer at his/her current salary, and if he/she is not at the maximum salary for the class, further increments shall be allowed following the completion of the required service based upon the seniority increment anniversary date in the former Department.
271. b. Reemployment in Same Class Following Layoff. An employee who has acquired permanent status in a position and who is laid off because of lack of work or funds and is re-employed in the same class after such layoff shall be paid the salary step attained prior to layoff.
272. c. Reemployment in an Intermediate Class. An employee who has completed the probationary period in a promotive appointment that is two or more steps higher in an occupational series than the permanent position from which promoted and who is subsequently laid off and returned to a position in an intermediate ranking classification shall receive a salary based upon actual permanent service in the higher classification, unless such salary is less than the employee would have been entitled to if promoted directly to the intermediate classification. Further increments shall be based upon the increment anniversary date that would have applied in the higher classification.
273. d. Reemployment in a Formerly Held Class. An employee who has completed the probationary period in an entrance appointment who is laid off and is returned to a classification formerly held on a permanent basis shall receive a salary based upon the original appointment date in the classification to which the employee is returned. An employee who is

returned to a classification not formerly held on a permanent basis shall receive a salary in accordance with this agreement.

III.G. METHODS OF CALCULATION

274. An employee whose compensation is fixed on a monthly basis shall be paid monthly or bi-weekly in accordance with State Law or other applicable provision. There shall be no compensation for time not worked unless such time off is authorized time off with pay.
275. Conversion to Bi-Weekly Rates. Rates of compensation established on other than a bi-weekly basis may be converted to bi-weekly rates by the Controller for payroll purposes.

III.H. SENIORITY INCREMENTS

276. Entry At The First Step. Full time employees shall advance to the second step upon completion of six months service and to each successive step upon completion of the one year required service.
277. Entry At Other Than The First Step. Employees who enter a classification at a rate of pay at other than the first step shall advance one step upon completion of the one year required service. Further increments shall accrue following completion of the required service at this step and at each successive step.
278. Date Increment Due. Increments shall accrue and become due and payable on the next day following completion of required service as an employee in the class, unless otherwise provided herein.
279. Exceptions. An employee shall not receive a salary adjustment based upon service as herein provided if he/she has been absent by reason of suspension or on any type of leave without pay (excluding a military, educational, or industrial accident leave) for more than one-sixth of the required service in the anniversary year, provided that such employee shall receive a salary increment when the aggregate time worked since his/her previous increment equals or exceeds the service required for the increment, and such increment date shall be his/her new anniversary date; provided that time spent on approved military leave or in an appointive or promotive position shall be counted as actual service when calculating salary increment due dates.
280. When records of service required for advancement in the step increments within a compensation grade are established and maintained by electronic data processing, then the following shall apply: An employee shall be compensated at the beginning step of the compensation grade plan, unless otherwise specifically provided for in this CBA. Employees shall receive salary adjustments through the steps of the compensation grade

plan by completion of actual paid service in total scheduled hours equivalent to one year or six months, whichever is applicable.

281. Paid service for this purpose is herein defined as exclusive of any type of overtime but shall include military or educational leave without pay.
282. An employee who (1) has completed probation in a permanent position, (2) is "Laid Off" from said position, (3) is immediately and continuously employed in another classification with the MTA either permanent or temporary, and (4) is thereafter employed in his/her permanent position without a break in service, shall, for the purposes of determining salary increments, receive credit for the time served while laid off from his/her permanent position.

III.I. WORKERS COMPENSATION LEAVE

283. An employee who is absent because of an occupational disability and who is receiving Temporary Disability, Vocational Rehabilitation Maintenance Allowance, State Disability Insurance, may request that the amount of disability indemnity payment be supplemented with salary to be charged against the employee's accumulated unused sick leave with pay credit balance at the time of disability, compensatory time off, or vacation, so as to equal the normal salary the employee would have earned for the regular work schedule. Use of compensatory time requires the employee's Appointing Officer's approval.
284. An employee who wishes not to supplement, or who wishes to supplement with compensatory time or vacation, must submit a written request to the Appointing Officer or designee within seven (7) calendar days following the first date of absence. Disability indemnity payments will be automatically supplemented with sick pay credits (if the employee has sick pay credits and is eligible to use them) to provide up to the employee's normal salary unless the employee makes an alternative election as provided in this section.
285. Employee supplementation of workers compensation payment to equal the full salary the employee would have earned for the regular work schedule in effect at the commencement of the workers compensation leave shall be drawn only from an employee's paid leave credits including vacation, sick leave balance, or other paid leave as available. An employee returning from disability leave will accrue sick leave at the regular rate and not an accelerated rate.
286. Salary may be paid on regular time-rolls and charged against the employee's sick leave with pay, vacation, or compensatory time credit balance during any period prior to the determination of eligibility for

disability indemnity payment without requiring a signed option by the employee.

287. Sick leave with pay, vacation, or compensatory time credits shall be used to supplement disability indemnity pay at the minimum rate of one (1) hour units.
288. The parties agree, therefore, that this provision clarifies and supersedes any conflicting provision of the Civil Service Commission Rules bargainable and arbitrable under Charter section A8.409, et seq.

Return To Work

289. The MTA will make a good faith effort to return employees covered by this CBA who have sustained an occupational injury or illness to temporary modified duty within the employee's medical restriction. Duties of the modified assignment may differ from the employee's regular job duties and/or from job duties regularly assigned to employees in the injured employee's class. Where appropriate modified duty is not available within the employee's classification, on the employee's regular shift, and in the employee's Department, the employee may be temporarily assigned pursuant to this section to work in another classification, on a different shift, and/or in another Department, subject to the approval of the Appointing Officer or designee. The decision to provide modified duty and/or the impact of such decisions shall not be subject to grievance or arbitration. Modified duty assignments may not exceed three (3) months. An employee assigned to a modified duty assignment shall receive their regular base rate of pay and shall not be eligible for any other additional compensation (premiums) and or out of class assignment pay as may be provided under this agreement.
290. The MTA reserves the right to take any action necessary to comply with its obligations under the Americans with Disabilities Act, the Fair Employment and Housing Act and all other applicable federal, state and local disability anti-discrimination statutes. Requests for accommodation under the ADA or FEHA shall be governed under separate MTA procedures established under those laws.

III.J. STATE DISABILITY INSURANCE (SDI)

291. All employees in the bargaining unit(s) covered by this Agreement shall be enrolled in the State Disability Insurance (SDI) Program. The cost of SDI will be paid by the employee through payroll deduction at a rate established by the State of California Employment Development Department.

III.K. HEALTH AND WELFARE

1. Employee Health Care

292. Health Service System Contributions. MTA shall contribute to the City Health Service System for each employee covered by this CBA who is a member of the Health Service System such sums as are required by the CITY Charter. The MTA agrees to maintain its contribution for health benefits at the current levels for the life of the agreement.

293. Medically Single. For “medically single” employees, i.e., benefited employees not receiving the contribution paid by the MTA for dependent health care benefits, SFMTA shall contribute all of the premium for the employee’s own health care benefit coverage.

2. Life Insurance

294. A life insurance policy of \$50,000 with a permanent total disability benefit provision, subject to the conditions and provisions of said policy, shall be provided for all employees covered by this CBA the full premium cost of which shall be paid for by MUNI. Coverage shall be suspended for an employee who has been off the payroll and been absent from service for a continuous period of twelve months.

295. Eye Examinations. For all covered employees required to use VDTs on average at least two (2) hours per day, MUNI will provide a base line eye examination at the Occupational Safety and Health facility ("OSH"), followed by an eye examination at OSH every two years.

3. Dependent Health Care Pick-Up

296. For dependent health care coverage in 2011-2012, SFMTA shall contribute up to a maximum of \$692.02 per covered employee per month. For dependent health care coverage in 2012-2013, SFMTA shall contribute up to a maximum of \$719.70 per covered employee per month. For dependent health care coverage in 2013-2014, SFMTA shall contribute up to a maximum of \$748.49 per covered employee per month. The contributions described in this paragraph shall not be considered as part of the employee’s compensation for the purpose of computing straight time earnings, compensation for overtime worked, premium pay, or retirement benefits, nor shall the contributions be taken into account in determining the level of any other benefit that is a function of or percentage of salary.

4. Dental Coverage

297. Each employee covered by this agreement shall be eligible to participate in the SFMTA 's dental program. For permanent full-time employees who enroll in the Delta Dental PPO Plan, the SFMTA shall pay the cost of the current citywide dental plan for employees and dependents, but employees shall pick up the following share of the dental plan premium.

\$5 per month for employees enrolled in employee only plans;

\$10 per month for employees in two-part plans; or

\$15 per month for employees enrolled in family (employee+2 or more plans).

5. Contributions While On Unpaid Leave

298. As set forth in Administrative Code section 16.701(b), covered employees who are not in active service for more than twelve (12) weeks shall be required to pay the Health Service System for the full premium cost of membership in the Health Service System, unless the employee shall be on sick leave, workers' compensation, mandatory administrative leave, approved personal leave following family care leave, disciplinary suspensions, or on a layoff holdover list where the employee verifies they have no alternative coverage.

III.L. RETIREMENT

299. Effective July 1, 2011, represented employees who are members of San Francisco Employee Retirement System (SFERS) shall be responsible for the unit member's employee share of contributions to SFERS., For old plan SFERS members under Charter Section A8.509, the SFMTA will contribute a total of 0.5% of pension covered gross salary.
300. If it is determined through the voter process or through CITY action as a result of negotiations with any other Miscellaneous bargaining unit (as described by Charter section A8.409) to improve retirement benefits for other Miscellaneous employees, such improvements shall be extended to employees covered by this Agreement. The effective date for such improvements to Local 200's retirement benefits shall be the date such improvement are ratified in the other MTA Miscellaneous employees' collective bargaining agreement.301.The MTA Agrees to participate, on behalf of service critical employees at the Municipal Railway, in any City meet and confer process with TWU, Local 200 over a possible Charter amendment to enhance miscellaneous retirement benefits. As set forth in Charter Section A8.409-5, the parties acknowledge that this paragraph is not subject to Charter Section A8.409's impasse resolution procedures.

Retirement Seminar

301. Subject to development, availability and scheduling by SFERS, employees shall be allowed not more than one day during the life of this CBA to attend a pre-retirement planning seminar sponsored by SFERS.
302. Employees must provide at least two-week advance notice of their desire to attend a retirement planning seminar to the appropriate supervisor. An employee shall be released from work to attend the seminar unless staffing requirements or other Department exigencies require the employee's attendance at work on the day or days such seminar is scheduled. Release time shall not be unreasonably withheld.
303. All such seminars must be located within the Bay Area.
304. This section shall not be subject to the grievance procedure.

III.N. LEAVES OF ABSENCE

305. Those portions of the Civil Service Commission Rules applicable to Leaves, which are negotiable and arbitrable pursuant to Charter Sections A8.409 et seq., may not be changed during the term of this Agreement except by mutual consent. Those matters within the jurisdiction of the Civil Service Commission are not subject to grievance or arbitration.

Bereavement Leave

306. Three (3) days' leave with pay shall be allowed to each employee for a death as defined in the Civil Service Commission Rule regarding Bereavement Leave which includes but is not limited to mother, father, registered domestic partner, sister, brother, husband, wife, son and daughter, mother-in-law, father-in-law, aunt, uncle and dependent relatives living in the employee's home.

III.O. CHILD CARE and DCAP

307. The MTA and Local 200 agree that employees covered by this CBA will be eligible to participate in any childcare programs made available to all MTA employees.

Dependent Care Reimbursement Account (DCAP)

308. The MTA shall continue to offer a flexible spending account for Dependent Care Reimbursement (DCAP) which allows employees to establish a "pre-tax" account of up to the maximum permitted by the law to reimburse dependent care costs.

Parental Release Time

309. Represented employees shall be granted paid release time to attend parent teacher conferences of four (4) hours per fiscal year (for children in kindergarten or grades 1 to 12).
310. In addition, an employee who is a parent or who has child rearing responsibilities (including domestic partners but excluding paid child care workers) of one or more children in kindergarten or grades 1 to 12 shall be granted unpaid release time of up to forty (40) hours each fiscal year, not exceeding eight (8) hours in any calendar month of the fiscal year, to participate in the activities of the school of any child of the employee, providing the employee, prior to taking the time off, gives reasonable notice of the planned absence. The employee may use vacation, floating holiday hours, or compensatory time off during the planned absence.

III.P. LONG TERM DISABILITY INSURANCE

311. The MTA, at its own cost, shall provide to employees a Long Term Disability (LTD) benefit that provides, after a one hundred and eighty (180) day elimination period, sixty percent salary (60%) (subject to integration) up to age sixty-five (65). Employees who are receiving or who are eligible to receive LTD shall be eligible to participate in the City's Catastrophic Illness Program as set forth in the ordinance governing such program.

III.Q. TUITION REIMBURSEMENT

312. The MTA agrees to allocate six thousand dollars (\$6,000) per each year of this agreement to the Tuition Reimbursement Program for the exclusive use of classifications represented hereunder. Employees in said classifications may not receive more than (\$500) per fiscal year from this special allocation. If any portion of said allocation remains unexpended on June 30th of any fiscal year, it shall be carried over to the next fiscal year. The Union shall be sent a quarterly report of the persons who have applied for tuition reimbursements, purpose of reimbursement, and monies allocated.
313. Eligibility: Any regularly scheduled Employee within the MTA service who has served a minimum of one (1) year of continuous service in any class immediately prior to receipt of application may apply for tuition reimbursement. Such reimbursement shall be for training courses pertaining to the duties of a higher classification or for the purpose of improving performance in the present classification when such courses are offered by an accredited educational institution.
314. Expenses: The MTA will reimburse each eligible Employee up to \$500 annually for tuition, books, supplies, and other fees for such course if attendance has been approved in advance. The MTA will attempt to make

such payment promptly upon the Employee's submission of proof of satisfactory completion of the course with a passing grade. If the course is not graded, or is not a credited course, an official transcript or other official document shall be deemed evidence of satisfactory completion.

315. Pre-Approval: Application for reimbursement shall be prepared on a form provided by the MTA Department of Human Resources. Courses require pre-approval by the MTA Department of Human Resources and the Appointing Officer (or designee), neither of which shall be unreasonably denied. Such application for tuition reimbursement shall be made prior to the date of enrollment in the course and, if approved by MTA Department of Human Resources and the Appointing Officer (or designee), reimbursement shall be subject to successful completion of the course. No reimbursement shall be made if the Employee is eligible to receive reimbursement for said tuition under a federal or State Veterans benefit program from other public funds.
316. Repayment: If an employee resigns from the City within two (2) years following completion of the training course, the amount of tuition reimbursement shall be repaid by the Employee to the MTA by cash payment or out of the Employee's last pay warrant or, if applicable retirement earnings.

ARTICLE IV: WORKING CONDITIONS

IV.A. HEALTH & SAFETY

317. SFMTA Non-Revenue Vehicle Check Procedure
The representatives from Local 200 and SFMTA will review all street management vehicles to assess their operable conditions. A list will be established and maintained of all these vehicles and their maintenance status. The Defect Reporting form, as mutually developed by the parties, shall be used by the street supervisor for the chronicling of vehicle defects. Each street supervisor who uses any SFMTA vehicles will be responsible for filling out a daily defect form regardless of whether a defect is noted or not. Group Managers or their designees will be responsible for reporting defects to Equipment Maintenance for corrective action. Group Managers will also be responsible for keeping records on defects and when the problem is corrected. Supervisors will not be required to operate vehicles with critical defects and should be assigned another vehicle. Both parties agree that priority for new Transit Division non-revenue vehicles shall be given to the groups for street management. No non-revenue vehicles shall be sent out on the street after 6:00 p.m. without working heaters and defrosters. Local 200 will receive a copy of the maintenance status report of the defect cards.

318. Shelters for Street Supervisors. The parties agree that there is a continuing need for shelters for Street Supervisors.
319. Use of Personal Vehicles as Shelters
If no shelter or SFMTA automobile is available for use by a Street Supervisor, those supervisors may use their personal vehicles for shelter subject to the following conditions: (a) all lines under the supervisor's direction are visible from the vehicle; (b) the vehicle is legally parked (whenever possible); (c) during inclement weather; and (d) while writing required written reports. At no time may the supervisor sit in a vehicle when the lines being supervised are in difficulty. It is understood that sitting in a personal vehicle under the above described conditions is an option available to the supervisor. It is not a requirement and therefore the use of one's personal vehicle is done so at the risk of the supervisor. Supervisors needing to use their personal vehicles as shelters shall be issued the official SFMTA Supervisor on Duty placards.
320. SFMTA will implement a certification process for all dispatchers who are currently working in dispatching. All certification will be completed by the SFMTA training section for all Trapeze or current scheduling software by SFMTA that currently exist. SFMTA will establish an annual continuing education course available by the SFMTA training department. Dispatchers are required to become certified by the SFMTA training department in the correct computer software as required by SFMTA management.

Coveralls will be provided to street inspectors upon request when required to work on or under vehicles.

IV.B. UNIFORMS & EQUIPMENT

321. Full and appropriate uniforms shall be supplied to all employee(s) who are required by SFMTA to wear uniforms on duty. In addition to full uniforms, all employee(s) who are required by their duties to work outdoors shall not be required to perform their normal work duties in the rain, wind or cold without being provided adequate foul-weather gear. The SFMTA agrees to provide all required safety equipment (i.e., protective eyewear, protective footwear) in compliance with Cal-OSHA regulations.
- i. Female employee(s) shall be provided with an appropriate female uniform equivalent to that furnished to male employee(s).
 - ii. Uniform items will be replaced by SFMTA when they become unserviceable. A complete uniform set will consist of: two (2) jackets; one (1) long sleeved sweater; one (1) sleeveless sweater; two (2) ties or scarves; four (4) pairs of trousers or skirts; five (5) shirts or blouses; and one (1) hat.

- iii. Foul-weather gear, appropriate for both male and female sizes, shall consist of the following items in a pool set aside for those requiring said items: one (1) foul-weather jacket; one (1) pair foul-weather trousers; one (1) warm outer jacket; and one (1) cold weather hat.
- 322. The Appointing Officer or his/her designee shall continue to meet and confer with Local 200 regarding the concept of safety with regard to TS uniforms.
- 323. For 7412 Automotive Service Worker Assistant Supervisor, the SFMTA agrees to provide one (1) clean pair of protective coveralls each working day to each employee. The cost of coveralls and laundering of the same shall be paid by the SFMTA. The employee is responsible for safeguarding coveralls issued to him/her and will be held responsible for the value of any coveralls lost, stolen or damaged beyond fair wear and tear. Evidence of forced entry to an employee locker will be grounds for relieving an employee of responsibility for stolen coveralls. Responsibility for losses of individual sets of coveralls will be determined by the worker's supervisor on a case-by-case basis.

Radios. SFMTA will make every effort to see that each inspector will have a working radio.

