

THIS PRINT COVERS CALENDAR ITEM NO.: 10.2

MUNICIPAL TRANSPORTATION AGENCY City and County of San Francisco

DIVISION: Parking and Traffic Division

BRIEF DESCRIPTION: Approving traffic and parking modifications itemized below

SUMMARY:

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

Benefit to the SFMTA 2008 – 2012 Strategic Plan:

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

ENCLOSURES:

1. MTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION TO BE RETURNED TO Maxine Louie

ASSIGNED MTAB CALENDAR DATE: _____

ITEMS:

- A. RESCIND - PARKING METER AND ESTABLISH - METERED MOTORCYCE PARKING - 4528 Mission Street, north side, from 72-feet to 92-feet east of Harrington Street, replacing parking meter #4514 (establishes 4 motorcycle spaces).
PH: 5/16/08 Requested by: Resident
- B. RESCIND - RIGHT LANE MUST TURN RIGHT AND ESTABLISH – RIGHT LANE MUST TURN RIGHT, EXCEPT MUNI – Crossover Drive, northbound, in advance of Fulton Street. **PH: 5/16/08 Requested by: SFMTA**

- C.. ESTABLISH - NO PARKING ANYTIME - Masonic Avenue, east side, from O'Farrell Street to 65 feet northerly. **PH: 5/16/08 Requested by: SFMTA**
- D. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "I" - Valencia Street, east side, between Hill and 22nd Streets (adds 1061-1089, odd numbers only into permit area). No signs will be posted since block is metered. **PH: 5/16/08 Requested by: Resident**
- E. ESTABLISH - STOP SIGNS - Ulloa Street at 20th Avenue, making this intersection an All-Way STOP. **PH: 5/16/08 Requested by: Resident**
- F. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "S" (2-HOUR TIME LIMIT, 8 AM - 9 PM, MONDAY THROUGH FRIDAY) – 21st Street, both sides, between Diamond and Eureka (4100 block); and 22nd Street, both sides, between Noe and Sanchez (3700 block). **PH: 5/30/08 Requested by: Resident**
- G. RESCIND - UNMETERED MOTORCYCLE PARKING - Plum Street, north side, from Mission Street to 25-feet easterly. **PH: 5/30/08 Requested by: DPW**
- H. ESTABLISH – METERED MOTORCYCLE PARKING – Mission Street, north side, from 353 feet east of 13th Street to 40-feet easterly (replaces meters #568-16580 and 568-16600 with motorcycle parking). **PH: 5/30/08 Requested by: DPW**
- I. ESTABLISH - SCHOOL BUS LOADING ZONE, FROM 7:30 AM TO 4:30 PM, SCHOOLDAYS - "371" Francisco Street, south side, from 91 feet to 141 feet east of Powell Street (50-foot zone). **PH: 5/30/08 Requested by: Resident**
- J. ESTABLISH - STOP SIGNS - Trainor at 14th Street, stopping the stem of this currently uncontrolled T-intersection. **PH: 5/30/08 Requested by: Resident**
- K. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "L" – “2824 – 2826” and “2828 – 2830” Geary Boulevard, includes specific addresses only (even numbers only). (Signs will not be installed on the street, but residents will be eligible for permits). **PH: 5/30/08 Requested by: Resident**
- L. ESTABLISH - NO TURN ON RED - Southbound approach of The Embarcadero at the intersection of The Embarcadero, Jefferson and Powell Streets. **PH: 5/30/08 Requested by: MUNI**
- M. RESCIND - UNMETERED MOTORCYCLE PARKING - Jessie Street, west side, from McCoppin Street to 14 feet southerly (14-foot zone accommodating 4 motorcycle stalls). **PH: 5/30/08 Requested by: DPW**
- N. ESTABLISH - UNMETERED MOTORCYCLE PARKING - Jessie Street, east side, from McCoppin Street to 14 feet southerly (14-foot zone accommodating 4 motorcycle stalls). **PH: 5/30/08 Requested by: DPW**
- O. ESTABLISH - STOP SIGNS - Chestnut and Polk Streets, stopping Polk Street at Chestnut Street, making this intersection an all-way STOP. **PH: 5/30/08 Requested by: Supervisor Alioto-Pier**
- P. ESTABLISH - NO PARKING ANYTIME - Harrison Street, north side, from 257 feet to 301 feet east of 4th Street (to accommodate sidewalk extension at 766 Harrison Street). **PH: 5/30/08 Requested by: DPW**
- Q. ESTABLISH - NO PARKING ANYTIME - Nellie Street, west and east sides, north of 23rd Street. **PH: 5/30/08 Requested by: Resident**
- R. ESTABLISH - NO U-TURNS - Cesar Chavez Street at Vermont Street, westbound. **PH: 5/30/08 Requested by: Resident**
- S. ESTABLISH – CROSSWALK - Hayes Street, south side, crossing of Gough Street (crosswalk currently closed). **PH: 5/30/08 Requested by: Board**
- T. ESTABLISH - DUAL LEFT TURN LANES - Northbound San Jose Avenue at Sagamore Street. **PH: 5/30/08 Requested by: Resident**
- U. RESCIND - GENERAL METERED PARKING, 1-HOUR TIME LIMIT AND

ESTABLISH - GENERAL METERED PARKING, 2-HOUR TIME – Polk Street, between Geary Street and Pacific Avenue; Jackson Street between Larkin Street and Van Ness Avenue; Washington Street between Larkin Street and Van Ness Avenue; Clay Street between Larkin Street and Van Ness Avenue; Sacramento Street between Larkin Street and Van Ness Avenue; California Street between Larkin Street and Van Ness Avenue; Pine Street between Larkin Street and Van Ness Avenue; Bush Street between Larkin Street and Van Ness Avenue; Sutter Street between Larkin Street and Van Ness Avenue; Post Street between Larkin Street and Van Ness Avenue; and, Geary Street between Larkin Street and Van Ness Avenue. **PH: 5/30/08 Requested by: Resident**

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

RESOLUTION No. _____

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

- A. RESCIND - PARKING METER AND ESTABLISH - METERED MOTORCYCLE PARKING – 4528 Mission Street, north side, from 72-feet to 92-feet east of Harrington Street, replacing parking meter #4514 (establishes 4 motorcycle spaces).
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WHEREAS, The public has been notified about the proposed modifications and has been given the opportunity to comment on those modifications through the public hearing process; now, therefore, be it

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

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

Secretary, Municipal Transportation Agency Board

THIS PRINT COVERS CALENDAR ITEM NO.: 10.3

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Appointing the Senior Director of Transportation Planning and Development of the San Francisco Municipal Transportation Agency (SFMTA) to serve as an alternate to the Executive Director/CEO of SFMTA representing the SFMTA on the Transbay Joint Powers Authority (TJPA) Board of Directors.

SUMMARY:

- The TJPA consists of a historic collaboration of Bay Area government and transportation agencies committed to the new Transbay Transit Center/Caltrain Downtown Extension Project to improve the transportation needs for the entire Bay Area Region and the State of California.
- In 2001, the City and County of San Francisco authorized the establishment of the TJPA, a joint powers agency for the purpose of developing, designing, constructing, and operating a new intermodal transit facility on and adjacent to the site of the new Transbay Transit Center/Caltrain Downtown Extension Project.
- The TJPA Joint Powers Agreement established a Board of Directors to oversee the project. The Board is comprised of six directors, one of whom is appointed by the SFMTA Board of Directors, subject to affirmative confirmation by the Board of Supervisors.
- On August 16, 2005, the SFMTA Board of Directors appointed the SFMTA's Director of Transportation to represent the Agency on the TJPA Board of Directors.
- On January 24, 2006, the San Francisco Board of Supervisors confirmed the appointment of the Director of Transportation to the TJPA as the representative of the SFMTA Board of Directors, effective August 16, 2005.
- The SFMTA Executive Director/CEO Nathaniel P. Ford, Sr., is recommending approval of the appointment of Carter R. Rohan, R.A., Senior Director of Transportation Planning and Development, as an alternate representative of the SFMTA on the TJPA Board of Directors. Upon approval by the SFMTA Board of Directors, a resolution will be forwarded to the San Francisco Board of Supervisors and to the Mayor for consideration and approval.

ENCLOSURES:

1. SFMTAB Resolution
2. Biography

APPROVALS:

DATE

DEPUTY OF DIVISION

PREPARING ITEM

FINANCE

N/A

EXEC. DIRECTOR/CEO _____
SECRETARY _____
ADOPTED RESOLUTION Sophia Simpliciano
BE RETURNED TO _____

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

EXPLANATION:

In February 2001, the San Francisco Board of Supervisors and Mayor Willie L. Brown approved a resolution authorizing the City and County of San Francisco to form a Joint Powers Authority for the purpose of developing, designing, constructing, and operating a new intermodal transit facility on and adjacent to the site of the Transbay Terminal with the new Transbay Terminal Center/Caltrain Downtown Extension Project.

On April 4, 2001, a Joint Powers Agreement, creating the Transbay Joint Powers Authority (TJPA), was executed by the Alameda-Contra Costa Transit District (AC Transit), the Peninsula Corridor Joint Powers Board (JPB), and the City and County of San Francisco as member agencies.

The TJPA was tasked with designing, financing, building, and operating the Transbay Transit Center/Caltrain Downtown Extension Project. Initial plans for the terminal included housing for the terminal's tenants, AC Transit, Muni, Golden Gate Transit, Greyhound, and Grey Line, and included building a downtown Caltrain extension below ground as well as other commercial space.

The Joint Powers Agreement also established a Board of Directors to oversee the project. The Board is comprised of five directors. Three of the five directors will be from the City and County of San Francisco. AC Transit and the JPB have one appointment each. In 2005, the TJPA Board of Directors appointed an additional member to the TJPA Board of Directors from the State Department of Transportation who serves "ex officio".

Of San Francisco's three appointees, one is appointed by the Mayor, one is a member of the San Francisco Board of Supervisors appointed by the Board of Supervisors, and one member is appointed by the SFMTA Board of Directors, subject to affirmative confirmation by the Board of Supervisors. On August 16, 2005, the SFMTA Board of Directors appointed the Director of Transportation as its representative to the TJPA. The Board of Supervisors confirmed the appointment on January 24, 2006.

The City representatives are Michael Cohen from the Office of Mayor Gavin Newsom; Chris Daly from the San Francisco Board of Supervisors; and Nathaniel P. Ford, Sr., from the San Francisco Municipal Transportation Agency. AC Transit is represented by Elsa Ortiz and the JPB is represented by Jerry Hill. Bijan Sartipi serves as the ex-officio member representing the State Department of Transportation.

BENEFIT TO THE SFMTA 2008 – 20012 STRATEGIC PLAN

This appointment ensures that the SFMTA is a leader in policy-level engagement by helping to further the following goal, objective, and initiative in the SFMTA Strategic Plan:

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

Objective 3.4 Enhance proactive participation and cooperatively strive for improved regional transportation

Initiative 3.4 Heightened regional transportation policy-level engagement

RECOMMENDATION

Executive Director/CEO Nathaniel P. Ford, Sr. recommends the appointment of Carter R. Rohan, Senior Director of Transportation Planning and Development, to serve as Mr. Ford's alternate representing the SFMTA on the TJPA Board of Directors.

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

RESOLUTION NO. _____

WHEREAS, On February 12, 2001, the Board of Supervisors approved Resolution No. 104-01, which authorized the City and County of San Francisco ("City") to form a joint exercise of powers agency, referred to as the Transbay Joint Powers Authority (TJPA), and to execute a joint powers agreement ("Agreement") for the purpose of developing, designing, constructing and operating a new intermodal transit facility on and adjacent to the site of the existing Transbay Terminal; and

WHEREAS, The TJPA is governed by a five-member Board of Directors with one Director appointed by AC Transit, one Director appointed by the Peninsula Corridor Joint Powers Board, and three Directors representing the City -- one appointed by the Mayor, one appointed by the Board of Supervisors, and one appointed by the San Francisco Municipal Transportation Agency Board of Directors -- all subject to confirmation by the Board of Supervisors; and

WHEREAS, In 2005, the TJPA Board of Directors appointed an additional member to the TJPA Board of Directors from the State Department of Transportation who serves "ex officio"; and

WHEREAS, On August 16, 2005, the San Francisco Municipal Transportation Agency Board of Directors approved Resolution No. 05-125, appointing the Director of Transportation as the representative of the SFMTA, which appointment was confirmed by the San Francisco Board of Supervisors on January 24, 2006, by Resolution No. 42-06; and

WHEREAS, Under Section 8(a) of the Agreement, each Member of the TJPA may appoint an alternate for a Director in the event that the Director is absent according to the terms of the Agreement; and

WHEREAS, The SFMTA Executive Director/CEO, Nathaniel P. Ford, Sr., requests that the SFMTA Board of Directors appoints Carter R. Rohan, R. A., Senior Director of Transportation Planning & Development to serve as Mr. Ford's alternate on the TJPA Board of Directors; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors appoints Carter R. Rohan as the Alternate Director to Nathaniel P. Ford, Sr. on the Transbay Joint Powers Authority, said appointment to be effective upon approval by the San Francisco Board of Supervisors.

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

Secretary, San Francisco Municipal Transportation Agency Board

BIOGRAPHY

Mr. Rohan is an experienced transit executive with over thirty years of professional experience, of which, fourteen years have been specifically devoted to work in transit. He joined the SFMTA in March 2006 as the Deputy General Manager of Capital Programs & Construction.

Carter has considerable experience in capital program management for a wide range of project types, including commercial, industrial, science & research, governmental, military and transit projects, both in the United States and internationally. He began his career working in the private sector as a project manager for CRS Sirrine, Inc. performing project management services for international projects in Egypt and Saudi Arabia. Highlights of his management career progression included key posts in Construction / Program Management for CRSS+M&E JV on the Peace Sun / Peace Shield programs in Saudi Arabia, and Construction Administration for the PB/MK Team on the Superconducting Super Collider project in Texas. During the time he held the post of Senior Manager.

In 1994 he joined the transit engineering consulting team of Parsons Brinckerhoff / Tudor, Inc. as a Construction Administrator / Resident Engineer performing construction management services for the Metropolitan Atlanta Rapid Transit Authority (MARTA) in Georgia. As a professional associate of PB the key projects that he managed were; the construction of; the first Compressed Natural Gas (CNG) Service and Maintenance Facility at Perry Boulevard, Laredo Bus Facility CNG Conversion project, Sandy Springs Station project and the Lindbergh Transit Oriented Development project. During this period he led a team of construction delivery experts that analyzed construction claims for the Fort Washington Way construction program in Cincinnati, Ohio.

In 2002 he joined the Metropolitan Atlanta Rapid Transit Authority (MARTA) as the Assistant General Manager of Engineering and Technology. While at MARTA, Carter efficiently managed the completion of all capital projects, most notable, the \$280 million Armor Yard Rail Services Facilities construction program, which was delivered on time and \$9 million under budget. He also provided project management services for the Automatic Fare Collection Smart Card program for the Agency.

As the Senior Director of Transportation Planning & Development for the SFMTA he is responsible for multimodal transportation planning and development including, Capital Investment Program, Quality Assurance, Project Management & Controls, Engineering, Contracts Management, Construction Management, Systems Integration, Regulatory Affairs, and Transportation Planning business functions of the Agency.

Mr. Rohan holds a Bachelor of Architecture degree from the University of Houston, in Texas, and is currently registered nationally and in the states of Georgia and Texas. He is an ENO Foundation leadership graduate and has participated in the International Transit Studies Program.

THIS PRINT COVERS CALENDAR ITEM NO: 10.4

MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco

DIVISION: Human Resources

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute an Agreement with Gilbert Tweed Associates to conduct an executive search for three senior level management positions: Deputy Director of Transportation Planning, Deputy Director of Finance, Budget and Grants and Director of Taxi and Accessible Services.

SUMMARY:

- The SFMTA wishes to identify and recruit candidates to fill three senior level positions.
- The Controller's Office issued an RFQ for Executive Search Services in November 2007.
- A list of pre-qualified Executive Search Consultants was established from the RFQ in January 2008, in collaboration with the Department of Human Resources and the General Services Agency.
- The purpose of establishing the list of pre-qualified executive search consultants was to assist City departments, boards and commissions to conduct recruitments for senior level positions without having to conduct their own competitive process.
- The SFMTA utilized the Controller's list to identify the most qualified consultant to provide the needed services and selected Gilbert Tweed Associates, Inc. to conduct executive searches for the three senior level management positions identified above.
- The anticipated term of the Agreement is one year from August 1, 2008 through July 31, 2009.
- The total not-to-exceed amount is \$192,536.
- The City Attorney's Office has reviewed this item.

ENCLOSURES:

1. SFMTA Board Resolution
2. Agreement between the SFMTA and Gilbert Tweed Associates, Inc.

APPROVALS:

DATE

DEPUTY OF DIVISION

PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION

SHOULD BE RETURNED TO:

_____	_____
_____	_____
_____	_____
_____	_____

Vicki Rambo, Director, Human Resources

ASSIGNED MTAB CALENDAR DATE:

EXPLANATION:

The SFMTA wishes to enter into a contract with an executive search firm to identify, recruit, screen, evaluate and recommend candidates to fill three senior level positions. The positions are:

- Deputy Director of Transportation Planning
- Deputy Director of Finance, Budgets and Grants
- Director of Taxi and Accessible Services

In order to secure these services, the SFMTA selected a consultant from a list of pre-qualified executive search firms that was established by the Controller's Office in collaboration with the Department of Human Resources and the General Services Agency.

The Controller's Office established the list of pre-qualified firms in order to assist City departments, boards and commissions to contract with search consultants without having to conduct their own separate competitive process.

The SFMTA identified Gilbert Tweed Associates, Inc. as the firm from the list that is the most qualified to conduct the executive search because of its experience and knowledge of San Francisco government, and more particularly, its knowledge of the SFMTA.

Scope of Work

Under the direction of the Director of Human Resources, the executive search firm will conduct a nationwide search for the positions listed above. The major tasks that will be performed are:

1. Review job descriptions for the positions and revise them as appropriate.
2. Identify desirable candidate qualifications, education, experience, and leadership skills.
3. Identify current issues and challenges for the SFMTA.
4. Identify target agencies and individuals who are likely to meet candidate qualifications.
5. Interview and screen prospective candidates.
6. Introduce the best candidates to SFMTA.
7. Conduct progress meetings with the SFMTA.
8. Conduct detailed reference and background checks.
9. Assist the SFMTA with salary negotiations and housing and relocations issues.
10. Provide a written summary to the SFMTA at the conclusion of the recruitment.

Staff negotiated a contract for an amount not to exceed \$192,536, and for a term of one year, with an option to extend the contract for up to one year. Staff seeks authority from the Board for the Executive Director/CEO to approve the contract and the extension.

Strategic Plan

While this item supports many of the Agency's goals, it supports Goal 5, MTA Workforce Development most directly: "To provide a flexible, supportive work environment and develop a workforce that takes pride and ownership of the agency's mission and vision and leads the agency into the evolving, technology-driven future." More specifically, this item supports Objective 5.5: "Improve the SFMTA's ability to grow and retain strong leadership."

The City Attorney's Office has reviewed this item.

The SFMTA Contract Compliance Office has reviewed this calendar item and has recommended that the Agency request a waiver from the LBE subcontracting goals of Chapter 14B. The request for the waiver is pending approval by the Executive Director of the Human Rights Commission.

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

WHEREAS, The SFTMA wishes to identify and recruit candidates to fill three senior level positions: Deputy Director of Transportation Planning; Deputy Director of Finance, Budget and Grants; and Director of Taxi and Accessible Services; and,

WHEREAS, The Controller's Office issued an RFQ for Executive Search Consulting Services in November 2007; and,

WHEREAS, The Controller established a list of pre-qualified Executive Search Consultants from the RFQ in January 2008, in collaboration with the Department of Human Resources and the General Services Agency; and,

WHEREAS, The SFMTA identified Gilbert Tweed Associates, Inc. (Gilbert Tweed), 415 Madison Ave., New York, NY 10017, from the list to conduct the searches for the three positions because of its experience and knowledge of San Francisco government, and its knowledge of the SFMTA; and,

WHEREAS, The SFMTA has negotiated an agreement with Gilbert Tweed for an amount not to exceed \$192,536, and for a term of one year, with an option to extend the contract for up to one year, now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute the Agreement with Gilbert Tweed Associates, Inc. to conduct an executive search for Deputy Director of Transportation Planning, Deputy Director of Finance, Budgets and Grants, and Director of Taxi and Accessible Services, with a contract term of one year from August 1, 2008 to August 1, 2009, and a contract amount not to exceed \$192,536, pending Civil Service Commission approval and Human Rights Commission waiver of LBE subcontracting goals; and, be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO or his designee, at his or her discretion, to extend the term of the Agreement for a period not to exceed one year.

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

Secretary, Municipal Transportation Agency Board

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

**Agreement between the City and County of San Francisco and
Gilbert Tweed Associates, Inc. for Executive Search Services**

This Agreement is made this 12th day of June, 2008, in the City and County of San Francisco, State of California, by and between: Gilbert Tweed Associates located at 415 Madison Ave., New York, NY 10017, ("Contractor"), and the City and County of San Francisco, a municipal corporation, ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

- A. The SFMTA wishes to obtain executive search services.
- B. The Controller's Office issued a Request for Qualifications ("RFQ") for firms specializing in executive search services on November 19, 2007, and the Contractor was one of the firms that were pre-qualified pursuant to the RFQ.
- C. Contractor represents and warrants that it is qualified to perform the services required by the SFMTA as set forth under this Contract.
- D. Approval for this Agreement was obtained when the Civil Service Commission approved Contract number _____ on July 7, 2008.

Now, THEREFORE, the parties agree as follows:

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

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

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

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

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from August 1, 2008 through July 31, 2009. At the option of the SFMTA, the Agreement may be extended for up to one year by an amendment signed by the Executive Director/CEO of the SFMTA.

3. Effective Date of Agreement

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

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation for basic Executive Recruitment services (consulting fee) shall be made in three equal payments of one third (1/3) of the amount of the consulting fee described in Appendix B, Calculation of Charges. The first payment will be made at the commencement of the recruitment process. The second payment will be made 30 days after the engagement has commenced. The final payment will be made upon the successful hiring and acceptance of the candidate(s). The final payment shall be split into three equal payments if not all the candidates are hired and accept the job offer at the same time. One third (1/3) of the final payment will be due for each position that is filled. A final payment will not be made for any position that is not filled.

Payments for administrative expenses and Contractor travel and candidate travel related to relocation shall be paid based upon monthly invoices submitted by the Contractor as described in Appendix B of this Agreement.

All payments shall be made, for services, as described in Appendix A of this Agreement, that the Executive Director / CEO of the SFMTA, in his or her sole discretion, concludes has been performed as of the submission of the current invoice. In no event shall the total amount of this Agreement exceed One Hundred Ninety-Two Thousand, Five Hundred Thirty-Six Dollars (\$192,536).

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

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

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

6. Guaranteed Maximum Costs

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

b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

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

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

7. Payment; Invoice Format

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

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

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or 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.

9. Left Blank by Agreement of the Parties (Disallowance)

10. Taxes

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

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

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

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

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

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

11. Payment Does Not Imply Acceptance of Work

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

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City’s reasonable requests regarding assignment of personnel, but all personnel, including those

assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

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

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

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

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

b. Payment of Taxes and Other Expenses.

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

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

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

15. Insurance

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

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

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

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

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

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

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

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

Vicki Rambo, Director, Human Resources
SF Municipal Transportation Agency
One S. Van Ness Avenue, 7th floor
San Francisco, CA 94103

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the

effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

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

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

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

16. Indemnification

Contractor 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 Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor'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 Contractor, 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.

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

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other

intellectual property claims of any person or persons 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

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

18. Liability of City

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

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

20. Default; Remedies

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

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

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

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

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in

bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

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

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

21. Termination for Convenience

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

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

(1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

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

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

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

22. Rights and Duties upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

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

24. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

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

To City: Vick Rambo, Director Human Resources
SF Municipal Transportation Agency
One South Van Ness Avenue, 7th floor
San Francisco, CA 94103
Email: Vicki.Rambo@sfmta.com
FAX: (415) 701-4731

To Contractor: Stephanie Pinson, President and Chief Operating Officer
Gilbert Tweed Associates, Inc.
415 Madison Avenue
New York, NY 10017
Email: spinson@gilberttweed.com
FAX: (212) 832-1040

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

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

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this

Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

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

31. Non-Waiver of Rights

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

32. Earned Income Credit (EIC) Forms

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

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

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

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

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

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”), provided such amendments do not materially increase Contractor’s obligations or liabilities, or materially diminish Contractor’s rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor’s willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor’s obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Enforcement

If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor’s net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City’s Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the “Director of HRC”) may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor’s LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking

accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts

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

c. Nondiscrimination in Benefits

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

d. Condition to Contract

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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

38. Resource Conservation

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

39. Compliance with Americans with Disabilities Act

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

40. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors’ bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records

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

42. Limitations on Contributions

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

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

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

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

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

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

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

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

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

MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

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

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

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

- f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
- g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.
- h. Contractor shall keep itself informed of the current requirements of the HCAO.
- i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.
- k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions

primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages

Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

(7) That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to 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 sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Services Provided by Attorneys

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

55. Left Blank by Agreement of Parties (Supervision of Minors)

56. Severability

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

57. Protection of Private Information

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

58. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can

be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements

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

60. Left Blank by Agreement of the Parties (Slavery Era Disclosure)

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

CITY

San Francisco Municipal Transportation
Agency

Nathaniel P. Ford, Sr.
Executive Director/CEO

Approved as to Form:

Dennis J. Herrera
City Attorney

By:

Robin M. Reitzes
Deputy City Attorney

AUTHORIZED BY:

MUNICIPAL TRANSPORTATION
AGENCY BOARD OF DIRECTORS

Resolution No:

Adopted:

Attest:

Roberta Boomer, Secretary to the
SFMTA Board of Directors

CONTRACTOR

Gilbert Tweed Associates, Inc.

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.

Authorized Signature

Stephanie
Pinson
Printed Name

Gilbert Tweed Associates,
Inc.
Company Name

415 Madison
Avenue
Address

New York, NY
10017
City, State, ZIP

(212) 758-
3000
Telephone No.

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges

Appendix A Services to be provided by Contractor

Pursuant to the proposal submitted in response to RFQ#CON2007-5, Contractor agrees to perform the following services:

Overview of Services:

At the direction of the SFMTA Director of Human Resources, the Contractor shall identify, recruit, screen, coordinate the interview process, conduct detailed reference checks, and recommend candidates for the following SFMTA positions:

- 1) Deputy Director of Transportation and Planning
- 2) Deputy Director of Finance, Budgets and Grants
- 3) Director of Taxi and Accessible Services

Description of Services:

Contractor shall work with the SFMTA Director of Human Resources to perform the following services:

1. Review job descriptions with SFMTA staff and revise them accordingly.
2. Identify desired candidate qualifications, education, experience, knowledge, skills, abilities and characteristics e.g. interpersonal, team-building and leadership skills.
3. Identify current issues, challenges and opportunities that face the MTA.
4. Launch an intensive research program to identify target companies and specific individuals likely to meet the candidate specifications.
5. Contact and interview prospects to gauge their qualifications and interest in the position.
6. Screen candidates and introduce candidates who can best perform the job(s) as specified by the SFMTA.
7. Conduct progress meetings with City staff to report, analyze and strategize the steps necessary to complete the interviews in the most expeditious manner.
8. Complete detailed reference and background checks of the candidates that have been interviewed.

9. Assist with the salary negotiations and participate, to the extent necessary, in presenting the offer to the final candidate. Assist the SFMTA with housing and relocation issues.
10. Throughout the recruitment, Contractor shall:
 - a. Send personal letters to candidates advising them of their status at each critical point in the recruitment;
 - b. Respond to candidate inquiries about the status of their candidacy within 24 hours;
11. At the conclusion of the recruitment, Contractor shall provide a written summary of the process to the SFMTA.

Department Liaison

In performing the services described in this Agreement, Contractor's liaison with the SFMTA will be:

Vicki Rambo, Director Human Resources
San Francisco Municipal Transportation Agency
Vicki.Rambo@sfmta.com
(415) 701-4260

Timeline

Contractor shall make recommendations regarding the finalists for the positions within thirty (30) to sixty (60) days from the first meeting with the SFMTA, unless an alternate timeline is established by mutual agreement of both parties.

Reports

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

Appendix B Calculation of Charges

Consulting Fee

The consulting fee for conducting the executive recruitments shall be 30% of the first year's anticipated salary for each position as indicated below. The services to be provided by the Contractor for this fee shall consist of the items outlined in Appendix A of this Agreement. The consulting fee will be paid in three equal installments of \$50,845 as provided for in Section 5, Compensation, of this Agreement and shall not exceed \$152,536.

Administrative Fee

In addition to the fixed fee for conducting the executive recruitments, the City will reimburse the Contractor for the actual cost of administrative expenses incurred in connection with conducting the search activities. Contractor must submit receipts or similar documentation for all expenses in order to be reimbursed for them. Allowable administrative expenses that the Contractor may be reimbursed for include: advertising expenses, credit checks, criminal and civil reference checks, newspaper searches, postage, printing, photocopying and telephone charges. The Contractor may request reimbursement for other administrative expenses not specifically listed herein. All reimbursement requests are subject to the approval of the SFMTA and shall not exceed \$15,000.

Travel Costs

Additionally, the City will reimburse the Contractor for the actual cost of reasonable and necessary travel expenses incurred by the Contractor and the candidates for interviews and related expenses. Travel expenses must be pre-approved by the SFMTA and must not exceed \$25,000. Contractor must submit receipts or similar documentation for all expenses in order to be reimbursed for them.

In no event shall the total amount paid to the Contractor exceed: \$ 192,536.00.

The fees for the executive search services are as follows:

1.	Deputy Director of Transportation & Planning	\$51,854
2.	Director of Taxi & Accessible Services	\$51,854
3.	Deputy Director of Finance, Budget & Grants	\$48,828
4.	Administrative Fee:	(Not to Exceed) \$15,000
5.	Travel for Contractor and Candidates	(Not to Exceed) \$25,000

Additional Searches

Should any of the selected candidates prove unsuitable and/or leave the position within one year of the hire date, the Contractor will re-open the search for that candidate at no additional charge

to the SFMTA, except for reasonable and pre-approved Administrative and Travel fees as indicated above. The additional search will be subject to the same terms and conditions as indicated herein. This provision will survive the termination of this Agreement.