ARTICLE V: SCOPE OF AGREEMENT

- 324. Terms and Conditions of Employment
Nothing in this Agreement shall alter the Civil Service Rules excluded from arbitration pursuant to Charter Section A8.409-3. In addition, such excluded Civil Service Rules may be amended during the term of this Agreement and such changes shall not be subject to any grievance or arbitration procedure but shall be subject to meet and confer obligations, subject to applicable law. The parties agree that, unless specifically addressed herein, those terms and conditions of employment that are currently set forth in the Civil Service Rules and the Administrative Code, are otherwise consistent with this Agreement, and that are not excluded from arbitration under Charter Section A8.409-3 shall continue to apply to employees covered by this contract. As required by Charter Section A8.409-3, the Civil Service Commission retains sole authority to interpret and to administer all Civil Service Rules.
- 325. Complete Agreement
This MOU shall constitute the complete written agreement between the SFMTA and TWU Local 200. The terms and conditions contained in this Agreement represent the full, complete, and entire understanding of the parties about matters within the scope of representation covered by provisions of this Agreement. This Agreement may be modified, but only in writing, upon the mutual consent of the parties.

326. Involvement of SFMTA Employee and Labor Relations
The SFMTA Employee and Labor Relations Office/Human Resources Division will be advised of and coordinate all meet & confer sessions and shall be available to assist so that all provisions in the CBA are followed.
327. Future Side Letters
The parties agree that any and all side letters, and other understandings between the parties not expressly memorialized and incorporated into this Agreement shall no longer be enforceable. No future side-letter within the scope of bargaining will be binding or precedential unless the side letter is incorporated into or appended to this Agreement and has been approved in writing by the SFMTA Executive Director or, where appropriate, by the SFMTA Board of Directors. To be valid, side-letters must cover only matters within the scope of bargaining, must be dated and signed by the appropriate parties, and contain an expiration date no later than the expiration date of this Agreement.
328. Past Practices, Policies, and Rules
No work rules or past practices shall remain unchanged during the life of this Agreement unless the specific work rules or past practices are explicitly included in this Agreement.
329. Should any part hereof or any provision herein be declared invalid by reason of conflict with a charter provision or existing ordinances or resolutions which the Board of Supervisors and/or the SFMTA Board of Directors had not agreed to alter, change or modify, or by any decree of a court, such invalidation of such part or portion of this CBA shall not invalidate the remaining portions hereof and the remaining portions hereof shall remain in full force and effect for the duration of the CBA.

Duration Of Agreement

330. This Agreement shall be effective July 1, 2011, and shall remain in full force and effect through June 30, 2014.

IN WITNESS HEREOF, the parties hereto have executed this MOU this
_____ day of _____, 2011.

FOR THE SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY

FOR THE UNION

Nathaniel P. Ford, Sr.
Executive Director/CEO

Reginald McCray
President
Transport Workers Union, Local 200

Debra A. Johnson
Director of Administration, Taxis & Accessible
Services

Andre Andrews
1st Vice-President
Transport Workers Union, Local 200

Mike Helms
Labor Relations Manager

Paul Lee
Secretary-Treasurer
Transport Workers Union, Local 200

Elizabeth Valdellon
Recording Secretary
Transport Workers Union, Local 200

APPROVED AS TO FORM:
DENNIS HERRERA, CITY ATTORNEY

Ayn Antonio
Trustee
Transport Workers Union, Local 200

Elizabeth Salvesson
Chief Labor Attorney

Marshall McGehee
Executive Board Member
Transport Workers Union, Local 200

APPENDIX A: TWU LOCAL 200 PAY RATES

1773 Media Training Specialist

Step	1	2	3	4	5
hourly	\$34.8250	\$36.5750	\$38.4000	\$40.3250	\$42.3375
bi-weekly	\$2,786	\$2,926	\$3,072	\$3,226	\$3,387
annual	\$72,436	\$76,076	\$79,872	\$83,876	\$88,060

7412 Automotive Service Worker Assistant Supervisor

Step	1	2	3	4	5
hourly	\$26.8125	\$28.1500	\$29.5625	\$31.0375	\$32.5875
bi-weekly	\$2,145	\$2,252	\$2,365	\$2,483	\$2,607
annual	\$55,770	\$58,552	\$61,490	\$64,558	\$67,782

8121 Investigator/Transit Fare Supervisor

Step	1	2	3	4	5
hourly	\$33.4875	\$35.1625	\$36.9125	\$38.7625	\$40.7000
bi-weekly	\$2,679	\$2,813	\$2,953	\$3,101	\$3,256
annual	\$69,654	\$73,138	\$76,778	\$80,626	\$84,656

9135 Passenger Service Specialist

Step	1	2	3	4	5
hourly	\$26.3750	\$27.6875	\$29.0750	\$30.5250	\$32.0500
bi-weekly	\$2,110	\$2,215	\$2,326	\$2,442	\$2,564
annual	\$54,860	\$57,590	\$60,476	\$63,492	\$66,664

9139 Transit Supervisor

Step	1	2	3	4	5
hourly	\$34.8250	\$36.5750	\$38.4000	\$40.3250	\$42.3375
bi-weekly	\$2,786	\$2,926	\$3,072	\$3,226	\$3,387
annual	\$72,436	\$76,076	\$79,872	\$83,876	\$88,062

9140 Transit Manager I

Step	1	2	3	4	5
hourly	\$41.1125	\$43.1625	\$45.3250	\$47.5875	\$49.9750
bi-weekly	\$3,289	\$3,453	\$3,626	\$3,807	\$3,998
annual	\$85,514	\$89,778	\$94,276	\$98,982	\$103,948

9141 Transit Manager II

Step	1	2	3	4	5
hourly	\$46.4250	\$48.7375	\$51.1750	\$53.7375	\$56.4250
bi-weekly	\$3,714	\$3,899	\$4,094	\$4,299	\$4,514
annual	\$96,564	\$101,374	\$106,444	\$111,774	\$117,364

9150 Train Controller

Step	1	2	3	4	5
hourly	\$40.3250	\$42.3375	\$44.4625	\$46.6750	\$49.0125
bi-weekly	\$3,226	\$3,387	\$3,557	\$3,734	\$3,921
annual	\$83,876	\$88,062	\$92,482	\$97,084	\$101,946

9160 Transit Operations Specialist

Step	1	2	3	4	5
hourly	\$42.9500	\$45.1000	\$47.3500	\$49.7250	\$52.2000
bi-weekly	\$3,436	\$3,608	\$3,788	\$3,978	\$4,176
annual	\$89,336	\$93,808	\$98,488	\$103,428	\$108,576

9520 Transportation Safety Specialist

Step	1	2	3	4	5
hourly	\$43.2500	\$45.4125	\$47.6875	\$50.0750	\$52.5750
bi-weekly	\$3,460	\$3,633	\$3,815	\$4,006	\$4,206
annual	\$89,960	\$94,458	\$99,190	\$104,156	\$109,356

APPENDIX C

EMPLOYEE ASSISTANCE PROGRAM AND PEER COUNSELING PROGRAM

Transport Workers Union Locals 250A and 200, Automotive Mechanics Local 1414, Teamsters Local 853, International Brotherhood of Electrical Workers Local 6, Laborers Union Local 261, Service Employees International Union Local 790, Stationary Engineers Local 39, and Glazier and Glass Workers, Local 718, and the San Francisco Municipal Transportation Agency (“SFMTA”) hereby agree to create an Employee Assistance Program as follows:

A. OVERVIEW OF EAP PROGRAM

This Employee Assistance Program (“EAP”) shall cover employees only, and is designed to assist employees, in consultation with their families where clinically appropriate, with problems that may affect their ability to perform their jobs. The EAP shall offer counseling services, including assessment, referral, and follow-up services.

EAP’s offer assistance by helping employees assess and identify problems arising from a variety of personal areas.

EAP’s assist employees by referring them to services which lead to solutions.

EAP’s provide training and consultation services to management and union leadership regarding assisting troubled employees.

The primary goal of the EAP will be to maintain employee’s ability to be fully productive on the job. EAP’s help employees, management, and supervisors maintain a high level of service by:

Motivating employees to help;

Helping supervisors identify troubled employees with job performance problems that may be related to personal problems;

Assessing employees with alcohol abuse, drug abuse, family problems, depression, stress and other problems that can result in performance problems;

Providing easily accessible quality helping services which include short-term problem-solving and referrals to more intensive care;

Providing crisis intervention services;

Providing follow-up assistance to support and guide employees through the resolution of their problems; and by

Acting as an education and training resource.

Employees shall be able to access the EAP through calling directly (self-referral), through the Peer Assistants, or through a supervisory referral based on job performance. Participation in the EAP is voluntary.

Establishing a voluntary EAP to compliment the mandatory testing program is intended to encourage employees to seek treatment early and on their own. The EAP will assist employees in obtaining information, guidance, and counseling to help them handle their problems before they become a drug testing or disciplinary issue.

An outside vendor has been selected and will perform the following duties:

- Maintain a toll-free telephone access for referrals and respond to calls in no more than sixty (60) seconds.
- Provide union/management consultation relative to the development and integration of organizational policies and procedures necessary for effective Employee Assistance Program implementation.
- Orient employees regarding the purpose, scope, nature and use of the Employee Assistance Program.
- Train Union (including Division Chairpersons and any other Union officials), supervisory and management staff to develop the knowledge and skills necessary to effectively utilize the program in the performance of their responsibilities.
- Provide direct one-to-one counseling utilizing licensed professional staff for crisis management and to identify and evaluate personal concerns among Employer's employees and/or their immediate dependents. Such direct counseling shall provide for three (3) sessions per family per year. Fees for any counseling sessions exceeding three (3) will become the financial responsibility of the employee and/or dependent, unless otherwise arranged for by the employer. For non-urgent situations, an appointment will be offered within seventy-two (72) hours of request. For urgent situations, an appointment will be offered on the same day as the request for service.
- Provide legal consultation, medical advice, financial consultation; one (1) consultation per incident is provided for each service, up to three (3) incidents per service, per year.
- Provide referral services to professional community resources for treatment and/or assistance, as may be appropriate.
- Provide continuing liaison and contact, when appropriate, between the employee, treatment agent or agency, and Employer to determine case status.

- Provide monthly statistical evaluation of program activity, and other reports, as needed.
- Send its principal or his designated representative to monthly meetings of the Municipal Railway Improvement Fund Board of Trustees, and any other meetings as reasonably required.
- Assess all employees involved in Critical Incidents (e.g., on the job assaults, threats and/or accidents) that occur while on duty.
- Provide up to three (3) counseling visits per employee involved in a Critical Incident.
- Develop Critical Incident Program Policies and Procedures.

Provide Critical Incident Case management, including:

- (a) Determination regarding an employee's ability to perform duties, including coordination with management and union personnel for employees who require time off work as a result of a Critical Incident;
- (b) Assisting employees in securing additional counseling visits beyond the three (3) Critical Incident/trauma response visits described above, when necessary.

B. ORGANIZATION

(1) The Joint Labor-Management Committee:

- (a) Membership and Meetings: Five (5) Committee members and two (2) alternate members to be appointed by the Unions. Five (5) Committee members to be appointed by the SFMTA.

If the SFMTA chooses to appoint less than five persons, it shall still have voting strength equal to that of the Unions. On the matters that come before the Committee, the SFMTA shall have one vote and the Unions shall have one vote. The vote of each side shall be controlled by the votes of the Committee members present for each respective side.

The Committee shall elect from its ranks a Chairperson and a Co-Chair, one of whom shall be a SFMTA appointee and the other the Unions' appointee. The Chair shall be held by one side for a year, then relinquished to the other side for the next year. Either the SFMTA or the Unions may replace their named Chair or Co-Chair at any time. The Chair shall preside over meetings of the Committee. In the absence of the Chair, the Co-Chair shall so preside. The SFMTA General Manager shall provide staff support to the Committee as appropriate.

A quorum for the transaction of business by the Committee shall consist of three (3) Union Committee members and a majority of the SFMTA-appointed Committee members.

(b) Functions: To receive and review information regarding the Substance Abuse and Peer Assistance Programs.

(c) Consolidation of Committees: The parties to this Agreement and to the Agreement concerning drug and alcohol testing and EAP between TWU Local 250A and the SFMTA may elect to combine the joint labor-management committee established here and in the Local 250A Agreement.

(2) Substance Abuse Program:

The SFMTA General Manager or designee will manage all aspects of the FTA-mandated Substance Abuse Program. He/she shall have appointing and removal authority over all personnel working for the Substance Abuse Program personnel, and shall be responsible for the supervision of the SAP.

(3) EAP Services:

The SFMTA and the Unions have concluded that it is in the best interests of all concerned to establish a uniform EAP Program for all employees. On this basis, the parties agree that the SFMTA shall engage an outside contractor to provide these services.

(4) The Peer Assistance System:

(a) Structure:

The outside contractor selected to provide EAP services shall also be directly responsible for the clinical and administrative management of the Peer Assistance Program. This Program shall be established on a 24-hour, seven-day a week basis. The peer assistants shall provide coverage during regular business hours (Monday - Friday, 8:30 a.m. - 5:00 p.m.) for all Muni worksites or sections. A system-wide EAP crisis hotline shall be established. Night, weekend and holiday crisis coverage shall be provided by one of the peer assistants and shall be rotated among the peer assistants, who shall be available on a pager. The full compensation of the Peer Assistant providing such night, weekend and holiday coverage shall be pager pay. Pager pay will not be provided for regular daily coverage.

(b) Peer Assistance Oversight Committee:

This Committee, composed of one representative from Locals 250A, 200, 6, 790 and 1414, shall be responsible for troubleshooting and making decisions on program operations.

(c) SFMTA Liaison:
The SFMTA Liaison shall be an individual designated by the SFMTA General Manager to serve as the SFMTA's emissary in matters such as labor relations and administrative issues.

(d) Qualifications:

- A MUNI employee who has previous counseling experience or is interested in peer counseling and is willing to make a two year commitment to pursue training and education toward certification as a drug and alcohol counselor

OR

- A MUNI employee who was a former substance abuser who has been clean and sober for a least two years and who continues to participate in a twelve step program

OR

- A MUNI employee who has had experience with family members' substance abuse and who had participated in a self-help group for co-dependency

AND

- A MUNI employee who is respected by their peers, the union, and the management

AND

- A MUNI employee who is committed to the goals of the Peer Assistance Program

(e) Duties:

- Assist employees in accessing the Voluntary Substance Abuse Program and EAP.
- Provide on-going support and case management for clients in the Voluntary Substance Abuse Program.
- Abide by state and federal confidentiality laws.
- Publicize the EAP verbally and through distribution of literature.

- Provide employees with information regarding the EAP and Voluntary Substance Abuse programs and create a forum for employees to discuss their concerns.
- Assist in publication of Voluntary Substance Abuse Program newsletter.
- Seek out opportunities to participate in training programs to further develop knowledge and skills.
- Develop and implement new ideas to increase utilization and maximize the effectiveness of the EAP and Voluntary Substance Abuse Programs.
- Develop and maintain a professional environment in which to interact with clients.
- Develop a group of volunteers in the divisions to support the goals of the EAP and Voluntary Substance Abuse Programs.
- Assist in education and training sessions for new and existing employees.
- Keep accurate records of client contacts and promotional activities.

(f) Staffing:

There shall be a clinician employed by the outside contractor for EAP Services who will be on-site a minimum of 20 hours a week. The clinician shall report directly to the outside contractor, Peer Assistance Oversight Committee and the MIF liaison. There shall be three full-time Peer Assistants reporting to the outside contractor.

(g) Volunteer Peer Assistants:

1. Up to eight (8) Volunteer Peer Assistants.
2. Assist peer assistants upon request during their off-duty time.
3. They shall participate in designated training.
4. Their activities shall be within the limits of their training.
5. Volunteer peer assistants will receive no compensation for their services.

(h) Functions:

The outside contractor, in consultation with the Peer Assistance Oversight Committee, shall develop procedures for the Peer Assistance Program.

(i) Civil Service Commission Approval:

The use of peer assistants shall be subject to the approval of the Civil Service Commission.

C. PAY STATUS DURING VOLUNTARY SELF-REFERRAL TREATMENT (VOLUNTARY SUBSTANCE ABUSE PROGRAM)

- (1) An employee who has a drug and/or alcohol abuse problem and has not been selected for drug and/or alcohol testing can voluntarily refer him/herself to the EAP for treatment. The EAP will evaluate the employee and make a specific determination of appropriate treatment. An employee who has completed two rehabilitation programs may not elect further rehabilitation under this program.
- (2) In the case of the up to two voluntary, employee-initiated referrals, the SFMTA will pay the employee the difference between his/her SDI benefits, use of accrued paid leaves, and any catastrophic illness benefits, and the employee's regular hourly base pay, for up to the eight hours per day for full-time employees and up to three hours per day for part-time employees, up to a maximum of 21 work days during a five-year period. This provision shall not apply in the event the employee does not receive SDI benefit payments or during the follow-up period established by the SAP after a positive test.

D. NON-PAID STATUS DURING TREATMENT AFTER POSITIVE TEST

The employee will be in a non-pay status during any absence for evaluation or treatment, while participating in a rehabilitation program.

E. EDUCATION AND TRAINING

The foundation of this Program is education and voluntary compliance. It is recognized that alcohol and chemical dependency may make voluntary cessation of use difficult, and one of the Program's principal aims is to make voluntary steps toward ending substance abuse easily available.

The outside contractor shall review and develop on-going educational and training information on the adverse consequences of substance abuse and the responsibility to avoid being under the influence of alcohol or chemicals at work. Certain training required by the DOT Regulations shall be the responsibility of the Substance Abuse Program.

F. CONFIDENTIALITY

Participation in the EAP shall be confidential and shall be conducted in accordance with DOT and DHHS standards.

G. FUNDING

The Employee Assistance Program and the Peer Assistance Oversight Committee shall be funded by the SFMTA.

H. SPECIAL PROVISIONS

Any proposed discipline resulting from the FTA Drug and alcohol testing program shall be in accordance with the MOU's, as amended June 12, 1995. The SFMTA recognizes the rights of employees and/or the Unions, who may consider themselves aggrieved by any discipline proposed, to raise such grievance through the authorized grievance procedure. The SFMTA General Manager will act in a fair and equitable manner, and shall prescribe that no personnel hired, contracted, selected or directly involved in the drug and alcohol testing program shall propose or render discipline.

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

DIVISION: Administration, Taxis and Accessible Services

BRIEF DESCRIPTION:

Approving the amendment to the Collective Bargaining Agreement (CBA) between the San Francisco Municipal Transportation Agency (SFMTA) and the Transport Workers Union, TWU Local 250-A (9132) to be effective July 1, 2011 through June 30, 2014.

SUMMARY:

- Charter Section 8A.104 provides that SFMTA shall bargain labor agreements with employee organizations representing employees in service critical classifications.
- The SFMTA Board of Director approved the terms of the prior CBA between the SFMTA and TWU, Local 250-A (9132) on June 26, 2009. That CBA expired on June 30, 2010 after the union membership failed to ratify a successor agreement. In the interim, their wages, hours and the terms and condition of their employment have remained as they were under the prior CBA.
- The SFMTA and TWU Local 250-A (9132) representatives reached a tentative agreement on a successor CBA. That agreement provides for a three-year wage freeze at their current level; elimination of the \$450 annual Transit Fare Inspectors allowance which is projected to result in savings of \$59,400; elimination of two paid furlough days and one floating holiday, saving \$93,951; a cap on the Agency’s contribution to the Employee and Dependent Health Care Pick-Up saving the SFMTA \$44,291; elimination of the Attendance Incentive Program, saving up to \$4020, and the Performance Incentive Program, saving \$7236; and changing the eligibility for overtime, saving \$5334.
- The agreement will result in total projected potential savings of \$214,232.

ENCLOSURES:

1. SFMTA Board Resolution
2. Labor Cost Analysis
3. Collective Bargaining Agreement

APPROVALS:

DATE

DEPUTY OF DIVISION

PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR

SECRETARY

ADOPTED RESOLUTION

BE RETURNED TO: Rumi Ueno

ASSIGNED SFMTA BOARD MEETING CALENDAR DATE:

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PURPOSE

The SFMTA and TWU, Local 250-A (9132) representatives reached a tentative agreement on a successor CBA. That agreement provides for a three-year wage freeze at their current level, elimination of the \$450 annual Transit Fare Inspector (TFI) Allowance, elimination of three paid days off per year, and placement of a cap on the Agency's contribution to the Employee and Dependent Health Care coverage. The tentative agreement eliminates the Wellness, Attendance and Performance Incentive programs. In addition, under the tentative agreement, most types of paid time off will not count toward eligibility for overtime on an employee's regularly scheduled day off.

GOAL

The proposed agreement meets the following goals:

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

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

DESCRIPTION

Charter Section 8A.104 gives SFMTA authority to negotiate labor agreements covering wage, hours, working conditions, and benefits with labor organizations representing employees at SFMTA in service critical classifications.

The SFMTA Board of Director approved the terms of the prior CBA between the SFMTA and TWU, Local 250-A (9132) on June 26, 2009. That CBA expired on June 30, 2010 after the union membership failed to ratify a successor agreement. In the interim, their wages, hours and the terms and condition of their employment have remained as they were under the prior CBA.

The SFMTA and TWU, Local 250-A (9132) representatives reached a tentative agreement on a successor MOU. That agreement provides for a three-year wage freeze at their current level, elimination of the \$450 annual Transit Fare Inspector (TFI) Allowance, elimination of three paid days off per year, and placement of a cap on the Agency's contribution to the Employee and Dependent Health Care coverage. The tentative agreement eliminates the Wellness, Attendance and Performance Incentive programs. In addition, under the tentative agreement, most types of paid time off will not count toward eligibility for overtime on an employee's regularly scheduled day off.

The agreement will result in savings of \$59,400 over three years by eliminating the TFI Allowance. The reduction in paid days off will save up to \$93,951 over three years, and the Agency's likely costs for dependent health care will be \$44,291 less than they would have been otherwise over the life of the contract. The Agency will also realize up to \$4,020 in cost savings from the elimination of the Attendance Incentive Program; \$7,236 for the Performance

Incentive Program and \$5,334 by changing the eligibility for overtime. The agreement will result in a net savings of \$214,232 over three years.

The City Attorney has reviewed this item.

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ALTERNATIVES CONSIDERED

If the CBA is not approved, the cost savings that this agreement provides will not be realized and the SFMTA would not have a labor contract for employees represented by TWU Local 250-A (9132).

FUNDING IMPACT:

If the amendment is not approved, the potential savings of \$214,232 for the elimination of the \$450 annual TFI Allowance, elimination of three paid days off per year, placement of a cap on the Agency's contribution to the Employee and Dependent Health Care coverage; the elimination of the Wellness, Attendance and Performance Incentive programs and the change of paid time off not counting towards eligibility for overtime on an employee's regularly scheduled day off will not be realized.

The Labor Cost Analysis is attached.

RECOMMENDATION

Staff recommends that the SFMTA Board approve the tentative agreement regarding the CBA between SFMTA and TWU, Local 250-A (9132).

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

RESOLUTION No. _____

WHEREAS, Under Section 8A.104 of the Charter, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors succeeded to the powers of the Board of Supervisors with respect to collective bargaining for employees in service critical classifications; and,

WHEREAS, The SFMTA Board of Directors approved the terms of the prior Collective Bargaining Agreement (CBA) between the SFMTA and TWU, Local 250-A (9132) on June 26, 2009. That CBA expired on June 30, 2010 after the membership of TWU Local 250-A (9132) failed to ratify a successor agreement. As a result, the wages, hours and terms and conditions of employment for those employees remained the same in the intervening year; and,

WHEREAS, Pursuant to the provisions of Charter Section 8A.104(r), before adopting any tentative agreement with an employee organization, the Agency shall disclose in writing the contents of such tentative agreement, a detailed analysis, a comparison of the differences between the agreement reached and the prior agreement, an analysis of all costs for each year of the term of such agreement, and whether funds are available to cover these costs; and,

WHEREAS, The parties have reached a tentative agreement providing for no wage increase for three years, elimination of the \$450 annual Transit Fare Inspector (TFI) Allowance, elimination of three paid days off per year, placement of a cap on the Agency's contribution to the Employee and Dependent Health Care coverage, elimination of the Wellness, Attendance and Performance Incentive programs, and elimination of most kinds of paid time off from eligibility for overtime on an employee's regularly scheduled day off; and,

WHEREAS, The Union membership ratified the tentative agreement on June 10, 2011; and,

WHEREAS, The proposed amendment of the CBA, which shall be in effect July 1, 2011 through June 30, 2014, and all other required information was publicly disclosed in accordance with Charter Section 8A.104(r) on June 14, 2011 and are now on file with the Secretary of the SFMTA Board of Directors; now therefore, be it

RESOLVED, That the SFMTA Board of Directors hereby approves the amendments to the Collective Bargaining Agreement between the SFMTA and the Transport Workers Union, Local 250-A (9132), effective July 1, 2011 through June 30, 2014.

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

Secretary, Municipal Transportation Agency Board

TWU, Local 250-A (9132) Labor Cost Analysis

Effective July 1, 2011

Article #	Issue	SFMTA Proposal	FTE Savings			
			FY12	FY13	FY14	Total
III.A	Wages	The tentative agreement provides a three-year extension for the labor agreement with no pay increases.				
III.D.	Additional Compensation	Suspension of the \$450.00 Transit Inspector Allowance	\$ 19,800	\$ 19,800	\$ 19,800	\$ 59,400
III.F.	Holidays & Holiday Pay	Elimination of the 2 Paid Furlough Days and 1 Floating Holiday.	\$ 31,317	\$ 31,317	\$ 31,317	\$ 93,951
III.P.	Heath & Welfare	Placing a cap on the Agency's contribution to the Employee and Dependent Health Care Pick-Up.	\$ -	\$ 14,197	\$ 30,094	\$ 44,291
III.U.	Wellness Incentive Program	Elimination of the Wellness Incentive Program	\$ -	\$ -	\$ -	\$ -
Appendix A	Attendance Incentive Program	Elimination of the Attendance Incentive Program	\$ 1,340	\$ 1,340	\$ 1,340	\$ 4,020
Appendix B	Performance Incentive Program	Elimination of the Performance Incentive Program.	\$ 2,412	\$ 2,412	\$ 2,412	\$ 7,236
III.E.	Overtime Compensation & Comp Time	Employees will be required to work in excess of forty (40) hours in each established work week or eight (8) hours in a work day to qualify for overtime pay.	\$ 1,778	\$ 1,778	\$ 1,778	\$ 5,334
Net Savings		** Based on 43 FTE	\$ 56,647	\$ 70,844	\$ 86,741	\$ 214,232

**COLLECTIVE BARGAINING AGREEMENT****BETWEEN****THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY****AND****THE TRANSPORT WORKERS' UNION, AFL-CIO****LOCAL 250-A****TRANSIT FARE INSPECTORS (9132)****FOR SERVICE CRITICAL CLASSIFICATIONS
AT THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY****July 1, ~~2006~~ 2011 - June 30, ~~2010~~ 2014**

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PREAMBLE

1. This Collective Bargaining Agreement (hereinafter "CBA") is entered into by the San Francisco Municipal Transportation Agency (hereinafter SFMTA"), and the Transport Workers Union of America, AFL-CIO, and Local 250-A, Transport Workers Union (hereinafter "UNION").

ARTICLE I - REPRESENTATION

I.A. RECOGNITION

2. The SFMTA acknowledges that the UNION has been certified as the recognized employee representative, pursuant to the provisions set forth in the SFMTA's Employee Relations Operating Resolution for the following classifications:

9132 Transit Fare Inspector

I.B. INTENT

3. It is the intent of the parties that the provisions of this CBA shall not become binding until ratified by the SFMTA and Board of Supervisors and by the membership of the UNION.
4. Provisions of this CBA which are in conflict with provisions of ordinances, resolutions, rules or regulations over which the Board of Supervisors and/or the SFMTA Board of Directors has jurisdiction to act, shall prevail. Unless an existing ordinance, resolution, rule or regulation is specifically discussed and changed, deleted, or modified by the terms of this CBA, it shall be deemed to remain in full operational effect.
5. The employees covered by this contract will be indemnified and defended by the SFMTA for acts within the course and scope of their official employment in accordance with the applicable requirements of state law. This Article is for informational purposes only and is not subject to grievance or arbitration.

I.C. NO STRIKE PROVISION

6. The UNION and each member of the bargaining unit covenant and agree not to initiate, engage in, cause, instigate, encourage or condone a strike, work stoppage, slowdown, or absenteeism. The UNION and each member of the bargaining unit covenant and agree not to engage in any form of sympathy strike including, but not limited to, observing or honoring the picket line of any other UNION or person.

I.D. OBJECTIVE OF THE MUNICIPAL TRANSPORTATION AGENCY

7. It is agreed that the delivery of municipal services in the most efficient, effective, and courteous manner is of paramount importance to the SFMTA and its employees. Such achievement is recognized to be a mutual obligation of the parties to this CBA within their respective roles and responsibilities.

I.E. MANAGEMENT RIGHTS

8. The UNION recognizes the SFMTA's right to establish and/or revise performance levels, standards or norms notwithstanding the existence of prior performance levels, norms or standards. Such standards, developed by usual work measurement procedures, may be used to determine acceptable performance levels, prepare work schedules, and to measure the performance of each employee or group of employees. The SFMTA recognizes the UNION's or the employee's right to grieve the effect of and implementation of the revised performance levels, norms, or standards.

I.F. SHOP STEWARDS

9. The UNION shall furnish the SFMTA with an accurate list of shop stewards. The UNION may submit amendments to this list at any time because of the permanent absence of a designated shop steward. If a shop steward is not officially designated in writing by the UNION, none will be recognized.
10. The UNION and the SFMTA recognize that it is the responsibility of the shop steward to assist in the resolution of grievances or disputes at the lowest possible level. No more than two shop stewards representing a particular worksite may assist in the resolution of grievances or disputes arising in that worksite. Should that steward be unavailable, a steward representing another shop may substitute.
11. While handling grievances or meeting with SFMTA representatives concerning matters affecting the working conditions and status of employees covered by this CBA, the shop steward shall be allowed time off during normal working hours to perform such duties without loss of pay, provided, however, that time off for investigation shall be reasonably related to the difficulty of the grievance. The shop steward shall not be paid overtime if UNION duties carry the employee past the her/his normal duty schedule. Shop stewards shall request time off at least 48-hours in advance of the time off requested, where practicable.
12. If, in the judgment of the supervisor, permission cannot be granted immediately to the shop steward to investigate or present a grievance during on-duty time, such permission shall be granted by the supervisor no later than the next working day from the date the shop steward was denied permission.

13. In handling grievances, the shop steward shall have the right to:
14. consult with an employee regarding the presentation of a grievance or dispute after the employee has requested the assistance or presence of the shop steward;
15. present to a supervisor a grievance or dispute which has been requested by an employee or group of employees to present for resolution or adjustment;
16. investigate any such grievance or dispute so that such grievance or dispute can be properly discussed with the supervisor or the designated representative; and,
17. attend meetings with supervisors or other SFMTA representatives when such meetings are necessary to adjust grievances or disputes.
18. In emergency situations, where immediate disciplinary action must be taken because of violation of law or a SFMTA or departmental rule (intoxication, theft, *etc.*) the shop steward shall, if possible, be granted immediate permission to leave his/her post of duty to assist in the grievance procedure.
19. Shop stewards shall not interfere with the work of any employee.
20. Stewards shall receive timely notice of and shall be permitted to make appearances at all departmental orientation sessions in order to distribute UNION materials and to discuss employee rights and obligations under this CBA.

I.G. GRIEVANCE PROCEDURE & THE DISCIPLINE PROCESS

21. The following procedures are adopted by the Parties to provide for the orderly and efficient disposition of grievances and are the sole and exclusive procedures for resolving grievances as defined herein.
22. Definition. A Grievance shall be defined as any dispute which involves the interpretation or application of, or compliance with this Agreement, including discipline and discharge of employees. Civil Service Rule “Carve-outs” are not subject to the grievance procedure nor may be submitted to arbitration.
23. Time Limits. The time between the Steps may be extended by mutual agreement in writing. Failure by the employee or UNION to follow the time limits, unless mutually extended, shall cause the grievance to be withdrawn. Failure of the SFMTA to follow the time limits shall serve to move the grievance to the next step.

24. Grievance Initiation. Only the UNION shall have the right on behalf of a disciplined or discharged employee to appeal a disciplinary or discharge action.
25. Steps of the Procedure. An employee having a grievance may first discuss it with the employee's immediate supervisor and try to work out a satisfactory solution in an informal manner with the supervisor. The employee may have a representative at this discussion. If a solution to the grievance, satisfactory to the employee and the immediate supervisor is not accomplished by informal discussion, the grievant may pursue the grievance further.
26. In computing the time within which any action must be taken under the grievance and discipline procedure, Saturdays, Sundays, and holidays shall not be counted. A grievance may be denied at any level because of failure to adhere to the time limitations.
27. Step 1 / Intermediate Supervisor. The employee and his/her representative shall submit a written statement of the grievance to the intermediate supervisor within fifteen (15) days after the facts or event giving rise to the grievance, containing a specific description of the basis for the claim and resolution desired or within fifteen (15) days from such time as the employee or UNION should have known of the occurrence thereof except for cases alleging sexual harassment, in which case the time limit herein shall be four (4) months. The intermediate supervisor will make every effort to arrive at a prompt resolution by investigating the issue. He/she shall respond within eight (8) working days.
28. Step 2 / ~~MUNI General Manager or designee~~ **Labor Relations Manager**. If the grievance is not satisfactorily resolved in Step 1, the grievance shall be submitted, in writing, containing a specific description of the basis for the claim and the resolution desired, and submitted to the ~~MUNI General Manager or designee~~ **Labor Relations Manager** within seven (7) days. The parties may meet. In any event, the ~~MUNI General Manager or designee~~ **Labor Relations Manager** or designee shall, within fourteen (14) days of receipt of the written grievance, respond in writing to the grievant and the UNION, specifying the reason(s) for concurring with or denying the grievance.
29. Step 3 / SFMTA Human Resources **Deputy** Director. If the decision of the ~~MUNI General Manager or designee~~ **Labor Relations Manager** is unsatisfactory, the grievant and/or the UNION representative may, within fourteen (14) days of receipt of such decision, submit the grievance to the SFMTA Human Resources Director. The SFMTA Human Resources **Deputy** Director shall have fourteen (14) days after receipt of the written grievance in which to review and seek resolution of the grievance and respond in writing.
30. Should there be no satisfactory resolution at Step 3, the UNION has the right to submit the grievance to final and binding arbitration within fourteen (14) days of receipt of the Step 3 response.

31. Expedited Arbitration. All disciplinary actions, excluding suspensions of fifteen (15)-days or greater and discharges, shall be processed through an Expedited Arbitration proceeding. By written mutual agreement entered into before or during Step 3 of the Grievance Procedure, the parties may submit other grievances to the Expedited Arbitration process.
32. Scheduling. Under no instance shall either the UNION or the SFMTA have less than seven (7) days advance notice prior to the scheduling of an Expedited Arbitration, unless mutually agreed by the parties in writing.
33. Selection of the Arbitrator for Expedited Arbitration. The parties will mutually agree on a list of 3 arbitrators to be utilized for expedited arbitration upon ratification of this Collective Bargaining agreement. This list shall remain in effect for the life of the agreement unless either party wishes to recommend a substitution. Any substitution shall be by mutual agreement of the parties and shall only take place once a year on July 1st of that year. As a condition of selection each of the arbitrators must certify that (s)he will be available to hear the Expedited Arbitration in not greater than thirty (30) days from her/his selection.
34. Proceeding. No briefs will be used in Expedited Arbitration. Testimony and evidence will be limited consistent with the expedited format, as deemed appropriate by the arbitrator. There will be no court reporter or transcription of the proceeding, unless either party or the arbitrator requests one. At the conclusion of the Expedited Arbitration, the arbitrator will make a bench decision. Every effort shall be made to have a bench decision followed by a written decision. Expedited arbitration decisions will be non-precedential except in future issues regarding the same employee.
35. Costs. Each party shall bear its own expenses in connection with the presentation of its case. All fees and expenses of the arbitrator shall be borne and shared equally by the parties. The costs of a court reporter and the transcription of the proceeding, if any, shall be paid by the party requesting such, unless requested by the arbitrator, which will then be borne and equally shared by the parties. In the event that an Expedited Arbitration hearing is canceled resulting in a cancellation fee, the party initiating the request or causing the cancellation shall bear the full cost of the cancellation fee, unless the parties agree otherwise.
36. Step 4 / Final and Binding Arbitration (Not Expedited Arbitration). Should there be no satisfactory resolution at Step 3, and Expedited Arbitration is not invoked, the UNION shall have the right to submit the grievance to final and binding arbitration within fourteen (14) days of receipt of the Step 3 response.

37. SELECTION OF AN ARBITRATOR (Non-Expedited arbitration). The parties shall first attempt to mutually agree on the selection of an arbitrator. The parties will first attempt to mutually agree on an arbitrator within seven (7) days of the invocation of Arbitration. If the parties are unable to agree on a selection within the seven (7) days, either party may request a list of seven (7) appropriately experienced arbitrators from the American Arbitration Association (“AAA”).
38. Except when a statement of facts mutually agreeable to the UNION and SFMTA is submitted to the arbitrator, it shall be the duty of the arbitrator to hear and consider facts submitted by the parties. It shall be the duty of the arbitrator to hold a hearing within thirty (30) days of acceptance of appointment. Should the designated arbitrator be unable to comply with this requirement, the parties will commence contacting other arbitrators, until an arbitrator is selected who will meet such requirement.
39. Authority of the Arbitrator (both regular and expedited). The decision of the arbitrator shall be final and binding on all parties, unless challenged under applicable law. The arbitrator shall have no authority to add to, subtract from or modify the terms of this Agreement.
40. Costs of Arbitration. Each party shall bear its own expenses in connection therewith. All fees and expenses of the arbitrator and court reporter and report, if any, shall be borne and paid in full and shared equally by the parties. In the event that an Arbitration hearing is canceled resulting in a cancellation fee, the party initiating the request or causing the cancellation shall bear the full cost of the cancellation fee, unless the parties agree otherwise.
41. Economic Claims. In no event shall a grievance include a claim for money relief for more than a thirty (30) working day period prior to the initiation of the grievance.
42. The Discipline Process. The SFMTA shall have the right to discipline any non-probationary permanent employee, temporary civil service employee, or provisional employee upon completion of twelve (12) months service, for just cause.
43. As used herein "discipline" shall be defined as written reprimands, written warnings, suspensions, disciplinary demotion and discharge. A change of work assignment, either to or from a particular assignment, may not be made solely for disciplinary purposes. Reassignments made for purposes of improving services or addressing performance problems shall not be considered disciplinary in nature and therefore shall not be in violation of this Article.
44. Employees who are released or disciplined during their initial probationary period or during any probationary period established by this CBA, may appeal the release or

discipline provided that the grounds for the grievance or appeal shall be limited to a claimed violation of Article II.A. In such an appeal the employee shall bear the burden of proof with respect to the claimed violation.