THIS PRINT COVERS CALENDAR ITEM NO: 10.5

MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco

DIVISION: Off-Street Parking Operations

BRIEF DESCRIPTION:

Approving the City of San Francisco Japan Center Garage Corporation's Fiscal Years 2008-2009 and 2009-2010 Operating Budget, with exception of the Marketing Plan and associated expenses, and authorizing the SFMTA Executive Director/CEO, or his designee, to forward the Operating Budget to the Office of the Controller for final approval.

SUMMARY:

- On July 1, 2002, the City and County of San Francisco leased the Japan Center Garages to the City of San Francisco Japan Center Garage Corporation ("Corporation") for the oversight of the Main Japan Center Garage and the Fillmore Street Annex Garage (collectively "Garage")
- Pursuant to the lease, the Corporation is required to submit an annual operating budget.
- The Japan Center Garage Corporation remits monthly net income to the City.
- The SFMTA receives 75 percent of the net income and the Corporation retains 25 percent in the Corporation's capital improvement fund.
- SFMTA Finance staff formulated a uniform, two-year budget submittal package to establish a new benchmark in the quality of garage budget submittals and to improve the budget review process.
- The budget package also incorporates recommendations outlined in the Chance Management Report for historical trend data, multi-year budgeting and consistent budget formats.
- The two-year operating budget submitted is consistent with the requirements of Proposition A.
- Staff has objected to the proposed Marketing Plan and asked that the Corporation present a revised plan for review.
- Staff recommends approval of the budget, without approving the Marketing Plan and the new position of Director of Marketing and Community Relations.

ENCLOSURES:

1. MTAB Resolution
2. Fiscal Years 2008-2009 and 2009-2010 Operating Budget for the Japan Center Garages.

APPROVALS:

DATE

DEPUTY OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY _____

ADOPTED RESOLUTION

SHOULD BE RETURNED TO: Amit Kothari, Off-Street Parking Operations

ASSIGNED MTAB CALENDAR DATE: _____

EXPLANATION:

Background:

On April 16, 2002, the Parking and Traffic Commission approved Resolution 122-02-PTC, urging the Board of Supervisors to approve the lease between the City of San Francisco Japan Center Garage Corporation (“Corporation”) and the City and County of San Francisco for the administration of the Japan Center Garages (“Garage”). On June 10, 2002, the Board of Supervisors adopted Resolution Number 0396-02, File Number 020634, approving the 15-year lease. The Corporation hires a management company to operate the Garage. The management company receives \$3,000 per month in management fees and ten percent of annual net revenues in excess of target revenues.

Pursuant to the lease, the Corporation is required to submit an annual Operating Budget for review and approval by the Municipal Transportation Agency Board of Directors and the Office of the Controller.

Under the lease, the Department of Parking and Traffic (“DPT”) receives 75 percent of the Garage’s net income and the Corporation retains 25 percent of net income (up to a maximum of \$2 million) in a capital improvement fund. Once the fund reaches \$2 million, all of the Garage’s net income goes to DPT.

SFMTA Finance staff formulated a uniform, two-year budget submittal package for use by all garages to establish a new benchmark in the quality of garage budget submittals and to improve the budget review process. The budget package also incorporates recommendations outlined in the Chance Management Report for historical trend data, multi-year budgeting and consistent budget formats throughout SFMTA administered garages. Capital improvement requests are deferred until an overall assessment of the capital improvement needs by the SFMTA is completed.

The two-year operating budget submitted by the Corporation is consistent with the requirements of Proposition A for this even-numbered year and the Corporation will be provided an opportunity to submit amendments to the two-year budget in each odd-numbered year.

Budget Evaluation Process:

Upon receipt of the Corporation's budget submittal, staff's initial review begins with a year-to-date verification of each revenue and expense line item category with the most recent garage monthly report. These line items are projected out through the end of the fiscal year taking into account the variations in seasonality, possible implementation of rate adjustments, known upcoming events, scheduled salary increases and associated payroll expenses, and normalizing for non-regular services or supply purchases. This initial review enables staff to identify possible erroneous assumptions made by the Corporation.

The next step in the process is to communicate to the Corporation any items of concern, point out obvious mathematical or formatting errors, if any, and to provide the opportunity for clarification and/or revision. Upon mutually accepted projections of revenues and expense for the current and proposed years, the Corporation is requested to re-submit the budget in its final form providing the basis for this staff report. The operating budget submitted by Corporation for the Japan Center Garages contained no significant errors and staff agreed with their initial projections of revenues and expenses.

FISCAL YEAR 2007-2008

A comparison between the approved FY 2007-2008 Operating Budget and the anticipated FY 2007-2008 performance is shown in the chart below.

FY 2007-2008 Performance:

	July 2007- June 2008 Approved Budget	July 2007 – June 2008 Actual/ Anticipated	Difference Between Approved and Anticipated
Revenue	\$3,622,100	\$3,670,577	\$48,477
less Parking Taxes	\$719,000	\$728,208	\$9,208
less Expenses	\$1,674,135	\$1,697,523	\$23,388
Net Income	\$1,228,965	\$1,244,846	\$15,881
SFMTA Income (75 percent of Net Income)	\$921,724	\$933,635	\$11,911

The anticipated revenue of \$3,670,577 for FY 2007-2008 reflects an anticipated growth of \$48,477 (or 1.3 percent) in revenues over the approved FY 2007-2008 budget. The increase in revenue over the prior year actual is the result in part from the rate increase implemented April 1, 2007 and the recent re-opening of the renovated Sundance Kabuki Cinemas (formally the AMC Kabuki 8 Theatres).

As to expenses, the Corporation anticipates spending \$1,697,523, which \$23,388 more than budgeted (or 1.4 percent), largely due to unforeseen sidewalk repairs and additional security personnel needed to direct traffic during the garage's waterproofing capital improvement.

The Corporation anticipates generating \$1,244,846 in Net Income, which is \$15,881 (or 1.3 percent) greater than the Net Income budgeted for FY 2007-2008. The SFMTA will receive \$933,635 in Net Income for FY 2008-2009 after the Corporation retains 25 percent for their future capital improvement needs.

FISCAL YEARS 2008-2009 and 2009-2010

A comparison of the approved FY 2007-2008 Operating Budget, the proposed FY 2008-2009 and 2009-2010 Operating Budget, is shown in the chart below.

FY 2008-2009 and 2009-2010 Proposed Operating Budget:

	2007-2008 Approved Budget	2008-2009 Proposed Budget	2009-2010 Proposed Budget	2008-2009 Compared to 2007- 2008	2009-2010 Compared to 2008- 2009
Revenue	\$3,622,100	\$3,844,970	\$3,997,610	\$222,870	\$152,640
less Parking Taxes	\$719,000	\$762,194	\$792,422	\$43,194	\$30,228
less Expenses	\$1,674,135	\$1,735,995	\$1,784,283	\$61,860	\$48,288
Net Income	\$1,228,965	\$1,346,781	\$1,420,905	\$117,816	\$74,124
DPT Income (75 percent of Net Income)	\$921,724	\$1,010,086	\$1,065,679	\$88,362	\$55,593

For FY 2008-2009, the Corporation projects generating \$3,844,970 in revenue, a \$222,870 (or 6.2 percent) increase over the budgeted amount for FY 2007-2008 due to an anticipated increase in patronage from the recently renovated/re-opened Sundance Kabuki Cinemas above the Annex Garage and the anticipated opening of the Japanese Pop Culture Center located directly across from the Main Garage on Post Street. The Corporation is planning an aggressive marketing effort to maintain the existing customer base and capture new patronage that could be attracted to the new venues and festivals in Japantown.

The Corporation proposes expenditures for FY 2008-2009 of \$1,735,995 which is \$61,860 (or 3.7 percent) over the amount budgeted for FY 2007-2008. The amount is \$38,472 (or 2.3 percent) more than anticipated for FY 2007-2008. The increase in expenditure is largely due scheduled salary increases and associated benefits. The Corporation has requested the addition of a Marketing and Community Relations Director to focus on increasing patronage to the garage and to represent the Corporation in connection with upcoming developments in the surrounding community. The expense for this position will be offset by the reduction of the marketing expense categories related to discontinuing efforts provided by the Japantown Task Force.

Consequently, the Corporation projects generating \$1,346,781 in Net Income for FY 2008-2009 which is \$117,816 more than budgeted for FY 2007-2008. FY 2008-2009 Net Income to the SFMTA is proposed to be budgeted at \$1,010,086 representing an increase of \$88,362 or nine percent over FY 2007-2008. Capital improvement requests are being deferred until the SFMTA has conduct an overall assessment of the capital improvement needs of all SFMTA administered parking facilities.

For FY 2009-2010, the Corporation is projecting \$1,065,679 Net Income to the SFMTA which is \$55,593 over the amount budgeted for FY 2008-2009. Expenditures are modestly budgeted to reflect scheduled salaries and associated payroll expenses. The Corporation will be provided an opportunity to make proposed amendments to the FY 2009-2010 Operating Budget.

This item directly supports Goal 4, Financial Capacity: To ensure financial stability and effective resource utilization and supports all other SFMTA 2008-2012 Strategic Plan Goals indirectly.

The City Attorney's Office has reviewed this item.

Recommendation

Staff recommends that the San Francisco Municipal Transportation Agency Board of Directors adopt the attached resolution, approving the City of San Francisco Japan Center Garage Corporation's Fiscal Years 2008-2009 and 2009-2010 Operating Budget, with the exception of the Marketing Plan and the associated costs, and authorizing the SFMTA Executive Director/CEO, or his designee, to forward the Operating Budget to the Office of the Controller for final approval.

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

RESOLUTION No. _____

WHEREAS, The Japan Center Garage Corporation (the “Corporation”) operates the Japan Center Garages (“Garage”) on behalf of the City and County of San Francisco under a lease agreement with the City; and,

WHEREAS, Under the conditions of the lease, the Corporation is required to submit an annual Operating Budget to the Municipal Transportation Agency Board of Directors and the Office of the Controller for review and approval; and,

WHEREAS, Each year the Municipal Transportation Agency Board of Directors reviews the non-profit garage budget and makes recommendations to the Office of the Controller; and,

WHEREAS, The Corporation has submitted the Fiscal Years 2008-2009 and 2009-2010 Garage Operating Budget to the Municipal Transportation Agency Board of Directors for review; and,

WHEREAS, The two-year Operating Budget submitted by the Corporation is consistent with the requirements of Proposition A for this even-numbered year and is in a format provided by the SFMTA; and,

WHEREAS, The Corporation will be provided an opportunity to submit amendments to the two-year budget in each odd-numbered year; and,

WHEREAS, The Municipal Transportation Agency Board of Directors has reviewed the Corporation’s Operating Budget for the Japan Center Garages; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors approves the Japan Center Garage Corporation’s Fiscal Years 2008-2009 and 2009-2010 Operating Budget for the Japan Center Garages; and, be it further

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the SFMTA Executive Director/CEO, or his designee, to forward the Japan Center Garage Corporation’s Fiscal Years 2008-2009 and 2009-2010 Operating Budget for the Japan Center Garages, except for the Marketing Plan and associated costs, to the Office of the Controller for final approval.

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

CITY AND COUNTY OF SAN FRANCISCO

**JAPAN CENTER GARAGES
1610 GEARY BOULEVARD
SAN FRANCISCO, CA 94115**

PROPOSED BUDGET

FY 2008 – 2009 (FY09)

FY 2009 – 2010 (FY10)

Prepared by:

**City of San Francisco Japan Center Garage Corporation
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**Three-Year Historical Trend
Summary of Revenue and Expenditure
(TABLE I)**

REVENUE & EXPENSE CATEGORIES	Budget Jun. 1, 2004 - Jul. 31, 2005	Actual Jun. 1, 2004 - Jul. 31, 2005	Budget Jun. 1, 2005 - Jul. 31, 2006	Actual Jun. 1, 2005 - Jul. 31, 2006	Budget Jun. 1, 2006 - Jul. 31, 2007	Actual Jun. 1, 2006 - Jul. 31, 2007
REVENUE						
1a Transient Parking	1,534,302	1,481,426	1,535,000	1,580,253	1,630,000	1,658,504
1b Monthly Parking	1,062,350	1,103,743	1,100,000	1,215,588	1,270,000	1,242,564
1c Business Validation	461,106	457,419	480,000	432,676	440,000	291,853
Total Parking Revenue	\$3,057,758	\$3,042,588	\$3,115,000	\$3,228,517	\$3,340,000	\$3,192,921
2a Miscellaneous Revenues	39,777	24,212	25,400	27,148	25,200	32,735
Gross Revenue	\$3,097,535	\$3,066,800	\$3,140,400	\$3,255,666	\$3,365,200	\$3,225,656
3a Parking Tax (less)	611,552	608,518	623,000	645,703	668,000	658,713
Net Parking Revenue	\$2,485,983	\$2,458,282	\$2,517,400	\$2,609,963	\$2,697,200	\$2,566,943
4a Bank Interest	8,000	1,470	2,100	2,350	2,000	4,241
Net Revenue	\$2,493,983	\$2,459,751	\$2,519,500	\$2,612,312	\$2,699,200	\$2,571,184
EXPENDITURE						
Personnel Cost						
A1 Administrative Salaries	214,617	210,400	230,000	218,384	237,000	226,906
A2 Parking Operations Salaries	407,645	389,076	430,000	391,794	455,000	390,804
Payroll Expenses						
B1 Payroll Taxes (non-SF)	52,892	52,555	56,000	53,677	63,500	53,863
B2 SF Payroll Taxes	9,334	8,992	11,000	9,153	11,000	9,266
B3 Welfare & Pension	174,570	163,617	172,000	178,692	205,000	162,947
B4 Worker's Compensation	55,852	53,819	60,000	51,494	60,000	50,173
Utilities						
C1 Gas & Electric	58,793	76,587	60,000	68,746	68,000	81,945
C2 Water	5,100	5,376	6,000	5,877	6,000	5,193
C3 Telephone	2,500	2,828	3,000	2,475	2,500	3,281
C4 Scavenger	7,100	7,173	7,400	7,246	7,500	8,370
Supplies & Services						
D1 Insurance	52,592	62,456	61,000	59,350	60,000	61,004
D2 Repairs & Maintenance (Facility)	25,000	50,061	30,000	46,754	36,000	42,263

REVENUE & EXPENSE CATEGORIES	Budget Jun. 1, 2004 - Jul. 31, 2005	Actual Jun. 1, 2004 - Jul. 31, 2005	Budget Jun. 1, 2005 - Jul. 31, 2006	Actual Jun. 1, 2005 - Jul. 31, 2006	Budget Jun. 1, 2006 - Jul. 31, 2007	Actual Jun. 1, 2006 - Jul. 31, 2007
D3 Office Supplies	5,000	6,077	5,000	4,162	7,500	7,074
D4 Garage Supplies	10,000	12,042	10,000	7,704	12,000	13,648
D5 Parking Supplies	6,500	6,727	6,500	6,166	8,500	8,465
Management Costs						
E1 Management Fee	36,000	36,000	36,000	36,000	36,000	36,000
E2 Incentive Fee	0	0	0	0	0	0
Professional/Personal Services						
F1 Accounting/Bookkeeping	7,500	7,338	7,500	8,315	8,600	7,279
F2 Garage Audit	17,650	16,411	15,500	19,460	18,000	25,718
F3 Garage Legal	10,000	8,558	10,000	9,100	10,000	23,135
F4 Security (Contractual)	90,000	88,193	84,000	91,408	95,000	95,911
F5 Janitorial Contract	65,500	65,420	48,000	53,375	48,000	51,280
F8 Bank Charges (Non-trustee)	500	-	6,600	6,590	7,500	9,095
F9 Uniform Cleaning	2,040	2,654	2,500	2,700	3,700	2,260
F10 Payroll Processing	1,300	388	500	376	500	368
F12 Other Contractual Services	85,000	52,739	80,000	103,687	150,000	140,339
Other Costs						
G1 Taxes & Licenses	1,800	1,383	1,800	1,839	2,700	1,845
G2 Marketing	22,000	20,847	90,000	33,565	30,000	96,579
G5 Miscellaneous	1,000	1,602	1,000	-	1,000	837
Total Garage Expense	\$1,427,785	\$1,409,320	\$1,531,300	\$1,478,091	\$1,650,500	\$1,615,847
Garage Operating Income/Loss	\$1,066,198	\$1,050,431	\$988,200	\$1,134,221	\$1,048,700	\$955,336
Corporate Expenses						
H2 Corporate Legal	10,000	2,065	10,000	8,932	10,000	8,278
H3 Corporate Insurance	4,326	0	5,000	3,204	6,000	0
Garage Net Income	\$ 1,051,872	\$ 1,048,366	\$ 973,200	\$ 1,122,086	\$ 1,032,700	\$ 947,059
75% City Income	788,904	786,274	729,900	841,564	774,525	710,294
25% Corporation Capital Fund	262,968	262,091	243,300	280,521	258,175	236,765

JAPAN CENTER GARAGE
FY 2008 Approved Budget vs. FY 2008 Projection
Summary of Revenue and Expenditure
(TABLE II)

REVENUE & EXPENSE CATEGORIES	Approved Budget Jun. 1, 2007 - Jul. 31, 2008	Projected Jun. 1, 2007 - Jul. 31, 2008	Difference Between FY08 Approved and FY08 Projected	
REVENUE				
1a Transient Parking	1,750,000	1,833,537	83,537	4.8%
1b Monthly Parking	1,400,000	1,367,411	(32,589)	-2.3%
1c Business Validation	445,000	440,093	(4,907)	-1%
Total Parking Revenue	\$3,595,000	\$3,641,041	\$46,041	1%
2a Miscellaneous Revenues	23,100	26,536	3,436	15%
Sub-total Revenue	\$3,618,100	\$3,667,577	\$49,477	1%
3a Parking Tax (less)	719,000	728,208	9,208	1%
Net Parking Revenue	\$2,899,100	\$2,939,369	\$40,269	1%
4a Bank Interest	4,000	3,000	(1,000)	-25%
Net Revenue	\$2,903,100	\$2,942,369	\$39,269	1%
EXPENDITURE				
Personnel Cost				
A1 Administrative Salaries	240,000	240,000	0	0%
A2 Parking Operations Salaries	441,000	424,088	(16,912)	-4%
Payroll Expenses				
B1 Payroll Taxes (non-SF)	61,290	57,337	(3,953)	-6%
B2 SF Payroll Taxes	10,215	9,863	(352)	-3%
B3 Welfare & Pension	175,000	185,612	10,612	6%
B4 Worker's Compensation	55,000	53,845	(1,155)	-2%
Utilities				
C1 Gas & Electric	85,000	79,075	(5,925)	-7%
C2 Water	6,100	4,139	(1,961)	-32%
C3 Telephone	3,200	3,566	366	11%
C4 Scavenger	8,500	8,845	345	4%
Supplies & Services				
D1 Insurance	34,600	31,928	(2,672)	-8%

REVENUE & EXPENSE CATEGORIES	Approved Budget Jun. 1, 2007 - Jul. 31, 2008	Projected Jun. 1, 2007 - Jul. 31, 2008	Difference Between FY08 Approved and FY08 Projected	
D2 Repairs & Maintenance (Facility)	70,000	112,936	42,936	61%
D3 Office Supplies	12,500	12,500	0	0%
D4 Garage Supplies	12,000	12,666	666	6%
D5 Parking Supplies	8,500	9,396	896	11%
Management Costs				
E1 Management Fee	36,000	36,000	0	0%
E2 Incentive Fee	0	0	0	0%
Professional/Personal Services				
F1 Accounting/Bookkeeping	8,600	8,600	0	0%
F2 Garage Audit	25,000	24,410	(590)	-2%
F3 Garage Legal	10,000	10,138	138	1%
F4 Security (Contractual)	98,000	115,000	17,000	17%
F5 Janitorial Contract	52,000	53,767	1,767	3%
F8 Bank Charges (Non-trustee)	12,000	22,843	10,843	90%
F9 Uniform Cleaning	4,000	2,607	(1,393)	-35%
F10 Payroll Processing	600	409	(191)	-32%
F12 Other Contractual Services	50,000	50,000	0	0%
Other Costs				
G1 Taxes & Licenses	3,000	5,590	2,590	86%
G2 Marketing	130,000	100,833	(29,167)	-22%
G5 Miscellaneous	1,030	1,030	0	0%
Total Garage Expense	\$1,653,135	\$1,677,023	\$23,888	1%
Garage Operating Income/Loss	\$1,249,965	\$1,265,346	\$15,381	1%
Corporate Expenses				
H2 Corporate Legal	15,000	15,000	0	0%
H3 Corporate Insurance	6,000	5,500	-500	-8%
Garage Net Income	\$1,228,965	\$1,244,846	\$15,881	1%
75% City Income	921,724	933,635	11,911	1%
25% Corporation Capital Fund	307,241	311,212	3,970	1%

JAPAN CENTER GARAGE
FY 2009 and FY 2010 Proposed Budget
Summary of Revenue and Expenditure
(TABLE III)

REVENUE & EXPENSE CATEGORIES	Approved Budget Jun. 1, 2007 – Jul. 31, 2008	Proposed Budget Jun. 1, 2008 – Jul. 31, 2009	Proposed Budget Jun. 1, 2009 – Jul. 31, 2010	Difference Between FY08 Approved and FY09 Proposed	
REVENUE					
1a Transient Parking	1,750,000	1,878,853	1,961,824	128,853	7%
1b Monthly Parking	1,400,000	1,440,000	1,468,800	40,000	3%
1c Business Validation	445,000	492,117	531,486	47,117	11%
Total Parking Revenue	\$3,595,000	\$3,810,970	\$3,962,110	\$215,970	6%
2a Miscellaneous Revenues	23,100	30,000	31,500	6,900	30%
Sub-total Revenue	\$3,618,100	\$3,840,970	\$3,993,610	\$222,870	6%
3a Parking Tax (less)	719,000	762,194	792,422	43,194	6%
Net Parking Revenue	\$2,899,100	\$3,078,776	\$3,201,188	\$179,676	6%
4a Bank Interest	4,000	4,000	4,000	0	0%
Net Revenue	\$2,903,100	\$3,082,776	\$3,205,188	\$179,676	6%
EXPENDITURE					
Personnel Cost					
A1 Administrative Salaries	240,000	339,900	350,097	99,900	42%
A2 Parking Operations Salaries	441,000	454,230	467,857	13,230	3%
Payroll Expenses					
B1 Payroll Taxes (non-SF)	61,290	71,472	73,616	10,182	17%
B2 SF Payroll Taxes	10,215	11,912	12,269	1,697	17%
B3 Welfare & Pension	175,000	200,461	206,474	25,461	15%
B4 Worker's Compensation	55,000	63,797	65,711	8,797	16%
Utilities					
C1 Gas & Electric	85,000	83,029	83,029	(1,971)	-2%

C2 Water	6,100	4,139	4,139	(1,961)	-32%
C3 Telephone	3,200	3,200	3,200	0	0%
C4 Scavenger	8,500	9,287	9,751	787	9%
Supplies & Services					
D1 Insurance	34,600	41,928	41,928	7,328	21%

REVENUE & EXPENSE CATEGORIES	Approved Budget	Proposed Budget	Proposed Budget	Difference Between FY08 Approved and FY09 Proposed	
	Jun. 1, 2007 – Jul. 31, 2008	Jun. 1, 2008 – Jul. 31, 2009	Jun. 1, 2009 – Jul. 31, 2010		
D2 Repairs & Maintenance (Facility)	70,000	70,000	72,100	0	0%
D3 Office Supplies	12,500	17,500	7,500	5,000	40%
D4 Garage Supplies	12,000	13,046	13,437	1,046	9%
D5 Parking Supplies	8,500	9,678	9,969	1,178	14%
Management Costs					
E1 Management Fee	36,000	36,000	36,000	0	0%
E2 Incentive Fee	0	13,937	28,278	13,937	100%
Professional/Personal Services					
F1 Accounting/Bookkeeping	8,600	8,858	9,124	258	3%
F2 Garage Audit	25,000	25,000	25,000	0	0%
F3 Garage Legal	10,000	10,000	10,000	0	0%
F4 Security (Contractual)	98,000	100,950	103,979	2,950	3%
F5 Janitorial Contract	52,000	55,380	57,041	3,380	6%
F8 Bank Charges (Non-trustee)	12,000	23,985	25,184	11,985	100%
F9 Uniform Cleaning	4,000	2,685	2,766	(1,315)	-33%
F10 Payroll Processing	600	421	434	(179)	-30%
F12 Other Contractual Services	50,000	10,000	10,000	(40,000)	-80%
Other Costs					
G1 Taxes & Licenses	3,000	3,000	3,000	0	0%
G2 Marketing	130,000	30,000	30,000	(100,000)	-77%
G5 Miscellaneous	1,030	1,000	1,000	(30)	-3%
Total Garage Expense	\$1,653,135	\$1,714,795	\$1,762,883	\$61,660	5%
Garage Operating Income/Loss	\$1,249,965	\$1,367,981	\$1,442,305	\$118,016	8%
Corporate Expenses					
H2 Corporate Legal	15,000	15,000	15,000	0	0%
H3 Corporate Insurance	6,000	6,200	6,400	200	3%
Garage Net Income	\$1,228,965	\$1,346,781	\$1,420,905	\$117,816	8%

75% City	921,724	1,010,086	1,065,679	88,362	8%
25% Corporation	307,241	336,695	355,226	29,454	8%

JAPAN CENTER GARAGE
FY 2008-2009 and FY 2009-FY2010 Proposed Revenues by Month
(TABLE IV)

FY 2008 - 2009	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
REVENUES													
Parking Revenues													
1a Transient Parking	163,745	163,745	160,768	160,768	151,394	151,394	151,394	154,842	154,842	156,276	154,842	154,842	1,878,853
1b Monthly Parking	120,000	120,000	120,000	120,000	120,000	120,000	120,000	120,000	120,000	120,000	120,000	120,000	1,440,000
1c Business Validations	43,667	38,784	42,077	42,085	41,353	58,099	34,291	41,275	43,149	36,945	38,038	32,353	492,117
Total Parking Revenue	\$327,412	\$322,529	\$322,845	\$322,852	\$312,748	\$329,493	\$305,685	\$316,117	\$317,991	\$313,221	\$312,881	\$307,195	\$3,810,970
2a Miscellaneous	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	2,500	30,000
Gross Revenue	\$329,912	\$325,029	\$325,345	\$325,352	\$315,248	\$331,993	\$308,185	\$318,617	\$320,491	\$315,721	\$315,381	\$309,695	\$3,840,970
3a Parking Tax (less)	65,482	64,506	64,569	64,570	62,550	65,899	61,137	63,223	63,598	62,644	62,576	61,439	762,194
Net Revenue	\$264,430	\$260,523	\$260,776	\$260,782	\$252,698	\$266,095	\$247,048	\$255,394	\$256,893	\$253,077	\$252,805	\$248,256	\$3,078,776

FY 2009 - 2010	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
REVENUES													
Parking Revenues													
1a Transient Parking	171,932	171,932	167,198	167,198	158,964	158,964	158,964	161,036	161,036	162,527	161,036	161,036	1,961,824
1b Monthly Parking	122,400	122,400	122,400	122,400	122,400	122,400	122,400	122,400	122,400	122,400	122,400	122,400	1,468,800
1c Business Validations	47,160	41,887	45,443	45,451	44,662	62,747	37,034	44,577	46,601	39,901	41,082	34,941	531,486
Total Parking Revenue	\$341,493	\$336,219	\$335,042	\$335,050	\$326,026	\$344,111	\$318,398	\$328,013	\$330,037	\$324,828	\$324,518	\$318,377	\$3,962,110
2a Miscellaneous	2,625	2,625	2,625	2,625	2,625	2,625	2,625	2,625	2,625	2,625	2,625	2,625	31,500
Gross Revenue	\$344,118	\$338,844	\$337,667	\$337,675	\$328,651	\$346,736	\$321,023	\$330,638	\$332,662	\$327,453	\$327,143	\$321,002	\$3,993,610
3a Parking Tax (less)	68,299	67,244	67,008	67,010	65,205	68,822	63,680	65,603	66,007	64,966	64,904	63,675	792,422
Net Revenue	\$275,819	\$271,600	\$270,659	\$270,665	\$263,445	\$277,914	\$257,343	\$265,035	\$266,654	\$262,487	\$262,239	\$257,327	\$3,201,188

NARRATIVE I

FY 2007-2008 Approved Budget To FY 2007-2008 Projection

1a. Transient Parking 4.8%

Although the upper level waterproofing project required closing sections of the main garage, it did not adversely effect overall garage utilization as we anticipated. In fact, the garage's performance improved. The increase is attributed to a combination of things from the successful efforts of the Japantown Task Force, Inc. in promoting the community that has resulted in demand for transient parking; the Kabuki Theater under new ownership re-opening in December 2007; the remodeling of two community hotels that are experiencing higher levels of occupancy rates and, the San Francisco International Film Festival moved its festival dates not conflicting with the Cherry Blossom Festival, as it has in the past. The garage is expected to perform \$83,537 more than previously projected.

1b. Monthly Parking

-2.3%

For the first five months of the FY, the garage operator experienced a shortage of parking spaces and implemented a wait list. During the waterproofing project, the garage operator was reluctant to issue new monthly spaces based on availability of parking spaces to sufficiently satisfy demand for transient parking. Since the completion of the waterproofing project in November 2007, the operator has removed the wait. The operator then maximized the number of monthlies and is once again on a wait list. Therefore, a decrease of (\$32,589) is expected for this FY.

1c. Business Validation

-1%

It was anticipated that the Kabuki Theaters would open in September 2007. Due to construction delays, the theaters did not open until mid-December 2007. During this same period, the two community hotels underwent major renovations resulting in lower hotel occupancy, seminars and consequently leading to fewer merchant generated validation customers resulting in (\$4,907) under budget.

2a. Miscellaneous

15%

An increase of \$3,436 is expected from the growing number of garage lock-outs, lost card and late monthly payment fees.

3a. Parking Tax

1%

Since there has been an increase in transient parking revenues, it is expected that Parking Tax will also rise reflecting the increase by \$9,208.

4a. Bank Interest**-25%**

Due to approved FY 2008 Capital expenses, the balance in the Capital Account has been reduced resulting in decreased earnings and falling interest rates will lower Bank Interest income by \$1,000.

A1. Administrative Salaries**0%**

The corporation's internal auditor was on maternity leave for three months. An outside temporary staff person was hired to fill the position. Because of the increase in transient parking and an added reporting obligation, that person has been retained for one day each week to assist in the parking ticket verification process. Due to surplus in this expense category, this position could be accommodated in our current approved budget amount therefore no increase is projected.

A2. Parking Operations Salaries**-4%**

During the waterproof renovation project, it was intended to increase garage personnel for traffic monitoring. However, the operator was cost conscience and increased the existing security guard service as much as possible while operator employees assisted during their assigned shifts. Therefore, this line item is expected to be (\$16,912) under budget and an increase will be reflected in F4 – Security (Page 14), of which, a portion of that cost is recoverable for contractor's delays.