45. No interview of an employee that may result in disciplinary action or at which discipline is to be imposed will be undertaken unless the employee is first advised of his/her right to representation. If requested by the employee, such representation must be secured within the succeeding twenty-four (24) hour period, excluding holidays and weekends. If the employee does not secure representation within such period, the right is waived.
46. No written reprimands, written warnings, suspensions, disciplinary demotions and discharges of non-probationary permanent employees, temporary civil service employees, or provisional employees with twelve (12) months service, may be imposed unless the following procedure is followed:
 47. a. The basis of any proposed discipline shall be communicated in writing to the employee and to the UNION no later than nine (9) working days after management has concluded a reasonable investigation and attained findings on the event or occurrence which is the basis of the discipline, or the offense will be deemed waived.
 48. b. Except in emergency situations, where immediate disciplinary action must be taken because of a violation of law or a CITY or department rule (theft, *etc.*), no disciplinary action can be taken without first providing the employee with the written charges and the materials upon which the charges are based.
 49. c. The employee and her/his representative shall be afforded a reasonable amount of time to respond, either orally at a meeting (“Skelly hearing”), or in writing, to the management official designated by the SFMTA to consider the reply. Should the employee and her/his representative elect to respond orally at a Skelly hearing, the Department will notify the parties at least five (5) days in advance of the meeting, whenever practicable. The employee and her/his representative may present any relevant oral/written testimony and other supporting documentation as part of her/his response. Individuals who may have direct knowledge of the circumstances may be present at the request of either party at the hearing for the purpose of giving relevant testimony. In the case of employees of the SFMTA, they shall be compensated at an appropriate rate of pay for time spent.
 50. d. The employee shall be notified in writing of the decision based upon the information contained in the written notification, the employee's statements, oral/written testimony and other supporting documentation and any further

investigation occasioned by the employee's statements. The employee's representative shall receive a copy of this decision.

51. e. Progressive Discipline: For most offenses, management is expected to use a system of progressive discipline under which the employee is given increasingly more severe discipline each time an offense is committed. Management is not bound by progressive discipline in cases of serious offenses where no specific warning or prior disciplinary action need precede separation for cause. A common pattern may include oral warning, written warning, suspension, and finally, separation for cause.

I.H. DUES DEDUCTIONS

52. The SFMTA agrees that it will check off and transmit to Transport Workers UNION Local 250-A Special Fund the amount specified for each hour worked from the wages of those employees who have voluntarily authorized such contributions on the forms provided for that purpose by said fund. These transmittals shall occur monthly and shall be accompanied by a list of the names of these employees for whom such deductions have been made and the amount deducted for each such employee.

I.I. AGENCY SHOP

53. Application. Except as provided otherwise herein, the following provisions shall apply to all employees of the SFMTA in all classifications represented by the UNION in representation Unit SFMTA 01-AA when on paid status.
54. The provisions shall not apply to individual employees of the SFMTA in representation Unit SFMTA 01-AA who have been properly and finally determined to be management, confidential, or supervisory employees pursuant to the SFMTA Employee Relations Operating Resolution (EROR).
55. SFMTA shall give the UNION no less than ten (10) working days notice of any proposed designation. Except when an individual employee has filed a challenge to a management, confidential, or supervisory designation, SFMTA and the UNION shall meet as necessary for the purpose of attempting to make such determinations by mutual agreement. Disputes regarding such designations shall promptly be resolved pursuant to Section 16.208(B) of the EROR.
56. Agency Shop. All current and future employees of the SFMTA as described in Article I.A., except as set forth below, shall, as a condition of continued employment, become and remain a member of the UNION or, in lieu thereof, shall pay a service fee to the UNION. Such service fee payment shall be 80% of the regular dues of the UNION,

provided that such agency shop fee will be used by the UNION only for the purpose of collective bargaining and representing the employees in the unit. The SFMTA may request verification of such use. Changed service fees will be assessed as of the time changes in the fees are set in accordance with applicable law, including: (1) the provision of sufficient financial information to gauge the propriety of the fees; (2) the provision of a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker; and (3) provision for an escrow account of amounts reasonably in dispute during an appeal. A description of the actual fee setting procedure shall be added to this CBA as an addendum when established.

57. Religious Exemptions. Any employee of the SFMTA in a classification described in Article I.I.1 hereof, who is a member of a bona fide religion, body or sect, which has historically held conscientious objections to joining and financially supporting a public employee organization and is recognized by the National Labor Relations Board to hold such objections to the UNION membership, shall, upon presentation of proof of membership and historical objection satisfactory to the SFMTA and the UNION, be relieved of any obligation to pay the required service fee.
58. Payroll Deductions. The UNION shall provide SFMTA and the Controller with a current statement of fees. Said statement of fees shall be amended as necessary. The Controller may take up to thirty (30) days to implement such changes. The Controller shall make service fee deductions, from the regular periodic payroll warrant of each SFMTA employee described in this Article, pursuant to Administrative Code Section 16.90. Employees hired on or after the ratification date shall receive membership and agency fee information at the time of employment. Said employees shall also be notified of their right to make direct payments to the UNION.
59. In the event an employee fails to make payments as required by this Article, the UNION may give written notice of such fact to the SFMTA and the employee. In the event such notice is given, a representative of the UNION, and the affected employee shall, within three (3) work days of such notice (excluding Saturdays, Sundays, and holidays), meet for the purpose of hearing the employee's position regarding non-payment, thoroughly explaining the circumstances to the employee and to work out a solution to any existing problems, satisfactory to the UNION. If the employee has not paid the required dues or fees (including general assessments) or initiation fee and the matter is not resolved to the satisfaction of the UNION, the UNION may request in writing that the employee's employment be terminated. Upon receipt of such request, the SFMTA shall implement termination procedures against said employee in accordance with applicable law and Civil Service Rules. Termination for violation of this Article shall not be subject to any grievance procedure.

60. The Controller will promptly pay over to the appropriate UNION all sums withheld for service fees, less the fee for making such deductions. The Controller shall also provide with each payment a list of the employees paying service fees. All such lists shall contain the employee's name, employee number, classification, department number and amount deducted.
61. Nothing in this Article shall be deemed to have altered the SFMTA's current obligation to make insurance program or political action deductions when requested by the employees.
62. Revocation of Agency Shop. The Agency Shop provision covering any bargaining unit or subunit covered by this Article may be rescinded as provided by state law. The SFMTA Department of Human Resources shall consult with the UNION and promulgate rules necessary for the conduct of said rescission elections.
63. Financial Reporting. The UNION shall annually provide SFMTA with a detailed written financial report of its financial transactions in the form of a balance sheet, and an operating statement, certified as correct by a certified public accountant, or as an alternative, a copy of the financial report required pursuant to the Labor-Management Disclosure Act of 1959. Copies of such reports shall be made available to employees subject to the Agency Shop provisions of this Article upon request by such employee at the offices of the UNION.
64. Indemnification. The UNION agrees to indemnify and hold the SFMTA harmless for any loss or damage arising from the operation of this Article.
65. *Hudson* Compliance. The UNION shall comply with the requirements set forth in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), for the deduction of agency shop fees. Annually, the UNION shall certify in writing to the SFMTA that the UNION has complied with the requirements set forth in this article and in *Hudson*, 475 U.S. 292.

I.J. INFORMATION, BULLETIN BOARDS AND UNION ACCESS

66. Overtime Worked. The UNION may have access to records of overtime worked in each department, division or section.
67. Seniority Lists. A list of SFMTA Seniority and Work Seniority detailing the date of commencement of service for all employees and their ranking in order of work seniority shall be maintained at all times by the Department with a copy provided to the UNION.
68. Upon request, the SFMTA will make available to the UNION Local 250-A a copy of its final and approved budget each fiscal year, as well as copies of any grant proposals.

69. Bulletin Boards. Reasonable space will be allowed on bulletin boards for use by the UNION to communicate with employees. Material shall be posted upon the bulletin board space as designated, and not upon walls, doors, windows or any other place. Posted material shall not be obscene, or of a partisan political nature, nor shall it pertain to public issues which do not involve the SFMTA or its relations with employees. All posted material shall be dated, shall bear the identity of the sponsor, shall be neatly displayed, and shall be removed when no longer timely, but in no event shall be displayed for more than two (2) weeks. A department may withdraw the authority to use bulletin board space if material is posted on other than authorized bulletin boards or if material posted on bulletin boards is not in compliance with this Article.
70. UNION Access. The UNION or its representatives shall have reasonable access to all work locations to verify that the terms and conditions of this CBA are being carried out and for the purpose of conferring with employees, provided that access shall be subject to such reasonable rules and regulations as may be agreed by the Appointing Officer or its designated representative and the UNION. Disputes arising pursuant to said rules and regulations shall be referred to a panel comprised of a representative of the SFMTA Human Resources Director and the UNION.

ARTICLE II - EMPLOYMENT CONDITIONS

II.A. NON DISCRIMINATION

71. The SFMTA and the UNION agree that this Agreement shall be administered in a non-discriminatory manner and that no person covered by this CBA shall in any way be discriminated against because of race, color, creed, religion, sex, gender identity, sexual orientation, national origin, physical or mental disability, age, political affiliation or opinion or UNION membership or activity, or non- membership, nor shall a person be subject to sexual harassment. The SFMTA shall process complaints of sexual harassment pursuant to Civil Service Rules, the Administrative Code and Federal and State laws.
72. Discrimination as used herein shall mean discrimination or harassment as defined by Title VII of the 1964 Civil Rights Act, as amended, the Civil Rights Act of 1991, the California Fair Employment and Housing Act, the Americans with Disabilities Act, the California and United States Constitutions, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Civil Rights Act of 1866 and any other laws and regulations relating to employment discrimination.
73. A complaint of discrimination may, at the employee's option, be processed through the SFMTA's Equal Employment Opportunity complaint process, or federal or state administrative or judicial processes. If the employee elects to pursue a non-contractual remedy for discrimination, it shall constitute a waiver of the right to pursue that complaint through the grievance and arbitration process provided by the Agreement.
74. Neither the SFMTA nor the UNION shall interfere with, intimidate, restrain, coerce or discriminate against any employee because of the exercise of rights granted pursuant to the Employee Relations Operating Resolution of the San Francisco Municipal Transportation Agency and the Meyers-Milias-Brown Act.
75. The parties acknowledge the obligation of the SFMTA to enforce the rules and regulations set forth in the Family Medical Leave Act and the California Family Rights Act.

II.B. AMERICANS WITH DISABILITIES / REASONABLE ACCOMMODATION

76. Americans with Disabilities Act. The parties agree that the SFMTA is obligated to provide reasonable accommodations for persons with disabilities, in order to comply with the provisions of the Americans with Disabilities Act, the Fair Employment and Housing Act and all other applicable federal, state and local disability anti-discrimination statutes. The parties further agree that this Memorandum shall be interpreted, administered and

applied in a manner consistent with such statutes. The SFMTA reserves the right to take any action necessary to comply therewith.

II.C. ASSIGNMENT OF WORK

77. Sign-Up for Class 9132: The existing practice of conducting a sign up for shifts and days off on a quarterly basis shall continue unless changed by mutual agreement of the parties.
78. In addition, the existing practice of allowing for sign ups for Field Training Officer lead assignments shall continue. This sign up shall occur every six months. This practice will remain in place for the term of this agreement unless changed by mutual agreement of the parties.

II.D. PERSONNEL FILES & OTHER PERSONNEL MATTERS

79. There shall be maintained only one official personnel file for an employee, and the employee shall have access to the file to review the file during normal working hours, upon reasonable request. The personnel files for employees covered by this CBA shall be maintained at the Personnel Office.
80. Personnel Files. No material may be entered into the official personnel file without knowledge of the employee and a copy being given to him/her. An employee will have the option to sign, date and attach a response to material entered in his/her personnel file within thirty- (30) days of his/her having knowledge of the entry. Discipline involving less than a suspension may not be considered for subsequent disciplinary actions after twelve (12) months. Discipline involving a suspension of five- (5) days or less suspension may not be considered for subsequent disciplinary actions after eighteen (18) months. Discipline involving a suspension of greater than five- (5) days may not be considered for subsequent disciplinary actions after thirty-six (36) months. Discipline resulting from a chemical dependency violation may not be considered for subsequent disciplinary actions after sixty- (60) months. Subject to the approval of the Civil Service Commission, the employee may request, in writing, that any disciplinary documents that may no longer be considered, as described above, be removed from his/her personnel file.
81. In addition, this provision shall not apply to employees disciplined for: misappropriating public funds or property, misusing or destroying public property, using illicit drugs at work or being under the influence of illicit drugs or alcohol at work, mistreating other persons, engaging in acts that would constitute a felony or misdemeanor involving moral turpitude, engaging in acts that present an immediate danger to the public health and safety, or engaging in immoral acts

82. Standards of Performance. The UNION recognizes the SFMTA's right to establish and/or revise performance levels, norms, or standards. Such standards, developed by usual work measurement procedures, may be used to determine acceptable performance levels, prepare work schedules, and to measure the performance of each employee or group of employees. EMPLOYEE(S) who work at less than acceptable levels of performance may be subject to disciplinary measures. Consistent with the Meyers-Milias-Brown Act, the SFMTA agrees to meet & confer with the UNION to discuss the effect of the establishment and implementation of revised performance levels, norms or standards. However, employee performance evaluations may not be grieved or submitted to arbitration.

II.E. SUBCONTRACTING OF WORK

83. Required Notice of the UNION on Prop J. Contracts. The SFMTA shall deliver to the UNION no later than thirty (30) days prior to issuing any "Invitation for Bid" or "Request for Proposal" a report explaining the proposed change, an explanation of reasons for the change, and the effect on represented classes.
84. Information Meetings. The UNION shall respond within twenty-one (21) days from the date of receipt of the above information with a request to meet. The SFMTA agrees to discuss and attempt to resolve issues relating to:
- 85. a. possible alternatives to subcontracting;
 - 86. b. questions regarding current and intended levels of service;
 - 87. c. questions regarding the Controller's certification pursuant to SFMTA Charter Section 10.104, subsection 15;
 - 88. d. questions relating to possible excessive overhead in the SFMTA's administrative-supervisory/worker ratio;
 - 89. e. questions relating to the effect on individual worker productivity by providing labor saving devices; and
 - 90. f. questions regarding services supplied by the SFMTA to the Contractor.
91. The SFMTA agrees that it will take all appropriate steps to ensure the presence at said meetings of those officers and employees of the SFMTA who are responsible in some manner for the decision to contract out so that the particular issues may be fully explored by the UNION and the SFMTA.

92. Personal Service Contracts. The Human Resources Director has agreed to direct all departments to notify the UNION of proposed personal services contracts which are presented to the Civil Service Commission for approval, where such services could potentially be performed by represented classifications. Such notification to the UNION shall occur simultaneously upon submission of the request to the SFMTA Department of Human Resources staff.

II.G. JOINT COMMITTEES

93. Joint Labor Management Board. SFMTA and the UNION jointly agree to establish a new Joint Labor Management Board (“JLMB”). Management shall designate representatives and the UNION shall be represented by an equal number of UNION representatives chosen by the UNION. The purpose of the JLMB shall be to provide the parties with a forum for discussion of important matters of mutual concern including: formulation of major management policies that affect the UNION membership, the effects of budgetary reductions on the SFMTA system, major restructurings of SFMTA, employee training and education, establishment of new civil service classifications, and health and safety issues. The JLMB shall jointly plan and recommend programs and/or solutions to problems in these areas. The JLMB shall meet once a month on a pre-determined day and time or on the call of either party should the need arise. Matters presented to the JLMB may not be grieved or submitted to arbitration.
94. Disciplinary grievances and matters involving the claims of individual employees should not be presented to the JLMB. However, the consideration of an issue by the JLMB shall not preclude an employee from pursuing a grievance relating to such issue regarding any action by SFMTA that otherwise constitutes a violation of the provisions of this CBA.
95. Within sixty (60) days of ratification of the CBA the parties will meet to agree upon meeting dates, times and participants.
96. Employee Suggestion Program. The SFMTA and UNION agree to publicize the Employee Suggestion Program and to encourage represented employees to submit cost saving suggestions for consideration and possible awards.

Joint Study Committee on Workers Compensation

97. **SFMTA and the Union shall establish a committee to review the SFMTA's procedures for handling and resolving workers' compensation claims and make recommendations for their improvement. This committee shall begin meeting upon the request of either party. If the parties mutually agree, this MOU may be reopened during its term for the sole purpose of negotiating over any changes to the**

workers' compensation system recommended by the committee. Issues negotiated during any such reopener shall not be subject to interest arbitration.

II.H. SENIORITY

98. Seniority in Classification 9132 Transit Fare Inspector. The parties hereto agree that the principles of seniority shall be observed and given consideration in the assignment of shifts, days off and overtime.
99. Work seniority for all employees covered by this CBA shall be defined as the length of continuous service determined from the day of employment as a 9132 Transit Fare Inspector. In the event that two or more employees' seniority begins on the same date, said employees' places shall be determined by the order of said employees on the civil service eligible list from which they were appointed.
100. Work seniority for provisional employees shall be defined as the length of continuous service determined from the day of employment in class 9132 with the Department. In the event that two or more employees' seniority begins on the same date, said employees' places shall be determined by the order of said employee's application date for employment in class 9132.
101. Separate work seniority lists shall be maintained for (a) permanent employees; (b) provisional employees.
102. CITY Seniority shall be defined as the length of continuous service determined from the day the employee begins work with the CITY and shall prevail in determining vacations.

II.I. PROBATIONARY PERIOD

103. The probationary period, as defined and administered by the Civil Service Commission, shall be two thousand and eighty (2,080) hours.
104. ~~After 1,040 hours worked, the employee may request a meeting with management to discuss performance expectations for the remainder of the probationary period. The employee may request to have his/her union representative at the meeting.~~ **The probationary period for a promotive appointment shall be one thousand and forty (1,040) hours.**
105. **The probationary period for any other appointment type (e.g. displacement ["bumping"], transfers) shall be five hundred twenty (520) hours.**

106. **A probationary period may be extended by mutual agreement, in writing, between the Union and SFMTA.**

II.J. ANTI-NEPOTISM (SFMTA)

107. No employee of the San Francisco Municipal Transportation Agency shall knowingly sign up for an assignment that reports directly to or directly supervises the employee's spouse, domestic partner, parent or child. SFMTA management shall not knowingly assign an employee to such a position. If an employee is in such a position on July 1, 2001 or if changes occur that cause an employee to be in such a position during the term of this Agreement (including but not limited to organizational restructuring, changes in familial relationships, or changes in reporting relationships caused by operation of the Civil Service rules), the following shall occur: the first represented employee of the two affected employees who has an opportunity to sign up, bid for, or be assigned to a different assignment for which he or she possesses the appropriate qualifications shall be required to do so. This provision is not intended to affect the rights of any employee under the Civil Service rules.

II.K. FILLING OF BUDGETED POSITIONS:

108. At the Unions request, the SFMTA agrees to meet with the Union to discuss the SFMTA's decision to hold bargaining unit positions vacant due to operational necessity or budgetary constraints.

ARTICLE III - PAY, HOURS AND BENEFITS

III.A. WAGES

109. ~~Base wages shall be increased as follows:~~

Effective January 1, 2007	2.5%
Effective June 30, 2008	2%
Effective January 1, 2009	3.5%

~~Wage adjustments shall be effective in the pay period closest to the effective dates.~~

Base Hourly Wage Rate for Fare Inspectors

Effective July 1, 2011 and continuing until June 30, 2012, SFMTA shall pay Fare Inspectors at the 2010-2011 hourly rate of pay.

110. Second Fiscal Year 2012-2013: Base Hourly Rate Of Pay

Effective July 1, 2012, and continuing until June 30, 2013, the base hourly rate of pay for Fare Inspectors shall remain the same as the FY 2011-2012 base rate of pay.

111. Third Fiscal Year 2013-2014: Base Hourly Rate Of Pay

Effective July 1, 2013, and continuing until June 30, 2014, the base hourly rate of pay for Fare Inspectors shall remain the same as the FY 2012-2013 base rate of pay.

III.B. ADJUSTMENTS TO PAY

112. Overtime & Holiday Pay. The SFMTA agrees to take necessary action in the annual budget process and through the supplemental appropriation process, if necessary, to assure that the departmental overtime accounts will have sufficient funds to pay overtime and holiday pay to those assigned to work such overtime and holidays throughout the fiscal year.

113. The Controller agrees to process and distribute all holiday and overtime paychecks with the regular pay warrants for the period in which the overtime was earned.

114. Recovery of Overpayment. Should recovery of overpayment of salary or wages be necessary, the Controller's Payroll/Personnel Services Division, or its designee ("PPSD"), will make every attempt to minimize the hardship for the employee.

115. The schedule of recovery of any overpayment shall be made by the mutual agreement between the SFMTA and the employee. In the absence of a mutual agreement, the

SFMTA may recover no more than 20% of the total amount in any one biweekly paycheck.

116. Correcting Problems. In correcting all employee underpayment or nonpayment problems, the following guidelines will be used to correct the most significant problems first:
117. No Check on Payday for the Pay Period. Highest priority, full check to be issued as quickly as possible, within four (4) hours if PPSD or departmental payroll division is notified before noon on payday or before noon on any subsequent day. If PPSD or departmental payroll division is notified after noon but before 4:00 p.m., the check will be issued no later than noon of the following day.
118. Check on Payday is 10% or More Short of Total Due for Pay Period. Second priority, correcting payment to be issued as quickly as possible with the goal of three (3) working days of report to payroll.
119. Check on Payday is Less Than 10% Short of Total Due for Pay Period. Third priority, correcting payment to be issued as quickly as possible, with a goal of within ten (10) working days of report to payroll.
120. Additional Payroll Procedures. Upon the request of the UNION, the Director of the PPSD agrees to meet with the UNION to discuss matters related to the SFMTA's payroll procedures, including but not limited to, the creation of a fund for reimbursement of short checks, issuance of overtime, holiday, vacation, or final paychecks. Departmental representatives will be invited to participate if the Director of PPSD deems it appropriate.

III.C. WORK SCHEDULES

121. Normal Work Schedule. Employees shall work eight (8) hours within eight and one-half (8½) hours, with a one-half (½) hour unpaid lunch break. At the end of a shift and within the eight (8) hour work period an employee shall receive a ten (10) minute period for dress change.
122. Part-Time Work Schedules. A part-time work schedule is a tour of duty less than forty hours per week. Compensation for part-time services shall be calculated upon the compensation for the normal work schedules proportionate to the hours actually worked.

III.D. ADDITIONAL COMPENSATION

123. The SFMTA and UNION agree that the following rates of premium pay shall apply to those positions agreed by the parties to be eligible for premium pay. All premium pay

shall be for hours actually worked. Premiums shall be calculated against the employee's base rate of pay and shall not be pyramided.

124. For example, Employee X earning a base rate of pay of ten dollars (\$10/hr.) per hour receives both Premium A (an additional \$0.65 per hour) and Premium B (5% increase to base pay). Employee X may NOT add Premium A to her base wage BEFORE calculating Premium B, therefore pyramiding the latter premium. All premiums are separately and independently calculated against the base wage. Therefore the correct pay for Premium A is \$0.65 per hour actually worked; Premium B is \$0.50 per hour actually worked.

1. LEAD PERSON PAY

125. Employees designated by their supervisor as lead person shall be entitled to Five and One-half (5½ %) Percent of their base hourly rate premium pay when required to take the lead on any job when at least two other persons are assigned.
126. An employee may also receive Lead Person pay for any special jobs specifically designated by the Department as receiving Lead Person pay.

2. ACTING ASSIGNMENT PAY

127. Employees **temporarily** assigned by the Appointing Officer or **its** designee to perform a substantial portion of the duties and responsibilities of a higher classification shall receive compensation at a higher salary if all of the following conditions are met:
128. a. The assignment shall be in writing.
129. b. The position to which the employee is assigned must be a budgeted position.
130. c. The employee is assigned to perform the duties of a higher classification for **longer than** eleven (11) consecutive **working** days, ~~after which acting assignment pay shall be retroactive to the first (1st) day of the assignment.~~
131. **d. Upon written approval by the Appointing Officer or its designee, an employee shall be paid at a step of the established salary grade of the higher class which is at least five percent (5%) above the employee's base salary but which does not exceed the maximum step of the salary grade of the class to which temporarily assigned. Premiums based on percent of salary shall be paid at a rate which includes out of class pay.**

132. e. Requests for classification or reclassification review shall not be governed by this provision.
133. In selecting employees for acting assignments under this provision, SFMTA shall take into consideration the employees' work record, attendance, discipline, communication skills, and seniority.
134. Claims Where the above requirements are satisfied but an employee does not receive a premium, the employee must be filed file a grievance within thirty (30) days of the date ~~an employee was assigned to perform the duties of a higher classification~~ written notice of the assignment.

3. SHIFT DIFFERENTIAL

135. Employees in classification 9132 Transit Fare Inspector shall be paid eight-and-one-half percent (8.5%) more than the base rate for each hour regularly assigned between 5:00 p.m. and midnight (12:00 a.m.) except for those employees participating in an authorized flex-time program and who voluntarily work between the hours of 5:00 p.m. and midnight (12:00 a.m.). Shift pay of 8.5% shall be paid for the entire shift, provided at least five (5) hours of the employee's shift falls between 5:00 p.m. and midnight (12:00a.m.). Work hours differential for class 9132 shall be applied to all paid hours.
136. Employees in classification 9132 Transit Fare Inspector shall be paid ten percent (10%) more than the base rate for each hour regularly assigned between the hours of midnight (12:00 a.m.) and 7:00 a.m. if the employee works at least one (1) hour of his/her shift between midnight (12:00 a.m.) and 7:00 a.m. except for those employees participating in an authorized flex-time program and who voluntarily work between the hours of midnight (12:00 a.m.) and 7:00 a.m. Shift pay of 10% shall be paid for the entire shift provided at least five (5) hours of the employee's shift falls between midnight (12:00a.m.) and 7:00a.m. Work hours differential for class 9132 shall be applied to all paid hours.

4. COMPENSATORY TIME - CLASS A & B LICENSES

137. Employees in class 9132, Transit Fare Inspectors, shall be granted compensatory time off for time spent outside their regularly scheduled assigned work schedule in obtaining a Class C California Driver's License when such a license is a condition of employment or it is required by the Appointing Officer. This provision shall not apply to time spent in preparing for tests but shall include all time spent in taking tests, medical examinations

and keeping required appointments. All expenses associated with obtaining and renewal of such license shall be at the expense of the employee.

5. WORK ON REGULAR DAYS OFF

138. ~~Employees in classification 9132, Transit Fare Inspectors, when assigned to work on their regular day off (RDO) will be compensated the overtime rate of 1-1/2 times their base rate of pay.~~

6. BILINGUAL PAY

139. Employees in classification 9132, Transit Fare Inspectors, who translate or interpret as part of their work shall have their positions designated a "bilingual". A "designated bilingual position" is a position designated by the department which requires translating to and from a foreign language including sign language for the hearing impaired and Braille for the visually impaired.
140. An employee who provides more than forty (40) hours per pay period of non-English services, including Braille and sign language as part of his or her regular job assignment, shall receive a bilingual premium of sixty dollar (\$60.00) per pay period.
141. An employee who routinely and consistently provides, but less than forty (40) hours per pay period, non-English services, including Braille and sign language, as part of his or her regular job assignment, shall receive a bilingual premium of forty dollars (\$40.00) per pay period.

7. TRANSIT INSPECTOR ALLOWANCE

142. ~~Provide allowance for term of agreement in the amount of \$450 to be paid in the first full pay period in December of each year of the agreement.~~

III.E. OVERTIME COMPENSATION & COMP. TIME

143. ~~Overtime shall be paid at time and one half (1½) the base rate for work performed outside the employee's regularly scheduled work hours. The UNION shall have access to all overtime records.~~ **For all hours of work performed in excess of forty (40) hours in each established work week or eight (8) hours in a work day, SFMTA shall pay 9132 Fare Inspectors at the rate of time and one-half. Overtime pay for work on a regular day off (RDO) is subject to the provisions of the following paragraph.**

144. Employees may be required to work hours in excess of their regularly scheduled work day and regular work week. Time worked in excess of eight hours per day or 40 hours per week shall be designated as overtime and shall be compensated at one-and-one-half times the base hourly rate which may include a night differential if applicable. **To be paid at the overtime rate of pay, 9132 Fare Inspectors must perform work in excess of forty (40) hours in each established work week or eight (8) hours in a work day. For the purpose of calculating the hours worked in each established work week, SFMTA shall include jury duty, military leave, and statutory holidays in the calculation of the number of hours worked. Vacation hours, sick leave, compensatory time and any other paid or unpaid leaves not listed in this paragraph shall not be counted as hours worked for purposes of overtime on an RDO. If a Fare Inspector working on her/his RDO does not qualify for overtime pay, the operator shall be paid at straight pay.**
145. ~~Employees shall not be entitled to overtime compensation for work performed in excess of specified regular hours until they exceed eight (8) hours per day or forty (40) hours per week.~~ Employees working in a flex-time program shall be entitled to overtime compensation as provided herein when required to work more than eighty hours per payroll period. Overtime shall be calculated and paid on the basis of the total number of straight-time hours actually worked in a day and week except that statutory holidays shall be considered time worked.
146. Employees covered by the FLSA who are required to work overtime shall be paid at a rate of one and one-half times the regular base rate, unless in accordance with the other provisions of this CBA overtime work is compensated by accrual of compensatory time off.
147. The Appointing Officer shall require an employee not designated by a “Z” symbol in the Annual Salary Ordinance to work overtime when it is known by said Appointing Officer that funds are legally unavailable to pay said employee, provided that an employee may voluntarily work overtime under such conditions in order to earn compensatory time off at the rate of time and one-half, pursuant to the provisions herein.
148. Those employees subject to the provisions of the Fair Labor Standards Act who are required or suffered to work overtime shall be paid in salary unless the employee and the Appointing Officer mutually agree that in lieu of paid overtime, the employee shall be compensated with compensatory time off. Compensatory time shall be earned at the rate of time and one half. Employees occupying non-“Z” designated positions shall not accumulate a balance of compensatory time earned in excess of 240 hours calculated at the rate of time and one half.

149. The SFMTA Department of Human Resources shall determine whether work in excess of eight (8) hours a day performed within a sixteen (16) hour period following the end of the last preceding work period shall constitute overtime or shall be deemed to be work scheduled on the next work day.
150. ~~Overtime for Class 9132:Overtime opportunities will be offered first to the employee at the top of the Overtime Availability List.~~ **SFMTA shall maintain an overtime wheel. Initial placement on the wheel shall be by seniority.**
151. Scheduled overtime shall be posted at the division, **with a copy provided to the Union,** at least two days in advance of the actual workday. **Employees shall sign up to work overtime on the posted notice** Availability forms will be accessible at all divisions. ~~Each employee must fill out an Availability to Work Overtime form and submit it to the supervisor or UNION Steward weekly or not less than 2 days prior to the day on which the employee is requesting to work, EXCEPT Sunday and Monday work must be received signed by 12:00 noon on the preceding Friday.~~
152. ~~SFMTA is responsible for maintaining the overtime availability lists and distributing it to the employees and to the UNION steward.~~
153. An employee who **has signed up for an overtime assignment** ~~is on the Overtime Availability List~~ must call the supervisor at the earliest available time, and no later than one hour before being scheduled to work, if she/he becomes unavailable to work overtime.
154. ~~A rotating list will~~ **The overtime wheel will** be used to **assign** disburse all **scheduled** overtime. The **person highest on the list who has signed up for an overtime assignment which falls on their regular day off will receive first preference,** ~~most senior person will be asked first, then each person~~ **who has signed up for an overtime assignment in order on the wheel,** ~~listed in order of seniority will be asked in succession, until the rotation is completed.~~ **If a Fare Inspector refuses his or her turn on the wheel, they will be charged as if they had worked and will go to the bottom of the list.** Should a person decline his/her chance, the overtime will then fall to the next person on the rotation listing.
155. ~~SFMTA shall retain the discretion to remove employees with poor attendance or unsatisfactory work performance from the overtime wheel until such time as their attendance/work performance is documented as improved.~~ **9132 Fare Inspectors with documented poor attendance or unsatisfactory work performance shall be removed from the overtime wheel until such time as their attendance/work performance is documented as improved. Requests to be placed back on the rotation schedule shall not be denied in an arbitrary or capricious manner. For purposes of this section,**

documented means the employee has been sent a written notice describing poor attendance or unsatisfactory work performance by management.

156. An employee will be charged with a “no-show” for the first failure to report for scheduled overtime. Any repeat “no-shows” within a 30-day period will bar that employee from the Overtime Availability List for 30 days. “No-shows” may be excused by the general superintendent upon presentation of sufficient evidence of an inability to report to work.
157. ~~Employees with poor attendance or unsatisfactory work performance shall be removed from the overtime wheel until such time as their attendance/work performance is documented as improved.~~
158. ~~A regular day off does not disqualify a person from overtime, but rather, upon his/her return to work, they will be asked again based on the rotation chart.~~
159. Regular Day Off List. EMPLOYEE(S) desiring to work on their regular day off must indicate their availability by signing up on an RDO list. An employee called in to work on a regular day off shall be provided with not less than 8 hours of work on that day. If an employee is passed over incorrectly in the RDO rotation pursuant to procedures established by the Department, he/she will be moved to the top of the list established for their next RDO.
160. **Overtime due to unanticipated needs. Overtime assignments due to operational needs that arise within forty-eight (48) hours of the overtime to be worked shall be made at the discretion of management.**
161. **The Union shall have access to all overtime records.**

III.F. HOLIDAYS AND HOLIDAY PAY

162. Except as otherwise provided herein, and except when normal operations require, or in an emergency, employees shall not be required to work on the following days hereby declared to be holidays for such employees:
163. January 1, the third Monday in January (Martin Luther King, Jr.'s Birthday), the third Monday in February (President's Day), the last Monday in May (Memorial Day), July 4, first Monday in September (Labor Day), the second Monday in October (Columbus Day), November 11 (Veterans' Day), Thanksgiving Day, the Day After Thanksgiving, December 25, any day declared to be a holiday by proclamation of the Mayor after such day has heretofore been declared a holiday by the Governor of the State of California or the President of the United States.

164. For those employees whose normal work week is Monday through Friday, in the event a legal holiday falls on Saturday, the preceding Friday shall be observed as a holiday; provided, however, that except where the Governor declares that such preceding Friday shall be a legal holiday, each department head shall make provision for the staffing of public offices under his/her jurisdiction on such preceding Friday so that said public offices may serve the public. Those employees who work on a Friday which is observed as a holiday in lieu of a holiday falling on Saturday shall be allowed a day off in lieu thereof as scheduled by the Appointing officer in the current Fiscal Year.
165. Holidays Compensation for Time Worked. Employees required by their respective appointing officers to work on any of the above specified or substitute holidays, excepting Fridays observed as holidays in lieu of holidays falling on Saturday, shall be paid extra compensation of one additional day's pay at time-and-one-half the usual rate (*i.e.*, 12 hours pay for 8 hours worked) or a proportionate amount for less than 8 hours worked provided, however, that at the employee's request and with the approval of the appointing officer, an employee may be granted compensatory time off in lieu of paid overtime pursuant to the provisions herein.
166. Holidays for Employees on Work Schedules Other than Monday Through Friday. Employees assigned to seven (7) day operation departments or employees working on a five (5)-day work week other than Monday through Friday shall be allowed another day off if a holiday falls on one of their regularly scheduled days off. Employees whose holidays are changed because of shift rotations shall be allowed another day off if a legal holiday falls on one of their days off. Employees regularly scheduled to work on a holiday which falls on a Saturday or Sunday shall observe the holiday on the day it occurs, or if required to work shall receive holiday compensation for work on that day. Holiday compensation shall not be paid for work on the Friday preceding a Saturday holiday nor on the Monday following a Sunday holiday.
167. If the provisions of this Article deprive an employee of the same number of holidays that an employee receives who works Monday through Friday, he/she shall be granted additional days off to equal such number of holidays. The designation of such days off shall be by mutual agreement of the employee and the appropriate supervisor with the approval of the Appointing Officer. Such days off must be taken within the fiscal year. In no event shall the provisions of this Article result in such employee receiving more or fewer holidays than an employee on a Monday through Friday work schedule.
168. Provided further, if January 1, July 4, November 11 or December 25 falls on a Sunday, the Monday following is a holiday.

169. Floating Holidays & Paid Furlough Days. In addition to the holidays listed above, the employees covered under this CBA will receive ~~three~~ **two** floating holidays ~~and two (2) paid furlough days~~. The ~~three~~ **two** floating holidays ~~and two paid furlough days~~ may be taken on days selected by the employee subject to prior scheduling approval of initial eligibility for the ~~three~~ **two** floating holidays ~~and two paid furlough days off~~. Employees hired on an as-needed, part-time, intermittent or seasonal basis shall not receive the ~~three~~ **two** floating holidays ~~and two paid furlough days off~~. The ~~three~~ **two** floating holidays ~~and two paid furlough days off~~ may not be carried forward from one fiscal year to the next. No compensation of any kind shall be earned or granted for the ~~three~~ **two** floating holidays ~~and two paid furlough days if not taken off~~. The ~~three~~ **two** floating holidays ~~and two paid furlough days~~ shall not be considered holidays for purposes of calculating holiday compensation for time worked.
170. Holiday pay for employees laid off. An employee who is laid off at the close of business the day before a holiday who has worked not less than five previous consecutive work days shall be paid for the holiday.

Part Time Holidays

171. **Part time employees, including employees on a reduced work week schedule, who regularly work a minimum of twenty (20) hours in a bi-weekly pay period shall be entitled to holidays as provided herein on a proportionate basis.**

III.G. JURY DUTY

172. An employee working the Graveyard Hours who is required to serve on a jury or report to Court for jury duty on her/his regular day off immediately following her/his shift, shall be considered to have Saturday as an assigned day off if the regular day off lost was Monday or Tuesday, and shall be considered to have Sunday as an assigned day off if the regular day off lost was Wednesday, Thursday or Friday.