B1. Payroll Taxes (non-SF)**-6%**

Since it is expected that there will be a decline in Parking Operation Salaries, Payroll Taxes is expected to be below the budgeted estimation by (\$3,953).

B2. SF Payroll Taxes**-3%**

As stated in B1 – SF Payroll Taxes is also expected to be below budget by (\$352).

B3. Welfare & Pension**6%**

An increase of \$10,612 is expected from the hefty health and welfare increase experienced in December. In addition, the corporate employees pension contributions were being reported under administrative salaries. The corporation instructed the operator to re-classify administrative pension contributions under this line category.

B4. Worker's Compensation **-2%**

Along with the unnecessary need to use operator employees for the waterproofing project it is expected that workers compensation shall be below budgeted forecast by (\$1,155).

C1. Gas & Electric **-7%**

The energy savings equipment that was installed to automatically monitor air quality is further eliminating unnecessary use of the garage ventilation fans. We anticipate a (\$5,925) reduction from projected budget.

C2. Water & Sewer **-32%**

Anticipated increase in PUC rates did not materialize during this FY budget and project a (\$1,961) under the approved budget amount of \$6,100.

C3. Telephone **11%**

Due to additional long distant telephone calls connected to waterproofing project, an increase of \$366 is anticipated.

C4. Scavenger **4%**

Due to increase in refuse disposed within garage premises, an additional pick-up service was required and will increase this Scavenger expense by \$345.

D1. Insurance **-8%**

Garage operator's liability insurance experienced a modest increase and estimate that Insurance will be under budget by (\$2,672).

D2. Repair & Maintenance (Facility) **61%**

The garage suffered several unforeseen losses that were not anticipated in the current year budget. There was \$3,621 spent on plumbing exploration work for a large water leak coming from the main garage's ceiling; \$4,113 to replace an emergency exit door destroyed by a wind storm; \$5,195 to repair damage to a concrete island caused by a hit and run driver (SFPD Case #080237461); \$17,122 to remove and replace portion of the main garage's concrete drive exit on Geary Street triggered by a trip and fall and \$7,577 to repair the garage's floor cleaning machines beyond the preventative maintenance program.

D3. Office Supplies **0%**

Will be at budget level.

D4. Garage Supplies **6%**

A slight increase of \$666 is expected due to rising costs.

D5. Parking Supplies **11%**

Due to rising fuel charges, trucking companies has increased their delivery fees of parking related consumables such as, tickets, receipts and ink cartridges.

E1. Management Fee	0%
Contractual cost.	
E2. Incentive Fee	100%
It is anticipated that the operator will meet and exceed the net target revenue of \$2,800,000 by \$139,370. The 2003 Management Agreement states that the operator shall receive an Incentive Fee of 10% for amounts exceeding the target revenue and will earn \$13,937 as long as Operating Expenses do not exceed 103% of the approved budget among other conditions that are currently being satisfactorily met. This expense item was not budgeted.	
F1. Accounting/Bookkeeping	0%
At budget level.	
F2. Garage Audit	-2%
The corporation's independent accounting firm kept within the maximum threshold for this line item resulting in (\$590) under budget.	
F3. Garage Legal	1%
In October 2007, corporate counsel increased fees from \$175 to \$200 per hour. The increase is equal to what the other non-profit garages are paying for this professional service. In addition, the City Attorney's Office has reviewed the request and has approved corporate counsel's invoices with the increase. It is expected that this line item expense will be above budget level by \$138.	
F4. Security (Contractual)	+17%
Due to additional security services required during the waterproofing project, it is expected that Security will be in the excess of the budget estimate by \$22,000. However, for the reason that the contractor overextended the project completion date, the Corporation shall seek reimbursement estimated at \$5,000 and forecast a \$17,000 over run for this line item. Despite the over run, the Corporation was able to save \$22,372 in garage operation salaries and related expenses. Offset by this cost, total savings experienced is \$5,372.	
F5. Janitorial Contract	3%
The janitorial company has included reimbursement of parking charges that was not taken into consideration when current year's budget was approved and forecast a \$1,767 increase over budget.	
F8. Bank Service Charge	90%
There has been a drastic increase in patrons using credit cards as a convenient method for payment of parking charges. The number credit card transactions have doubled since last year resulting in a \$10,843 increase in bank processing fees for credit card transactions. The credit card clearing house (NOVA), is the same company employed at other City garages and is at a discounted rate.	
F9. Uniform Cleaning	-35%

Some operator has employees elected to launder their own uniforms reducing the cost of cleaning service from uniform provider by (\$1,393).

F10. Payroll Processing **-32%**

Anticipated increase in operator's payroll service provider did not materialize and expect a (\$191) decrease.

F12. Other Contractual Services **0%**

No change expected from prior year's approved budget.

G1. Tax & License Fees **+86%**

Due to tax assessor's office mailing error, annual statements were sent to another address. This expense line item includes the 2005, 2006 and 2007 unsecured property taxes. Since the tax assessor's office acknowledged the error, no interest or penalties has been assessed. Therefore, an increase of \$2,590 is expected for this FY.

G2. Marketing **-22%**

Since the Japantown Task Force, Inc. (JTF) did not receive formal approval of its marketing plan until October 2007, JTF could not engage in many of its planned goals and activities. Thus, these funds could not be applied to its plan. Since, the funds will not be used, a decrease of (\$29,167) is expected under the approved budget allocation of the \$100,000 to JTF.

G5. Miscellaneous **0%**

This budget line item includes approved refund of parking charges and other miscellaneous item not covered above and is at budget.

H2 Corporate Legal **0%**

The corporation has filed a lawsuit in December 2008, against iParking, Inc. for not completing their proposed parking management and security system as promised. The corporation is currently receiving depositions from three individuals linked to the proposal and installation of the project. A fourth defendant may be released of any legal liability because it was only involved in the energy conservation portion of the two phases project that was satisfactorily completed.

Also, because they are located in Japan, their attorney has insisted international legal process that includes all transcripts being translated into Japanese and would also require services of an international attorney, which are very costly. Since they have no connection to the parking management and security system phase of the overall project, the corporation will consider suspending its claim against them in a subsequent board meeting.

In addition, as stated in F3 – Garage Legal, counsel has increased charges from \$175 to \$200 per hour.

For these reasons, the corporation cannot determine how much this line item of expense will exceed the approved FY 2008 budget projection of \$15,000.

H3 Corporate Insurance

-8%

Due to smaller increase than anticipated, a reduction of (\$500) is expected.

NARRATIVE II

FY 2007-2008 Approved Budget To FY 2008-2009 Proposed Budget

1a. Transient Parking

7%

Combined with the Kabuki Theaters opening and remodeling projects of the two community hotels, the garage is experiencing an encouraging trend for transient demand.

Current efforts of JTF in promoting the community has been successful in recapturing many past patrons lost during parking rate increases and bringing back former residents that were displaced during urban renewal to visit and become actively involved in community efforts in preserving the historic community.

We are also projecting that the proposed Japanese Pop Culture Center scheduled to open in Spring 2009 will increase the demand for transient parking, as well. The corporation also plans that the new position, Director of Marketing and Community Relations (as described under A1 – Administrative Salaries, Page 17) shall further augment increased demand as explained under the corporation's Marketing Plan on Page 20.

It is expected that these marketing efforts will increase Transient Parking revenues by \$128,853.

1b. Monthly Parking

3%

There has been interest from another neighboring hospital facility to add 50 monthlies during our off peak hours under the restricted monthly parking program. The corporation is negotiating this agreement with Kaiser Permanente, which is likely to occur later this FY and forecast a \$40,000 increase.

1c. Business Validation

11%

Since the Sundance Kabuki Cinemas and two major hotels have completed renovation, it is anticipated that visitors will begin returning to the theater and mall shops.

The past history of the theater from the former operator neglected the facility and began losing movie patrons as far back as 1997. Under Sundance Cinemas' new ownership, the theaters have reopened screening independent films. Although the films are not considered box office hit attractions, it is expected that overall establishments offering parking validations will benefit by the increase in returning moviegoers.

The corporation is currently engaged with Sundance Cinemas to enter into a new parking validation agreement offering its moviegoers four hours validation, instead of the current three hour validation. Sundance Cinemas has included a restaurant, a Bistro and a full service bar in the remodeled Kabuki Theaters. It makes sense to offer an additional hour of parking validation so its patrons can comfortably enjoy a dinner, cocktails and movie without feeling rushed.

It is also expected that the Director of Marketing and Community Relations will continue to promote the current parking validation programs to new and existing businesses such as the proposed Japanese Pop Culture Center and proposed opening of DOSA Restaurant in September 2008.

2a. Miscellaneous

30%

The corporation shall increase monthly rents on storage room facilities and projects the growing number of garage lockouts, lost card keys and late fees. An increase of \$6,100 is projected.

3a. Parking Tax

6%

Increase in overall taxable parking revenue dictates increase in parking tax by \$43,194.

4a. Bank Interest

0%

Although the capital account balance will increase, the current condition of the economy may affect interest earned. Accordingly, no change is forecasted from prior year income and will remain at \$4,000.

A1. Administrative Salaries

42%

The Japan Center Garage Corporation is requesting approval to hire an additional corporate staff person as the Director of Marketing and Community Relations. The Corporation is committed to maintaining revenue growth to the City while ensuring that the Corporation is well informed and responds proactively to major business changes and planning developments that could adversely affect the garage operations and revenues. The Director will be measured largely on the ability to lead and manage the marketing of Japantown to increase parking revenues to JCGC as its main objective. Responsibilities and efforts of this new staff person are outline below in the Corporation's Marketing Plan.

In addition, on December 20, 2007, the corporation's board of directors approved performance increases for the corporate manger, administrative assistant and internal auditor.

Total amount is projected to be \$99,900 more than prior year's approved budget.

A2. Parking Operations Salaries

3%

Pursuant to the bargaining agreement, a small increase is projected. However, the current bargaining agreement expires on November 30, 2008 therefore, this budget forecast does not take into consideration for any increases to be more than 3% of the current staffing level.

B1. Payroll Taxes (non-SF)

17%

In relation to increases in wages, payroll taxes are expected to increase \$10,182 accordingly.

B2. SF Payroll Taxes

17%

1.5% of total payroll and is expected to increase \$1,697, as well.

B3. Welfare & Pension

15%

Reflects a 4.9% increase in health benefits and 6% increase in pension contributions based on current staffing resulting in a \$25,461 proposed increase.

B4. Worker's Compensation

16%

Reflects current workers compensation percentages (.0145 for administrative and .1296 for operational employees) of payroll costs. Due to increase in wages, an increase of \$8,797 is expected.

C1. Gas & Electric

-2%

Based on current consumption, a decrease of (\$1,971) is projected.

C2. Water & Sewer

-32%

Based on current usage with no rate increase taken into consideration, this line item shall be reduced by (\$1,961).

C3. Telephone

0%

Same as prior year's budget with no increase expected.

C4. Scavenger

9%

Last year's actual plus historical annual increase of 5% plus added pick-up service will increase to \$787.

D1. Insurance

-8%

Based on current expenditure, a decrease of (\$2,672) is forecasted.

D2. Repair & Maintenance (Facility)

14%

On May 2, 2008, the main garage's roll-up gate on Geary Boulevard was vandalized. The gate was destroyed beyond repair and currently must be operated manually. The garage operator is obtaining estimates for repairs from three gate companies. Upon receiving estimates and pending SFPD report, the corporation will file a claim with insurance company. The increase of \$10,000 is the insurance deductible.

D3. Office Supplies **40%**

The current garage management agreement expires on June 2008. The corporation intends to perform Bid/RFP process in FY 2009 and have allocated \$5,000 in producing material related to this process. The corporation also intends to replace two, possibly three obsolete and infected computers in the aggregate of \$5,000. In 2010, this line item shall be reduced by \$10,000 pending the Bid/RFP in FY 2009.

D4. Garage Supplies **9%**

Reflects a \$1,046 increase to meet rising costs.

D5. Parking Supplies **14%**

Substantial increase to satisfy shipping increases in printed parking related items such as tickets and receipt stock resulting in an increase of \$1,178.

E1. Management Fee **0%**

This is a set contractual cost. However, the current management agreement expires on June 2008. Since Bid/RFP documents have not been approved yet, fees for the new management agreement has not been established.

E2. Incentive Fee **100%**

Should the current Management Agreement be extended, the operator's Net Target Revenue will remain at \$2,800,000 and reflects 10% of amount exceeding the Target Net Revenue. For FY 2009, the projected amount is \$28,278 and FY 2010 is \$40,519. The current Management Agreement has capped Incentive Fee at \$50,000 per year.

F1. Accounting/Bookkeeping **3%**

Cost of living increase projected at \$258 more than prior year.

F2. Garage Audit **0%**

No change expected.

F3. Garage Legal **0%**

No increase is anticipated. However, the corporation has just filed a complaint against iParking, Inc. and legal expenses associated with this litigation are not included in this budget (H2 – Corporate Legal, Page 14).

F4. Security (Contractual) **3%**

Contractual increase of \$2,950.

F5. Janitorial Contract	6%
Includes 3% economic increase and reimbursement of parking charges.	
F8. Bank Service Charge	100%
Due to current trend in increased credit card transactions, an \$11,985 rise is projected.	
F9. Uniform Cleaning	-33%
Based on FY 2008 experience a reduction of (\$1,315) is proposed.	
F10. Payroll Processing	-30%
Based on FY 2008 experience a reduction of (\$179) is projected.	
F12. Other Contractual Services	-80%
The corporation successfully completed its bilingual Internet website into Japanese and is reducing this line item by \$40,000 but, needs to continue \$10,000 for maintenance and modifications.	
G1. Tax & License Fees	0%
No change from prior year.	
G2. Marketing	-77%
The one-year \$100,000 marketing fund extension to the Japantown Task Force, Inc. will conclude and will be reduced (\$100,000) in FY 2009. However, \$30,000 remains for recurring marketing expenses such as advertisements, participation in annual festivals and events. The Director of Marketing and Community Relations person shall allocate funds for the garage to receive maximum exposure.	
G5. Miscellaneous	-3%
A (\$30) reduction is anticipated.	

JAPAN CENTER GARAGE
FY 2008-2009 and FY 2009-2010 MARKETING PLAN

Following is Japan Center Garage Corporation's Marketing Plan for the Japan Center Main and Fillmore Street Annex Garages.

If funded, the Director of Marketing and Community Relations will be employed by the Japan Center Garage Corporation (JCGC) and will be accountable to the board of directors of JCGC. The Director will be measured largely on the ability to lead and manage the marketing of Japantown to increase parking revenues to JCGC as its main objective. The major activities will include partnering JCGC with public and private organizations to further the economic viability, promotion and cultural preservation of San Francisco's Japantown. The position will work closely with and, in coordination with the corporate manager and staff.

The corporation successfully completed its website in English and Japanese offering coupon incentives to businesses in the community with a steady number of guests visiting the site. In order to maintain visitors interest, the website also includes an events page and periodically change the views on our home page. The Director of Marketing and Community Relations will explore translation into other languages, as well.

To achieve maximum exposure benefiting two organizations, the corporation is proposing to combine the Japantown merchants website with the garage's. For the reason that the merchants association has a domain name that is more commonly recognized, it is not regularly maintained to sustain visitors' interest. The garage's website can be made more superior which the merchants will benefit by the increase in on-line visitors and, at the same time, provide opportunity to take advantage of the coupon incentive program.

The corporation, with assistance from Japantown Task Force, has started to promote the parking validation program to businesses in the new Fillmore Jazz Heritage Center and explore customizing validations to benefit merchant and garage such as the proposed parking validation proposal to Sundance Kabuki Cinemas from three to four hours.

Additional businesses are opening soon such as restaurants, Japanese Pop Culture Center and recent remodeling of the two community hotels. These new establishments will have a positive influence in local economy by attracting additional visitors to the community. However, in order to continue promoting this culturally rich community, the Director of Marketing and Community Relations will be responsible to keep it in the public forefront by promoting but, not limited to, media coverage.

The hotel(s) operator has engaged with a media consultant that has produced a video promoting the hotel(s) and community attractions. Creating a new marketing video would be a duplication of same efforts. Therefore, the Director of Marketing and Community Relations will work with the hotel's media consultant into expanding the current video to include merchant and convenient parking benefiting everyone.

The Director of Marketing and Community Relations goals and objectives for the coming fiscal year will also include:

1. Continue marketing the JCGC parking validation programs to new and existing businesses.
2. Organizing a marketing mission to Japan for further development and solicitation of culturally relevant businesses and organizations to promote commerce in Japantown focusing on increasing patronage at the garage.
3. Develop marketing programs for Japantown merchants in preparation for the refurbishment of the Japan Center malls.
4. Develop a marketing strategy for garage patrons during the Japan Center renovation.
5. Work with corporate manager, City departments and the SFMTA's Director of Off-Street Parking to develop other potential parking in the community during renovation and explore the possibility that revenues generated from those temporary parking spaces can compensate the garage corporation for losses.
6. Work with current Internet site provider to enhance and effectively promote the use of the garage's website. Encourage other attractions to advertise on the website and provide direct links from their website to ours.
7. Follow up on a past request to NavTeq (source for on-line maps) to place Japantown on all Internet map searches.
8. Manage the garage Marketing budget including the garage advertising during community events and festivals to maximize exposure.
9. To research the production of one new cultural festival.
10. Explore the potential of becoming a member of the San Francisco Convention and Visitor's Bureau to partner with the Japantown Merchants Association creating a marketing plan for Japantown.
11. Provide monthly reports to the board of directors.
12. Attend bi-monthly board of directors meetings providing marketing and community updates.
13. Main objective is to re-establish Japantown as a major visitors' destination.

THIS PRINT COVERS CALENDAR ITEM NO: 10.6

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

DIVISION: Muni Service Delivery and Operations

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO or his Designee to advertise and issue a Request for Proposals (RFP) for San Francisco Municipal Transportation Agency (SFMTA) Contracts CS-900, As-Needed Specialized Engineering Services for SFMTA Rail Vehicles Rehabilitation and Replacement program and CS-901, As-Needed Specialized Engineering Services for SFMTA Rubber Tire Vehicles Rehabilitation and Replacement Program, receive proposals, select consultants to provide technical and professional services on an as-needed basis, and negotiate contracts with the selected consultants for a term of up to five years and an amount not to exceed \$5,000,000 for Rail Vehicles Rehabilitation and Replacement Program and \$4,000,000 for Rubber Tire Vehicles Rehabilitation and Replacement Program.

SUMMARY:

- Proposals will be solicited for qualified firms to provide technical and professional services to support the Rail Vehicles Rehabilitation and Replacement Program and the Rubber Tire Vehicles Rehabilitation and Replacement Program.
- Consultant is to provide technical and professional services on an “as-needed” basis to assist and supplement SFMTA staff.
- Consultant will provide specialized engineering and quality control services for the implementation and completion of the various vehicle procurement and rehabilitation projects.
- Services provided under this contract will be used for locally and federally funded projects.
- The term for each contract shall not exceed five years. The Rail Vehicles Rehabilitation and Replacement Program shall not exceed \$5,000,000 and the Rubber Tire Vehicles Rehabilitation and Replacement Program shall not exceed \$4,000,000.
- The Contract Compliance Office has established a 25 percent Small Business Enterprise participation goal for each contract.
- The City Attorney's Office has reviewed this item.

ENCLOSURES: (List numerically and by title)

1. Resolution
2. Request for Proposals

EXPLANATION:

The San Francisco Municipal Transportation Agency (SFMTA) is requesting authority to advertise and issue a Request for Proposals (RFP) As-Needed Specialized Engineering Services for SFMTA Rubber Tire Vehicles Rehabilitation and Replacement Program to solicit proposals from qualified consultants with specialized professional experience in the areas of rolling stock manufacturing, production, rehabilitation, and remanufacturing to provide technical engineering and quality assurance services for the following vehicle replacement and rehabilitation programs:

1. Rubber Tire Vehicles Rehabilitation and Replacement Program
 - A. Replacement of 45 NABI Buses
 - B. 329 Neoplan Buses Midlife Overhaul
 - C. Replacement of 60 New Flyer Trolley Coaches
 - D. 273 ETI Midlife Overhaul
2. Rail Vehicles Rehabilitation and Replacement Programs
 - A. Midlife Overhaul of 151 Breda Light Rail Vehicles
 - B. Complete Rehabilitation of 4 Damaged Light Rail Vehicles
 - C. Streetcar Rehabilitation Program:
 - Safety Enhancement of 9 Milan Streetcars
 - Complete Rehabilitation of “Car No. 1” (streetcar)
 - Major Rehabilitation of 16 Non-Active Presidents Conference Committee (PCC) Streetcars
 - Major Overhaul of 16 active PCC Streetcars

The SFMTA may enter into one contract for each replacement and rehabilitation program. The selected consultants will assist the SFMTA in ensuring that the vehicle replacement and rehabilitation contractors for each program deliver a quality product that is on schedule, within budget, with minimal claims, with minimal impacts to the public, and in conformance with the contractors' obligations.

After advertising the RFP and receiving proposals, a Selection Committee will review the proposals, conduct oral interviews, and recommend a highest-rated proposer for each contract to the Executive Director/CEO who may authorize staff to enter into negotiations with the selected consultants. Although a consultant may submit bids for both contracts, the same consultant may not be selected for both contracts. Upon successful conclusion of negotiations with the selected consultants, the Executive Director/CEO will present the negotiated contracts to the SFMTA Board of Directors for approval and request authorization to award and execute the contracts.

No new funds are required for these contracts since all tasks will be funded through existing local and federal sources.

The Contract Compliance Office has established a 25 percent Small Business Enterprise participation goal for each contract.

CONSISTENCY with SFMTA 2008-2012 Strategic Plan

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

Objectives:

- 1.1 Improve safety and security across all modes of transportation
- 1.3 Reduce emissions as required by SFMTA Clean Air Plan
- 1.4 Improve accessibility across transit services

Goal 4:Financial Capacity: To ensure financial stability and effective resource utilization

Objective:

- 4.2 Ensure efficient and effective use of resources.

Recommendation:

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to advertise and issue the RFP for Contracts CS-900, As-Needed Specialized Engineering Services for SFMTA Rail Vehicles Rehabilitation and Replacement program and CS-901, As-Needed Specialized Engineering Services for SFMTA Rubber Tire Vehicles Rehabilitation and Replacement Program, receive proposals, select consultants to provide technical and professional services on an as-needed basis, and negotiate contracts with the selected consultants for a term of up to five years and an amount not to exceed \$5,000,000 for Rail Vehicles Rehabilitation and Replacement Program and \$4,000,000 for Rubber Tire Vehicles Rehabilitation and Replacement Program.

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

RESOLUTION NO. _____

WHEREAS, The Muni Service Delivery and Operations Division – Operation Engineering of the San Francisco Municipal Transportation Agency (SFMTA) provides professional services for SFMTA fleet procurement and rehabilitation projects; and

WHEREAS, Due to the variety and specialization of this work, staff with the required skills and experience to perform the work are not always readily available; and

WHEREAS, Staff proposes that the SFMTA issue and advertise a Request for Proposals to solicit proposals from qualified consultants with specialized professional experience in the areas of rolling stock manufacturing, production, rehabilitation, and remanufacturing to provide technical engineering and quality assurance services for the Rail Vehicles Rehabilitation and Replacement Program and for Rubber Tire Vehicles Rehabilitation and Replacement Program; and

WHEREAS, After advertising the Request for Proposals and receiving proposals, a Selection Committee will review the proposals, conduct oral interviews, and recommend a highest-rated proposer for each contract to the Executive Director/CEO who may authorize staff to enter into negotiations with the selected consultants; and

WHEREAS, The professional services will be used in conjunction with locally and federally funded projects, and will be funded through the project budgets; and

WHEREAS, The Contract Compliance Office has established a 25 percent SBE goal for each contract; and

WHEREAS, Authorizing the Executive Director/CEO to issue and advertise this Request for Proposal will result in professional services that will ultimately assist the SFMTA in ensuring improved safety, accessibility and security across all modes of transportation and efficient and effective use of resources in accordance with the goals and objectives of the 2008-2012 Strategic Plan; and

WHEREAS, SFMTA staff will seek approval by the SFMTA Board of Directors prior to awarding Contracts CS-900 and CS-901; now, therefore be it

RESOLVED, That the Executive Director/CEO is authorized to issue and advertise a Request for Proposals for Contract CS-900, As-Needed Specialized Engineering Services for SFMTA Rail Vehicles Rehabilitation and Replacement Program, receive proposals, select a Consultant, and negotiate a contract with the selected Consultant for an amount not to exceed \$5,000,000.00, and for a term not to exceed five years; and be it further

RESOLVED, That the Executive Director/CEO is authorized to issue and advertise a Request for Proposals for Contract CS-901, As-Needed Specialized Engineering Services for SFMTA Rubber Tire Vehicles Rehabilitation and Replacement Program, receive proposals, select a Consultant, and negotiate a contract with the selected Consultant for an amount not to exceed \$4,000,000.00, and for a term not to exceed five years.

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

Secretary, Municipal Transportation Agency Board

City and County of San Francisco

The Municipal Transportation Agency

Request for Proposals for

CONTRACT NO. CS-900
CCO 08-1001

AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR SFMTA RAIL VEHICLE
PROJECTS

AND

CONTRACT NO. CS-901
CCO-08-1014

AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR SFMTA RUBBER TIRE
VEHICLE PROJECTS

JUNE 2008

Pre-proposal Conference: July 29, 2008 at 10:00 am
Deadline For Submission: August 28, 2008 at 3:00 pm

OFFICIAL ADVERTISEMENT

The San Francisco Municipal Transportation Agency (SFMTA) desires to retain specialized professional and technical engineering consultants to provide as-needed specialized professional engineering services in a broad area of technical disciplines to supplement staff in the implementation of various SFMTA vehicle rehabilitation and procurement projects. The contracts for these services will be established for a period not to exceed five years, at a cost not to exceed \$4,000,000 for the Rubber Tire Vehicles Rehabilitation and Replacement Program and \$5,000,000 for the Rail Vehicles Rehabilitation and Replacement Program.

Consultants will provide professional consulting services as specified in the Request For Proposals (RFP), either by direct assignment of Consultant's personnel or through sub-consultants.

Consultants are encourage to submit proposals for both contracts, but only one contract will be awarded to a single Consultant or Joint Venture. Both contracts will not be awarded to the same Consultant or Joint Venture. Each proposal will be clearly marked as a response to either the Rubber Tire Vehicles Rehabilitation and Replacement Program or the Rail Vehicles Rehabilitation and Replacement Program. It is not acceptable to submit one proposal for both contracts.

Proposals and completed forms must be submitted and received by the SFMTA by 3:00 p.m. on August 28, 2008 at the following address:

The San Francisco Municipal Transportation Agency
Operation Engineering Section
700 Pennsylvania Ave, San Francisco CA 94107
Attention: R. Rankin

Prospective proposers may obtain a copy of the RFP and additional information for Contracts Nos. CS-900 and CS-901, including the forms to be submitted with the proposal, at the address given above or by calling (415) 401-3107.

Consulting firms are encouraged to contact Ms. Naomi Steinway of the SFMTA Contract Compliance Office at (415) 701-4363 prior to submitting a proposal to discuss the Small Business Enterprise (SBE) Program.

The SFMTA will hold a pre-proposal conference on July 29, 2008 at 10:00 a.m. at 700 Pennsylvania Avenue, Building D Conference Room, San Francisco, California, to discuss the proposed contracts and the SBE Program.

A Selection Committee and the Contract Compliance Office will evaluate each submittal. The final selection of the Consultants for these Contracts will be made based on the evaluation of the proposals, the proposals' responsiveness to the RFP, oral interviews, and compliance with the SBE/Nondiscrimination Requirements. The Selection Committee will be composed mainly of SFMTA staff.

The successful proposer shall cooperate with the SFMTA in meeting its commitments and objectives with regard to ensuring nondiscrimination in the award and administration of DOT-assisted contracts and shall use its best efforts to ensure that barriers to participation of SBEs do not exist.

A twenty-five percent (25%) SBE participation goal has been established for each Contract.

Questions concerning SBE Program requirements should be addressed to:

Ms. Naomi Steinway
SFMTA Contract Compliance Office
One South Van Ness Avenue,
San Francisco, CA 94103
Telephone: (415) 701-4363

Questions regarding the Scope of Work should be addressed in writing to:

Ms. Trinh Nguyen Project Manager
Operations Engineering
700 Pennsylvania Street
San Francisco, CA 94107-3443
Telephone: (415) 401-3113
Fax: (415) 401-3218

The work described in these specifications is to be financed with the assistance of a grant from the Federal Transit Administration (FTA) and all work described in these specifications shall be performed in accordance with FTA requirements.

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Request for Proposals for
As-Needed Specialized Engineering Services for the SFMTA Rail Vehicles Rehabilitation and Replacement Program
And
As-Needed Specialized Engineering Services for the SFMTA Rubber Tire Vehicles Rehabilitation and Replacement Program.

In order to ensure a fair and competitive selection process, SFMTA directs Proposers not to contact SFMTA staff members, executives of the SFMTA, or individual members of the SFMTA Board of Directors regarding this RFP, except as otherwise stated in this RFP. If proposers disregard this directive, they may be disqualified from participating in the selection process.

I. Introduction

The San Francisco Municipal Transportation Agency (SFMTA) requests proposals from qualified consultants to provide as-needed specialized engineering services to supplement staff in the implementation of its various projects. The contract for these services will be established for a period not to exceed five years, at an amount of \$4,000,000 for the Rubber Tire Vehicles Rehabilitation and Replacement Program and \$5,000,000 for the Rail Vehicles Rehabilitation and Replacement Program.

The Small Business Enterprise (SBE) goal is twenty-five percent (25%.) for each contract.

The intent of the professional services contract is to enable SFMTA to obtain qualified technical assistance on short notice (within 5 calendar days) on an as-needed basis from the selected consultants or sub-consultants.

II. Scope of Work

A. Rail Vehicles Rehabilitation and Replacement Program

The Consultant must be able to provide a broad range of specialized services and staff to complete work required by the SFMTA. The scope of work for the Consultant is described in this section, but is subject to change as a result of negotiations with the selected proposer. The quantity and type of services and personnel to be provided under the tasks listed herein will be executed at the sole discretion of the SFMTA. The SFMTA reserves the right to use qualified City Staff to whatever extent possible in providing the technical engineering and quality control services. The Consultant will not perform any services that qualify as a public work or improvement as defined in Chapter 6 of the San Francisco Administrative Code.