III.H. SALARY STEP PLAN AND SALARY ADJUSTMENTS

173. Appointments to positions in the SFMTA shall be at the entrance rate established for the position except as otherwise provided herein.
1. Promotive Appointment in a Higher Class.
174. An EMPLOYEE who has completed a probationary period or six months of continuous service, whichever is less, and who is appointed to a position in a higher classification deemed to be promotive shall have his/her salary adjusted to that step in the promotive class as follows:

175. The EMPLOYEE shall receive a salary step in the promotive class which is closest to an adjustment of 7.5% above the salary received in the class from which promoted. The proper step shall be determined by the bi-weekly compensation grade and shall not be above the maximum of the salary range of the promotive class.
176. For purpose of this Section, appointment of an EMPLOYEE as defined herein to a position in any class the salary grade for which is higher than the salary grade of the EMPLOYEE's prior class shall be deemed promotive.

2. Non-Promotive Appointment.

177. An EMPLOYEE or officer who is a permanent appointee following completion of the probationary period or six months of continuous service, and who accepts a non-promotive appointment in a classification having the same salary grade, or a lower salary grade, the appointee shall enter the new position at that salary step which is the same as that received in the prior appointment, or if the salary steps do not match, then the salary step which is immediately in excess of that received in the prior appointment, provided that such salary shall not exceed the maximum of the salary grade. Further increments shall be based upon the seniority increment anniversary date in the prior appointment.

3. Appointment Above Entrance Rate.

178. Subject to the Controller's certification of available funds and procedures to be established by SFMTA/Department of Human Resources, appointments may be made by an appointing officer at any step in the compensation grade under any of the following conditions:

A former permanent CITY EMPLOYEE, following resignation with service satisfactory, is being reappointed to a permanent position in his/her former classification; or

179. Loss of compensation would result if appointee accepts position at the normal step; or
180. A severe, easily demonstrated and documented recruiting and retention problem exists, or
181. The appointee possesses special experience, qualifications and/or skills which, in the Appointing Officer's opinion, warrants appointment above the entrance rate.

4. Reappointment Within Six Months.

182. A permanent EMPLOYEE who resigns and is subsequently reappointed to a position in the same classification within six (6) months of the effective date of resignation shall be reappointed to the same salary step that the EMPLOYEE received at the time of resignation.

5. Compensation Adjustments.

183. Prior Fiscal Year. When an EMPLOYEE promoted to a higher class during a prior fiscal year receives a lesser salary than if promoted in the same class and from the same grade step during the current fiscal year his/her salary shall be adjusted on July 1, to the rate he/she would have received had he/she been promoted in the current fiscal year.
184. The SFMTA Department of Human Resources is hereby authorized to adjust the salary and anniversary increment date of any EMPLOYEE promoted from one class to a higher classification who would receive a lesser salary than an EMPLOYEE promoted at a later date to the same classification from the same salary step in the same base class from which the promotional examination was held.
185. Salary Increase in Next Lower Rank. When a classification that was formerly a next lower rank in a regular civil service promotional examination receives a salary grade higher than the salary grade of the classification to which it was formerly promotive, the SFMTA Department of Human Resources shall authorize a rate of pay to an EMPLOYEE who was promoted from such lower class equivalent to the salary he/she would have received had he/she remained in such lower class, provided that such EMPLOYEE must file with the SFMTA Department of Human Resources an approved request for reinstatement in accordance with the provisions of the Civil Service Commission rule governing reinstatements to the first vacancy in his/her former classification, and provided further that the increased payment shall be discontinued if the EMPLOYEE waives an offer to promotion from his/her current classification or refuses an exempt appointment to a higher classification. This provision shall not apply to offers of appointment which would involve a change of residence.
186. The special rate of pay herein provided shall be discontinued if the EMPLOYEE fails to file and compete in any promotional examination for which he/she is otherwise qualified, and which has a compensation grade higher than the protected salary of the EMPLOYEE.
187. Flat Rate Converted to Salary Range. An EMPLOYEE serving in a class in the prior fiscal year at a flat rate which is changed to a compensation grade number during the current fiscal year, shall be paid on the effective date of such change the step in the

current salary grade closest to, but not below, the prior flat rate and shall retain the original anniversary date for future increments, when applicable.

6. Compensation Upon Transfer Or Re-Employment.

188. Transfer. An EMPLOYEE transferred in accordance with Civil Service Commission rules from one Department to another, but in the same classification, shall transfer at his/her current salary, and if he/she is not at the maximum salary for the class, further increments shall be allowed following the completion of the required service based upon the seniority increment anniversary date in the former Department.
189. Reemployment in Same Class Following Layoff. An EMPLOYEE who has acquired permanent status in a position and who is laid off because of lack of work or funds and is re-employed in the same class after such layoff shall be paid the salary step attained prior to layoff.
190. Reemployment in an Intermediate Class. An EMPLOYEE who has completed the probationary period in a promotive appointment that is two or more steps higher in an occupational series than the permanent position from which promoted and who is subsequently laid off and returned to a position in an intermediate ranking classification shall receive a salary based upon actual permanent service in the higher classification, unless such salary is less than the EMPLOYEE would have been entitled to if promoted directly to the intermediate classification. Further increments shall be based upon the increment anniversary date that would have applied in the higher classification.
191. Reemployment in a Formerly Held Class. An EMPLOYEE who has completed the probationary period in an entrance appointment who is laid off and is returned to a classification formerly held on a permanent basis shall receive a salary based upon the original appointment date in the classification to which the EMPLOYEE is returned. An EMPLOYEE who is returned to a classification not formerly held on a permanent basis shall receive a salary in accordance with this agreement.

III.I. METHODS OF CALCULATION

192. Bi-Weekly. An employee whose compensation is fixed on a bi-weekly basis shall be paid the bi-weekly salary for his/her position for work performed during the bi-weekly payroll period. There shall be no compensation for time not worked unless such time off is authorized time off with pay.
193. Per Diem or Hourly. An employee whose compensation is fixed on a per diem or hourly basis shall be paid the daily or hourly rate for work performed during the bi-weekly

payroll period on a bi-weekly pay schedule. There shall be no compensation for time not worked unless such time off is authorized time off with pay.

III.J. SENIORITY INCREMENTS

194. Entry At The First Step. Full-time employees shall advance to the second step upon completion of six months service and to each successive step upon completion of the one year required service.
195. Entry At Other Than The First Step. Employees who enter a classification at a rate of pay at other than the first step shall advance one step upon completion of the one year required service. Further increments shall accrue following completion of the required service at this step and at each successive step.
196. Date Increment Due. Increments shall accrue and become due and payable on the next day following completion of required service as an employee in the class, unless otherwise provided herein.
197. Exceptions. An employee shall not receive a salary adjustment based upon service as herein provided if he/she has been absent by reason of suspension or on any type of leave without pay (excluding a military, educational, or industrial accident leave) for more than one-sixth of the required service in the anniversary year, provided that such employee shall receive a salary increment when the aggregate time worked since his/her previous increment equals or exceeds the service required for the increment, and such increment date shall be his/her new anniversary date; provided that time spent on approved military leave or in an appointive or promotive position shall be counted as actual service when calculating salary increment due dates.
198. When records of service required for advancement in the step increments within a compensation grade are established and maintained by electronic data processing, then the following shall apply: An employee shall be compensated at the beginning step of the compensation grade plan, unless otherwise specifically provided for in this CBA. Employees shall receive salary adjustments through the steps of the compensation grade plan by completion of actual paid service in total scheduled hours equivalent to one year or six months, whichever is applicable.
199. Paid service for this purpose is herein defined as exclusive of any type of overtime but shall include military or educational leave without pay.
200. An employee who (1) has completed probation in a permanent position, (2) is "Laid Off" from said position, (3) is immediately and continuously employed in another classification with the SFMTA either permanent or temporary, and (4) is thereafter

employed in his/her permanent position without a break in service, shall, for the purposes of determining salary increments, receive credit for the time served while laid off from his/her permanent position.

III.K. SICK LEAVE WITH PAY

201. ~~Sick leave will be granted, accumulated, and used in accordance with applicable provisions of the Charter (Section 8.363), the Administrative Code (Section 16.17), CSC Rules and departmental rules and policies.~~ **SFMTA shall grant, accumulate, administer, and enforce sick leave in accordance with Rule 420, Articles II and III of the Civil Service Rules. These rules shall not be subject to review in arbitration, except to the extent that they are used as a basis for discipline.**
202. The SFMTA may require that any employee in this bargaining unit submit to an examination by a physician designated by the Department to determine the employee's fitness to perform his/her duties.
203. On returning from sick leave after an absence of more than five (5) working days, an employee must have a statement from his/her doctor stating the diagnosis, the treatment given, and that the employee is capable of performing his/her regular duties.
204. If an employee will not be at work on his/her regularly scheduled day, he/she must notify his/her supervisor not later than fifteen (15) minutes before the start of his/her shift. If her/his supervisor is not available, then the employee should call the contact person designated by the supervisor within the unit. Only in the event that the employee is unable to reach the supervisor and the unit contact person should (s)he call the Department's designated secondary contact. All time actually worked by each employee shall be maintained on the Time Report.
205. In the case of an employee diagnosed as suffering from mental or emotional stress, elevated blood pressure, eye or heart trouble, or any comparable condition that might affect his/her ability to perform their duties, the Department may require the employee to report to the Employee Health Unit of the San Francisco General Hospital or other medical facility or physician designated by the Department for clearance before returning to work.
206. In the event of a disagreement between the doctor designated by the Department and the employee's doctor concerning the fitness of the employee to return to work, the Department's doctor and the employee's doctor shall mutually choose a specialist doctor and shall refer the employee to said specialist, whose bill shall be paid by Department. The opinion of the specialist doctor concerning the fitness of the employee to return to work shall resolve the disagreement.

207. ~~The SFMTA may investigate suspected abuse of sick leave and may bring charges against any employee who willfully abuses the sick leave rules. Particular attention will be paid to patterns of absence.~~
208. ~~Additional sick leave procedures may be promulgated by the Department after complying with the meet and confer requirements of the Meyers-Milias-Brown Act.~~

III.L. WORKER'S COMPENSATION

209. An employee who is absent because of an occupational disability and who is receiving Temporary Disability, Vocational Rehabilitation Maintenance Allowance, State Disability Insurance, may request that the amount of disability indemnity payment be supplemented with salary to be charged against the employee's accumulated unused sick leave with pay credit balance at the time of disability, compensatory time off, or vacation, so as to equal the normal salary the employee would have earned for the regular work schedule. Use of compensatory time requires the employee's appointing officer's approval.
210. An employee who wishes not to supplement, or who wishes to supplement with compensatory time or vacation, must submit a written request to the appointing officer or designee within seven (7) calendar days following the first date of absence. Disability indemnity payments will be automatically supplemented with sick pay credits (if the employee has sick pay credits and is eligible to use them) to provide up to the employee's normal salary unless the employee makes an alternative election as provided in this Article.
211. Employee supplementation of workers compensation payment to equal the full salary the employee would have earned for the regular work schedule in effect at the commencement of the workers compensation leave shall be drawn only from an employee's paid leave credits including vacation, sick leave balance, or other paid leave as available. An employee returning from disability leave will accrue sick leave at the regular rate and not an accelerated rate.
212. Salary may be paid on regular time-rolls and charged against the employee's sick leave with pay, vacation, or compensatory time credit balance during any period prior to the determination of eligibility for disability indemnity payment without requiring a signed option by the employee.
213. Sick leave with pay, vacation, or compensatory time credits shall be used to supplement disability indemnity pay at the minimum rate of one (1) hour units.
214. The parties agree, therefore, that this provision clarifies and supersedes any conflicting provision of the Civil Service Commission Rules bargainable and arbitrable under Charter section A8.409.

Return to Work.

215. The SFMTA reserves the right to take any action necessary to comply with its obligations under the Americans with Disabilities Act, the Fair Employment and Housing Act and all

other applicable federal, state and local disability anti-discrimination statutes. Requests for accommodation under the ADA or FEHA shall be governed under separate-SFMTA procedures established under those laws.

216. The SFMTA will make a good faith effort to return employees who have sustained an occupational injury or illness to temporary modified duty within the employee's medical restriction. Duties of the modified assignment may differ from the employee's regular job duties and/or from job duties regularly assigned to employees in the injured employee's class. Where appropriate modified duty is not available within the employee's classification, on the employee's regular shift, and in the employees' department, the employee may be temporarily assigned pursuant to this Article to work in another classification, on a different shift, and/or in another department, subject to the approval of the appointing officer or designee. The decision to provide modified duty and/or the impact of such decisions shall not be subject to grievance or arbitration. Modified duty assignments may not exceed three (3) months. An employee assigned to a modified duty assignment shall receive their regular base rate of pay and shall not be eligible for any other additional compensation (premiums) and or out of class assignment pay as may be provided under this agreement.

Return To Work Medical Release Requirement

217. Where an employee has claimed a work-related injury, and where that employee has been determined to be a "Qualified Injured Worker" (unable to return to his or her usual and customary occupation) due to work related injury, the employee may not return to work without a medical report that fully describes and explains the employee's improvement, clearly states the employee's current work restrictions and clearly releases the employee to return to work. The SFMTA shall not be liable for pay or wages until the employee presents to the SFMTA such a report. Prescription pad or check-box medical releases shall not be sufficient to return an employee to work that has been declared to be a Qualified Injured Worker.

III.M. STATE DISABILITY INSURANCE (SDI)

218. All employees in the bargaining unit(s) covered by this Agreement shall be enrolled in the State Disability Insurance (SDI) Program. The cost of SDI will be paid by the employee through payroll deduction at a rate established by the State of California Employment Development Department.

III.N. LONG TERM DISABILITY INSURANCE

219. The SFMTA, at its own cost, shall provide to employees a Long Term Disability (LTD) benefit that provides, after a one hundred and eighty (180) day elimination period, sixty percent salary (60%) (subject to integration) up to age sixty-five (65). Employees who

are receiving or who are eligible to receive LTD shall be eligible to participate in the SFMTA's Catastrophic Illness Program only to the extent allowed for in the ordinance governing such program.

III.O. VACATION

220. Vacations will be administered pursuant to the Administrative Code, Article 11, Sections 16.10 through 16.16 (dated 12/94).

III.P. HEALTH AND WELFARE

221. **For Informational Purposes only: Fare Inspectors are entitled to receive such fringe benefits as are granted to miscellaneous employees in the City in accordance with applicable provisions of the Charter, ordinances or CSC Rules, except as may be additionally provided in this Agreement.**
222. EMPLOYEE HEALTH CARE. ~~The SFMTA shall contribute annually for employee health benefits, the contribution required under the Charter. For "medically single" employees~~ **Fare Inspectors**, i.e., benefited employees not receiving the contribution paid by the SFMTA for dependent health care ~~benefits~~ **coverage**, ~~the SFMTA shall contribute all of the premium for the employee's own health care benefit coverage.~~
223. DEPENDENT HEALTH CARE PICK-UP. ~~The SFMTA will also~~ **shall** contribute **up to** a maximum of ~~\$225~~ **\$692.02 per covered Fare Inspector** per month, ~~towards each employee's dependent health coverage for the life of the agreement. However, in the event that the cost of dependent care exceeds \$225 per month, the SFMTA will adjust its pick up level up to 75% of the cost of Kaiser's dependent health care medical premium charged to the employee plus two or more dependents category.~~ **For dependent health care coverage in 2012-2013, SFMTA shall contribute up to a maximum of \$719.70 per covered Fare Inspector per month. For dependent health care coverage in 2013-2014, SFMTA shall contribute up to a maximum of \$748.49 per covered Fare Inspector per month.**
224. DENTAL COVERAGE. ~~The SFMTA agrees to maintain its contribution for dental benefits at present levels for the life of the agreement.~~ **For permanent full-time Fare Inspectors, the SFMTA shall pick up the full cost of the current citywide dental plan for employees and dependents, and will pay directly to the provider, but Fare Inspectors who enroll in the Delta Dental PPO Plan shall pay the following premiums for respective coverage levels:**
225. **\$5 per month for Fare Inspectors enrolled in employee only plan;**

226. **\$10 per month for Fare Inspectors enrolled in employee + 1 dependent plan; or**
227. **\$15 per month for Fare Inspectors enrolled in employee +2 dependent plan.**
228. CONTRIBUTIONS WHILE ON UNPAID LEAVE. As set forth in Administrative Code section 16.701(b), covered employees who are not in active service for more than twelve (12) weeks, shall be required to pay the Health Service System for the full premium cost of membership in the Health Service System, unless the employee shall be on sick leave, workers' compensation, mandatory administrative leave, approved personal leave following family care leave, disciplinary suspensions or on a layoff holdover list where the employee verifies they have no alternative coverage.

III.Q. RETIREMENT PICK-UP

229. ~~For the term of this Agreement, the SFMTA shall pick up the full amount of the employees' contribution to retirement.~~ **For permanent full-time Fare Inspectors employed by the SFMTA before July 1, 2011, the SFMTA shall pick up the employee share of contributions to the San Francisco Employee Retirement System (SFERS), up to a maximum of seven and one half percent (7.5%) of pension covered gross salary for new plan SFERS members and eight percent (8%) of pension covered gross salary for old plan SFERS members.**
230. **For Fare Inspectors who commence employment with SFMTA on or after July 1, 2011, the SFMTA shall pick up the employee share of contributions to SFERS up to a maximum of two and one-half percent (2.5%) of pension covered gross salary.**
231. The parties reaffirm that all employees covered by the CBA shall be in a full retirement contribution status. The parties recognize that the implementation of full contribution rather than reduced contribution is irrevocable.
232. The aforesaid contribution shall not be considered as a part of an employee's compensation for the purpose of computing straight time earnings, compensation for overtime worked, premium pay, or retirement benefits; nor shall such contributions be taken into account in determining the level of any other benefit which is a function of or percentage of salary. The SFMTA reserves the right to take said contributions into account for the purpose of salary comparisons with other employers.
233. If it is determined through the voter process or through SFMTA action as a result of negotiations with any other Miscellaneous bargaining unit (as described by Charter section A8.409) to improve retirement benefits for other Miscellaneous employees, such

improvements shall be extended to employees covered by this Agreement. The effective date for such improvements to the UNION's retirement benefits shall be the date such improvement are ratified in the other Miscellaneous employees' collective bargaining agreement.

Retirement Seminar Release Time

234. Subject to development, availability and scheduling by SFERS and PERS, employees shall be allowed not more than one day during the life of this CBA to attend a pre-retirement planning seminar sponsored by SFERS or PERS. All such seminars must be located within the Bay Area.
235. Employees must provide at least two weeks advance notice of their desire to attend a retirement planning seminar to the appropriate supervisor. An employee shall be released from work to attend the seminar unless staffing requirements or other Department exigencies require the employee's attendance at work on the day or days such seminar is scheduled. Release time shall not be unreasonably withheld.
236. This section shall not be subject to the grievance procedure.

237. **III.R. TUITION REIMBURSEMENT**

The SFMTA agrees to One Thousand Two Hundred Fifty dollars (\$1,250.00) per each year of this agreement to the Tuition Reimbursement Program for the exclusive use of classifications represented hereunder. Employees in said classifications may not receive more than Two Hundred Fifty dollars (\$250.00) per fiscal year from this special allocation. If any portion of said allocation remains unexpended on June 30th of any fiscal year, it shall be carried over to the next fiscal year. The Union shall be sent a quarterly report of the persons who have applied for tuition reimbursements, purpose of reimbursement, and monies allocated.

238. Eligibility. Any regularly scheduled Employee within the SFMTA service who has served a minimum of one (1) year of continuous service in any class immediately prior to receipt of application may apply for tuition reimbursement. Such reimbursement shall be for training courses pertaining to the duties of a higher classification or for the purpose of improving performance in the present classification when an accredited educational institution offers such courses.
239. Expenses. The SFMTA will reimburse each eligible Employee up to \$250.00 per fiscal year for tuition, books, supplies, and other fees for such course if attendance has been approved in advance. The SFMTA will attempt to make such payment promptly upon the Employee's submission of proof of satisfactory completion of the course with a passing grade. If the course is not graded, or is not a credited course, an official transcript or other official document shall be deemed evidence of satisfactory completion.
240. Pre-Approval. Application for reimbursement shall be prepared on a form provided by the SFMTA Department of Human Resources. Courses require pre-approval by the SFMTA Department of Human Resources and the Appointing Officer (or designee), neither of which shall be unreasonably denied. Such application for tuition reimbursement shall be made prior to the date of enrollment in the course and, if approved by the SFMTA Department of Human Resources and the Appointing officer (or designee), reimbursement shall be subject to successful completion of the course. No reimbursement shall be made if the Employee is eligible to receive reimbursement for said tuition under a federal or State Veterans benefit program from other public funds.
241. Repayment. If an employee resigns from the SFMTA within two (2) years following completion of the courses for which tuition reimbursement was used to fund, the amount of tuition reimbursement shall be repaid by the Employee to the SFMTA by cash payment or out of the Employee's last pay warrant or, if applicable retirement earnings.

III.S. VOLUNTEER PARENTAL RELEASE TIME

242. Represented employees shall be granted paid release time to attend parent teacher conferences of four (4) hours per fiscal year (for children in kindergarten or grades 1 to 12).
243. In addition, an employee who is a parent or who has child rearing responsibilities (including domestic partners but excluding paid child care workers) of one or more children in kindergarten or grades 1 to 12 shall be granted unpaid release time of up to forty (40) hours each fiscal year, not exceeding eight (8) hours in any calendar month of the fiscal year, to participate in the activities of the school of any child of the employee, providing the employee, prior to taking the time off, gives reasonable notice of the planned absence. The employee may use vacation, floating holiday hours, or compensatory time off during the planned absence.

III.T. FITNESS FACILITY FEES

244. The SFMTA agrees to set aside an amount up to One Thousand dollars (\$1,000) for each year of this agreement for the purpose of paying membership fees at a fitness facility for those employees covered by this CBA.

~~III.U. WELLNESS INCENTIVE PROGRAM~~

245. ~~For the term of this agreement, SFMTA shall implement a "wellness incentive program" to promote workforce attendance.~~
246. ~~Effective July 1, 2002, any full-time employee leaving the employment of the SFMTA upon service or disability retirement may receive payment of a portion of accrued sick leave credits at the time of separation.~~
247. ~~The amount of this payment shall be equal to two and one half percent (2.5%) of accrued sick leave credits at the time of separation times the number of whole years of continuous employment times an employee's salary rate, exclusive of premiums or supplements, at the time of separation. Vested sick leave credits, as set forth under Civil Service Commission Rules, shall not be included in this computation.~~
248. ~~Example of Calculation~~

~~Employee A retires with 20 years of service.
Employee A has a sick leave balance of 500 hours.
Employee A has a base salary rate of \$25.00 per hour at the time of separation.~~

~~Wellness Incentive = 2.5% for each year of service x 20 years of service = 50%
50% x 500 hours = 250 hours.~~

~~250 hours x \$25.00 (base salary at time of separation) = \$6,250.00~~

249. ~~The number of hours for which an employee may receive cash payments shall not exceed one thousand forty (1040) hours, including any vested sick leave.~~
250. ~~A wellness incentive bonus payment shall not be considered as part of an employee's compensation for the purpose of computing retirement benefits.~~
251. ~~Effective July 1, 2008, employees must have at least three hundred (300) hours of accrued sick leave as of the last day of employment in order to be eligible to receive the benefits of the wellness program.~~

III.V. LIFE INSURANCE

252. A life insurance policy of \$14,000 with a permanent total disability benefit provision, subject to the conditions and provisions of said policy, shall be provided for all employees with 5 years or more of service, the full premium cost of which shall be paid for by the SFMTA. For employees with 1 year or more, but with less than 5 years of service a similar policy of \$6,000 will be provided. Coverage shall be suspended for an employee who has been off the payroll and been absent from service for a continuous period of twelve months.

ARTICLE IV - WORKING CONDITIONS

IV.A. SAFETY EQUIPMENT

253. 1. The Department shall designate rules and regulations governing field safety measures. If mace is provided, the provision of mace, training for use of mace and the conditions under which the use of mace may be allowed are recognized to be within the sole discretion of the Department and shall be subject to departmental rules and regulations. The use and provision of mace shall not be subject to grievance or arbitration.
254. 2. Safety and security will be given priority as a topic for JLMB discussions.

IV.B. UNIFORMS & EQUIPMENT

255. Employees in class 9132 are required to wear the prescribed SFMTA uniform on duty and shall not wear the uniform at any other time except on their way immediately to and from assigned SFMTA work.
256. Employees will be responsible for maintaining the uniform in a clean and presentable condition and for maintaining a neat appearance while on duty.
257. All items of uniform, uniform insignia, and equipment supplied to an employee by the SFMTA will be returned to the SFMTA, as required by management, when the employee leaves SFMTA service. Equipment not so returned will be paid for at cost. SFMTA may direct that the employee's final paycheck be held until such equipment has been properly returned.
258. Uniforms shall be furnished to the employees. The items of uniform apparel to be furnished shall consist of; two short sleeve shirts, two long sleeve shirts, one windbreaker jacket, one traffic reflective vest, four pairs of trousers, one tie, one tie bar, two name tags (brass), one badge, one dress belt, one duty belt, four keepers, one baseball style cap with inscription, one foul weather jacket and one pair of rain pants.
259. Uniforms are to be replaced when they become unserviceable. The unserviceable item must be submitted in order to receive a replacement.

Damaged or Stolen Property

260. Reimbursement of employee's property: Reimbursement for property damaged, destroyed or stolen in the line of duty is administered through the provisions of Administrative Code sections 10.25-1 through 10.25-9. An employee who qualifies for reimbursement of such damaged, destroyed or stolen property shall submit a claim to

her/his department head with all available documentation not later than thirty (30) calendar days after the date of each alleged occurrence. An employee shall be entitled to the appropriate reimbursement no later than one hundred-twenty (120) days following the submission of such claims. Reimbursement may be delayed if the employee does not submit the appropriate documentation.

261. Damaged or stolen SFMTA property: Employees are responsible for safeguarding SFMTA property entrusted to them for use in the performance of their duties and will be responsible for paying the SFMTA for the value of the property at the time of its loss, damage or theft due to the employee's negligence or failure to take prudent measures to safeguard the items.

IV.C. LUNCH/BREAK ROOM

262. **SFMTA shall provide a lunch/break room for the use of employees at an appropriate SFMTA facility.**

ARTICLE V – SCOPE

V.A. SAVINGS CLAUSE

263. Should any part hereof or any provision herein be declared invalid by reason of conflicting with a Charter provision or existing ordinances or resolutions which the Board of Supervisors and/or the SFMTA Board of Directors had not agreed to alter, change or modify, or by any decree of a court, such invalidation of such part or portion of this CBA shall not invalidate the remaining portions hereof and the remaining portions hereof shall remain in full force and effect for the duration of the CBA.

V.B. ZIPPER CLAUSE

264. This Agreement sets forth the full and entire understanding of the parties regarding the matters herein. This Agreement may be modified, but only in writing, upon the mutual consent of the parties.
265. Past Practice. The parties agree that all past practices and other understandings between the parties not expressly memorialized and incorporated into this Agreement shall no longer be enforceable.
266. Civil Service Commission Rules / Administrative Code. Nothing in this Agreement shall alter the Civil Service Rules excluded from arbitration pursuant to Charter Section A8.409-3. In addition, such excluded Civil Service Rules may be amended during the term of this Agreement and such changes shall not be subject to any grievance and arbitration procedure but shall be subject to meet & confer negotiations, subject to applicable law. The parties agree that, unless specifically addressed herein, those terms and conditions of employment that are currently set forth in the Civil Service Rules and the Administrative Code, are otherwise consistent with this Agreement, and are not excluded from arbitration under Charter Section A8.409-3 shall continue to apply to employees covered by this contract.
267. As required by Charter Section A8.409-3, the Civil Service Commission retains sole authority to interpret and to administer all Civil Service Rules. Disputes between the parties regarding whether a Civil Service Rule or a component thereof is excluded from arbitration shall be submitted for resolution to the Civil Service Commission. All such disputes shall not be subject to the grievance and arbitration process of the Agreement.

V.C. DURATION OF AGREEMENT

268. This CBA shall be in effect from July 1, 2006, through and inclusive of June 30, 2010-
269. It is understood and agreed that no new economic benefits for FY 2010-11 shall become effective prior to December 31, 2010, provided as follows;
270. (a) in the event the San Francisco Municipal Transportation Agency negotiates to improve an economic benefit that becomes effective between July 1, 2010 through December 30, 2010, inclusive, for any other miscellaneous City and County officers or employees employed in the SFMTA, that economic benefit will be extended to the Union's represented employees in a manner consistent with the overall economic agreement between the SFMTA and the union with which it previously agreed;
271. (b) in the event that an arbitration panel acting under the authority of Charter section A8.209-4 awards another union representing miscellaneous employees employed in the SFMTA an economic benefit that becomes effective between July 1, 2010 through December 30, 2010, the SFMTA shall allow the Union to reopen its MOU solely for the purpose of proposing that the represented employees should receive an economic benefit in FY 2011-12, in light of the arbitration panel's award on behalf of the other miscellaneous labor organization. Such reopener, if any, shall commence in January 2011, and shall be subject to the timelines and the Charter factors set forth in Charter section A8.409. By entering into this agreement, the SFMTA is not conceding that the Union is or should be entitled to a remedy in the event another union receives an economic benefit for the time period described above. The parties also acknowledge that any economic increases so awarded that are based on market-based adjustments or reflect premiums for specific work functions aren't necessarily applicable to any other group of employees or to other unions;
272. (c) that economic benefits negotiated for or awarded to non A8-409 employees, so called "miscellaneous safety", or employees whose retirement is with the California Public Employees' Retirement System are exempt from this section and do not trigger subsections (a) and (b), above; and
273. (d) that any economic benefits negotiated for or awarded that become effective on or prior to June 30, 2009 are exempt from this section and do not trigger subsections (a) and (b), above.

IN WITNESS HEREOF, the parties hereto have executed this MOU this _____ day of.
_____, ~~2009~~ 2011.

FOR THE SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY

FOR THE UNION

Nathaniel P. Ford, Sr.
Executive Director/CEO

Hubert Snead
International Vice President, Transport
Workers Union of America, AFL-CIO

Debra. A. Johnson
Chief of Staff/Director, Administration

~~Irwin Lum~~ Rafael Cabrera
President
Transport Workers Union, Local 250-A

APPROVED AS TO FORM:

Rafael Cabrera
~~Transport Workers Union, Local 250-A~~

Elizabeth Salveson
Chief Labor Attorney
Office of the City Attorney

JULY 1, ~~2006~~ 2011- JUNE 30, ~~2010~~ 2014
CBA BETWEEN SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY AND
TRANSPORT WORKERS' UNION LOCAL 250-A (CLASS 9132)

APPENDIX A

SFMTA ATTENDANCE INCENTIVE PROGRAM

(Non-Transit Operator Personnel)

The following Attendance Incentive Program is established for non-Transit Operator, “service-critical” employees at the San Francisco Municipal Transportation Agency SFMTA).

This SFMTA Attendance Incentive Program is available to “service-critical” personnel in Groups A and B as indicated on Exhibits A and B, and is offered separate and apart from any Wellness or Sick Leave “cash out” program the City may offer. The benefits of this program are not vested, and are only available to employees while in active employment status at the SFMTA. SFMTA employees who take employment in other City departments lose the benefits of this program upon the effective date of such non-SFMTA employment.

ANNUAL SICK LEAVE “CASH OUT”/TIME OFF OPTIONS

If at the end of a “Qualifying Calendar Period” a full-time “service-critical” employee has not used more than a total of forty (40) hours (part-time “service-critical” employees twenty (20) hours) of sick leave, with or without pay, and or Disability Leave, and in addition has not been absent from work due to either Absence Without Leave (AWOL), leave without pay, or disciplinary suspension, may convert sick leave hours to “cash” or “time off” based on their accrued sick leave balance as shown below.

FULL-TIME QUALIFYING BALANCE	GROUP A “CASH OUT”	GROUP B TIME OFF
240 hours or more sick leave balance	40 hours	3 days

PART-TIME QUALIFYING BALANCE	GROUP A “CASH OUT”	GROUP B TIME OFF
120 hours or more sick leave balance	20 hours	2 days

Attendance Incentive Bonuses shall be paid to each qualifying employee no later than one (1) calendar month following the end of the Qualifying Calendar Period.

Employees in the groups eligible for the “time off” option shall be allowed to take their days off within ten (10) calendar months following the end of the Qualifying Calendar Period. The days

~~off may be taken in single day increments or all at one time, subject to department/section scheduling.~~

~~NOTE: All sick leave hours “cashed out” or “taken off” shall be deducted from an employee’s total sick leave balance, however sick leave hours “cashed out” or “taken off” shall not count towards the forty (40) hours of sick leave used during the “Qualifying Calendar Period” above.~~

~~QUALIFYING CALENDAR PERIOD~~

~~For purposes of this Attendance Incentive Program a “Qualifying Calendar Period” is defined as follows:~~

~~July 1 through June 30~~

~~Sick leave hours “cashed out” shall be paid based on the employee’s “base hourly rate,” exclusive of any other premiums. The aforementioned incentive “cash out” premium shall not be considered as part of an employee’s compensation for the purpose of computing retirement benefits.~~

~~The following “service critical” Job Classifications are covered under the “Cash Out” option of the Attendance Incentive Program.~~

~~———— 9132 Transit Fare Inspector~~

APPENDIX B

~~SFMTA PERFORMANCE INCENTIVE PROGRAM~~

~~A Performance Incentive Program is established for “service critical” employees at the San Francisco Municipal Transportation Agency (SFMTA) in each of the following Occupational Groups:~~

- ~~• Maintenance Group~~
- ~~• Operations Group~~
- ~~• Administration Group~~

~~Service Standards are developed for each Occupational Group, and Performance Goals are established for each Service Standard. Service critical employees responsible for achievement of Performance Goals are identified for each goal.~~

~~SERVICE STANDARDS~~

~~The following Service Standards are established for each Occupational Group:~~

~~MAINTENANCE GROUP:~~

- ~~1. Percentage of vehicles that run on time according to published schedules.~~
- ~~2. Increase vehicle miles between road calls by mode.~~
- ~~3. Total number days of unscheduled absences.~~
- ~~4. Total number of lost days due to industrial injury/illness.~~

~~OPERATIONS GROUP:~~

- ~~1. Percentage of vehicles that run on time according to published schedules.~~
- ~~2. Percentage of scheduled hours delivered.~~
- ~~3. Total number days of unscheduled absences.~~
- ~~4. Total number of lost days due to industrial injury/illness.~~

~~ADMINISTRATION GROUP:~~

- ~~1. Percentage of vehicles that run on time according to published schedules.~~
- ~~2. Total number days of unscheduled absences.~~

HOW PROGRESS IS MEASURED

~~Performance Goals will be developed each fiscal year for the above listed Service Standards. For each Performance Goal, a Mode and/or Division Goal may be established. Progress toward achievement of these Performance Goals will be tracked and measured each fiscal year. A “Qualifying Fiscal Year” is defined as follows:~~

July 1 through June 30

~~When Performance Goals are achieved, Incentive Bonuses will be paid to eligible employees in each Occupational Group at the end of a fiscal quarter during which goal(s) were achieved. A “Qualifying Fiscal Quarter” is defined as follows:~~

- ~~1. July 1, – September 30~~
- ~~2. October 1, – December 31~~
- ~~3. January 1, – March 31~~
- ~~4. April 1, – June 30~~

INCENTIVE BONUSES

~~Incentive Bonuses will be paid quarterly based on Occupational Group achievement of one or more of the Performance Goals established for each Service Standard. Separate bonuses will be paid based on achievement of overall Occupational Group Goals and/or Mode or Division Goals.~~

~~Incentive Bonuses will be paid to each eligible “service-critical” employee of an Occupational Group following a Qualifying Calendar Quarter during which a group goal(s) were achieved. Bonuses will be paid no later than sixty (60) calendar days following the end of a Qualifying Calendar Quarter during which group goals were achieved. Incentive Bonuses will be itemized and paid by check to each eligible group member, after deducting applicable federal and state taxes.~~

~~Incentive Bonuses shall not be considered as part of an employee’s compensation for the purpose of computing retirement benefits.~~

~~Incentive Bonuses will be paid to eligible “service-critical” employees based on the achievement of Occupational Group and/or Mode/Division Goals as follows:~~

OVERALL GROUP GOALS

Number of Goals Achieved	Quarterly Bonus
Four (4) Group Goals achieved	\$150.00
Three (3) Group Goals achieved	90.00
Two (2) Group Goals achieved	60.00
One (1) Group Goals achieved	30.00

MODE/DIVISION GOALS

Number of Goals Achieved	Quarterly Bonus
Four (4) Mode/Division Goals achieved	\$225.00
Three (3) Mode/Division Goals achieved	150.00
Two (2) Mode/Division Goals achieved	90.00
One (1) Mode/Division Goals achieved	60.00

ELIGIBLE EMPLOYEE CRITERIA

To be eligible to receive payment of an Incentive Bonus, an employee must have actually worked a minimum of 400 hours in each Qualifying Fiscal Quarter, and not have sustained discipline of a suspension or higher. Authorized absences including vacation, legal holidays, and floating holidays shall be considered as "time worked" when computing actual hours worked.

GOAL MONITORING AND MEASUREMENT

Performance Goals will be monitored, measured, and reported in the San Francisco Municipal Railway "Services Standards" Quarterly Report.

SENIOR MANAGEMENT AND SENIOR ADMINISTRATIVE CLASSIFICATIONS

When more than one goal is achieved, the amount of Incentive Bonuses for "service-critical" senior-level management and senior administrative classifications with multi-divisional or multi-mode responsibility will be determined by the General Manager in his/her sole discretion. Classifications so affected are identified for each goal.

MAINTENANCE GROUP

PERFORMANCE GOALS

GOAL #1:

To assure that vehicles run on time according to published schedules (no more than 4 minutes late or 1 minute early) measured at terminals and established intermediate points.