The Consultant shall provide specialized engineering and quality control services for the implementation and completion of various Rubber Tire vehicle procurement and rehabilitation projects, including, but not limited to drafting Request for Proposals, design analysis, engineering calculations, reliability, safety, maintainability, and Mean Distance Between Failure (MDBF), quality control inspection, administrative support, vehicle acceptance and testing, warranty administration and competency gap analysis. The Consultant shall provide competent professional staff and services in the specialties described below, either by direct assignment of

its own personnel or through sub-consultants, subject to review and approval by SFMTA's Project Manager. The services to be provided by the Consultant at the direction of, and to the satisfaction of, the SFMTA include, but are not limited to:

1. Performing detailed design review, data analysis, calculation and investigation of the various sub-systems of vehicles to enable the SFMTA project team to make sound decisions regarding the reliability and feasibility of the products being offered by the vehicle manufacturer.
2. Drafting specifications, and reviewing and making recommendations on all designs, including, but not limited to, conceptual preliminary designs and final design reviews.
3. Advising the SFMTA on key issues regarding vehicle rehabilitation and procurement, including deviation from project requirements.
4. Reviewing, coordinating and recommending approval of project submittals for vehicle rehabilitation and procurement including:
 - a. Overall vehicle design documents (including hardware and software functionality and performance)
 - b. Test plans, procedures, and reports
 - c. Training plans and materials
 - d. Design and Application drawings and manuals
5. Performing quality control and resident inspection during production, including witnessing First Article testing at the vendor's facilities and on SFMTA property.
6. Ensuring that all required tests, operations, measurements and inspections are satisfactorily performed and documented by the vehicle manufacturers and sub-suppliers.
7. Providing periodic inspection, progress reports, and meeting minutes.
8. Witnessing, reviewing and conducting acceptance tests of vehicles delivered to the SFMTA.
9. Ensuring that all O&M manuals, as-built drawings, warranties and other closeout documents are obtained and accepted by the appropriate parties.
10. Ensuring that all training, spare parts, special tools, special test equipment, maintenance and operation manuals, and other deliverables are properly provided to the appropriate parties.
11. Assisting SFMTA engineers in reviewing and redlining deliverables:
 - a. Design documents
 - b. Test plans, procedures and reports
 - c. Training plans and materials
12. Preparing a Final Project Report summarizing the entire project process, including a discussion of successes and areas for improvement.

13. Providing cost and price analyses of contracts, change orders, task orders, and contract modifications in accordance with FTA guidelines, change order estimating, schedule and delay analysis, constructability review, forensic cost and accounting analyses, and dispute analysis and review.
14. Providing additional staffing on an as-needed basis in the areas of inspection, engineering, and quality assurance expertise.
15. Providing risk and sensitivity analyses for capital/operating expenses and revenues.
16. Preparing Fleet Management Plans.
17. Conducting safety analysis, compatibility analysis of the configuration and integration of project deliverables into Muni's shop facilities and infrastructure, and certification activities of documents that include, but are not limited to: reports, databases, spreadsheets, and vehicle interface documentation.
18. Conducting rail profiling.
19. Conducting wheel profiling.

The final scope of work for the contract shall be determined by the SFMTA and will be derived from the RFP and the submitted proposal, but may not include all elements of the RFP or proposal. The performance of services under this contract shall be on a cost plus fixed fee or by task order, or some combination thereof. A maximum not-to-exceed amount for services will be negotiated with the Contractor.

B. Rubber Tire Vehicles Rehabilitation and Replacement Program

The Consultant must be able to provide a broad range of specialized services and staff to complete work required by the SFMTA. The scope of work for the Consultant is described in this section, but is subject to change as a result of negotiations with the selected proposer. The quantity and type of services and personnel to be provided under the tasks listed herein will be executed at the sole discretion of the SFMTA. The SFMTA reserves the right to use qualified City Staff to whatever extent possible in providing the technical engineering and quality control services. The Consultant will not perform any services that qualify as a public work or improvement as defined in Chapter 6 of the San Francisco Administrative Code.

The Consultant shall provide specialized engineering and quality control services for the implementation and completion of various rubber tire vehicle procurement and rehabilitation projects, including, but not limited to drafting Request for Proposals, design analysis, engineering calculations, reliability, safety, maintainability, and mean distance between failure (MDBF), quality control inspection, administrative support, vehicle acceptance and testing, warranty administration and competency gap analysis. The Consultant shall provide competent professional staff and services in the specialties described below, either by direct assignment of its own personnel or through sub-consultants, subject to review and approval by SFMTA's Project Manager. The services to be provided by the Consultant at the direction of, and to the satisfaction of, the SFMTA include, but are not limited to:

1. Performing detailed design review, data analysis, calculation and investigation of the various sub-systems of vehicles to enable the SFMTA project team to make sound decisions regarding the reliability and feasibility of the products being offered by the vehicle manufacturer.
2. Drafting specifications, and reviewing and making recommendations on all designs, including, but not limited to, conceptual preliminary designs and final design reviews.
4. Advising the SFMTA on key issues regarding rail vehicle rehabilitation and procurement, including deviation from project requirements.
5. Reviewing, coordinating and recommending approval of project submittals for rail vehicle rehabilitation and procurement including:
 - a. Overall vehicle design documents (including hardware and software functionality and performance)
 - b. Test plans, procedures, and reports
 - c. Training plans and materials
 - d. Design and Application drawings and manuals
6. Performing quality control and resident inspection during production, including witnessing First Article testing at the vendor's facilities and on SFMTA property.
7. Ensuring that all required tests, operations, measurements and inspections are satisfactorily performed and documented by the vehicle manufacturers and sub-suppliers.
8. Providing periodic inspection, progress reports, and meeting minutes.
9. Witnessing, reviewing and conducting acceptance tests of vehicles delivered to the SFMTA.
10. Ensuring that all O&M manuals, as-built drawings, warranties and other closeout documents are obtained and accepted by the appropriate parties.
11. Ensuring that all training, spare parts, special tools, special test equipment, maintenance and operation manuals, and other deliverables are properly provided to the appropriate parties.
12. Assisting the SFMTA engineers in reviewing and redlining deliverables:
 - a. Design documents
 - b. Test plans, procedures and reports
 - c. Training plans and materials
13. Preparing a Final Project Report summarizing the entire project process, including a discussion of successes and areas for improvement.

14. Providing cost and price analyses of contracts, change orders, task orders, and contract modifications in accordance with FTA guidelines, change order estimating, negotiation, schedule and delay analysis, constructability review, forensic cost and accounting analyses, and dispute analysis and review.
15. Providing additional staffing on an as-needed basis in the areas of inspection, vehicle procurement management, engineering, quality assurance expertise, and project management for SFMTA's capital projects.
16. Providing risk and sensitivity analyses for capital/operating expenses and revenues.
17. Preparing Fleet Management Plans.
18. Conducting safety analysis, compatibility analysis of the configuration and integration of project deliverables into Muni's shop facilities and infrastructure, and certification activities of documents that include, but are not limited to: reports, databases, spreadsheets, and vehicle interface documentation.

The final scope of work for the contract shall be determined by the SFMTA and will be derived from the RFP and the submitted proposal, but may not include all elements of the RFP or proposal. The performance of services under this contract shall be on a cost plus fixed fee or by task order, or some combination thereof. A maximum not-to-exceed amount for services will be negotiated with the Contractor.

Additional Information

The services to be provided under both contracts will require Contractors' personnel to climb scaffolds and ladders, work under Muni's prevailing shops operation conditions, work in inclement weather, enter confined spaces, and work nights, holidays and weekends. All of the Contractors' employees are expected to be courteous and professional in their behavior. Intimidating, discriminatory, harassing, or any behavior deemed unacceptable by the SFMTA may be grounds for removal of the individual(s) from SFMTA property.

The City Attorney's Office will provide legal counsel for contract issues, disputes and claims.

Request for substitution of sub-consultants shall be subject to the approval of the SFMTA Board of Directors.

All matters affecting scope, budget, and schedule will require written approval by the SFMTA's Project Manager.

III. Submission Requirements

A. Submission of Proposals

All proposers must submit 10 copies of their Proposals, including required SBE Forms and attachments, by the deadline to the address stated below. Postmarks will not be considered in judging the timeliness of submissions. Each proposal received will be screened to ensure that the information required in Section VI and other requirements are included. Partial or total omission of any of these items from a proposal may disqualify a proposal from further consideration. Proposals that are submitted by fax or submitted late will not be accepted.

All proposals must be received at the SFMTA: August 28, at 3:00 PM

Proposals must be delivered to:

Rosa Rankin
SFMTA Operation Engineering Section
700 Pennsylvania Ave
Building B – 2nd Floor
San Francisco, California 94107-3443
(415) 401-3107

Each proposal shall be clearly marked as a proposal for either the Rubber Tire Vehicles Rehabilitation and Replacement Program or the Rail Vehicles Rehabilitation and Replacement Program. It is not acceptable to submit one proposal for both contracts. The cover page for each proposal should clearly indicate the contract name and number (i.e. : PROPOSAL FOR CONTRACT CS-900 CCO 08-1001- AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR RAIL VEHICLES).

B. Format and Content of Proposals

The proposal shall be clear, concise and complete. The proposal shall total no more than 35 pages on double sided paper (18 sheets). All pages shall be 8-1/2" x 11", minimum size 10 font, unless otherwise noted in this RFP. Documents requested in Item 7 of this Section, along with team members' references and resumes and other reference materials, shall be placed in the appendices and will not be counted as part of the 35-page limit. All documents submitted shall be bound in a binder with each section separated by tabbed dividers. Distinct documents enclosed in the appendix shall be separated by tabbed dividers as well. Attachments, photos, and other reference material may be included in the proposal; however, reference materials not requested in this RFP may or may not be used by the Selection Committee in evaluating the Consultant's proposal.

Firms interested in responding to this RFP must also submit the following information, in the order specified below:

1. Introduction and Executive Summary (up to 2 pages)

Submit a letter of introduction and executive summary of the proposal. The letter must be signed by a person authorized by your firm to obligate your firm to perform the commitments contained in the proposal. Submission of the letter will constitute a representation by your firm that your firm is willing and able to perform the commitments contained in the proposal.

Furnish an executive summary briefly describing the qualifications and organization of the consulting team (prime consultant, sub-consultants, and key personnel), highlighting the key points of the proposal, and verifying that the consulting team will be able to meet all requirements in the RFP, including the twenty-five percent (25%) SBE participation goal.

Indicate that the proposer has read and finds the City's standard contract agreement acceptable (see Attachment 3). If the proposer is unable or unwilling to comply with any requirements of the standard contract agreement, then identify the requirements and explain why the proposer cannot comply with them.

2. Project Organization and Management Approach (up to 8 pages)

a. For a joint venture or association, provide the full name and address of the prime firms or member firms. For an association, provide the type of arrangement and describe the contractual relationship. Provide the same information for each sub-consultant (if any).

b. Provide the name, title, address, and telephone number of individual(s) with authority to bind the firm, joint venture, or association.

c. Identify one individual, empowered by the proposer and representing the entire consulting team, as the principal in charge who has responsibility to manage the entire consulting team, regardless of the other key personnel provided.

d. Briefly describe the prime consultant firm, joint venture, or association and the services it will provide. If the prime consultant is a joint venture or association, explain in detail the responsibility of each member firm. Briefly describe any sub-consultants, their responsibilities, and the services they will provide.

e. Describe how the proposer's team will be organized, specify how each task will be managed and staffed, and identify the relationships among the sub-consultants (if any), and their respective roles on the project. In addition to a written description, an organizational chart on 8-1/2x11 or 11x17 paper may be used to show these relationships.

f. Describe how the Consultant will integrate and interface with City staff and City's other consultants.

g. Describe the consulting team's internal procedures for developing and maintaining quality and cost control, and for correcting quality and budget deviations. Describe the types of reports that the consulting team will provide.

h. Describe your firms' quality control / quality assurance program. Provide a copy of the current corporate organization chart depicting the reporting relationship of those responsible for quality assurance and quality control in your firm.

3. Service and Staffing (up to 5 pages)

Describe the consulting team's ability and plan to provide the services and staffing to undertake tasks of the proposed scope of work.

Provide matrix (11"x17" maximum size paper) detailing the names of the individuals proposed for all tasks; list their current employers; provide a summary of their qualifications, experience and relevant projects worked on over the past four years; and their present job assignment(s). Include brief descriptions of each individual's title, projects, total contract amount including all modifications for each project, locations, duties, and assignment start and end dates.

4. Relevant Experience and References (up to 10 pages)

a. Describe qualifications, experience and major or unusual accomplishments for the following:

- The companies involved: prime consulting firm and its sub-consultants;
- The management personnel directly involved and playing key roles under the Contract;
- The personnel proposed for the tasks specified in the RFP.

This section of the proposal shall summarize, highlight and supplement the information contained in SFMTA Form PM3 (Appendix 1) and resumes. Describe any experience and qualifications that the consulting teams or personnel have in working with a mixed team of City/client-consultant engineering personnel. Describe the proposer's familiarity with San Francisco's construction climate and labor practices. Describe the proposer's familiarity with SFMTA's operating rules and regulations and standard operating procedures.

Detailed information regarding the above shall be contained in SFMTA Form PM3 (Appendix 1) for the prime consultant and its sub-consultants, and in the resumes for individual personnel. SFMTA Form PM3 and personnel resumes should be enclosed in Appendix 1 and will not be counted toward the page limit. Personnel resumes should describe the roles, responsibilities, and major accomplishments achieved for each contract, along with dates of involvement.

b. Provide three different client references for each firm and each individual proposed for each task, including a contact person, his/her title, address, phone number and fax number, from the most recent contracts undertaken by each firm and individual.

5. Technical Approach (up to 5 pages)

The tasks outlined in the Scope of Work are a general description of work. The prospective consultants shall address and expand, as necessary, upon the outlined tasks described in this RFP. At a minimum, the technical approach shall contain the following:

- a. Describe the proposer's understanding of the nature and extend of the services required for each task.
- b. Describe the proposer's plan, program, and methods for executing the scope of work. Describe special issues, problems and constraints, and the approach towards mitigating and resolving them.

The proposer may suggest additional tasks and revise task descriptions from those specified in this RFP.

6. Sample Detail Cost Analysis (up to 5 pages)

Provide a sample "cost analysis" (as defined by FTA Circular 4220.1E) that demonstrates the proposer's understanding and ability to meet FTA third party contract solicitation, award, and administration requirements. If the proposer has not yet developed such a "cost analysis," SFMTA will accept an actual cost analysis of a task/procurement performed by the proposer for a non-FTA-funded project.

7. Other Required Documents

In addition to the requirements discussed above, proposers must submit the following documents with their proposals:

1. Completed SFMTA Form PM3
2. Small Business Enterprise (SBE) Participation Form (SFMTA SBE Form 1)
3. SFMTA SBE Form 2 - SBE Consultant Participation – Good Faith Efforts
- 3a. SFMTA SBE Form 2A - SBE Bidders List
- 3b. SFMTA SBE Form 2B- SBE Consultant/Joint Venture Partner/Sub-consultant-Gross Revenue Declaration
4. SFMTA SBE Form 3 - Questionnaire on Recruitment, Hiring and Training Practices
5. SFMTA SBE Form 4 - Sub-consultant Participation Declaration *
6. SFMTA SBE Form 5 - Small Business Enterprise Acknowledgement Declaration
7. Copy of the proposer's Nondiscrimination Program or EEO Policy Statement (if any)
8. Completed Business Tax Declaration
9. S.F. Administrative Code Chapters 12B and 12C Declaration: Nondiscrimination in Contracts and Benefits (See www.sfgov.org/sfhumanrights)
10. Completed Certification Regarding Lobbying
11. Attestation of Compliance

Both the prime consultant and all sub-consultants need to submit Items 1, 3a, 3b, 4, 6, 7, 8, 9, 10 and 11. Items 2 and 3 apply to the prime consultant only. Item 6 applies to SBE sub-consultants only. Information about all firms submitting quotes or proposals must be included for Item 3a.

Directions for completing Items 2, 3, 3a, 3b, 4, 5, and 6 can be found in SBE Program for Professional and Technical Services for Federally Funded Projects (Appendix 2). Part VI of the SBE Program describes the documents that must be submitted as part of the proposal. Additionally, Joint Ventures formed at either the prime consultant level or sub-consultant level must submit a Joint Venture Participation Form (Schedule B) plus a joint venture agreement. Please contact SFMTA's CCO to obtain a copy of the Joint Venture – Schedule B Form to be submitted with the proposal if applicable.

* (Note: If applicable, sub-consultants utilizing lower tier SBE sub-subconsultants must complete SBE Form 4.)

IV. Selection Process and Evaluation Criteria

A. Selection Process

The selection process used by SFMTA generally follows City and FTA procurement guidelines. All proposals will be evaluated by a Selection Committee composed mainly of SFMTA staff.

Step One: The Selection Committee will first evaluate and score written proposals based on the Evaluation Criteria listed below in B.1. A through G, using a 100-point rating system. Each member of the Selection Committee will separately score each proposer's written proposal. The Selection Committee's scores for each firm will be totaled, and the result will be divided by the number of Selection Committee members to obtain an average written evaluation score for each proposal. The maximum score for each proposal will be 100 points.

Based on the average score for each proposer's written proposal, the SFMTA will determine which proposers are within the competitive range. The proposers within the competitive range will be invited to make a presentation and participate in an oral interview with the Selection Committee.

Step Two: The SFMTA will invite selected proposers to appear before the Selection Committee for an oral interview and presentation of the proposal and detailed discussions of the various elements of their proposals. Presentations at the oral interview shall be made by the key team members who will actually be assigned to the Contract. All team members, including SBE subcontractors, should actively participate in the presentation and oral interview with the Selection Committee. Proposers selected for the interview may be required to furnish additional information to clarify their proposals prior to or at the interview and respond to questions by the Selection Committee.

The Selection Committee will score each presentation/oral interview using the Evaluation Criteria listed below in B.2.H, using a 50-point rating system. Each member of the Selection Committee will separately score each proposer's oral interview and presentation. Individual evaluation scores from all Selection Committee members will be added together and then divided by the number of Selection Committee members, to obtain an average interview evaluation score.

Step Three: Final selection will be made based on the combined scores for both the written proposals and the presentation/oral interview. The highest-ranking proposer will be invited to

negotiate a contract with the SFMTA. However, the same proposer will not be selected for both contracts. If the highest-ranking proposer is the same for both contracts, the second-highest proposer will be invited to negotiate one of the two contracts at the discretion of the SFMTA.

The selection of any proposal shall not imply acceptance by the City of all terms of the proposal, which may be subject to further negotiations and approvals before the City may be legally bound thereby. In the event that the SFMTA determines that an agreement cannot be reached with the highest-ranking proposer, SFMTA may choose to discontinue negotiations with the highest-ranking proposer and enter into negotiations with other qualified proposers in the order of their ranking. SFMTA reserves the right to accept other than the lowest-priced offer and to reject proposals that are not responsive to this RFP.

B. Evaluation Criteria

1. **Written Proposal:** Each proposal will be evaluated on the basis of the following criteria, on a 100-point rating system:

A. **Relevant Experience (30 points maximum):** Capability, specific relevant experience and qualifications of each consultant firm, sub-consultant firm, and especially, the proposed personnel for each task.

B. **Organization, and Management Approach (15 points maximum):** Proposer's understanding of the services for each task; effectiveness of its plan, program and method of execution; understanding of special issues, problems and constraints, and approach towards mitigating and resolving them; effectiveness of the proposer's work plan. Effectiveness of the consulting team's organizational structure in executing and managing the tasks; management approach in providing quality and cost-effective and on-time services.

C. **Services and Staffing Ability (15 points maximum):** Ability of the Consultant to provide timely, qualified and adequate staffing and services to support project demands, especially personnel with the expertise related to the proposed scope of work.

D. **Sample cost analysis (5 points maximum):** Quality and conciseness of the sample cost analysis submitted in response to III.B.5 above.

E. **Technical approach (15 points maximum):** Consultants will be evaluated on their understanding of the services for each tasks, effectiveness of their plan, program and method of execution, understanding of special issues, problems, and constraints, and approach towards mitigating and resolving them, effectiveness of the Consultant's work plan.

F. **Record of performance (15 points maximum):** Record of past performance and demonstrated competence of the proposer and sub-consultants.

G. **Overall Proposal (5 points maximum):** Overall organization and clarity of proposal; responsiveness to all items requested to be in the written proposal.

2. **Oral Interview/Presentation:** The Selection Committee will conduct oral interviews of each selected proposer. Prior to the interviews, SFMTA will notify the selected

proposer in writing as to the time and length of the interview and the general format of the interview. The Selection Committee will evaluate the oral interview and presentation based on the following criteria:

H. Oral Interview/Presentation (50 points maximum): The Selection Committee will consider the proposer's overall presentation, communication skills, and ability to explain and answer questions from the Selection Committee regarding the Proposer's written proposal. The Selection Committee will score the Oral Interview/ Presentation based on the same criteria on which the written proposals were evaluated.

V. Schedule

A. Pre-Proposal Conference

A pre-proposal conference will be held at the time and place stated below to discuss the proposed contract and to answer any questions concerning the RFP, SBE/Nondiscrimination Requirements, and other City requirements. Although attendance at the pre-proposal conference is not mandatory, all prospective consultants and sub-consultants are urged to attend this conference.

The Pre-Proposal Conference will be held on:

July 29, 2008 at 10:00 am
700 Pennsylvania Avenue
Building D Conference Room
San Francisco, California 94107

SFMTA will keep a record of all parties who request and receive copies of the RFP. Any requests for information concerning the RFP, whether submitted before or after the pre-proposal conference, must be in writing, and any substantive replies will be issued as written addenda to all parties who have requested and received a copy of the RFP. Questions raised at the pre-proposal conference may be answered orally. If any substantive new information is provided in response to questions raised at the pre-proposal conference, it will also be memorialized in a written addendum to this RFP and will be distributed to all parties that received a copy of the RFP. No questions or requests for interpretation will be accepted within 15 calendar days prior to proposal due date.

B. Schedule

The anticipated schedule for selecting a consultant is as follows:

<u>Proposal Phase</u>	<u>Date</u>
RFP is advertised and issued by the City	June 20, 2008

Pre-proposal conference	July 29, 2008
Deadline for submission of written questions or requests for clarification	August 13, 2008
Proposals due	August 28, 2008
Contract Review Period	August 28, 2008 – September 12, 2008
Contract Award	October 21, 2008

VI. Terms and Conditions for Receipt of Proposals

A. Errors and Omissions in RFP; Requests for Information or Clarification

Proposers are responsible for reviewing all portions of this RFP. Proposers must notify SFMTA promptly, in writing, if the Proposer discovers any ambiguity, discrepancy, omission, or other errors in the RFP. Any such notification should be directed to SFMTA promptly after discovery, but in no event later than fifteen (15) calendar days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

Questions regarding this RFP should be addressed in writing to:

Ms. Trinh Nguyen, Project Manager
 MTA Operation Engineering Section
 700 Pennsylvania Ave
 San Francisco, California 94107
 (415) 401-3113 phone
 (415) 701-3270 fax

Questions sent via facsimile transmission are acceptable; however, it is the responsibility of the sender to ensure that the transmission was sent properly. SFMTA will send responses in writing, along with all the questions received, to all official recipients of this RFP. All questions must be received by SFMTA no later than 5:00 pm fifteen (15) calendar days prior to the proposal due date. SFMTA may or may not respond to questions received after that time.

Addendum / Addenda

SFMTA may modify the RFP prior to the proposal due date by issuing written addenda. Addenda will be sent via regular, first class U.S. mail to the last known business address of each firm listed with SFMTA as having received a copy of the RFP for proposal purposes. SFMTA will make reasonable efforts to notify Proposers in a timely manner of modifications to the RFP. Notwithstanding this provision, the Proposer shall be responsible for ensuring that its proposal reflects any and all addenda issued by SFMTA prior to the proposal due date regardless of when the proposal is submitted. Therefore, SFMTA recommends that Proposers call SFMTA to verify, prior to submitting a proposal, whether an addendum or addenda have been issued.

For information, call Ms. Rosa Rankin at 415-401-3107.

C. Reservation of Rights by City

SFMTA reserves the right to cancel this RFP at any time without liability prior to execution of the contract. The issuance of this RFP does not constitute an agreement by the City that any contract will actually be entered into by the City and/or SFMTA. The City and SFMTA expressly reserve the right, at any time, to:

1. Waive any defect or informality in any response, proposal, and proposal procedure;
2. Reject any or all proposals;
3. Accept any proposals in whole or in part;
4. Reissue a Request for Proposals;
5. Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
6. Procure any service specified in this RFP by any other means; or
7. Determine that no project/contract will be pursued.

D. Award and Certification Required

In accordance with San Francisco Administrative Code Chapter 6, no proposal may be accepted and no contract in excess of \$100,000 may be awarded by the City and County of San Francisco until such time as (a) the Executive Director/CEO recommends the Contract for award and (b) the San Francisco Municipal Transportation Agency adopts a resolution awarding the Contract. Pursuant to Charter Section 3.105, all contract awards are subject to certification by the Controller as to the availability of funds.

E. Objections to RFP Terms

Should a Proposer object on any ground to any provision or legal requirement set forth in this RFP, the Proposer must, not more than ten calendar days after the RFP is issued, provide written notice to the SFMTA setting forth with specificity the grounds for the objection. The failure of a Proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

F. Errors and Omissions in Proposal

Failure by the SFMTA to object to an error, omission, or deviation in the proposal will in no way modify the RFP or excuse the Proposer from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

Financial Responsibility

The City accepts no financial responsibility for any costs incurred by a firm in responding to this RFP. Submissions in response to the RFP will become the property of the City and may be used by the City in any way deemed appropriate.

Small Business Enterprise (SBE)/Non-Discrimination Requirements

The following information is provided to assist the Proposers in the preparation of proposals. Please also see Appendix 2 for a description of SFMTA's SBE program, along with all forms required for submittal of proposals and for use by the Proposer.

1. Policy

The SFMTA is committed to a Small Business Enterprise ("SBE") Program for the participation of SBEs in contracting opportunities. The SFMTA is also committed to comply with the federal regulations in 49 CFR Part 26, issued March 4, 1999, as amended from time to time (the "Regulations"). The Regulations are incorporated into the SBE Program as though fully set forth herein. It is the intention of the SFMTA to create a level playing field on which SBEs can compete fairly for contracts and subcontracts relating to the procurement and professional services activities of the SFMTA.

2. Questions

Questions concerning SBE/Non-Discrimination Requirements should be addressed to:

Ms. Naomi Steinway
Contract Compliance Officer
Municipal Transportation Agency
Contract Compliance Office
1 South Van Ness, 3rd Floor
San Francisco, CA 94103
Telephone: (415) 701-4363

3. Non-Discrimination in Employment

SFMTA will evaluate the proposer's response to the Questionnaire on Recruitment, Hiring, and Training Practices (MTA SBE Form No. 3) to determine whether the proposer is in compliance with the Nondiscrimination Requirements.

Should SFMTA deem it necessary, the SFMTA will seek a written commitment from the proposer to use good faith efforts to provide equal employment opportunities during the term of the contract. One measure of such a commitment would be comparing utilization of women and minorities with the relevant labor market in order to improve parity between the composition of the proposer's workforce and the available labor market. The proposer may be required to provide the SFMTA with the relevant data regarding its labor market.

4. SBE Goal

The Contract Compliance Office has established a twenty-five percent (25%) SBE participation goal for this contract. Small business firms may qualify for this program by enrollment in either the State of California's Small Business Program, the federal DBE program, or the City and County of San Francisco's LBE program. This SBE goal will apply to the following types of contracts or scope of work in the contract: Computer Programming and Design; Architecture and Engineering Services, Drafting (design services); Landscape Architecture; Building Inspection; Public Relations; Telecommunications; Merchant Wholesalers, Durable Goods, and Machinery and Equipment Rental (construction) ("SBE Work").

To be determined responsive, a proposer must demonstrate in its submittal that it will meet this goal in the performance of this contract; or if it is unable to meet the goal, the proposer must submit documentation (MTA Form 2 – SBE Consultant/Sub-consultant – Good Faith Efforts) with its proposal that it performed good faith efforts, prior to submission of the bid or proposal, to meet this goal. A proposer that is not responsive shall be ineligible for award of the contract.

I. Nondiscrimination In City Contracts-Benefits Ordinance

1. Chapter 12B and 12C of the Administrative Code are incorporated by reference as though fully set herein. Chapter 12B and 12C prohibit discrimination by city contractors in employment, the use of property and the provision of employee benefits.

a. Please refer to the Non-discrimination Program mandated by Chapter 12B of the San Francisco Administrative Code. Documentation regarding Charter 12B and compliance must be on file with or submitted to the CCSF Human Rights Commission (HRC). For further information, contact Mr. Yong K. Lee at (415) 252-2514.

b. The successful Consultant must agree to abide by the following standard contract provisions regarding Chapter 12B and 12C.

2. Nondiscrimination; Penalties

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

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

c. Nondiscrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations within the United States, discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract. As a condition to this Agreement, Contractor shall execute the "Nondiscrimination in Contracts and Benefits" form and secure the approval of the form by the SF Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 12B and 12C of the San Francisco Administrative Code are incorporated by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under Chapter 12B and 12C of the Administrative Code, including but not limited to remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payment due Contractor.

San Francisco Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFPs and all other records of communications between the 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 benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

Public Access to Meetings and Records

If a consultant is a non-profit entity that 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, the consultant must comply with the reporting requirements of that Chapter. The consultant must include in its Proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to consultant's meetings and records, and (2) a summary of all complaints concerning the consultant's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the consultant shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in consultant's Chapter 12L submission shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

L. Proposer's Obligations under the Campaign Reform Ordinance

Proposers must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the proposer is prohibited from making contributions to:

- the officer's re-election campaign
- a candidate for that officer's office
- a committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

1. Criminal. Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
2. Civil. Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. Administrative. Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

M. Resource Conservation

All documents submitted in response to this RFP must be on recycled paper and printed on double-sided pages to the maximum extent possible unless otherwise required herein.

N. San Francisco Business Tax Certificate

San Francisco Ordinance No. 345-88 requires that, in order to receive an award, a firm located in San Francisco or doing business in San Francisco must have a current Business Tax Certificate. Since the work contemplated under the proposed Agreement will be performed in San Francisco, a San Francisco Business Tax Certificate will be required. The Business Tax Declaration (Appendix 4) should be completed and submitted with the proposal.

O. Certification Regarding Lobbying

All prospective consultants are required to complete and submit along with their proposals, the certification form in Appendix 6 regarding lobbying. The same certification shall be obtained and submitted from all lower tier participants (sub-consultants, suppliers, etc.) with work greater than \$100,000.