OVERALL GROUP GOALS

July 1 through June 30 of each Fiscal Year

<u>FISCAL YEARS</u>	<u>OVERALL GOAL</u>	<u>QUARTER GOALS</u>
July 1, – September 30		% TBD
October 1, – December 31		% TBD
January 1, – March 31		% TBD
April 1, – June 30		% TBD

MODE/DIVISION GOALS

July 1 through June 30 of each Fiscal Year

<u>FISCAL YEARS</u>	<u>LRV</u>	<u>CABLE CAR</u>	<u>TROLLEY</u>	<u>DIESEL</u>
July 1, – September 30	% TBD	% TBD	% TBD	% TBD
October 1, – December 31	% TBD	% TBD	% TBD	% TBD
January 1, – March 31	% TBD	% TBD	% TBD	% TBD
April 1, – June 30	% TBD	% TBD	% TBD	% TBD

GOAL #2:

To increase vehicle miles between road calls by mode.

MODE GOALS

July 1 through June 30 of each Fiscal Year

<u>MODE</u>	<u>Quarter Goals</u>
MOTOR COACH:	TBD
Flynn-Artie	TBD
Woods	TBD
Kirkland	TBD
TROLLEY COACH:	TBD
Potrero-Artie	TBD
Potrero-Standard	TBD

**MAINTENANCE GROUP
PERFORMANCE GOALS**

<u>MODE</u>	<u>Quarter Goals</u>
Presidio	TBD
RAIL:	TBD
Breda Light Rail Vehicle	TBD
PCC	TBD
CABLE CAR:	TBD

GOAL #3:

To reduce the total number days of unscheduled absences.*

*[Unscheduled Absences includes the following categories: Sick pay (with pay), Sick Leave (without pay), AWOL, Workers Comp, SDI, and Assault Pay.]

July 1 through June 30 of each Fiscal Year

<u>FISCAL YEARS</u>	<u>OVERALL GOAL</u>	<u>QUARTER GOALS</u>
July 1, – September 30		<u>%</u> TBD
October 1, – December 31		<u>%</u> TBD
January 1, – March 31		<u>%</u> TBD
April 1, – June 30		<u>%</u> TBD

GOAL #4:

To reduce the total number of lost days due to industrial injury/illness.

July 1 through June 30 of each Fiscal Year

<u>FISCAL YEARS</u>	<u>OVERALL GOAL</u>	<u>QUARTER GOALS</u>
July 1, – September 30		<u>%</u> TBD
October 1, – December 31		<u>%</u> TBD
January 1, – March 31		<u>%</u> TBD
April 1, – June 30		<u>%</u> TBD

**OPERATIONS GROUP
PERFORMANCE GOALS**

GOAL #1:

To assure that vehicles run on time according to published schedules (no more than 4 minutes late or 1 minute early) measured at terminals and established intermediate points.

OVERALL GROUP GOALS

July 1 through June 30 of each Fiscal Year

<u>FISCAL YEARS</u>	<u>OVERALL GOAL</u>	<u>QUARTER GOALS</u>
July 1, – September 30		<u>%</u> TBD
October 1, – December 31		<u>%</u> TBD
January 1, – March 31		<u>%</u> TBD
April 1, – June 30		<u>%</u> TBD

MODE/DIVISION GOALS

July 1 through June 30 of each Fiscal Year

<u>FISCAL YEARS</u>	<u>LRV</u>	<u>CABLE CAR</u>	<u>TROLLEY</u>	<u>DIESEL</u>
July 1, – September 30	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD
October 1, – December 31	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD
January 1, – March 31	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD
April 1, – June 30	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD

GOAL #2:

To assure that scheduled service hours are delivered and scheduled vehicles begin service at the scheduled time.

MODE GOALS

July 1 through June 30 of each Fiscal Year

<u>MODE</u>	<u>Quarter Goals</u>
MOTOR COACH:	<u>%</u> TBD
Flynn	<u>%</u> TBD
Woods	<u>%</u> TBD
Kirkland	<u>%</u> TBD
TROLLEY COACH:	<u>%</u> TBD
Potrero	<u>%</u> TBD

**OPERATIONS GROUP
PERFORMANCE GOALS**

<u>MODE</u>	<u>Quarter Goals</u>
Presidio	<u>%</u> TBD
RAIL:	<u>%</u> TBD
Green	<u>%</u> TBD
Cable Car	<u>%</u> TBD

GOAL #3:

To reduce the total number days of unscheduled absences.*

*[Unscheduled Absences includes the following categories: Sick pay (with pay), Sick Leave (without pay), AWOL, Workers Comp, SDI, and Assault Pay.]

July 1 through June 30 of each Fiscal Year

<u>FISCAL YEARS</u>	<u>OVERALL GOAL</u>	<u>QUARTER GOALS</u>
July 1, – September 30		<u>%</u> TBD
October 1, – December 31		<u>%</u> TBD
January 1, – March 31		<u>%</u> TBD
April 1, – June 30		<u>%</u> TBD

GOAL #4:

To reduce the total number of lost days due to industrial injury/illness.

July 1 through June 30 of each Fiscal Year

<u>FISCAL YEARS</u>	<u>OVERALL GOAL</u>	<u>QUARTER GOALS</u>
July 1, – September 30		<u>%</u> TBD
October 1, – December 31		<u>%</u> TBD
January 1, – March 31		<u>%</u> TBD
April 1, – June 30		<u>%</u> TBD

ADMINISTRATION GROUP

PERFORMANCE GOALS

GOAL #1:

To assure that vehicles run on time according to published schedules (no more than 4 minutes late or 1 minute early) measured at terminals and established intermediate points.

ADMINISTRATION GROUP GOALS

July 1 through June 30 of each Fiscal Year

<u>FISCAL YEARS</u>	<u>OVERALL GOAL</u>	<u>QUARTER GOALS</u>
July 1, – September 30		<u>%</u> TBD
October 1, – December 31		<u>%</u> TBD
January 1, – March 31		<u>%</u> TBD
April 1, – June 30		<u>%</u> TBD

MODE/DIVISION GOALS

July 1 through June 30 of each Fiscal Year

LRV, CABLE CAR, TROLLEY, DIESEL

<u>FISCAL YEARS</u>	<u>LRV</u>	<u>CABLE CAR</u>	<u>TROLLEY</u>	<u>DIESEL</u>
July 1, – September 30	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD
October 1, – December 31	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD
January 1, – March 31	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD
April 1, – June 30	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD	<u>%</u> TBD

ADMINISTRATION GROUP

PERFORMANCE GOALS

GOAL #2:

To reduce the total number days of unscheduled absences.*

~~*[Unscheduled Absences includes the following categories: Sick pay (with pay), Sick Leave (without pay), AWOL, Workers Comp, SDI, and Assault Pay.]~~

July 1 through June 30 of each Fiscal Year

<u>FISCAL YEARS</u>	<u>OVERALL GOAL</u>	<u>QUARTER GOALS</u>
July 1, – September 30		<u>% TBD</u>
October 1, – December 31		<u>% TBD</u>
January 1, – March 31		<u>% TBD</u>
April 1, – June 30		<u>% TBD</u>

The following “service critical” Job Classifications are covered under Operations Group Goals #1, #2, #3 and #4.

——— 9132 Transit Fare Inspector

APPENDIX D

EMPLOYEE ASSISTANCE PROGRAM AND PEER COUNSELING PROGRAM

Transport Workers Union Locals 250A and 200, Automotive Mechanics Local 1414, Teamsters Local 853, International Brotherhood of Electrical Workers Local 6, Laborers Union Local 261, Service Employees International Union Local 790, Stationary Engineers Local 39, and Glazier and Glass Workers, Local 718, and the San Francisco Municipal Transportation Agency (SFMTA) hereby agree to create an Employee Assistance Program as follows:

A. OVERVIEW OF EAP PROGRAM

This Employee Assistance Program (“EAP”) shall cover employees only, and is designed to assist employees, in consultation with their families where clinically appropriate, with problems that may affect their ability to perform their jobs. The EAP shall offer counseling services, including assessment, referral, and follow-up services.

EAP’s offer assistance by helping employees assess and identify problems arising from a variety of personal areas.

EAP’s assist employees by referring them to services which lead to solutions.

EAP’s provide training and consultation services to management and union leadership regarding assisting troubled employees.

The primary goal of the EAP will be to maintain employee’s ability to be fully productive on the job. EAP’s help employees, management, and supervisors maintain a high level of service by:

Motivating employees to help;

Helping supervisors identify troubled employees with job performance problems that may be related to personal problems;

Assessing employees with alcohol abuse, drug abuse, family problems, depression, stress and other problems that can result in performance problems;

Providing easily accessible quality helping services which include short-term problem-solving and referrals to more intensive care;

Providing crisis intervention services;

Providing follow-up assistance to support and guide employees through the resolution of their problems; and by

Acting as an education and training resource.

Employees shall be able to access the EAP through calling directly (self-referral), through the Peer Assistants, or through a supervisory referral based on job performance. Participation in the EAP is voluntary.

Establishing a voluntary EAP to compliment the mandatory testing program is intended to encourage employees to seek treatment early and on their own. The EAP will assist employees in obtaining information, guidance, and counseling to help them handle their problems before they become a drug testing or disciplinary issue.

An outside vendor has been selected and will perform the following duties:

- Maintain a toll-free telephone access for referrals and respond to calls in no more than sixty (60) seconds.
- Provide union/management consultation relative to the development and integration of organizational policies and procedures necessary for effective Employee Assistance Program implementation.
- Orient employees regarding the purpose, scope, nature and use of the Employee Assistance Program.
- Train Union (including Division Chairpersons and any other Union officials), supervisory and management staff to develop the knowledge and skills necessary to effectively utilize the program in the performance of their responsibilities.
- Provide direct one-to-one counseling utilizing licensed professional staff for crisis management and to identify and evaluate personal concerns among Employer's employees and/or their immediate dependents. Such direct counseling shall provide for three (3) sessions per family per year. Fees for any counseling sessions exceeding three (3) will become the financial responsibility of the employee and/or dependent, unless otherwise arranged for by the employer. For non-urgent situations, an appointment will be offered within seventy-two (72) hours of request. For urgent situations, an appointment will be offered on the same day as the request for service.
- Provide legal consultation, medical advice, financial consultation; one (1) consultation per incident is provided for each service, up to three (3) incidents per service, per year.
- Provide referral services to professional community resources for treatment and/or assistance, as may be appropriate.
- Provide continuing liaison and contact, when appropriate, between the employee, treatment agent or agency, and Employer to determine case status.
- Provide monthly statistical evaluation of program activity, and other reports, as needed.

- Send its principal or his designated representative to monthly meetings of the Municipal Railway Improvement Fund Board of Trustees, and any other meetings as reasonably required.
- Assess all employees involved in Critical Incidents (e.g., on the job assaults, threats and/or accidents) that occur while on duty.
- Provide up to three (3) counseling visits per employee involved in a Critical Incident.
- Develop Critical Incident Program Policies and Procedures.
- Provide Critical Incident Case management, including:
 - (a) Determination regarding an employee's ability to perform duties, including coordination with management and union personnel for employees who require time off work as a result of a Critical Incident;
 - (b) Assisting employees in securing additional counseling visits beyond the three (3) Critical Incident/trauma response visits described above, when necessary.

B. ORGANIZATION

(1) The Joint Labor-Management Committee:

- (a) Membership and Meetings: Five (5) Committee members and two (2) alternate members to be appointed by the Unions. Five (5) Committee members to be appointed by the SFMTA.

If the SFMTA chooses to appoint less than five persons, it shall still have voting strength equal to that of the Unions. On the matters that come before the Committee, the SFMTA shall have one vote and the Unions shall have one vote. The vote of each side shall be controlled by the votes of the Committee members present for each respective side.

The Committee shall elect from its ranks a Chairperson and a Co-Chair, one of whom shall be a SFMTA appointee and the other the Unions' appointee. The Chair shall be held by one side for a year, then relinquished to the other side for the next year. Either the SFMTA or the Unions may replace their named Chair or Co-Chair at any time. The Chair shall preside over meetings of the Committee. In the absence of the Chair, the Co-Chair shall so preside. The SFMTA General Manager shall provide staff support to the Committee as appropriate.

A quorum for the transaction of business by the Committee shall consist of three (3) Union Committee members and a majority of the SFMTA appointed Committee members.

- (b) Functions: To receive and review information regarding the Substance Abuse and Peer Assistance Programs.
- (c) Consolidation of Committees: The parties to this Agreement and to the Agreement concerning drug and alcohol testing and EAP between TWU Local 250A and the SFMTA may elect to combine the joint labor-management committee established here and in the Local 250A Agreement.

(2) Substance Abuse Program:

The SFMTA General Manager or designee will manage all aspects of the FTA-mandated Substance Abuse Program. He/she shall have appointing and removal authority over all personnel working for the Substance Abuse Program personnel, and shall be responsible for the supervision of the SAP.

(3) EAP Services:

The SFMTA and the Unions have concluded that it is in the best interests of all concerned to establish a uniform EAP Program for all employees. On this basis, the parties agree that the SFMTA shall engage an outside contractor to provide these services.

(4) The Peer Assistance System:

(a) Structure:

The outside contractor selected to provide EAP services shall also be directly responsible for the clinical and administrative management of the Peer Assistance Program. This Program shall be established on a 24-hour, seven-day a week basis. The peer assistants shall provide coverage during regular business hours (Monday - Friday, 8:30 a.m. - 5:00 p.m.) for all Muni worksites or sections. A system-wide EAP crisis hotline shall be established. Night, weekend and holiday crisis coverage shall be provided by one of the peer assistants and shall be rotated among the peer assistants, who shall be available on a pager. The full compensation of the Peer Assistant providing such night, weekend and holiday coverage shall be pager pay. Pager pay will not be provided for regular daily coverage.

(b) Peer Assistance Oversight Committee:

This Committee, composed of one representative from Locals 250A, 200, 6, 790 and 1414, shall be responsible for trouble-shooting and making decisions on program operations.

(c) SFMTA Liaison:

The SFMTA Liaison shall be an individual designated by the SFMTA General Manager to serve as the SFMTA's emissary in matters such as labor relations and administrative issues.

(d) Qualifications:

- A MUNI employee who has previous counseling experience or is interested in peer counseling and is willing to make a two year commitment to pursue training and education toward certification as a drug and alcohol counselor

OR

- A MUNI employee who was a former substance abuser who has been clean and sober for a least two years and who continues to participate in a twelve step program

OR

- A MUNI employee who has had experience with family members' substance abuse and who had participated in a self-help group for co-dependency

AND

- A MUNI employee who is respected by their peers, the union, and the management

AND

- A MUNI employee who is committed to the goals of the Peer Assistance Program

(e) Duties:

- Assist employees in accessing the Voluntary Substance Abuse Program and EAP.
- Provide on-going support and case management for clients in the Voluntary Substance Abuse Program.
- Abide by state and federal confidentiality laws.
- Publicize the EAP verbally and through distribution of literature.
- Provide employees with information regarding the EAP and Voluntary Substance Abuse programs and create a forum for employees to discuss their concerns.
- Assist in publication of Voluntary Substance Abuse Program newsletter.
- Seek out opportunities to participate in training programs to further develop knowledge and skills.

- Develop and implement new ideas to increase utilization and maximize the effectiveness of the EAP and Voluntary Substance Abuse Programs.
- Develop and maintain a professional environment in which to interact with clients.
- Develop a group of volunteers in the divisions to support the goals of the EAP and Voluntary Substance Abuse Programs.
- Assist in education and training sessions for new and existing employees.
- Keep accurate records of client contacts and promotional activities.

(f) Staffing:

There shall be a clinician employed by the outside contractor for EAP Services who will be on-site a minimum of 20 hours a week. The clinician shall report directly to the outside contractor, Peer Assistance Oversight Committee and the MIF liaison. There shall be three full-time Peer Assistants reporting to the outside contractor.

(g) Volunteer Peer Assistants:

1. Up to eight (8) Volunteer Peer Assistants.
2. Assist peer assistants upon request during their off-duty time.
3. They shall participate in designated training.
4. Their activities shall be within the limits of their training.
5. Volunteer peer assistants will receive no compensation for their services.

(h) Functions:

The outside contractor, in consultation with the Peer Assistance Oversight Committee, shall develop procedures for the Peer Assistance Program.

(i) Civil Service Commission Approval:

The use of peer assistants shall be subject to the approval of the Civil Service Commission.

C. PAY STATUS DURING VOLUNTARY SELF-REFERRAL TREATMENT

Voluntary Substance Abuse Program

- (1) An employee who has a drug and/or alcohol abuse problem and has not been selected for drug and/or alcohol testing can voluntarily refer him/herself to the EAP for treatment. The EAP will evaluate the employee and make a specific determination of appropriate treatment. An employee who has completed two rehabilitation programs may not elect further rehabilitation under this program.

- (2) In the case of the up to two voluntary, employee-initiated referrals, the SFMTA will pay the employee the difference between his/her SDI benefits, use of accrued paid leaves, and any catastrophic illness benefits, and the employee's regular hourly base pay, for up to the eight hours per day for full-time employees and up to three hours per day for part-time employees, up to a maximum of 21 work days during a five-year period. This provision shall not apply in the event the employee does not receive SDI benefit payments or during the follow-up period established by the SAP after a positive test.

D. NON-PAID STATUS DURING TREATMENT AFTER POSITIVE TEST

The employee will be in a non-pay status during any absence for evaluation or treatment, while participating in a rehabilitation program.

E. EDUCATION AND TRAINING

The foundation of this Program is education and voluntary compliance. It is recognized that alcohol and chemical dependency may make voluntary cessation of use difficult, and one of the Program's principal aims is to make voluntary steps toward ending substance abuse easily available.

The outside contractor shall review and develop on-going educational and training information on the adverse consequences of substance abuse and the responsibility to avoid being under the influence of alcohol or chemicals at work. Certain training required by the DOT Regulations shall be the responsibility of the Substance Abuse Program.

F. CONFIDENTIALITY

Participation in the EAP shall be confidential and shall be conducted in accordance with DOT and DHHS standards.

G. FUNDING

The Employee Assistance Program and the Peer Assistance Oversight Committee shall be funded by the SFMTA.

H. SPECIAL PROVISIONS

Any proposed discipline resulting from the FTA Drug and alcohol testing program shall be in accordance with the MOU's, as amended June 12, 1995. The SFMTA recognizes the rights of employees and/or the Unions, who may consider themselves aggrieved by any discipline proposed, to raise such grievance through the authorized grievance procedure. The SFMTA General Manager will act in a fair and equitable manner, and

shall prescribe that no personnel hired, contracted, selected or directly involved in the drug and alcohol testing program shall propose or render discipline.

RETIREMENT HEALTH BENEFITS – FUNDING

The SFMTA and the Union agree that it is in the interests of the public and all SFMTA employees that sufficient funds be made available for the payment of the retiree medical benefits provided by the City Charter. As of January 2007, the City has an obligation to report its unfunded liability for retiree medical benefits, as required by the Governmental Accounting Standards Board. In recognition of these facts, the Union and the SFMTA agree to participate in a City-wide Retiree Health Benefits Committee, which will include other Unions and employee organizations representing City and SFMTA employees, to study and make recommendations regarding funding of retiree health benefits.