P. Certification Regarding Debarment, Suspension, and Other Responsibility Matters – Lower Tier Covered Transactions (Third Party Contracts over \$25,000)

This contract is covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or Consultant certifies as follows:

The certification in this clause is a material representation of fact relied upon by the San Francisco Municipal Transportation Agency (“SFMTA”). If it is later determined that the bidder or Consultant knowingly rendered an erroneous certification, in addition to remedies available to the SFMTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or Consultant agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or Consultant further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Notification of Limitations on Contributions

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

A party to any contract awarded under this solicitation must acknowledge that it understands that any public official who approves this contract may not accept campaign contributions, gifts, or future employment from the Contractor except as provided under the Conduct Code. The contractor must agree to notify any other individuals or entities that may be deemed “public benefit recipients” under the Conduct Code because of this contract.

Upon request, the contractor must further agree to furnish, before the contract is entered into, such information as any public official approving this contract may require in order to ensure such official's compliance with the Conduct Code. Upon request, the City will agree to provide, before the contract is entered into, a list of public officials who, under the Conduct Code, approve the contract to the contractor. Failure of any public official to abide by the Conduct Code will not constitute a breach by either the contractor or the City of the contract. Neither party to the contract will have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

No Waiver

No waiver by the City of any provision of this RFP shall be implied from any failure by the City to recognize or take action on account of any failure by a Proposer to observe any provision of this RFP.

VII. CITY CONTRACT REQUIREMENTS

Agreement For Professional Services

The successful Consultant shall be required to enter into a contract substantially in the form of the Agreement for As-Needed Specialized Engineering Services, attached hereto as Appendix 3. Failure to timely execute the contract, or to furnish any and all certificates, bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

Proposers should pay special attention to the requirements of the Minimum Compensation Ordinance (§43 in the Agreement), the Health Care Accountability Ordinance (§44 in the Agreement), the First Source Hiring Program (§45 in the Agreement), and FTA requirements for personal services contracts, as set forth in Sections 7.2, 7.3, 7.4, and Exhibit A of the Agreement for As-Needed Specialized Engineering Services.

B. Minimum Compensation Ordinance (MCO)

The successful proposer will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements. For the contractual requirements of the MCO, see §43 of the Form Agreement appended to this RFP.

For the amount of hourly gross compensation currently required under the MCO, see www.sfgov.org/olse/mco. Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract.

Additional information regarding the MCO is available on the web at www.sfgov.org/olse.

C. Health Care Accountability Ordinance (HCAO)

The successful Proposer shall be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Proposers should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at www.sfgov.org/purchase/hcao.htm.

D. First Source Hiring Program

If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) may apply. Generally, this ordinance requires contractors to notify the First Source Hiring Program of available entry-level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment.

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at www.sfgov.org/moed/fshp.htm.

E. Protest Procedures

Any protest must be in conformance with the Protest Procedures as detailed in Appendix 5.

F. FTA Requirements for Personal Services Contracts

These requirements are set forth in Exhibit E of the Agreement for As-Needed Specialized Engineering Services. The successful Consultant will be required to comply with all FTA contracting requirements.

VIII. APPENDICES

The following appendices accompany this RFP and are incorporated thereto by reference:

1. SFMTA Form PM3
2. Sample Contract Agreement with Exhibits
3. Business Tax Declaration
4. Protest Procedures
5. Certification Regarding Lobbying
6. Attestation of Compliance
7. Nondiscrimination In Contracts And Benefits

APPENDIX 1

MTA FORM PM3

SFMTA MUNI FORM PM 3 Architect-Engineer Related Services For Specific Project	1. Project Name/Location for which Firm is Filing:	2. Year Present Firm Established:	3. Date Prepared:
		4. Type of ownership: 4a. Minority Owned yes no	

1. Firm (or Joint-Venture) Name & Address:	5. Name, Title & Telephone Number of Principal to Contact
1a. Submittal is for <input type="checkbox"/> Parent Company <input type="checkbox"/> Branch or Subsidiary Office	5a. Address of office to perform work, if different from Item 1

6. Name of Parent Company, if any:	6a. Former Firm Name(s), if any, and Year (s) Established:
------------------------------------	--

7. Present Offices: City/State/Telephone No./Personnel Each Office	7a. Total Personnel _____
--	---------------------------

8. Personnel by Discipline:			
_____ Administrative	_____ Electrical Engineers	_____ Oceanographers	
_____ Architects	_____ Estimators	_____ Planners:Urban/Regional	
_____ Chemical Engineers	_____ Geologists	_____ Sanitary Engineers	
_____ Civil Engineers	_____ Hydrologists	_____ Soils Engineers	
_____ Construction Inspectors	_____ Interior Designers	_____ Specification Writers	
_____ Draftsman	_____ Landscape Architects	_____ Structural Engineers	
_____ Ecologists	_____ Mechanical Engineers	_____ Surveyors	
_____ Economists	_____ Mining Engineers	_____ Transportation Engineers	_____ Total Personnel

9. Brief Resume of Key Persons, Specialists, and Individual Consultants Anticipated for the Project	
a. Name & Title:	a. Name & Title:
b. Project Assignment:	b. Project Assignment:
c. Name of Firm with which associated:	c. Name of Firm with which associated:
d. Years experience: With This Firm_____ With Other Firms_____	d. Years experience With this Firm:_____ With Other Firms_____
e. Education: Degree(s)/Years/Specialization	e. Education: Degree(s)/Years/Specialization
f. Active Registration: Year First Registration/Discipline:	f. Active Registration: Year First Registration/Discipline:
g. Other Experience and Qualifications relevant to the proposed project::	g. Other Experience and Qualifications relevant to the proposed project:

10. Outside Key Consultants/Associates Anticipated for this Project (Attach PM3 for Consultants/Associates Listed, if not already on file with the SFMTA)

Name & Address	Specialty	Worked with Prime before (Yes or No)
1)		
2)		
3)		
4)		
5)		
6)		
7)		
8)		
9)		

11. Use this space to provide any additional information or description of resources supporting your firm's qualifications for the proposed project
(Attach additional sheets if more space is needed)

12. If submittal is by Joint-Venture, list participating firms and outline specific areas of responsibility (including administrative, technical and financial) for each firm:
(Attach PM3 for each if not on file with MTA)

13. Use this space to provide any additional information or description of resources supporting your firm's qualifications for the proposed project
(Attach additional sheets if more space is needed)

14. If submittal is by Joint-Venture, list participating firms and outline specific areas of responsibility (including administrative, technical and financial) for each firm:
(Attach PM3 for each if not on file with MTA)

15. Work by Firm or Join Venture which Best Illustrates Current Qualifications Relevant to this Project (List not more than 10 projects)

a. Project Name & Location	b. Nature of Firm's Responsibility Responsible Individual	c. Owner's Name & Address	Completion Date (Actual or Estimated)	e. Estimated Cost (In thousands) Entire Project	work for which firm was/is responsible
1)					
2)					
3)					
4)					
5)					
6)					
7)					
8)					
9)					
10)					
11)					
12)					

The foregoing is a statement of facts.

Signature: _____ Typed Name and Title _____

Date: _____

APPENDIX 2

SAMPLE CONTRACT AGREEMENT WITH EXHIBITS

APPENDIX 2

SAMPLE

AGREEMENT BETWEEN

CITY AND COUNTY OF SAN FRANCISCO

MUNICIPAL TRANSPORTATION AGENCY

AND

XXXXXXXXXXXXXXXXXX

FOR

AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR

SFMTA RAIL VEHICLE PROJECTS

CONTRACT NO. CS-900

CCO NO. 08-1001

OR

AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR

SFMTA RUBBER TIRE VEHICLE PROJECTS

CONTRACT NO. CS-901

CCO NO. 08-1014

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

AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND

This Agreement is made this [insert day] day of [insert month], 20 [insert year], in the City and County of San Francisco, State of California, by and between: [insert name and address of Consultant] ("Consultant"), and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency ("MTA").

Recitals

A. The Transportation Planning and Development Division of the MTA provides the professional and technical services required to implement capital and other projects of the San Francisco Municipal Railway ("Muni").

B. The Agency wishes the services of a consulting firm to provide as-needed specialized engineering services in support of the MTA's various projects.

C. On XXXX X, 2008, the SFMTA Board of Directors ("SFMTA Board") adopted Resolution No. XX-XXX, which authorized the Executive Director/CEO to issue and advertise a Request for Proposals for as-needed specialized engineering services.

D. Consultant submitted a proposal in response to the Request for Proposals and the SFMTA successfully concluded contract negotiations with the Consultant.

E. On _____, the SFMTA Board adopted Resolution No. _____, authorizing the Executive Director/CEO to award and execute this Agreement with Consultant for said services.

F. Consultant represents and warrants that it is qualified to perform the services required by City as set forth under this Contract.

G. Approval for said Agreement was obtained from Civil Service Commission by PSC No. _____, dated _____.

Now, THEREFORE, the parties agree as follows:

Definitions

A/E Services are the professional services of an architectural or engineering nature, as defined by State law, if applicable, that are required to be performed or approved by a person licensed, registered or certified to provide those services.

Agreement or Contract refers to this Agreement for As-Needed Services and all referenced Exhibits to this Agreement.

Award means authorization by resolution of the SFMTA Board of Directors for its staff to execute the Contract with the selected proposer, and (where required) approval of the Contract by the San Francisco Board of Supervisors. .

City means the City and County of San Francisco, acting through the SFMTA.

Controller means the Controller of the City.

Branch Office is a geographically distinct place of business or subsidiary office of a firm that has a key role on the project team.

Consultant is _____.

Contract Compliance Office (CCO) is the SFMTA office that administers compliance with federal regulations governing the Disadvantaged Business Enterprises/Equal Employment and Non-Discrimination Programs, in addition to the Small Business Enterprise Program, and the

City's Human Rights Commission's Local Business Enterprise/Non-Discrimination Program. The Contract Compliance reference numbers for this RFP is CCO No. 08-1001 and 08-1014. (Is this the correct number?)

Contract Manager (CM) refers to the SFMTA Manager responsible for overseeing contractual administration of the Contract, to include review and approval of invoices, review and approval of all contractual actions and Contract interpretation.

Days refers to working days of the City and County of San Francisco (unless otherwise indicated). The use of the term "days," "working days" or "business days" in this Request for Proposals shall be synonymous.

Department of Parking and Traffic (DPT) refers to the former Department of Parking and Traffic division of the SFMTA.

Discipline includes the area of primary technical capabilities of key personnel, as evidenced by academic degrees, professional registration, certification, and/or extensive experience.

Executive Director/CEO refers to the Executive Director/CEO of the SFMTA.

Federal Transit Administration (FTA) is an operating administration of the U.S. Department of Transportation.

Key Personnel are those participants on a project who contribute in a substantive, measurable way to the projects development.

Municipal Transportation Agency ("SFMTA" or "Agency") is the agency of the City that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the San Francisco Municipal Railway and the Department of Parking and Traffic,

and has exclusive authority over contracting, leasing and purchasing by the Municipal Railway and the Department of Parking and Traffic, subject to certain restrictions of the City's Charter. The Agency acts through its Board of Directors.

Notice to Proceed; NTP refers to a letter from the SFMTA advising the Consultant of the day when work is to commence on the Project or a phase of the Project.

Project Manager / Project Engineer: The designated SFMTA employee who will assume all duties and responsibilities and have the right and authority assigned to the Project Manager in the Contract in connection with completion of Work in accordance with the Contract.
Proposal refers to the Consultant's written response/submittal to the RFP.

Request for Proposals; RFP refers to the Request for Proposals for As-Needed Specialized Engineering Services, issued by the SFMTA on _____.

Revenue Fleet is a SFMTA fleet of vehicles providing transit or transportation services to fare-paying customers.

San Francisco Bay Area refers to the area within the nine Bay Area counties as currently defined by the Association of Bay Area Governments ("ABAG"), which are Alameda County, Contra Costa County, Marin County, Napa County, San Francisco County, San Mateo County, Santa Clara County, Solano County, and Sonoma County.

San Francisco Municipal Railway ("Muni") refers to the San Francisco Municipal Railway division of the SFMTA.

Scope of Services are the services, tasks, and deliverables that the Consultant will provide to the SFMTA under this Contract.

Small Business Enterprise or SBE is 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").

Subconsultant refers to any firm under contract to the Consultant for services under this Agreement.

Turnkey refers to a system of hardware and software delivered ready to operate.

Work Product includes, but is not limited to, all reports, studies, data, specifications, design criteria, graphs, tape recordings, pictures, memoranda, letters, computer-generated data, calculations, estimates, summaries and such other information and materials as may have been accumulated or generated by the Consultant or its subconsultants, in connection with the services performed under this Agreement, whether completed or in process.

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

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

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

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

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

Term of the Agreement

- a. Term Subject to Section 2, the term of this Agreement shall be five (5) years from the Effective Date of the Agreement.
- b. Effective Date. This Agreement shall become effective when the Controller has certified to the availability of funds for the first Task Order issued.

Services Consultant Agrees to Perform

- c. Scope of Agreement. The Consultant agrees to perform the services provided for in Exhibit A, "Services to be Provided by Consultant," attached hereto and incorporated by reference as though fully set forth herein.
- d. Priority of Documents. All requirements of the RFP and the representations made in the Consultant's Proposal that are not in conflict with provisions of this Agreement are incorporated by reference and made an integral part of this Agreement as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or Consultant's 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 or Proposal shall control. Documents listed as Exhibits to this Agreement are incorporated by reference as though fully set forth herein.
- e. Information and Data The Consultant shall request in writing any information and data it will require to perform task orders. The Consultant shall identify the timing and priority for which this information and data will be required. The Consultant and City shall reach agreement as to the availability and delivery time for this data and information during initial task negotiations.
- f. Presentations. In the performance of assigned tasks, the Consultant, if requested by City, shall prepare graphic and written presentations, and participate in presentations of said material to various City departments, commissions, and interested community groups.
- g. Compliance with Laws. Consultant shall comply with requirements of all applicable codes, regulations, and current written interpretation thereof published and in effect during Consultant's services. In the event of changes in such codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by Consultant and which result in a substantive change to the construction documents, Consultant

shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of responding to such changes. Consultant shall be responsible, however, to identify, analyze and report to the City pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including changes to the California Building Codes and San Francisco Building Code to adopt provisions of the International Building Code and other amendments.

- h. Task Requirements. Task requirements will be defined by the SFMTA. The cost and estimated time to perform the task fully will be agreed upon in advance of the start of work on the task in accordance with the terms and conditions of this Agreement, generally following the procedures outlined below.
 - i. Scope of Work. SFMTA will prepare the scope of work and expected time of completion, using the Task Order form (Exhibit B) and transmit the Task Order form to the Consultant with a request for a proposal for the performance of the task.
- ii. Consultant Proposal. The Consultant shall prepare and submit a proposal for the task to the Contracting Section showing:
 1. A detailed description by subtask of the work to be performed and the means and methods that will be used to perform it;
 2. Milestones for completion for each subtask and deliverables at each milestone;
 3. Personnel and the sub-consultants assigned to each part of the work along with a justification as to why such personnel are qualified to perform the work; and prior experience in performing work of this nature;
 4. A detailed cost estimate for each task or subtask showing:
 - Estimated hours and direct salaries by position (hourly rates by position as listed in Exhibit C for both Consultant and subconsultant personnel);
 - Overhead, including salary burden costs (% rates as listed in Exhibit D) for both Consultant and subconsultants; to arrive at this cost, the overhead rate is multiplied by the cost in (1) above;
 - Estimated reasonable out-of-pocket expenses;
 - Proposed profit as follows:
 - Proposed profit of Consultant's work effort as fixed fee amount not to exceed ten percent (10%) of Consultant's estimated direct salaries and overhead costs; and
 - For work performed by all subconsultants, proposed total profit for Consultant and subconsultant on subconsultant's work effort as fixed fee not to exceed twelve percent (12%) of sub-consultant's estimated direct salaries and overhead costs.
- iii. Negotiation of Cost and Profit. The Contracting Section will review the proposal and negotiate either a lump sum price or a fixed profit to perform the work of each subtask and task and either a total price or a total cost not to exceed for the task.
- iv. Record of Negotiations. If agreement is reached, the Contracting Section will document the negotiations and agreement in a Record of Negotiations and obtain the approval of Director of Transportation Planning and Development Division of the agreement as defined in the Record of Negotiations.
- v. Controller Certification. Upon approval of the Director of Transportation Planning and Development, the Contracting Section will request certification from the Controller that adequate funds are available to proceed with the task as agreed.
- vi. Notice to Proceed. After certification, the Contracting Section will send to the Consultant a written NTP and Task Number. The Consultant is required to use the task number when

submitting invoices to the Contracting Section for payment. The Consultant shall not commence work on any task until it receives a written NTP for the task.

- vii. **Changes.** Agreed lump sum prices and fixed profits for subtasks and tasks above cannot be modified unless there is a material change in the scope of work of the task. If there is a material change in the scope of work of a task, then a proposal, negotiations, Record of Negotiations and approval of the Record of Negotiations by the Director of Transportation Planning and Development shall be required before changes to agreed lump sum prices and fixed profits can be approved. Certification by the Controller is required for changes that result in an increase to the total cost of a task.
- viii. **Failure to Agree on Terms of Task.** In the event that City and Consultant cannot reach agreement on the terms of the task order, City may either cancel the task order and have the work accomplished through other available sources, or City may direct the Consultant to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances may the Consultant refuse to undertake a City-ordered task.
 - i. **Key Team Members.** Work under this Agreement shall be performed only by competent personnel under the supervision of and/or in the employment of Consultant. The Consultant agrees that the following key team members shall be committed and assigned to work on the Project to the level required by SFMTA for the term of the Agreement and shall also be staffed at the local Consultant offices within the San Francisco Bay Area for all such time:
[insert names].

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

- j. **Current Workload and Available Resources.** The Consultant covenants that its current workload and the workload of its subconsultants will not affect the commencement and the progress of the work under this Agreement. The Consultant shall have all the necessary professional, technical and support personnel, including those of the subcontractors, available, ready and mobilized to perform actual work within two (2) weeks of the receipt of NTP on a particular task. In addition, the Consultant shall make good faith efforts to have all contracts signed with subcontractors within three (3) weeks of NTP. Consultant shall provide copies of said subcontracts to the SFMTA upon request.
- k. **Information and Data.** The Consultant shall request in writing any information and data it will require from the Agency for its work. The Consultant shall identify the timing and priority for which this information and data will be required in its draft Program Management/Implementation Plan. The Consultant and Agency shall reach agreement as to the availability and delivery time for this information and data prior to finalizing the Plan.
- l. **Transmittal of Work Product.** When requested by Agency's Project Manager, and after completion of each task and subtask, the Consultant shall transmit to Agency all Work Product (duplicates and originals) produced or accumulated in the course of its and its subconsultant's work on this Agreement. The Consultant's Project Manager and Key Personnel shall have thoroughly reviewed and approved all Work Product and signed off as such prior to transmitting them to Agency.
- m. **Reproduction of Work Product.** The Consultant shall arrange and provide for all printing (or other required reproduction) of Work Product.
- n. **Agency's Responsibilities Regarding Submittals.** Agency will review and comment on Consultant's submittals generally within four calendar weeks of submittal. The Agency and Consultant will establish a timetable of submittals and reviews in the initial coordination meetings and include such a timetable in the Program Management/Implementation Plan.

Agency's review and comments of Consultant submittals shall in no way relieve the Consultant of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the Agency relieve the Consultant of its independent responsibility to provide submittals and deliverables in full compliance with local, state and federal codes, regulations and standards.

If Consultant considers certain Agency review comments or directives, either written or oral, to require work efforts not included in approved Program Management/Implementation Plan, the Consultant shall provide Agency with either a written request for clarification of intended work or a proposal to proceed with additional work within five (5) working days of discovering the perceived extra work, in strict accordance with procedures in Section 4.E (Extra Work) of this Agreement.

Compensation

o. Amount. Compensation under this Agreement shall be based on either a negotiated lump sum price per task or subtask, or actual direct costs plus a negotiated fixed profit per subtask and task. In no event shall the amount of this Agreement exceed XXX Million Dollars (\$X,000,000).

p. Method of Computing Compensation.

- i. Direct Labor Rates. The direct labor rates in Exhibit C shall be fixed at that level until 12 months after effective date of this Agreement. Direct Salary Rates in Exhibit C may be adjusted 12 months after the effective date of this Agreement but the average increase shall be no more than the Consumer Price Index (CPI). The CPI shall be defined as the Consumer Price Index for San Francisco-Oakland-San Jose, All Items, 1982-84=100 for All Urban Consumers. Any individual salary adjustments above five percent (5%) will require prior written approval from the Director of Transportation Planning and Development Division.
- ii. Overhead. The Consultant's compensation under this Agreement will be based on and shall not exceed the combined overhead and salary burden rates as shown on the Schedule of Overhead Rates attached as Exhibit D. The rates in Exhibit D may be adjusted annually with prior written approval from the Director of Transportation Planning and Development. The Consultant's and subconsultants' combined overhead and salary burden rates are subject to audit in compliance with Federal requirements.

The overhead rates attached as Exhibit D, including any adjustment to such rates as provided for above, are subject to reimbursement as described in this paragraph. Within one hundred eighty (180) days of the end of Consultant's fiscal year that immediately follows the expiration or any earlier termination of this Agreement, Consultant shall submit to the SFMTA Liaison, Consultant's and all sub-consultants' actual rates during the term of this Agreement. For each rate paid to the Consultant that exceeds the Consultant's or any sub-consultant's actual rate, the Consultant shall reimburse to the City the total difference between the rate paid and Consultant's or sub-consultant's actual rate during the term of this Agreement. Consultant shall reimburse City within thirty (30) days of written notice from City seeking reimbursement. For each actual overhead rate of Consultant or sub-consultant that exceeds the rate paid to Consultant, City shall pay to Consultant the difference between the actual rate and the rate paid during the term of the Agreement. City shall reimburse Consultant within sixty (60) days of City's receipt of all of Consultant's actual rates. Nothing in this paragraph shall limit City's right to audit and inspect Consultant's rates as provided above.

- iii. Reimbursable Costs. The Consultant states it is familiar with the provisions of Office of Management and Budget (OMB) Circular A-87, Cost Principles For State, Local, and Indian Tribal Governments; that it understands the City does not intend to pay the Consultant for costs under this Agreement which are not reimbursable to City from its funding agencies in accordance with Circular A-87; and that all payments under this Agreement are subject to audit and adjustment.

- iv. **Out-of-Pocket Expenses.** The SFMTA will reimburse Consultant for the actual cost of approved out-of-pocket expenses for the prime Consultant and subconsultants. Compensation for materials and expenses shall be at direct cost, without any mark-ups.
- v. **Non-Reimbursable Expenses.** Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses will not be tracked or reimbursed separately as out-of-pocket costs. Consultant and subconsultant personnel relocation costs and entertainment or personal expenses of any kind will not be reimbursable under this Contract. Office and field supplies/equipment expenses will also not be reimbursable unless these supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for this Project. Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis as listed in Exhibit ____ will also not be reimbursable by the SFMTA under this Contract.
- vi. **Use of Public Transportation.** San Francisco is a transit-first city, and the SFMTA encourages Consultant and subconsultants to use public transit in performance of its services to the maximum extent possible. The SFMTA will closely review the Consultant's requests for reimbursement of travel expenses. Travel from and to airports must be by public transit to the maximum extent possible. Taxicabs and hired cars are not considered public transit. The City reserves the right to refuse to reimburse travel expenses that are not in accord with these policies.

Payment

q. General. No charges shall be incurred under this Agreement nor shall any payments become due to Consultant until reports, services, or both, required under this Agreement are received from Consultant and approved by the SFMTA as being in accordance with this Agreement. City may withhold payment to Consultant in any instance in which Consultant has failed or refused to satisfy any material obligation provided for under this Agreement. If the evidence of production, the quality of the work, or relationship of labor and costs expended are not consistent with the budgets and the schedules for an assigned task, the Consultant shall justify to the Agency's Project Manager the time and expenses invoiced. The Project Manager will review the justification offered and adjust the monthly payment as deemed necessary. These requirements shall also apply to work by subconsultants.

r. Invoices.

- i. **Form of Invoice.** Invoices furnished by Consultant under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. The Consultant shall submit invoices in quadruplicate for all allowable charges incurred in the performance of the Agreement. No invoice shall be rendered if the total work done under this Agreement since the last invoice amounts to less than Fifteen Hundred Dollars (\$1,500), except that an invoice may be submitted if three (3) months have elapsed since the last invoice was submitted. No more than one invoice shall be submitted in a month.
- ii. **Progress Payment Form.** The Controller is not authorized to pay invoices submitted by Consultant prior to Consultant's submission of the MTA Progress Payment Form. If the Progress Payment Form is not submitted with Consultant's invoice, the Controller will notify the MTA and Consultant of the omission. If Consultant's failure to provide the MTA Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold twenty percent (20%) of the payment due pursuant to that invoice until the MTA Progress Payment Form is provided..
- s. **Documentation for Payment.** Invoices shall be submitted together with the Monthly Progress Reports, Monthly Cost Control Report and Monthly Update Schedule, and shall be submitted by the 21st day of each month for work performed in the preceding month. The Monthly Cost Control Report shall include the current completed percentages for each task and subtask, the current estimated labor hours and cost for each Discipline to complete each of the tasks, an itemized breakdown of dollars and hours by employee and by subtask for all prime and subconsultant charges for the month being invoiced (accounting for a minimum of 28 calendar days of the month), and an itemized breakdown of out-of-pocket expenses by task incurred since the previous billing, along with copies of bills of materials and expenses incurred. Failure to

submit a complete Monthly Cost Control Report, Monthly Updated Schedule and Monthly Progress Report by the due date shall constitute cause for suspension of invoice payments.

In addition to the above, the Agency's Project Manager may, prior to authorization for payment of invoices, require delivery of either a complete or partial set of current Work Products as evidence of the status of the Consultant's work.

t. Payment of Invoices.

i. Monthly Payments. Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Appendix B of this Agreement, that the Executive Director/CEO of the SFMTA, in his sole discretion, concludes has been performed as of the last day of the immediately preceding month in accordance with the performance milestones and work delivery schedule attached to this Agreement as Appendix B. City shall make payment to Consultant at the address specified in the section entitled "Notices to the Parties." All amounts paid by City to Consultant shall be subject to audit by City.

ii. Final Payment. Upon receipt of the final invoice for the completion of the services set forth in Section 4, and after services have been certified by Agency's Project Manager as having been satisfactorily performed, City shall promptly, but in no event later than forty-five (45) calendar days after the receipt of the last invoice, pay Consultant the balance of any allowable costs incurred in the performance of services of this Agreement.

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

u. Payment of Subconsultants. Following City's payment of an invoice, Consultant has ten (10) days to file an affidavit using SFMTA's Payment Affidavit verifying that all subconsultants have been paid and specifying the amount.

Guaranteed Maximum Costs

v. 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.

w. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Consultant for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

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

y. 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.

Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code sections 6.80 to 6.83 and section 21.35, any Consultant or subconsultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A Consultant or subconsultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A Consultant or subconsultant will be deemed to have submitted a false claim to the City if the Consultant or subconsultant: (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.

Disallowance

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

Taxes

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

aa. **Possessory Interest.** Consultant 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 Consultant to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

- i. Consultant, on behalf of itself and any permitted successors and assigns, recognizes and understands that Consultant, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
- ii. Consultant, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Consultant accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
- iii. Consultant, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Consultant accordingly agrees on behalf of it 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.
- iv. Consultant further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.
- v. Consultant shall provide a San Francisco Business Tax Registration to the SFMTA in order for the City to certify this Agreement.

Payment Does Not Imply Acceptance of Work

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

Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Consultant or its subconsultants. Consultant's personnel and subconsultants shall comply with the licensing requirements of the State of California in their respective professional fields. Persons employed by Consultant and its subconsultants who are not subject to licensing requirements of California law are exempt from the requirements of this Section 12. Consultant will comply with City's reasonable requests regarding assignment of personnel, but Consultant must supervise all personnel, including those assigned at City's request.

Equipment

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

cc. Ownership of Equipment. Any equipment vehicles, computer programs (software licenses and media), and the like, purchased by the Consultant or its subconsultants in connection with services to be performed under this Agreement shall become property of and will be transmitted to the MTA at the conclusion of the Consultant's services under the Agreement.

Independent Contractor; Payment of Taxes and Other Expenses

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

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

ee. 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 Consultant 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 Consultant 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 Consultant for City, upon notification of such fact by City, Consultant shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Consultant under

this Agreement (again, offsetting any amounts already paid by Consultant which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Consultant shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Consultant is an employee for any other purpose, then Consultant 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 Consultant was not an employee.

Insurance

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

- i. Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident injury or illness; and
 - ii. Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
 - iii. 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.
- iv. Professional liability insurance as follows:
1. From the effective date of this Agreement, each partner of the joint association constituting the Consultant shall maintain professional liability insurance coverage with limits not less than \$1,000,000 each claim/annual aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement. Such insurance shall be maintained a claim reporting period for a period not less than three (3) years following completion of services.

gg. Requirements of Insurance Policies. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

- i. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- ii. 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.

hh. Notice. All policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent via courier or U.S. Mail, first class, to the following persons:

Ms. Trinh Nguyen
Project Manager
SFMTA Operations Engineering
700 Pennsylvania Avenue
San Francisco, CA 94107-3343

- ii. Claims-Made Form. Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this

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

jj. General Annual Aggregate Limit. 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.

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

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

mm. No Decrease of Liability. Approval of the insurance by City shall not relieve or decrease the liability of Consultant hereunder.

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

Indemnification

oo. General Indemnity. To the fullest extent permitted by law, Consultant shall assume the defense of, indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Consultant or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorney's fees and costs of investigation), that arise directly nor indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Consultant and subconsultant to the Consultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

pp. Limitations

- i. No insurance policy covering Consultant's performance under this Agreement shall operate to limit the Consultant's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.
- ii. Consultant assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnatee or the Consultants of any Indemnatee.
- iii. Consultant's indemnification obligations of claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Consultant's negligence or other breach of duty.

qq. Intellectual Property Infringement. Consultant shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or

employees of articles or services to be supplied in then performance of Consultant's services under this Agreement.

Incidental and Consequential Damages

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

Liability of City

City's payment obligations under this Agreement shall be limited to the payment of the compensation provided for in Section 5 of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall city be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

Standard of Performance

Consultant shall perform all of its services in accordance with generally accepted standards of professional practice in the design and construction administration of projects of similar size and complexity in the San Francisco Bay Area.

Default; Remedies

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

- i. Consultant fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, or 58.
- ii. Consultant fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Consultant.
- iii. Consultant (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 Consultant or of any substantial part of Consultant's property or (e) takes action for the purpose of any of the foregoing.
- iv. A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Consultant or with respect to any substantial part of Consultant'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 Consultant.

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

expenses incurred by City as a result of such Event of Default and any liquidated damages due from Consultant pursuant to the terms of this Agreement or any other agreement.

tt. No Preclusion of Remedies. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

Termination for Convenience

uu. Exercise of Option to Terminate for Convenience. 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 Consultant written notice of termination. The notice shall specify the date on which termination shall become effective.

vv. Duties of Consultant Upon Notice of Termination. Upon receipt of the notice, Consultant shall commence and perform, with diligence, all actions necessary on the part of Consultant to effect the termination of this Agreement on the date specified by City and to minimize the liability of Consultant 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:

- i. Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- ii. Not placing any further orders or subcontracts for materials, services, equipment or other items.
- iii. Terminating all existing orders and subcontracts.
- iv. At City's direction, assigning to City any or all of Consultant'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.
- v. Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- vi. Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- vii. 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 Consultant and in which City has or may acquire an interest.

ww. Invoice for Services Performed. Within 30 days after the specified termination date, Consultant shall submit to City an invoice, which shall set forth each of the following as a separate line item:

- i. The reasonable cost to Consultant, without profit, for all services and other work City directed Consultant 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 Consultant's direct costs for services or other work. Any overhead allowance shall be separately itemized. Consultant may also recover the reasonable cost of preparing the invoice.
- ii. A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (i), provided that Consultant can establish, to the satisfaction of City, that Consultant 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.
- iii. The reasonable cost to Consultant of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

iv. A deduction for the cost of materials to be retained by Consultant, 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.

xx. Non-Recoverable Costs. In no event shall City be liable for costs incurred by Consultant or any of its subconsultants 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).

yy. Deductions. In arriving at the amount due to Consultant under this Section, City may deduct: (i) all payments previously made by City for work or other services covered by Consultant's final invoice; (ii) any claim which City may have against Consultant in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (D); and (iv) 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.

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

Rights and Duties Upon Termination or Expiration

aaa. Survival of Provisions. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 57, and 58.

bbb. Duties Upon Termination. Subject to the immediately preceding subsection (A), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Consultant 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.

Conflict of Interest

Through its execution of this Agreement, Consultant 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. Consultant further acknowledges that it is aware of requirements concerning the filing of Statements of Economic Interest, California Fair Political Practices Commission Form 700, under the requirements of California Government Code section 7300 et seq. and the San Francisco Campaign and Governmental Code section 3.1-102, and that Consultant shall ensure that its employees and subconsultants are aware of those requirements and comply with them.

Proprietary or Confidential Information of City

Consultant understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Consultant may have access to private or confidential information which may be owned, controlled by, or licensed to the City and that such

information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Consultant agrees that all information disclosed by City to Consultant shall be held in confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information, as a reasonably prudent consultant would use to protect its own proprietary data.

Notices to the Parties

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

To MTA: Ms. Trinh Nguyen
Project Manager
SFMTA Operations Engineering Section
700 Pennsylvania Avenue
San Francisco, CA 94107-3343

To Consultant: [insert name of Consultant, mailing address, e-mail address and fax number]

Any notice of default must be sent by registered mail.

Ownership of Work Product

Any interest of Consultant or its Subconsultants, in its Work Product shall become the property of and will be transmitted to City. However, Consultant may retain and use copies for reference and as documentation of its experience and capabilities.

Works for Hire

If, in connection with services performed under this Agreement, Consultant or its subconsultants create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Consultant or its subconsultants under this Agreement are not works for hire under U.S. law, Consultant hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Consultant may retain and use copies of such works for reference and as documentation of its experience and capabilities.

Audit and Inspection of Records

ccc. Access to Records. Consultant agrees to maintain and make available to the City accurate books and accounting records relative to its activities under this Agreement. Consultant will permit the 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 reimbursable expenses and additional services provided on an hourly basis, whether funded in whole or in part under this Agreement.

ddd. Maintenance of Records. Consultant shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later.

eee. Flowdown to Subconsultants. Consultant shall include the provisions of this Section 28 in all sub-agreements between Consultant and its subconsultants giving the City the same rights against the subconsultants. Cancelled checks of payments to subconsultants must be maintained by Consultant and made available to the City upon request.

fff. Audit. The City may initiate an audit under this Agreement by written notice, upon not fewer than seven (7) calendar days.

ggg. Rights of State or Federal Agencies. 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.

Subcontracting

hhh. Approval of City. Consultant is permitted to subcontract portions of the services to be performed under this Agreement only after the prior written approval by the City. Consultant shall be responsible for its subconsultants and other subcontractors throughout the course of the work to be performed under this Agreement. Execution of this Agreement shall constitute approval of the firms and individuals listed in Exhibit ____ to this Agreement as subconsultants and/or subconsultants on this Project.

iii. Substitutions of Subconsultants. Substitutions may be made for any subconsultants or subcontractors listed in Exhibit ____, for: (i) failure to perform to a reasonable level of professional competence; (ii) inability to provide sufficient staff to meet the Project requirements and schedules; or (iii) unwillingness to negotiate reasonable contract terms or compensation.

jjj. Additions of Subconsultants. The City will reserve the right to request specific subconsultants with specific expertise to be added to the team to provide services under this Agreement if the City determines that specific expertise is lacking in the project team.

kkk. SBE Firms. Substitutions of SBE firms shall be made on equal basis upon written request and recommendation by the Consultant and written approval by the City. Consultant shall hold harmless, indemnify and defend the City from any claim that may arise out of any approval of substitutions.

Assignment

The services to be performed by Consultant are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Consultant unless first approved by City by written instrument executed and approved as required by SFMTA policy and City ordinance. Consultant and the partners of any joint venture or association that Consultant may establish for the Project, or any of the Consultant's subconsultants may incorporate or change their business names; provided such incorporation or change does not decrease their obligation or liability under this Agreement. This Agreement shall be binding upon the City and the Consultant and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any funds due or to become due there under may be assigned by the Consultant without the prior written consent and approval of the City.

Non-Waiver of Rights

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

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.

lll. Provision of Forms to Eligible Employees. Consultant 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 Consultant 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 Consultant; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

mmm. Failure to Comply. Failure to comply with any requirement contained in subparagraph (A) of this Section shall constitute a material breach by Consultant of the terms of this Agreement. If, within 30 days after Consultant receives written notice of such a breach, Consultant fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Consultant fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

nnn. Flowdown to Subconsultants. Any subcontract entered into by Consultant shall require the subconsultant to comply, as to the subconsultant's Eligible Employees, with each of the terms of this section.

ooo. Terms. 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.

Small Business Enterprise Program.

ppp. General. The SFMTA is committed to a Small Business Enterprise Program ("SBE Program") for the participation of SBEs in contracting opportunities. In addition, the Consultant 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 CFR 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>.

qqq. Compliance with SBE Program. Consultant shall comply with the SBE provisions contained in Attachment 2 of the Request for Proposals, which are incorporated by reference as though fully set forth herein, including, but not limited to, achieving and maintaining the SBE goal set for the total dollar amount awarded for the services to be performed under this Agreement. Failure of Consultant to comply with any of these requirements shall be deemed a material breach of this Agreement.

rrr. SBE Goal. The goal for SBE participation is 25 percent of the total dollar amount awarded for the services to be performed under this Agreement.

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

Nondiscrimination; Penalties

ttt. Consultant Shall Not Discriminate. In the performance of this Agreement, Consultant agrees not to discriminate against any employee, City and County employee working with such Consultant or subconsultant, applicant for employment with such Consultant or subconsultant, 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.

uuu. Subcontracts. Consultant shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from the MTA) and shall require all subconsultants to comply with such provisions. Consultant's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

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

www. Condition to Contract. As a condition to this Agreement, Consultant 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.

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

MacBride Principles—Northern Ireland.

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Consultant acknowledges and agrees that he or she has read and understood this section.

Tropical Hardwood and Virgin Redwood Ban

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

Drug-Free Workplace Policy

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

Resource Conservation

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

Compliance with Americans with Disabilities Act

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

Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, Consultants’ bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization’s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

Public Access to Meetings and Records

If the Consultant 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, Consultant shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Consultant 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. Consultant 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 Consultant acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Consultant 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.

Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of

any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (A) 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, (B) a candidate for the office held by such individual, or (C) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

Requiring Minimum Compensation for Covered Employees

yyy. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

zzz. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

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

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

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

dddd. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as

liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

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

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

gggg. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

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

kkkk. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has

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

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

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

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

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

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

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

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

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

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

First Source Hiring Program

uuuu. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Consultant shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

vvvv. First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

- i. Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take

into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs may be certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

- ii. Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.
- iii. Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.
- iv. Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.
- v. Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.
- vi. Set the term of the requirements.
- vii. Set appropriate enforcement and sanctioning standards consistent with this Chapter.
- viii. Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.
- ix. Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

www. **Hiring Decisions.** Consultant shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

xxxx. **Exceptions.** Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

yyyy. **Liquidated Damages.** Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA. Contractor agrees:

- i. To be liable to the City for liquidated damages as provided in this section;
- ii. To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- iii. That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- iv. That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;
- v. That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:
 1. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and
 2. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;
- vi. That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and
- vii. That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

zzzz. **Subcontracts.** Any subcontract entered into by Consultant shall require the subconsultant to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Consultant 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. Consultant 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 Consultant violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (A) terminate this Agreement, and (B) prohibit Consultant from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Consultant's use of profit as a violation of this section.

Preservative-treated Wood Containing Arsenic

Consultant may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Consultant 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 Consultant 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.

Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required by law.

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, including but not limited to the Dispute Resolution Procedures set out in the Agreement, or resort to any other legal remedy, be referred to the SFMTA's Executive Director (or designee), for final administrative interpretation of the Agreement.

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.

Construction

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

Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48.

Compliance with Laws.

Consultant shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

Services Provided by Attorneys

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

Prompt Payment of Subconsultants

aaaaa. Progress Payments. In accordance with SFMTA's SBE Program, no later than three (3) working days from the date of Consultant's receipt of progress payments by the City, the Consultant shall pay any subconsultants for work that has been satisfactorily performed by said subconsultants, unless the prime consultant notifies the CCO Director in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between the prime consultant and the subconsultant. Within five (5) working days of such payment, Consultant shall provide City with a declaration under penalty of perjury that it has promptly paid such subconsultants for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

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

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

Disputes

ddddd. Notice of Dispute. For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within fifteen (15) days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with fourteen (14) days of delivery of the notice. The notice and response shall contain the following: (i) a statement of the party's position and a summary of the arguments supporting that position, and (ii) any evidence supporting the party's position.

eeee. Resolution of Disputes. Disputes arising in the performance of this Agreement that are not resolved by negotiation between the SFMTA Liaison and Consultant's shall be decided in writing by the SFMTA Manager of Project Management. The decision shall be administratively final and conclusive unless within ten (10) days from the date of such decision, the Consultant mails or otherwise furnishes a written appeal to the Director of Transportation Planning and Development, or his/her designee. In connection with such an appeal, the Consultant shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Director of Transportation Planning and Development shall be administratively final and conclusive. This section applies to all disputes unless a specific provision of this Agreement provides that the MTA Liaison's decision as to a particular dispute is final.

ffff. No Cessation of Work. Pending final resolution of a dispute hereunder, the Consultant shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the MTA Liaison.

gggg. Alternative Dispute Resolution. If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

hhhh. Claims for Additional Compensation. For disputes involving a claim for additional compensation, parties involved shall attempt to resolve such disputes expediently and in good faith so as not to impact the performance or schedule of the Project. Under no circumstances shall the Consultant or its sub-consultants stop work due to an unresolved dispute.

iiii. Disputes among Consultant Partners. The resolution of any contractual disputes related to Consultant's Joint Venture or Association partners (if any) shall be the sole responsibility of the Consultant. Each party of the Joint Venture or Association shall resolve all such disputes within thirty (30) calendar days of when the dispute first surfaced so as not to impact the performance of the contract with the City. Any such disputes which impact the Project and which are left unresolved for more than one month shall be cause for the City to withhold and/or reduce invoice payments to the Consultant's Joint Venture or Association firms until the dispute is resolved.

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.

Protection of Private Information

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

Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be

disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

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

Food Service Waste Reduction Requirements

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

Sole Benefit

This Agreement is intended for the sole benefit of the City and the Consultant, and is not intended to create any third-party rights or benefits..

FTA Requirements

The provisions contained in “FTA Requirements for Personal Services Contracts,” attached as Exhibit E are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

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

CITY

Municipal Transportation Agency

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

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Deputy City Attorney

Municipal Transportation Agency
Board of Directors
Resolution No. _____

Adopted: _____

Attest: _____
Secretary, SFMTA Board

CONSULTANT

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.

Authorized Signature

Printed Name

Title

Company Name

CITY VENDOR NUMBER

Address

City, State, ZIP

Phone Number

Federal Employer ID Number

EXHIBITS

- A. SERVICES TO BE PROVIDED BY CONSULTANT
- B. TASK ORDER FORM
- C. DIRECT SALARY RATES BY POSITION OR CLASS FOR CONSULTANT AND ALL SUBCONSULTANTS
- D. OVERHEAD RATES FOR CONSULTANT AND ALL SUBCONSULTANTS
- E. FTA Requirements for Personal Services Contracts
- F. Small Business Enterprise (SBE) Program for Professional and Technical Services

EXHIBIT A

SERVICES TO BE PROVIDED BY CONSULTANT

1. Description of Services

Consultant agrees to perform the services described below. Services shall be provided in conformance with the City's "Request for Proposals, As-Needed Specialized Engineering Services," issued June 23, 2008, the Proposal submitted by the Consultant on **[insert date]**, and as required under this Agreement.

The Consultant will provide specialized engineering and quality control services for the implementation and completion of the various vehicle procurement and rehabilitation projects, including, but not limited to drafting Request for Proposals, design analysis, engineering calculations, reliability, safety, maintainability, and Mean Distance Between Failure (MDBF), quality control inspection, administrative support, vehicle acceptance and testing, warranty administration and competency gap analysis. The Consultant will provide competent professional staff (subject to review and approval by SFMTA's Project Manager) and services in specialties described below, either by direct assignment of its own personnel or through sub-consultants. The services for which staff and services are to be provided by the Consultant to support the project include, but are not limited to:

20. Performing detailed design review, data analysis, calculation and investigation of the various sub-systems of the vehicle to enable the SFMTA project team to make sound decisions regarding the reliability and feasibility of the products being offered by the vehicle manufacturer.
21. Drafting specifications, and reviewing and making recommendations on all designs, including, but not limited to, conceptual design preliminary and final design reviews.
22. Providing technical review and assessment of transportation systems.
23. Advising the SFMTA on key issues, including deviation from project requirements.
24. Reviewing, coordinating and recommending approval of project submittals including:
 - a. Overall vehicle design documents (including hardware and software functionality and performance)
 - b. Test plans, procedures and reports
 - c. Training plans and materials
 - d. Design and Application drawings and manuals
25. Performing quality control and resident inspection during production, including witnessing First Article testing at the vendor's facilities and on SFMTA property.
26. Ensuring all required tests, operations, measurements and inspections are satisfactorily performed and documented by the vehicle manufacturers and sub-suppliers.
27. Providing periodic inspection and progress reports, and meeting minutes.

28. Witnessing, reviewing and conducting acceptance tests of vehicles delivered to the SFMTA.
29. As directed by the SFMTA's project manager, make sure that all O&M manuals, as-built drawings, warranties and other closeout documents are obtained and accepted by the appropriate parties.
30. As directed by the SFMTA's project manager, ensure that all training, spare parts, special tools, special test equipment, maintenance and operation manuals, and other deliverables are properly provided to the appropriate parties.
31. Assist the SFMTA engineers in reviewing and redlining deliverables:
 - a. Design documents
 - b. Test plans, procedures and reports
 - c. Training plans and materials
32. Prepare Final Project Report summarizing the entire project process, including a discussion of the successes and aspects requiring improvements.
33. Provide cost and price analyses of contracts, change orders, task orders, and contract modifications in accordance with FTA guidelines, change order estimating, schedule and delay analysis, constructability review, forensic cost and accounting analyses, and dispute analysis and review.
34. Providing additional staffing on an as-needed basis in the areas of inspection, engineering and quality assurance expertise for SFMTA's vehicle rehabilitation and procurement projects.
35. Providing risk and sensitivity analyses for capital/operating expenses and revenues.
36. Preparing Fleet Management Plans.
37. Conducting safety analysis, compatibility analysis of the configuration and integration of project deliverables into Muni's shop facilities and infrastructure, and certification activities of documents that include, but are not limited to: reports, databases, spreadsheets, and vehicle interface documentation.
38. Conducting rail profiling.
39. Conducting wheel profiling

2. Reports

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

3. SFMTA Liaison

In performing the services provided for in this Agreement, Consultant's liaison with the SFMTA will be:

Ms. Trinh Nguyen
Project Manager
SFMTA Operations Engineering Section
700 Pennsylvania Avenue
San Francisco, CA 94107-3343
(415) 401-3113

BIT B

MUNICIPAL TRANSPORTATION AGENCY

Contract Title: As-needed Systems Contract No.: CS-900 or 901
Engineering Services

Project Title: Project No.: _____

TASK ORDER DESCRIPTION

Task Title			
<input type="checkbox"/> New Task Order		<input type="checkbox"/> Revised Task Order	
Work to be Performed			
Schedule			
		Start Date:	
		Estimated Completion Date:	
Budget Amount: \$		Index Code:	
Deliverables			
Descriptions		Date Req'd.	Quantity
APPROVALS			
Approved _____		MTA Liaison	
Approved _____		Manager, Operation Engineering	

EXHIBIT C

Direct Salary Rates by Position or Class for
Consultant and all Sub-consultants

Position

Direct
Salary
(Hourly)

EXHIBIT D

SCHEDULE OF OVERHEAD RATES

Consultant/Overhead Rate

Sub-consultant (%)

EXHIBIT E

FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

2. FEDERAL CHANGES

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

ACCESS TO RECORDS

- A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

DEBARMENT AND SUSPENSION

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

- a. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- b. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

CIVIL RIGHTS

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

applicable Federal implementing regulations and other implementing requirements FTA may issue.

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

i. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

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

f. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

g. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of

Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

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

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

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

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

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

ii. Federal License. In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, "for Federal Government purposes," any subject data or copyright described below. As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:

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

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

iii. FTA Intention. When FTA awards Federal assistance for a experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement

for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.

- iv. **Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.
- v. **Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.
- vi. **Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.
- vii. **Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- k. **Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- l. **Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

- a. **Overtime requirements -** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. **Violation; liability for unpaid wages; liquidated damages -** In the event of any violation of the clause set forth in paragraph A of this section the contractor and any

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

- c. Withholding for unpaid wages and liquidated damages - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- d. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

ENERGY CONSERVATION REQUIREMENTS

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

CLEAN WATER REQUIREMENTS (applicable to all contracts in excess of \$100,000)

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

CLEAN AIR (applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.)

Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

DRUG AND ALCOHOL TESTING

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

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

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

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

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

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

FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

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

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

i. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either

for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

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

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

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

EXHIBIT F

SMALL BUSINESS ENTERPRISE (SBE) PROGRAM FOR PROFESSIONAL AND TECHNICAL SERVICES

CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
SMALL BUSINESS ENTERPRISE PROGRAM
FOR PROFESSIONAL AND TECHNICAL SERVICES

REQUEST FOR PROPOSALS (RFP)

FOR

CONTRACT NO. CS-900:
AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR
SFMTA RAIL VEHICLES

(CCO No. 08-1001)

AND

CONTRACT NO. CS-901:
AS-NEEDED SPECIALIZED ENGINEERING SERVICES FOR
SFMTA RUBBER TIRE VEHICLES

(CCO No. 08-1014)

FTA FUNDED

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

Appendix 2

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY SMALL BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

ARCHITECTS, ENGINEERS, PLANNERS, ENVIRONMENTAL SCIENTISTS AND OTHER PROFESSIONAL SERVICES

FOR FEDERALLY-FUNDED PROJECTS

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SMALL BUSINESS ENTERPRISE PROGRAM REQUIREMENTS

ARCHITECTS, ENGINEERS, PLANNERS, ENVIRONMENTAL SCIENTISTS AND OTHER
PROFESSIONAL SERVICES

FOR FEDERALLY-FUNDED PROJECTS

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SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

Small Business Enterprise Program Requirements

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

POLICY

The San Francisco Municipal Transportation Agency (SFMTA) is committed to a Small Business Enterprise (SBE) Program ("Program") for the participation of SBEs in contracting opportunities in accordance with the federal regulations in 49 CFR Part 26, issued March 4, 1999, as amended from time to time (the "Regulations"). The Regulations are incorporated into this Program as though fully set forth herein. It is the intention of the SFMTA to create a level playing field on which SBEs can compete fairly for contracts and subcontracts relating to the procurement and professional services activities of the SFMTA.

A. Applicability

Under 49 CFR Sections 26.3 and 26.51, and in response to the Federal Transit Administration's ("FTA") March 23, 2006, publication of the Department of Transportation's ("DOT") guidance concerning the federal Disadvantaged Business Enterprise ("DBE") program that applies to grant recipients within the Ninth Circuit, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement race-neutral means of facilitating DBE participation. The SFMTA's SBE Program is in accordance with DOT's guidance that, absent a disparity study, the SFMTA must meet its overall annual DBE goal using race-neutral means. This Program applies to the following types of SFMTA contracts that are funded, in whole or in part, by DOT financial assistance: Construction – Building, Heavy; Construction – Dredging and surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection, Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering Services; Surveying and Mapping; Drafting (design services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

B. Objectives

The objectives of this program are to:

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

1. Assist SBEs to develop and compete successfully outside of the Program;
2. Ensure that the Program is narrowly tailored in accordance with 49 CFR Part 26;
3. Ensure that only SBEs meeting the eligibility requirements are allowed to participate as SBEs;
4. Identify business enterprises that are qualified as SBEs and are qualified to provide SFMTA with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;

5. Develop communications programs and procedures which will acquaint prospective SBEs with SFMTA's contract procedures, activities and requirements and allow SBEs to provide SFMTA with feedback on existing barriers to participation and effective procedures to eliminate those barriers; and
6. Administer the Program in close coordination with the various divisions within SFMTA so as to facilitate the successful implementation of this Program.

C. Administration of Program

The Executive Director/CEO of the SFMTA is responsible for adherence to this policy. The Contract Compliance Office (CCO) shall be responsible for the development, implementation and monitoring of this program. All SFMTA personnel shall adhere to the provisions and the spirit of the program.

D. Prohibited Discrimination

SFMTA does not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by the Regulations on the basis of race, color, sex or national origin. The City and County of San Francisco also prohibits discrimination on the 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).

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

SFMTA has signed the federal assurances regarding non-discrimination required under 49 CFR Section 26.13.

E. Non-Discrimination in Employment

SFMTA will evaluate the proposer's response to the Questionnaire on Recruitment, Hiring, And Training Practices (SFMTA SBE Form No. 3) to determine whether the proposer is in compliance with the Nondiscrimination Requirements.

Should SFMTA deem it necessary, the SFMTA will seek a written commitment from the proposer to use good faith efforts to provide equal employment opportunities during the term of the contract. One measure of such a commitment would be comparing utilization of women and minorities with the relevant labor market in order to improve parity between the composition of the proposer's workforce and the available labor market. The proposer may be required to provide the SFMTA with the relevant data regarding its labor market.

DEFINITIONS

Any terms used in this Program shall have the meaning set forth below:

Small Business Enterprise (SBE)

An SBE is a for-profit, small business concern with a three (3) year average gross revenue not exceeding \$12 million dollars and is certified under any of the following programs: the State of California's Small Business Program with the Department of General Services ("State Program"), the City and County of San Francisco's LBE Program ("City Program"), or the California Unified Certification Program ("Federal DBE program").

B. Contractor

The term "Contractor" includes consultants.

III. SBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

A. SBE Participation Goal

The Contract Compliance Office has established a twenty-five percent (25%) Small Business Enterprise participation goal for each contract. Small business firms may qualify for this program by enrollment in either the State of California's Small Business Program with the Department of General Services ("State Program"), the California Unified Certification Program with a U.S. Department of Transportation recipient ("Federal DBE program"), or the City and County of San Francisco's LBE program with the Human Rights Commission ("City Program"). This SBE goal will apply to the following types of contracts or scope of work in the contract: Architecture & Engineering Services (to include professional and technical services), Computer Programming and Design, Drafting (design services); Landscape Architecture; Building Inspection; Public Relations; Telecommunications; Merchant Wholesalers, Durable Goods, and Machinery and Equipment Rental (construction) ("SBE Work".)

To be determined responsive, a proposer must demonstrate in its submittal that it will meet this goal in the performance of this contract; or if it is unable to meet the goal, the proposer must submit documentation (SFMTA SBE Form 2 – SBE Consultant/Subconsultant – Good Faith Efforts) with its proposal that it performed good faith efforts, prior to submission of the bid or proposal, to meet this goal. A proposer that is not responsive shall be ineligible for award of the contract.

If no goal has been set for this contract, SFMTA encourages proposer to use good faith efforts to solicit SBEs for this contract if available.

NOTE: Website links for finding Certified DBEs/SBEs/LBE :

- Certified Disadvantaged Businesses Enterprises ("Federal DBE Program")
<http://www.dot.ca.gov/ucp/GetLicenseForm.do> (or http://www.dot.ca.gov/hq/bep/dbe_query.htm)
- Certified Small Businesses Enterprises ("State Program")
<http://www.pd.dgs.ca.gov/smbus/sbdvbelist.htm>
- For Certified HRC Local Business Enterprises ("City Program")
http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS_1.htm

Contact Sheila Evans-Peguese at (415) 701-4436 should you need assistance with accessing the databases.

B. SBE Income Thresholds For Certain Types of Contracts

The total average gross revenue thresholds for the past three years for the types of SBE work listed in Section III.A. above is \$12 million.

For these categories, the proposer needs to collect and submit to SFMTA with its proposal the SBE Consultant/Joint Venture Partner/ Subconsultant Gross Revenue Declaration(s) (SFMTA SBE Form No. 2-B) from all potential SBE participants listed on its SFMTA SBE Form No. 1. Each SBE must declare that its total average gross revenues for the past three years are equal to or below the income threshold stated above.

C. SBE Participation

The SFMTA requires the prime contractor to make every good faith effort to include SBEs to perform meaningful work in all aspects of the project. To accomplish these efforts, the following guidance is provided:

1. Nature of SBE Participation

SBE participation includes contracts (other than employee contracts) with SBEs for any goods or services specifically required for the completion of the SBE Work. An SBE may participate as a prime contractor, subcontractor, joint venture partner with a prime contractor, or a supplier of other services, e.g., machinery/equipment rental, to fulfill the SBE goal for the SBE Work.

2. Function

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

3. Determining the Amount of SBE Participation.

The Contractor shall determine the amount of SBE participation for each SBE performing work on the contract in terms of both the total value of the individual SBE work in dollars and the percentage of the total contract bid price for the SBE Work. The Contractor shall achieve the SBE participation goal specified for the entire SBE Work, including any amendments to the SBE Work.

a. SBE Prime Consultant

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

b. SBE Subconsultant

Count the entire amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work (except for materials and supplies purchased or leased from the Prime Consultant or supplier) and reasonable fees and commissions charged for the

services. Do not count any work subcontracted by an SBE subconsultant to another firm as SBE participation by said SBE subconsultant. If the work has been subcontracted to another SBE, it will be counted as SBE participation by that other SBE.

c. SBE Joint Venture Partner

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

d. SBE Regular Dealer

Count 60% of the costs of materials and supplies obtained from an SBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly bought, kept in stock and sold or leased to the public in the usual course of business. This applies whether an SBE is a prime contractor or subcontractor.

e. Other SBEs

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

f. Materials or Supplies

Count expenditures with SBEs for materials or supplies toward SBE goals as provided in the following:

- (1) If the materials or supplies are obtained from a SBE manufacturer, count 100 percent of the cost of the materials or supplies toward SBE goals
- (2) For purposes of this paragraph (f)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- (3) If the materials or supplies are purchased from a SBE regular dealer, count 60 percent of the cost of the materials or supplies toward SBE goals.
- (4) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the material, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

D. Meeting the SBE Participation Goal

By submitting SFMTA SBE FORM No. 1 – CONSULTANT/JOINT VENTURE PARTNER AND SUBCONSULTANT PARTICIPATION REPORT, a proposer certifies that it is committed to using the identified SBEs in the performance of the contract. Detailed instructions for completing this and other required forms are found in Part VI.

E. Submission of Certification for SBEs

1. Prime Contractors and subcontractors must be certified under the State Program, City Program, or the Federal DBE Program on the proposal/bid due date to qualify to meet the SBE subconsulting/subcontracting goal(s). Firms may obtain information on how to become certified as SBEs from either SFMTA or from the State or City at the following addresses:

Federal DBE Program, or general information about the other programs and assistance with accessing the databases:

San Francisco Municipal Transportation Agency (SFMTA)
Contract Compliance Office
One South Van Ness Avenue, 3rd Floor
San Francisco, California 94103
(415) 701-4436
Attn: Sheila Evans-Peguese, CCO Certification Unit

Firms that wish to be certified as DBEs can obtain DBE certification applications from SFMTA at the above address. Completed DBE certification applications can be returned to SFMTA or another certifying agency. Certification applications can be obtained by downloading from website http://www.dot.ca.gov/hq/bep/business_forms.htm or by calling (415) 701-4436. A list of certifying agencies is provided on the DBE certification application.

State Program:

California Department of General Services
Office of Small Business and DVBE Services, Room 1-400
P.O. Box 989052
West Sacramento, CA 95798-9052
(916) 375-4940
<http://www.pd.dgs.ca.gov/smbus/certapps.htm#RenReq>

City Program:

Human Rights Commission
25 Van Ness Ave. #800
San Francisco, CA 94102
Attn: Certification Unit
(415) 252-2500
http://www.sfgov.org/site/sfhumanrights_page.asp?id=45141

2. Project by project certification will not be required; however, if the status of the SBE changes during the certification period, the certification may no longer be valid. In such cases, a newly completed certification application should be submitted.

IV. TRAINEES – San Francisco Municipal Transportation Agency (SFMTA) Employment Training Program

A. SFMTA requires all consultants to comply with the SFMTA Employment Training Program which fosters employment opportunities for economically disadvantaged individuals. Consultants are required to notify the SFMTA of all open, entry-level positions and consider all program referrals fairly and equally. In addition, the City requires consultants to hire a minimum number of professional

service trainees in the area of the consultant's expertise. Trainees shall be obtained through the City's First Source Hiring Program 'One Stop Employment Center', which works with various employment and job training agencies/organizations or other employment referral sources.

Number of Trainees

Project Fees	To Be Hired
\$0 – \$499,999	0
\$500,000 – \$899,999	1
\$900,000 – \$1,999,999	2
\$2,000,000 – \$4,999,999	3
\$5,000,000 – \$7,999,999	4
\$8,000,000 – \$10,999,999	5
\$11,000,000 – \$13,999,999	6
(> = \$14M, for each additional \$3 million in consultant fees, add one additional trainee)	

B. The intent of this Program is to provide technical training and job opportunities in a professional office environment for economically disadvantaged individuals as on-the-job trainees. These training opportunities will be executed through the duration of this contract. In hiring prospective trainee, the Consultant shall comply with the non-discrimination provisions pursuant to local, state and federal laws.

C. Trainees shall be obtained through First Source Hiring Program. Outreach should be done to include individuals from the communities that have experienced high rates of unemployment. A list of the designated resources may be obtained from SFMTA.

D. The Professional Engineering Services Trainee Program consists of participation of individuals as on-the-job trainees based on the project cost. The trainee program will be implemented by the Consultant for this project. The individuals will be hired as regular employees of the firms(s) and shall receive any benefits that they may be entitled to under State labor laws.

1. The trainee must be hired in a discipline related to professional engineering services or meaningful support or technical position by the Consultant.

2. No existing employee may be counted towards meeting the trainee goal. However, the new trainees can be part of the pool of new employees that the Consultant may have to hire anyway for a new project of this magnitude and therefore need not be an "extra" cost to the Consultant or to the City.

3. The Consultant may utilize trainees on other projects it has within San Francisco Bay Area, where trainees can execute work for other projects after the effective date of the Notice to Proceed.

4. The Consultant is responsible for providing On-The-Job Training (OJT). The Consultant shall hire the trainee on a full-time basis for at least 12 months or on part-time basis for 24 months, offering him/her OJT, which allows the trainee to progress on a career path. The Consultant may hire the trainee(s) for the duration of the project.

5. The Consultant should submit to SFMTA for approval a job description and summary of the training program for each trainee, with the proposed rate of pay (commensurate with the job requirements).

6. A trainee qualified in this program is defined as a socially and economically disadvantaged individual who:

- a. Is unemployed, has a history of unemployment, or who is currently in a job training program; and
- b. Will receive training in a non-trade discipline associated with the Professional Engineering Services industry.

7. The term “socially and economically disadvantaged individual” shall have the meaning, as the term is defined in 49 CFR Section 26.5, and shall also include persons with disabilities.

8. The Consultant shall provide the necessary tools and/or office equipment (i.e., computers, desks and chairs) for trainees to perform the assigned duties. The Consultant shall provide travel costs if the individual has to travel 50 miles or more from his/her assigned work site for the purpose of getting the job done.

9. The Consultant shall design a training program specifically for the trainee. The program shall include, but not be limited to company’s personnel policy procedures manual, benefit package and OJT duties and responsibilities. The trainees are not permitted to work in trade positions performing covered work.

10. The Consultant can replace a trainee if there is documentation to demonstrate that the trainee did not perform satisfactorily the key requirements as identified in the job descriptions. The Consultant can apply the time accumulated by the original trainee toward satisfying the contract requirement.

11. The Consultant shall provide SFMTA within thirty (30) working days of Notice to Proceed, the following information in order to expedite time in securing the appropriate person to participate during the project.

- a. Indicate number of trainees to be hired. The hiring of trainees can be phased in over a period of time.
- b. Provide the name and telephone number of Consultant’s contact person.
- c. The Consultant shall provide a job description used to recruit the trainee(s). Indicate the specific skills/disciplines for the job.
- d. A college degree is not a requirement for a trainee and the job description should so indicate.

E. The Consultant shall submit to SFMTA on a monthly basis a Workforce information report on the status of the trainees.

F. The SFMTA Contract Compliance Office will monitor the contract trainee requirements for compliance.

G. The Consultant agrees that the City may withhold pending and future progress payments should the Consultant not demonstrate good faith efforts toward satisfying the required number of trainee hours.

H. The Consultant Team is responsible for sponsoring the trainee(s). Each team member’s contribution toward the cost of a trainee should be based on the contract percentage amount received.

V. EVALUATION OF PROPOSALS

A. CCO Evaluation

As stated in Section III. A., above, a proposer that fails to demonstrate that it achieved the contract-specific SBE participation goal or fails to demonstrate that it made good faith efforts prior to submission of the proposal to meet the goal shall be deemed non-responsive. A proposer found to be non-responsive shall be ineligible for award of the contract.

1. Evaluation of Proposals

After the receipt of proposals, the CCO shall evaluate all proposals with regard to the SBE requirements. Should the CCO determine that additional information is needed to evaluate a proposer's submission, the CCO shall request said proposer or listed SBE to submit the required information, which shall be due within five (5) days of the request.

2. Determination of Amount of SBE Participation

The CCO shall review the total dollar value of the work and the percentage of the total contract bid price reported on the proposer's Consultant/Joint Venture and Subconsultant Participation Report (SFMTA SBE FORM No. 1) for accuracy and shall compare it to the contract-specific goal, if any, established for the contract.

3. Evaluation of SBE Certification Status

SFMTA requires that any SBEs listed by proposers for participation in the contract be certified by proposal due date. The CCO shall review the proposer's Consultant/Joint Venture and Subconsultant Participation Report (SFMTA SBE FORM No. 1) to confirm the certification status of each SBE. SFMTA will accept current certifications by (a) SFMTA and other DOT recipients in California authorized under the federal DBE regulations; (b) the State Program, or (c) the City Program.

The SBE threshold for consultants and subconsultants is \$12 million. The SBE consultant and listed SBE subconsultants or suppliers must declare under penalty of perjury under the laws of the State of California that its total average gross revenues for the past three years are equal to or below the \$12 million threshold (see SFMTA SBE FORM 2B).

4. Good Faith Efforts

If the amount of SBE participation does not meet the SBE goal, the CCO shall review the good faith efforts report (SFMTA SBE Form 2) submitted by the proposer with its proposal. A proposer must submit a report explaining the steps taken and the reasons the efforts were not successful to obtain SBE participation. The CCO shall determine whether, prior to submission of the proposal, the proposer has performed the quality, quantity and intensity of efforts that demonstrate a reasonably active and aggressive attempt to meet the established SBE goal.

Proposers must submit the SBE Consultant/Subconsultant Participation – Good Faith Efforts Form (SFMTA SBE Form No. 2) with its proposal. Even if proposers' SFMTA SBE Form No. 1 indicates the SBE goal has been met, proposers should still submit SFMTA SBE Form No. 2 to protect their eligibility for the contract. This is because SFMTA's Contract Compliance Office may determine that proposers have not met the goal for various reasons, e.g., if an SBE subconsultant submitted by the prime consultant was not properly certified on the proposal due date. In these cases, SFMTA's SBE Form No. 1 will not normally provide sufficient information to demonstrate that the proposer made good faith efforts.

The following is a list of types of actions that the proposer should consider as part of its good faith efforts to obtain SBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- a. Soliciting through all reasonable and available means (e.g. attendance at pre-proposal meetings, advertising and/or written notices) the interest of all certified SBEs who have the capability to perform the work of the contract. The proposer must solicit this interest within sufficient time to allow the SBEs to respond to the solicitation. The proposer must determine with certainty if the SBEs are interested by taking appropriate steps to follow up initial solicitations.
- b. Selecting portions of the work to be performed by SBEs in order to increase the likelihood that the SBE goal(s) will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate SBE participation, even when the prime consultant might otherwise prefer to perform these work items with its own forces.
- c. Providing interested SBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- d. (i) Negotiating in good faith with interested SBEs. It is the proposer's responsibility to make a portion of the work available to SBE subconsultants and suppliers and to select those portions of the work of material needs consistent with the available SBE subconsultants and suppliers, so as to facilitate SBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of SBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for SBEs to perform the work.

(ii) A proposer using good business judgment would consider a number of factors in negotiating with subconsultants, including SBE subconsultants, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using SBEs is not in itself sufficient reason for a proposer's failure to meet the contract SBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime consultant to perform the work of a contract with its own organization does not relieve the proposer of the responsibility to make good faith efforts. Prime consultants are not, however, required to accept higher quotes from SBEs if the price difference is excessive or unreasonable.

e. Not rejecting SBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The consultant's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the consultant's efforts to meet the project goal.

f. Making efforts to assist interested SBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

g. Effectively using the services of available small business community organizations; small business consultants' groups; local, state, and Federal small business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of SBEs.

B. Recommendation for Award of Contract

1. SFMTA CCO's Recommendation for Award

The CCO shall review all of the information submitted by proposers to determine a recommendation to the Executive Director/CEO for award of the contract to the highest-ranked proposer. The proposer shall cooperate with the CCO if a request for additional information is made during this evaluation process.

Following the determination of the highest-ranked proposer, the CCO will prepare a report on the proposer's compliance with the SBE Program requirements for submission to the SFMTA Board of Directors or other awarding authority. SFMTA will follow the award of contract and protest procedures described in the Request for Proposals.

C. Successful Proposer

Substitution of Subconsultants and Suppliers

The Consultant shall not terminate an SBE subconsultant or supplier for convenience and then perform the work with its own forces. The Consultant must make good faith efforts to substitute another SBE for an original SBE subconsultant or supplier when the original SBE subconsultant or supplier is terminated or fails to complete the work on the contract. The Consultant shall notify SFMTA in writing of any request to substitute a SBE subconsultant or supplier and provide the CCO with any documentation requested to support the substitution. The CCO must approve the request in writing in order for the substitution to be valid. The substitution may also have to be approved by the SFMTA Board of Directors.

2. Addition of Subconsultants and Suppliers

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

3. Prompt Payment to Subconsultants

In accordance with SFMTA's SBE Program, no later than three (3) working days from the date of Consultant's receipt of progress payments by the City, the Consultant shall pay any subconsultants for work that has been satisfactorily performed by said subconsultants, unless the prime consultant notifies the CCO Director in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between the prime consultant and the subconsultant. Within five (5) working days of such payment, Consultant shall provide City with a declaration under penalty of perjury that it has promptly paid such subconsultants for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

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

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

4. Reporting Requirements

The Consultant shall maintain records of all SBE participation in the performance of the contract, including subcontracts entered into with certified SBEs and all materials purchased from certified SBEs. The Consultant shall submit SBE participation reports to SFMTA on a monthly basis, or as otherwise directed by the CCO. The reports shall identify the name and address of each SBE performing work on the project, and show the total dollar amount requested for payment and the total dollar amount actually paid to each SBE. Within thirty (30) days of completion of the contract, or as otherwise directed by the CCO, the Consultant shall submit a final summary SBE report to the CCO.

D. Administrative Remedies

1. Monitoring SBE Participation

The CCO will monitor and track the actual SBE participation through consultant and subconsultant reports of payments, site visits and other appropriate monitoring. The CCO will ensure that SBE participation is counted towards contract goal(s) and the overall annual goal in accordance with the Regulations.

The CCO will require prime consultants to maintain records and documents of payments to SBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of SFMTA or DOT. This reporting requirement also extends to any certified SBE subconsultant.

The CCO will keep a running tally of actual payments to SBE firms for work committed to them at the time of contract award.

The CCO will perform interim audits of contract payments to SBEs. The audit will review payments to SBE subconsultants to ensure that the actual amount paid to SBE subconsultants equals or exceeds the dollar amount stated in the schedule of SBE participation.

2. Enforcement Mechanisms

a. Reporting to DOT

SFMTA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the Program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Section 26.109. Consultant may also be subject to penalties and/or a debarment action under the San Francisco Administrative Code. Failure to comply with the requirements of the SBE Program constitutes a material breach of contract and will be grounds for termination of the contract. Funds may also be withheld under the Contract pending investigation of a complaint of violation of the SBE Program.

E. CONFIDENTIALITY

SFMTA will safeguard from disclosure from third parties information that may reasonably be regarded as trade secrets, consistent with federal, state, and local laws. Notwithstanding any contrary provisions of state or local law, SFMTA will not release personal financial information submitted in response to the

personal net worth requirement to a third party other than DOT without the written consent of the person submitting the information.

VI. SUBMISSION OF FORMS AND INSTRUCTIONS

A. Required Forms

PROPOSERS ARE WARNED that failure to comply with the requirements for submission of forms, within the times prescribed, may RESULT IN REJECTION OF THE PROPOSAL, unless a later time is authorized by the CCO. The following forms are included in the RFP:

Forms Submitted with Proposal

SFMTA SBE Form No. 1	Consultant/Joint Venture Partner and Subconsultant Participation Report	SBE - 17
SFMTA SBE Form No. 2	SBE Consultant/Subconsultant – Good Faith Efforts	SBE – 18
SFMTA SBE Form No. 2A	Bidders List	SBE – 20
SFMTA SBE Form No. 2B	SBE Consultant/Joint Venture Partner/Subconsultant Gross Revenue Declaration	SBE – 21

Forms Submitted with Proposal		
	Questionnaire on Recruitment, Hiring, and Training Practices for Consultants	SBE – 22
SFMTA SBE Form No. 4	Subconsultant Participation Declaration	SBE – 28
SFMTA SBE Form No. 5	Small Business Enterprise Acknowledgment Declaration	SBE – 29
SCHEDULE B	Joint Venture Participation Form	From CCO, if needed.
	FORMS SUMMITTED AT POST AWARD	
SFMTA SBE Form No. 6	Progress Payment Report	SBE – 31
SFMTA SBE Form No. 7	Subconsultant Payment Declaration	SBE - 33
SFMTA SBE Form No. 8	Declaration – Modification of Professional Service Contracts	SBE - 35
2. SFMTA SBE Form No. 9	Consultant Exit Report and Declaration	SBE - 37

Note: The following instructions are included for the convenience of proposers in preparing their proposals and for consultants to monitor SBE participation appropriately. If there are any conflicts between these instructions and the provisions elsewhere in the specifications or with federal, state, or city statutory requirements, the latter will prevail.

B. FORMS SUBMITTED WITH PROPOSAL:

The following forms must be executed in full and submitted with the proposal package, or as otherwise specified; if not, the proposal may be rejected.

SFMTA SBE FORM No. 1 - CONSULTANT/JOINT VENTURE AND SUBCONSULTANT PARTICIPATION REPORT

All proposers are required to complete this form and include the names of the SBEs being used, a description of the work they will perform, the services or supplies which will be provided by each and the dollar value of each SBE transaction.

This completed form must be submitted with the proposal or the proposal shall be rejected.

SFMTA SBE FORM No. 2 - SBE CONSULTANT/SUBCONSULTANT PARTICIPATION – GOOD FAITH EFFORTS

Each Proposer shall submit with its proposal a written report (SFMTA SBE Form No. 2) with supporting documentation covering all actions taken by the proposer to meet the SBE goal prior to the submittal of the proposal. This form must be submitted regardless whether or not the proposer's Consultant/Joint Venture and Subconsultant Participation Report (SFMTA SBE Form No. 1) indicates that the SBE goal

has been met. If the CCO requires further information following its review of the report, the proposer shall submit such information within five days of the request.

SFMTA SBE FORM No. 2A - BIDDERS LIST

Pursuant to 49 CFR Section 26.11, SFMTA will create and maintain a “Bidders List” consisting of all firms bidding or quoting on prime contracts and bidding, or quoting on subcontracts on DOT-assisted projects. For every firm, the following information will be included: firm name, firm address, firm status as a DBE or non-DBE, the age of the firm, and the annual gross receipts of the firm.

All proposers shall complete the “Bidders List” to the maximum extent feasible, supplying the requested information on all firms quoting on this contract (including the proposer submitting the form).

☐ SFMTA SBE FORM No. 2B - SBE CONSULTANT/JOINT VENTURE PARTNER/SUBCONSULTANT – GROSS REVENUE DECLARATION

An SBE consultant/joint venture partner and listed SBE subconsultants or suppliers, including lower tier subconsultants or suppliers, must complete this form. The prime shall collect the completed forms and submit them with its proposal on the proposal due date. The SBE consultant and listed SBE subconsultants or suppliers will need to submit this form declaring, under penalty of perjury, that their total average gross revenues for the past three years are equal to or below the \$12-million income threshold for the specific category of the contract.

☐ SFMTA SBE FORM No. 3 - QUESTIONNAIRE ON RECRUITMENT, HIRING, AND TRAINING PRACTICES FOR CONSULTANTS

To be completed by proposers, joint venture partners and subconsultants.

☐ SFMTA SBE FORM No. 4 - SUBCONSULTANT PARTICIPATION DECLARATION (to be submitted by the prospective prime consultant and subconsultant, as appropriate):

To confirm and identify the use of SBEs, all proposers shall submit a completed SFMTA SBE FORM No. 4, with the proposal, unless a request for an extension of time is granted by CCO.

Subconsultants using SBEs as lower tier subconsultants, suppliers or service agents shall also submit SFMTA SBE FORM No. 4. The form may be submitted with the proposal unless an extension of time is granted by CCO.

☐ SFMTA SBE FORM No. 5 - SMALL BUSINESS ENTERPRISE ACKNOWLEDGEMENT DECLARATION (to be submitted by each listed SBE consultant)

Every listed SBE subconsultant or supplier, including lower tier subconsultants, must submit the completed declarations to the proposers. The proposers shall submit the completed declarations to CCO with the proposal unless an extension of time is granted by CCO.

☐ Schedule B - Joint Venture Participation Form (If applicable)

Joint Ventures formed at either the prime consultant level or subconsultant level must submit a Joint Venture Participation Form (Schedule B) plus a joint venture agreement. To obtain this form, please contact the CCO.

C. FROMS SUBMITTED AT POST AWARD

☐ SFMTA SBE FORM NO. 6 - PROGRESS PAYMENT REPORT

This form shall be completed by Consultant, including each joint venture partner, if applicable, and submitted to the Project Manager (copy to CCO) with its monthly progress payment applications after award of Contract. Consultants must provide complete information and documentation on SFMTA SBE FORM No. 6 for the immediately preceding period for SBE joint venture partners and all subconsultants that are utilized on the Contract.

☐ SFMTA SBE FORM No. 7 - SUBCONSULTANT PAYMENT DECLARATION Consultant shall complete SFMTA SBE FORM No. 7 and submit it to CCO (copy to Project Manager) within five (5) working days following each payment to subconsultants in compliance with prompt payment requirements: This form shall provide evidence that the Consultant has complied with the prompt payment provisions of the Contract.

☐ SFMTA SBE FORM No. 8 - DECLARATION – AMENDMENTS OF PROFESSIONAL SERVICES CONTRACTS

This form shall be completed when processing all modifications, supplements or change orders that cumulatively increase the original amount of the contract. All prime consultants, individual joint venture partners, subconsultants and any other vendors participating in the modification must be listed.

☐ SFMTA SBE FORM No. 9 - CONSULTANT EXIT REPORT AND DECLARATION

☐ Consultant, including all joint venture partners, if any, shall complete SFMTA SBE FORM No. 9 and submit it to the Project Manager (copy to CCO) with its final progress payment application. Consultant must provide complete and accurate information on SFMTA SBE FORM No. 9 and have it executed by all SBE joint venture partners and all subconsultants.

☐ SFMTA SBE FORM No. 1 – CONSULTANT/JOINT VENTURE PARTNER AND SUBCONSULTANT PARTICIPATION REPORT

☐ PROPOSER _____

NAME OF FIRMS, ADDRESS, TELEPHONE NO. AND CONTACT PERSON; FEDERAL I.D. NO. (or STATE I.D. NO.)	SBE		NON- SBE		SCOPE OF WORK & CERTIFICATION TYPE & CERT. NO.	ANTICIPATED PERCENTAGE AND/OR \$ AMOUNT OF PARTICIPATION
	MALE	FEMALE	MALE	FEMALE		
Name & Signature: Authorized Officer of Consultant Firm				Total SBE (Male)		
				Total SBE(Female)		
Print or Type Name:				Total Non-SBE (Male)		
Date				Total Non-SBE(Female)		
				TOTAL % AND/OR \$:		

SFMTA SBE FORM No. 2

SBE CONSULTANT/SUBCONSULTANT PARTICIPATION – GOOD FAITH EFFORTS

This form must be completed and submitted along with compelling documentation detailing the good faith efforts made to meet the SBE participation goal if the information submitted on SFMTA SBE Form No. 1 indicates that the SBE goal has not been met.

If the SBE participation goal is not met, and if this form, along with compelling documentation detailing the good faith efforts made to meet the goal, is not completed and returned with the proposal, the proposal shall be deemed non-responsive and rejected.

Even if proposers’ SFMTA SBE Form No. 1 indicates the SBE goal has been met, proposers should still submit the following information to protect their eligibility for the contract. This is because SFMTA’s Contract Compliance office may determine that proposers have not met the goal for various reasons, e.g., if an SBE subconsultant submitted by the prime consultant was not SBE/DBE/LBE certified on the proposal due date. In these cases, SFMTA’s SBE Form No. 1 will not normally provide sufficient information to demonstrate that the proposer made good faith efforts.

Contract Number:	_____	Contract Name:	_____
Proposer’s Name:	_____	CCO Staff Assigned:	_____

Please supply the following information:

1. Attending any presolicitation or proposal meetings scheduled by the awarding department to inform all proposers of SBE Program requirements for the project for which the contract is awarded.
 2. List below the names and dates of all certified SBEs solicited by direct mail for this project or print out a list of SBE contacted via the States’ SBE website, City’s HRC website, or UCP DBE website. List the dates and methods used for following up initial solicitations to determine with certainty whether the SBEs were interested. Attach copies of letters and supporting documentation.
-
3. Summarize below the items of work for which the Proposer requested subconsultant services supplied by SBEs, the information furnished interested SBEs regarding work requirements and any breakdown of tasks into economically feasible units to facilitate SBE participation. Where there are SBEs available for doing portions of the work normally performed by the proposer with its own staff, the proposer will be expected to make portions of such work available for SBEs.
 4. List below the names of SBEs solicited for any of the work indicated above and which were not utilized, and a summary of the proposer’s discussions and/or negotiations with them.
 - a. List the names of rejected SBEs:

b. Summarize below discussions and/or negotiations:

5. List the names of subconsultants that were selected over the rejected SBEs listed above and the reasons for that choice.

6. Summarize below assistance that the Proposer has extended to rejected SBEs identified above to remedy the deficiency in their sub-proposals.

7. If insurance is a reason for rejecting any potential SBE, a complete explanation must be provided as follows.

a. List the names and phone numbers of insurance firms contacted by the proposer and/or other involved parties:

b. List the names and phone numbers of public assistance agencies contacted and their responses (for example, the City's Bonding and Insurance Assistance Program):

NOTE: Use additional sheets of paper if necessary. Appropriate documentation such as copies of newspaper ads, letters soliciting bids, & telephone logs should accompany this form.

Signature of Proposer	_____	Date:	_____
Print Name of	_____	Phone Number:	_____
Name of Company:	_____	email:	_____
Address, City, ST, Zip:	_____		_____

SFMTA SBE FORM No. 2A
BIDDERS LIST

(Supply the following information for all firms bidding or quoting on this contract. If any information is not included, specify reason why you could not obtain the information.)

PROPOSER'S NAME: _____

[illegible]

PROPOSER: _____

SFMTA SBE FORM No. 2B

SBE CONSULTANT/JOINT VENTURE PARTNER/SUBCONSULTANT GROSS REVENUE
DECLARATION

(TO BE COMPLETED BY SBE CONSULTANT/JOINT VENTURE
PARTNER/SUBCONSULTANT)

An SBE consultant and every listed SBE subconsultant or supplier, including lower tier subconsultants, must submit the completed declarations to the Prime Consultant. The Prime Consultant shall submit completed declarations with its proposal to the Contract Compliance Office. In order to be counted towards the SBE goal, the SBE must declare, under penalty of perjury, that its total average gross revenues for the past three years are equal to or below the \$12 million threshold.

Contract Number: _____ Contract Title: _____

SECTION I

Name: _____ Vendor Number: _____

Address: _____

Phone: _____ Type of Consultant's License(s): _____ Federal I.D. No.:

SECTION II

(Check Ownership and Certification Type check all that apply)

- | | |
|---|---|
| <input type="checkbox"/> Sole Proprietor | <input type="checkbox"/> DBE (Issued by Calif. Unified Certification Prog.) |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> SBE (Issued by Calif. Dept. of General Services) |
| <input type="checkbox"/> Corporation, s-Corp, LLC | <input type="checkbox"/> LBE (Issued by SF Human Rights Commission) |

DECLARATION

The undersigned declares under penalty of perjury under the laws of the State of California that its total average gross revenues for the past three years are equal to or below the \$12 million threshold.

Name and Title (Print)

Signature

Date

☐ PROPOSER: _____

SFMTA SBE FORM No. 3
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
QUESTIONNAIRE
NONDISCRIMINATION REQUIREMENTS

Professional or Technical Services

Instructions

1. Please complete and return the attached Nondiscrimination Questionnaire, Workforce Data forms and Participation Form with a copy of your entire proposal directly to the awarding Department.
2. Please complete the questionnaire for the office that will ultimately perform the project work.
3. The questionnaire must be completed by:
 - a. All prime consultants
 - b. All joint venture partners and subconsultants
4. Support firms (e.g., printers, photographers, etc.) need not complete any part of the questionnaire.
5. Approved State or Federal Nondiscrimination Programs may be substituted for those items where the information requested in the questionnaire is identical to that contained in the State or Federal Programs.
6. If the questionnaire(s) is/are not correctly and fully completed, SFMTA will not consider your proposal. For firms selected as finalists, all SBEs participating in the project must be certified prior to contract award.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY QUESTIONNAIRE ON
RECRUITMENT, HIRING, AND TRAINING PRACTICES FOR CONSULTANTS

NOTE: The term "minority" refers to the following groups: American Indian or Alaskan Native, Asian or Pacific Islander, African-American, Filipino, and Hispanic.

(Please answer all questions. Use additional sheets if necessary.)

Name of Company: _____

Address: _____

Location of Company Workforce (Check one):

_____ San Francisco

_____ Other Location, provide address:

1. Name, title, telephone number of company official at the establishment who is responsible for recruitment and hiring and who will provide information concerning this matter.
2. Name, title, and telephone number of senior managing official at the establishment if not the person named in the answer to question 1.
3. Describe briefly the basic business activity at the establishment (i.e., identify the product produced or the services performed.)
4. Describe briefly how employees at various levels are hired (see Workforce Breakdown #8).
 - A. Technicians and/or others.
 - B. Support Staff (accounting, reception, and clerical).
5. Describe in full, Nondiscrimination programs in the past two years. (Consultants may submit one (1) copy of their Nondiscrimination Program directly to SFMTA Contract Compliance Office, One South Van Ness Ave., 3rd Floor, San Francisco, CA 94103, (415) 701-4443.
 - Participation in training programs.
 - Participation in apprenticeship programs.
 - Participation in any summer hire program or own program.
 - Paid educational leave or tuition to improve skills and level.
 - Participation in scholarship fund.
 - Participation in clerical training programs.
 - Participation in "other" programs.
6. If minorities and/or women are underutilized explain steps to ensure the firm is not discriminating.
7. Describe joint ventures or subconsulting arrangements in past projects. If there is a company policy on this issue, include it.

8. Complete workforce breakdown. (Separate form, Page SBE-26.)

8a. Hires in last 12 months. (Complete separate form, Page SBE-27.)

SFMTA SBE FORM No. 3

WORKFORCE DATA SPREADSHEET #1

8. Please fill out this workforce breakdown

Name of firm: _____

Address: _____

EMPLOYEE * CATEGORIES	TOTAL EMPLOYEE		AFRICAN AMERICAN		HISPANIC		ASIAN/ PAC. ISL.		AMER. IND./ ALAK. NTV.		TOTAL MINORITY		PERCENTAGE WHITE		PERCENTAGE MINORITY	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Officials																
Managers																
Professionals																
Technicians																
Admin. Support																
Trainees																
Others																
Full-time																
Part-time																
TOTAL																

3/30/95

COMPLETED BY Name: _____ Title: _____ Date: _____

* If the list of occupations on the left side of the workforce data form does not match your occupation titles, please modify the data form to indicate occupations peculiar to your organization.

SFMTA SBE FORM No. 3
WORKFORCE DATA SPREADSHEET #2

8a. Hires in last 12 months

Name of firm: _____

Address: _____

EMPLOYEE CATEGORIES	TOTAL EMPLOYEE		AFRICAN AMERICAN		HISPANIC		ASIAN/PAC. ISL.		AMER. IND./ALAK. NTV.		TOTAL MINORITY		PERCENTAGE WHITE		PERCENTAGE MINORITY	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Officials																
Managers																
Professionals																
Technicians																
Admin. Support																
Trainees																
Others																
Full-time																
Part-time																
TOTAL																

COMPLETED BY Name: _____ Title: _____ Date: _____

* If the list of occupations on the left side of the workforce data form does not match your occupation titles, please modify the data form to indicate occupations peculiar to your organization

☐ PROPOSER_____

SFMTA SBE FORM No. 4

SBE SUBCONSULTANT PARTICIPATION DECLARATION

(To be submitted by the prospective prime consultant or subconsultant, as appropriate, to the Contract Compliance Office with its proposal, unless an extension of time is requested and granted.)

_____,
(Name and Title)

declares as follows: That contingent upon award of_____
(Name of Project)

_____ will award subcontracts or pursue
(Name of Prime Consultant)

orders to the following Small Business firms: (If the firm is a joint venture, you must attach a copy of the joint venture agreement.)

Name and Address of SBE	Type of SBE Certification	Lic.#	Gender M F		Ethnicity	Type of Work (Describe)	% and/or \$ Amount of Contract

Total dollar value of SBE work: \$ _____ = _____ % of SBE Participation

Total dollar value of Proposal Price \$ _____ 100%

I declare under penalty of perjury under the laws of the State of California, that the above information is true and correct.

Owner or Authorized Representative (Signature)

Dated: _____

☐ PROPOSER: _____

SFMTA SBE FORM No. 5

SMALL BUSINESS ENTERPRISE ACKNOWLEDGMENT DECLARATION

☐ Every listed SBE subconsultant or supplier (including lower tier subconsultant) must submit the completed declarations to the Prime Consultant. The Prime Consultant shall submit completed declarations with its proposal to the Contract Compliance Office, unless an extension of time is requested.)

(Owner or Authorized Representative and Title)

declares that _____ will award
(Name of Prime Consultant)

_____ [(%) percent and/or (\$) amount], of subcontract or

_____ [(%) percent and/or (\$) amount] of a purchase order of the total value of the
prime contract to _____ (Name of your firm).

License No. _____. Type of SBE Certification: _____

Nature of work to be performed by SBE: _____

FORM OF OWNERSHIP FOR SMALL BUSINESS ENTERPRISE

Sole Proprietorship _____ Partnership _____ Joint Venture _____ Corporation _____

Limited Liability Partnership _____ Limited Liability Corporation _____

LIST OWNERS

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Name _____ Ethnicity* _____ Gender _____ % of Ownership _____

Percentage of SBE Stockholders: _____

*Ethnic Codes: AI/AN = American Indian or Alaskan Native, A/PI = Asian or Pacific Islander, B = Black, F = Filipino, H = Hispanic, and W = White.

LIST INSURANCE POLICIES AND BONDING ARRANGEMENTS

Name of Policy _____ Party Insured _____

Name of Policy _____ Party Insured _____

Name of Policy _____ Party Insured _____

For Prime Consultants and Subconsultants Only:

List the firm's annual gross receipts for the last three fiscal years:

20_____ \$_____, 20_____ \$_____, 20_____ \$_____

For Suppliers or Manufacturers Only:

List the number of employees for the last three fiscal years:

20_____ Number_____, 20_____ Number_____, 20_____ Number_____

ADDITIONAL SUBCONTRACTING BY SUBCONSULTANTS:

a._____ We will not subcontract any portion of work to another subconsultant.

b._____ We will subcontract _____ [% and/or \$ amount] of our work to _____
(Name of Subconsultant)

Indicate owners' ethnicity and gender _____

I declare under penalty of perjury under the laws of the State of California that the above information is true and correct; and that our firm is a certified SBE as defined under the Municipal Transportation Agency's SBE Pro.

Owner/Authorized Representative (Signature)

Name & Title (Please Print)

Address

Telephone No.



SFMTA SBE FORM No. 6
PROGRESS PAYMENT REPORT

To be completed by Consultant and submitted to Project Manager with its monthly progress payment application (transmit and copy to all of the following.)

TRANSMITTAL To: Project Manager

Copy: Contract Compliance Office

From: Consultant _____

Date Transmitted: _____

PART 1: Fill in all blanks and check the box below.

Contract Number: _____

Contract Title: _____

Reporting Period (Month and Year): _____

Corresponding Progress Payment No.: _____

Note: The information submitted on Parts 1 and 2 of this form is accurate for the progress payment period immediately preceding that of the current payment application attached herewith.

1. Amount of Prime Contract	\$
2. Amount of Change Orders, Amendments and Modifications to Date	\$
3. Total Contract to Date including Change Orders, Amendments and Modifications (Line 1 + Line 2)	\$
4. Amount Invoiced this Reporting Period	\$
5. Total Amount Paid to Date including Retention (excluding Line 4)	\$
6. Amount of Progress Payment Requested to Date (Line 4 + Line 5)	\$
7. Percent Complete (Line 6 ÷ Line 3)	\$
8. Reporting Period - From (date): _____ To (date) _____	

Consultant, including each joint venture partner, must execute this form.

Owner/Authorized Representative (Signature)

Owner/Authorized Representative

Name & Title (Please Print) Date

Name & Title (Please Print) Date

Firm Name

Firm Name

() ()

Telephone Fax

() ()

Telephone Fax

PART 2: Provide complete information in the following table for Consultant, each SBE joint venture partner and all subconsultants. Make copies of this sheet as needed. Attach copies of all invoices from subconsultants supporting the information tabulated on this form and Consultant's invoice and Contract Payment Authorization for the immediately preceding progress payment period. Note: Failure to submit all required information may lead to partial withholding of progress payments. See 49 CFR Sections 26.29, 26.37.

A Name of Firm (List consultant, including each joint venture partner, and all subconsultants, and indicate if firm is a SBE.)	B Portio n of Work	C Amount of Subcontract or Purchase Order	D Amount of Change Orders to Date	E Total Amount Subcontract or Purchase Order to Date + Change Orders (C + D)	F Amount Invoiced this Reporting Period	G Amount of Progress Payments Paid to Date	H Percent Completed to Date [F + G] / E
TOTALS							

☐ SFMTA SBE FORM No. 7

SUBCONSULTANT PAYMENT DECLARATION

(To be completed and submitted by Consultant, including all joint venture partners, if any, and submitted to the Contract Compliance Office within 5 working days following actual payment to subconsultant. Payments to subconsultant shall be made no later than 3 working days following receipt of progress payment from the City).

TRANSMITTAL TO: Contract Compliance Office

COPY TO: Project Manager

From: Prime Consultant: _____ Date Transmitted: _____

☐ **Provide the following information for each progress payment received from SFMTA. Use additional sheets to include complete payment information for all subconsultants and vendors utilized on this Contract including each joint venture partner. Failure to submit all required information may lead to partial withholding of progress payment.**

Contract No.: _____ Contract Title: _____

Contract Awarding Department: _____

Progress Payment No.: _____ Period Ending: _____

Amount Received: \$ _____ Date: _____ Warrant/Check No.: _____

Prime JV/Subconsultant/ Vendor Name	Business Address	Amount Paid	Payment Date	Check Number

I/We declare under penalty of perjury under the laws of the State of California that the above information is complete, and that the tabulated amounts paid to date are accurate and correct.

Prime Consultant, including each joint venture partner, must sign this form.

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name (Please print/type)

Name (Please print/type)

Title (Please print/type) Date

Title (Please print/type) Date

Firm Name

Firm Name

Telephone Fax

Telephone Fax



SFMTA SBE FORM No. 8

DECLARATION – AMENDMENTS OF PROFESSIONAL SERVICE CONTRACTS

This section is to be completed for all modifications to this contract. All prime consultants, individual joint venture partners, subconsultants and any other vendors participating in the modifications must be listed.

CONTRACT NO.:		CONTRACT MOD NO.:
CONTRACT TITLE:		
ORIGINAL AMOUNT:	\$	SBE GOAL:
CONTRACT MODIFICATION AMOUNT:	\$	
CONSULTANT:		
CONTACT PERSON:		PHONE:
ADDRESS:		
CITY:	STATE:	ZIP CODE:

JV/P/S: Indicate if consultant is Joint Venture Partner, Prime or Sub.

JV/P/S	NAME	SERVICES PERFORMED	% of Total Mod	MODIFICATION AMOUNT	% SBE

I declare, under penalty of perjury under the laws of the State of California, that the information contained on this form is true and correct.

Owner/Authorized Representative (Signature):

Date:

Owner/Authorized Representative (Print):

Title:

☐ SFMTA SBE FORM No. 8

DECLARATION – AMENDMENTS TO PROFESSIONAL SERVICE CONTRACTS

Information is needed for each firm listed on Page 1 (prime consultants, joint venture partners, subconsultants and suppliers). Firms that have previously worked on City contracts may already have a vendor number. You may enter the vendor or federal I.D. number instead of completing the rest of the information. Use additional sheets if necessary.

FIRM NAME			
ADDRESS:			
CITY:		<u>FEDERAL I.D. NO.:</u>	VENDOR NO.
STATE:	ZIP:		
PHONE NO.:	FAX NO:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		

FIRM NAME			
ADDRESS:			
CITY:		<u>FEDERAL I.D. NO.:</u>	
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		

FIRM NAME			
ADDRESS:			
CITY:		<u>FEDERAL I.D. NO.:</u>	
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		

FIRM NAME			
ADDRESS:			
CITY:		<u>FEDERAL I.D. NO.:</u>	
STATE:	ZIP:		
PHONE NO.:	FAX NO.:	ETHNIC OWNERSHIP:	
SERVICE:	\$ AMOUNT:		

ETHNIC OWNERSHIP: Asian, Black, Hispanic, Native American, White, Other (please state)

SFMTA SBE FORM No. 9

CONSULTANT EXIT REPORT AND DECLARATION

To be completed by Consultant, including all joint venture partners if any, and submitted to Resident Engineering (copy to Contract Compliance) with its final progress payment application (transmit and copy to all of the following.)

TRANSMITTAL To: Project Manager Copy: Contract Compliance Office

From: Consultant: _____

Date Transmitted: _____

Consultant must complete SFMTA SBE Form 9, Page 2 and have it executed by all SBE joint venture partners and all subconsultants.

Reporting Date: _____

I/We declare under penalty of perjury under the laws of the State of California, that the information on Page 2 of this form is complete, that the tabulated amounts paid to date are accurate and correct, and that the tabulated amounts owing will be paid within forty (40) days after the date of SFMTA's final payment under the Contract.

Consultant, including each joint venture partner, must execute this form.

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name (Please print/type)

Name (Please print/type)

Title (Please print/type) Date

Title (Please print/type) Date

Firm Name

Firm Name

() ()

Telephone Fax

() ()

Telephone Fax

Note: Failure to submit all required information may lead to partial withholds of progress payment. See 49 CFR Sections 26.29, 26.37.

Name of Firm (List Consultant, including each joint venture partner, and all subconsultants, and indicate if the firm is a SBE.)	Portion of Work	Amount of Progress Payments Paid to Date	Amount Owing under the Contract including all Change Orders, Amendments and Modifications	Owner/Authorized Representative Signature (Consultant, including each joint venture partner, and all subconsultants)
TOTALS				

APPENDIX 3

Business Registration Certificate Requirement

Unless you have previously submitted this form, failure to complete the Declaration on the reverse and return this form to Purchasing with your bid will be a basis for rejection of the bid, and Purchasing will assume that your company does not intend to apply for a Business Tax Certificate.

General

To receive an award, a vendor must have a current Business Registration Certificate or else not be required to register. The registration fee is \$25, \$150, \$250 or \$500, depending on the type and size of your business. The fee (except the \$25 fee) is pro-rated for new registrations, depending on when during the year you started your business in San Francisco, and is based on estimated tax liability for your payroll expense. To determine the registration fee due, you can check the website at "<http://sfgov.org/tax/busfaq.htm#reg>".

Who must obtain a registration certificate?

Any business located, or conducting business, in San Francisco.

What is "conducting business in San Francisco"?

Briefly, it means having employees or a place of business in San Francisco, or having employees visit San Francisco regularly. Questions 1-4 on the reverse specifically relate to "conducting business."

Are there exceptions?

Yes. A non-profit, tax-exempt business need not register or pay the registration fee. See Question 5 on reverse. Government agencies, banks and insurance companies are exempt. See Question 6.

My business is not located in San Francisco. Is a registration certificate still required?

Yes, if the business "conducts business in San Francisco," unless it is non-profit and tax-exempt, or a bank, or an insurance company.

All businesses, including those which do not "do business in San Francisco" but excluding government agencies, must sign and return the Declaration.

Businesses whose computed tax is \$2,500 or less do not have to pay the tax, but are required to file an annual statement with the Tax Collector to qualify for this Small Business Exemption.

However, all businesses are subject to the annual Business Registration fee, which varies depending on the type and size of business.

What's involved in obtaining a registration certificate?

Obtaining a certificate is easy, but not automatic. Once the Tax Collector receives an application, the office must check the payment status of other taxes (Unsecured Personal Property Tax, Payroll/Business Tax) and licenses or permits. If any tax or license/permit fee is delinquent, the certificate cannot be issued. Only when all taxes and fees are paid in full will the certificate be issued.

Where do I obtain the certificate?

At the Tax Collector's Office. You would obtain an application form from, and submit it and the registration fee to:

Tax Collector's Office
Taxpayer Assistance
City Hall, Room 140
San Francisco, CA 94102-4696
(415) 554-6718 or (415) 554-4400

P-25 (6-01)

Do Company Divisions, Parents and Subsidiaries

have to register separately?

That depends on a company's individual situation. Contact the Tax Collector at (415) 554-6718 or 554-4400 for more information.

Can I do business with the City without a certificate?

Not if you "conduct business in San Francisco." The City can make purchases from businesses only in the following situations:

- The business conducts business in San Francisco and has registered.

- The business does not conduct business in San Francisco and has signed the Declaration.
- The business is non-profit and tax-exempt, has signed the Declaration and has submitted an IRS exemption letter.
- The business is a government agency, bank, or insurance company.
- There is an emergency. Although Purchasing can award the contract, the vendor may be subject to business taxes and required to possess a certificate.

These requirements cover service contracts, construction contracts and product purchases.

If you submitted this form for an earlier transaction, and if your business tax status has not changed, please discard this form.

What if my application is pending during a bid evaluation?

If you are the low bidder on a City contract, and have applied for the certificate but your application has not yet been approved, the City may make the award to you if you sign the Declaration. If you have a receipt from the Tax Collector for the registration fee, submit a copy of the receipt with this form.

What if I currently “do not conduct business in San Francisco,” but if I win this bid, I will?

You may answer the questions based on your current status, and you should not register at this time. If you win the bid, you should register with the Tax Collector.

For more information

For information on how to apply for the certificate, call the Tax Collector’s Office. For information on your eligibility to receive a particular award, call Purchasing. See the bottom of the reverse of this form.

Completing the Declaration; Failure to do so

Unless you previously submitted this form, complete the Declaration and, if possible, return it with your bid or quotation in the envelope provided. If you submit this form separately, see the mailing address under “Routing” near the bottom of the reverse of this form.

If you do not complete and return this form, that will be a basis for Purchasing’s rejecting the bid, and for assuming that your company should register but will not and therefore that the City cannot do business with you.

If you submitted this form previously

Business Tax Declaration

Please answer Yes or No to Questions 1-6, based on your company's situation **as of now**. If any answers would change if your company won a bid that is pending, you may submit a new form later.

Conducting Business in San Francisco

Yes No

This person, business, or person's or business's employee:

 1. maintains, owns or leases a fixed place of business within San Francisco.

 2. regularly maintains a stock of tangible personal property in San Francisco for sale in the ordinary course of business.

 3. in the ordinary course of business, loans capital on property within San Francisco.

 4. is physically present within San Francisco through property (e.g., trucks or inventory) or employees (e.g., sales representatives) during **7 or more separate days per year** (e.g., 4 employees in San Francisco for 2 days each constitute 8 separate days, and require a "yes" answer to this question). If a manufacturer does not conduct business in San Francisco but the manufacturer's independent representative does, only the representative must register.

If you answered "no" to Questions 1-4, ordinarily you are not conducting business in San Francisco, need not register with the Tax Collector and may omit items 5-10 below, but you must sign and return this Declaration. However, this is subject to review by the Tax Collector. **If you answered "yes" to any of the questions**, you must answer the remaining questions in this Declaration and, unless an exemption applies **must register**.

Tax-Exempt Businesses, Banks, Insurance Companies

Yes No

 5. This business is non-profit, tax-exempt. If "yes," you need not register and may omit items 6-10, but you must sign the declaration and submit proof of tax-exempt status to Purchasing. Proof is usually an exemption letter from the IRS, noting §501(c) or (d) of the Internal Revenue Code.

 6. This business is a bank or an insurance company. (Please indicate on this form your type of business.)

Applying for a Business Registration Certificate

If you answered "yes" to any of Questions 1-4, and "no" to Questions 5 and 6, check item 7, 8, or 9 and complete any applicable blanks. If no item is checked, or if the Declaration is not signed, this will constitute a basis for Purchasing to reject the bid.

 7. This company has registered with the Tax Collector. Certificate # (6 digits, e.g., "123456").

 8. This company applied for a Certificate by mailing the application and fee to the Tax Collector, or by submitting the application in person, on 20 . The application is pending. (NOTE: Completing this Declaration is not the same as applying for a Certificate.) If you submitted the application in person, please submit with this Declaration a copy of the fee receipt you received from the Tax Collector.

 9. This company does not intend to apply for a certificate.

 10. If, as a result of winning this bid, this company is required to register, we will do so.

I understand that my representation, if any, that I am not engaged in business in San Francisco is subject to review by the Tax Collector. If the Tax Collector determines that I am conducting business in San Francisco, the City may either cancel the contract or withhold payment ten days after written notification by the Tax Collector.

I declare (or certify) under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, 20____, at _____,
(State) (City)

Name of Company (please print) _____ Mailing Address for General
Corresp., Purchase Orders, etc.
General Address

Signature _____ City, State, ZIP _____

Name of Signatory (please print) _____ Remittance Address, if different
Remit Address { _____

Title _____ City, State, ZIP _____

Telephone Number _____ Federal ID or Social Security
Number

Routing

If you are registering, send the application to the Tax Collector (address on obverse). Do not send this form to the Tax Collector. We encourage you to send this form with your bid or quotation in the envelope provided. If you submit this form separately, send it to: Purchasing Department, Business Tax Compliance, City Hall, Room 430, San Francisco, CA 94102-4685. If you submitted this form previously and if your business tax status has not changed, discard this form.

For more information

Regarding how to apply, call the Tax Collector at (415) 554-6718 or 554-4400. Regarding a bid, call Purchasing.

APPENDIX 4

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY PROTEST PROCEDURES FOR THE BIDDING AND AWARD OF FEDERALLY ASSISTED THIRD PARTY CONTRACTS

(Construction, public improvements, personal services, negotiated procurement and other major procurement contracts)

REVISED: April 2007

1. Policy

In the event that any protests, discrepancies, or legal questions arise during the bidding and award process of federally assisted construction, public improvements, personal services, negotiated procurement and other major procurement contracts, the Contract Manager shall report unresolved protests to the Executive Director/CEO, who shall review the protest and recommend its resolution to the San Francisco Municipal Transportation Agency. These procedures shall be incorporated by reference in all bid packages.

2. Definitions

Contract Manager (CM) refers to the San Francisco Municipal Transportation Agency engineer in charge of administering the contract that is the subject of the protest. CM also refers to the Project Manager for the project when there is no engineer administering the contract.

Award shall mean authorization by resolution of the San Francisco Municipal Transportation Agency Board of Directors for its staff to contract with a bidder or proposer, or recommendation by resolution of the SFMTA Board of Directors that the City's Board of Supervisors approve a contract with a bidder or proposer.

Award Process includes the pre-award, award and post-award phases of a negotiated procurement, a request for proposals (RFP) and a sealed bid.

Bid includes the terms "offer" or "proposal" as used in the context of negotiated procurements, requests for proposals and sealed bids.

City means the City and County of San Francisco, acting through the San Francisco Municipal Transportation Agency.

Contract Compliance Office (CCO) is the SFMTA office that administers compliance with federal regulations governing Disadvantaged Business Enterprises, as well as SFMTA's program governing Small Business Enterprises.

Days refers to working days of the City and County of San Francisco (unless otherwise

indicated).

Executive Director/CEO refers to the Executive Director/CEO of the SFMTA.

Department of Parking and Traffic (DPT) refers to the Department of Parking and Traffic of the San Francisco Municipal Transportation Agency.

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

Federal Transit Administration (FTA) is an operating administration of the U.S. Department of Transportation.

San Francisco Municipal Transportation Agency (SFMTA or Agency) is the agency of the City and County of San Francisco that is in charge of the construction, management, supervision, maintenance, extension, operation, use and property of the San Francisco Municipal Railway and the Department of Parking and Traffic, and has exclusive authority over contracting, leasing and purchasing by the Municipal Railway and the Department of Parking and Traffic, subject to certain restrictions of the City's Charter. The Agency acts through its Board of Directors.

Protest is a complaint by a bidder or proposer regarding a bid or the award process which arises prior to award and is formally communicated to the Director, as provided below.

Post-Award Protest is a complaint by a bidder or proposer when San Francisco Municipal Transportation Agency awards a contract, or recommends that the Board of Supervisors award a contract, to other than the bidder or proposer recommended for award by SFMTA staff.

San Francisco Municipal Railway refers to the San Francisco Municipal Railway of the San Francisco Municipal Transportation Agency.

Small Business Enterprise (SBE) refers to a for-profit, small business concern that qualifies for the program by being certified under any of the following programs: the State of California's Small Business Program, the City and County of San Francisco's LBE Program, or the Federal DBE program.

3. Responsibilities:

3.1 The Contract Manager (CM) obtains the response to issues not related to DBE compliance and coordinates the resolution of all protest issues.

3.2 The Contract Compliance Office (CCO) resolves issues regarding DBE compliance.

3.3 In the event that a protest is not resolved by the CM, the Director shall review the protest and make a recommendation to the Agency for final action.

4. Implementation

4.1. Submit Protest

A protest describing the nature of the disagreement must be submitted in writing to SFMTA no later than five (5) working days following notification of proposed award. A post-award protest describing the nature of the disagreement must be submitted in writing to SFMTA no later than five (5) days following the Notification of Award of the contract. If the bid procedure requires submission of documents in separate phases and bidders may be disqualified at the end of a phase prior to the final award, then protests regarding a phase of the procedure (including protests concerning documents received by bidders during the phase) must be submitted in writing with a description of the disagreement to SFMTA no later than five (5) days following receipt of notification of the results of that phase.

Protests shall be addressed to:

Executive Director/CEO
San Francisco Municipal Transportation Agency
One South Van Ness Ave, 7th Floor
San Francisco, CA 94103
with a copy to:
Elson Hao, P.E.
Principal Engineer
Operations Engineering Section, Operations Divisions
San Francisco Municipal Transportation Agency
700 Pennsylvania Ave
San Francisco, CA 94107

Trinh Nguyen, P.E.
Project Manager
Operations Engineering Section, Operations Divisions
San Francisco Municipal Transportation Agency
700 Pennsylvania Ave
San Francisco, CA 94107

4.2 Coordination Efforts

With direction from the Executive Director/CEO, and following the requirements of FTA Circular 4220.1E, the AE shall determine the nature of the disagreement and coordinate resolution efforts.

4.3. DBE or SBE Requirements

If the protest involves meeting DBE or SBE requirements, the Contract Manager shall forward a copy of the protest to the Contract Compliance Office for review and recommendations. The CM shall also send a copy to the City Attorney for information.

The CCO shall review DBE or SBE requirements for the project and examine whether the protest has merit. Based on the examination, the CCO shall notify the Director and the CM of its decision. The CM shall provide copies of the decision to the Senior Director of Transportation Planning and Development Division. The CM shall then inform the protester, in writing, of the decision, responding at least generally to each material issue raised in the protest. The CM's letter to the protester shall state that (a) the protester may contact the CM to discuss the response, (b) the protester has the right to appeal his decision to the Director pursuant to Section 4.5, and (c) the protester has the right to address the Agency on the date when the matter is calendared to be heard if the Director denies the appeal.

Regarding the issue of whether a bidder has met its DBE or SBE goal or demonstrated good faith efforts in reaching the contract-specific DBE or SBE goal, the CCO's determination will be administratively final except when the CCO has determined that an apparent low bidder has failed to meet its goal or make the required good faith efforts. In that situation, the procedures in Section V.D.3.v of the Agency's DBE or SBE Program apply to requests for reconsideration from the apparent low bidder. Neither the Executive Director/CEO nor the SFMTA Board of Directors will have jurisdiction to hear administrative appeals or requests for reconsideration of the CCO's decision on good faith efforts.

4.4 Issues Not Related to DBE or SBE Requirements

If the protest concerns complaints regarding discrepancies in the bid documents, missing or required documentation, or the selection process, and is not related to DBE or SBE requirements, the CM or designee shall prepare a memorandum to the City Attorney's Office requesting an opinion on the protest. The CM shall attach a copy of the bidder's protest and all documentation from the bid package and any other document deemed necessary by the attorney.

Upon receipt of the memorandum, the City Attorney's Office will investigate and respond with an opinion to the Executive Director/CEO and the CM for review and evaluation. The CM shall provide copies of the opinion to the Senior Director of Transportation Planning and Development Division, and the CCO. The CM shall inform the protester in writing of the CM's recommendation, stating the reasons for the recommendation, and responding at least generally to each material issue raised in the protest. The CM's letter to the protester shall state that (a) the protester may contact the CM to discuss the response, (b) the protester has the right to appeal the decision to the Executive Director/CEO pursuant to Section 4.5, and (c) the protester has the right to address the Agency on the date when the matter is calendared to be heard if the Director denies the appeal.

4.5 Disagreement by Protester

Except as provided in Section 4.3, in the event that the protester disagrees with the recommendations or decisions rendered, the protester may submit a written request to the Executive Director/CEO for review of the decision within five (5) days of receipt of the CM's letter responding to the protest. The Executive Director/CEO shall review the decision and make a recommendation to Agency for final action. The CM shall inform the protester of the Executive Director/CEO's recommendation, the date when the Agency will consider the item, and the protester's opportunity to address the Agency regarding the matter.

4.6 Incorporate Legal Opinion/Recommendation

The CM shall incorporate appropriate language reflecting the outcome of the protest in the calendar item and resolution for approval of the contract by the Agency. However, in the event of a multi-phased bid procedure as described in Section 4.1 above, the protest may be considered

by the Agency prior to the meeting when final award is determined.

4.7 Final Action

The protester shall be notified in writing of the Agency decision regarding the protest and/or award of the contract. The action of the Agency is final. Subject to the provisions of Section 4.8, the protester may seek a remedy in State or Federal court, as appropriate, from the final action of the Agency.

4.8 Protest to FTA

FTA may only entertain a protest that alleges that the Agency (1) failed to have written protest procedures; (2) failed to follow its written protest procedures; or (3) failed to review a complaint or protest. A protest to FTA must be received by the cognizant FTA regional or Headquarters Office within five (5) working days of the date the protester knew or should have known of the violation. A protester must exhaust all administrative remedies with the Agency before pursuing a protest with FTA.

APPENDIX 5

NEW RESTRICTIONS ON LOBBYING CERTIFICATION

1.

2. The Contractor certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The Contractor shall require that the language of this certification be included in all Subcontracts, and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Section 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies and affirms the truthfulness and accuracy of each statement of this certification and disclosure. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section 3801 et seq., apply to this certification and disclosure.

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

(1) The prospective participant certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- b. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) b. of this certification; and
- d. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective primary participant shall attach an explanation to this proposal.

The certification in this clause is a material representation of fact relied upon by the TJPA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the TJPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Bidder/Offeror Name: _____

Authorized Representative Name: _____

Authorized Representative Title: _____

Authorized Representative Signature: _____

Date: _____

APPENDIX 6

ATTESTATION OF COMPLIANCE

To be completed by all Proposing Firms and All Individual Subcontractors

(Please check each box, sign this form and submit it with your response.)

Name of individual completing this form: _____

The form is submitted on behalf of firm: _____

Name of RFP:

1. I attest that I and all members of the firm listed above will and have complied to date with Section VI. S of the above RFP. ☐Yes

2. I understand that if my firm or any members of the firm listed above are found to be in violation of Section VI. S of the above RFP, this will disqualify my firm and any Proposal in which my firm is named from further consideration. ☐Yes

I have entered required responses to the above questions to the best of my knowledge and belief.

Signature: _____

Date: _____

APPENDIX 7

NONDISCRIMINATION IN CONTRACTS AND BENEFITS

THIS PRINT COVERS CALENDAR ITEM NO: 11

MUNICIPAL TRANSPORTATION AGENCY
CITY AND COUNTY OF SAN FRANCISCO

DIVISION: Operations

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO, or his designee, to execute an agreement with Cubic Transportation Systems, Inc. for the refurbishment of the fareboxes on all SFMTA revenue vehicles, equipment and software to account for fares and manage the fareboxes, and support for SFMTA staff, for a term of 26 months and an amount not to exceed \$19 million.

SUMMARY:

- The existing farebox system was procured in 1991 from Cubic Transportation Systems, Inc. ("Cubic"). Over the past 16 years, Cubic has provided additional fareboxes to support the growth of SFMTA fleet when needed.
- The fareboxes are currently far beyond their intended 10-year design-life; they frequently breakdown, need new parts, and require constant maintenance, all of which has become a critical service issue.
- Based on an analysis comparing complete replacement versus refurbishment of the farebox system, refurbishment is the best option for SFMTA based on funding availability, return on investment, integration of new technologies (such as smart cards), and project timeline.
- The Human Rights Commission has approved a sole source contract waiver for this project. The farebox system software and hardware are proprietary to Cubic. No other vendor can provide parts or software for the system, and no other fare system can easily integrate to SFMTA fareboxes.
- The proposed contract with Cubic to refurbish the farebox system is for a 26-month term, including 15 months for installation of refurbished fareboxes on all revenue vehicles and the equipment and software to account for fares and manage the fareboxes, and 12 months for post-installation training to support the system.
- The total amount of the contract to refurbish the farebox system is \$19 million. The contract requires Board of Supervisors' approval under Charter section 9.118.
- The City Attorney has reviewed this report and accompanying Resolution.

ENCLOSURES:

1. SFMTA Board Resolution
2. Agreement between the SFMTA and the Cubic Transportation Systems, Inc.

APPROVALS:

DEPUTY OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION

DATE

SHOULD BE RETURNED TO: Kenneth McDonald, Operations

ASSIGNED MTAB CALENDAR DATE: _____

EXPLANATION:

Background

The existing farebox system, provided by Cubic Transportation Systems, Inc. ("Cubic"), was procured under a 1990 contract that was completed in 1991. The delivery and installation of the farebox system was completed in 1991.

The SFMTA has purchased additional fareboxes from Cubic over the past 16 years to support the growth of the revenue fleet as needed. The 1991 farebox system had a 10-year design life, and now is well past its useful life. Fareboxes break down repeatedly, and the fare collection system requires constant maintenance and new parts. Replacement or refurbishment of the existing fareboxes has become a critical service issue that must be addressed immediately.

Comparison of Full Replacement vs. Refurbishment Options

Based on the following factors, refurbishing the existing farebox system is preferable to replacing it.

- Cost. Procurement of a new farebox system would cost approximately two to three times the cost of refurbishing the existing farebox system, based on costs incurred by other transit systems that have recently replaced their farebox systems.
- Return on investment. With the upcoming implementation of TransLink, staff anticipates that patrons will more frequently use that system (and in the future, other cashless systems) to pay fares, so the high investment cost of a new cash farebox system is unnecessary.
- Technology: New fareboxes currently available are "validating" fareboxes that are slower to process cash fares and more complex to use than the SFMTA's existing fareboxes, which use a faster "registering" methodology to count coins and bills.
- Timeline: Based on industry experience, replacement of an entire farebox system with new technology would take approximately 30 to 36 months, while a refurbishment project of an existing farebox system can usually be completed in less than 16 months.

Sole Source Contract Justification

The San Francisco Human Rights Commission has approved a sole source contract with Cubic for this project. The contract for refurbishing the farebox system must be issued as a sole-source contract because the technology used in the system is propriety to Cubic, which does not license its technology to other vendors. The SFMTA conducted several competitive procurement bid requests for additional fareboxes and replacement modules/parts over the last 16 years. Cubic was the only respondent to these requests for bids, because no other vendor can provide the parts and software for the existing system. Moreover, no other farebox system can be integrated with a Cubic farebox. These circumstances are not unique to Cubic, as the other manufacturer of registering farebox

systems, GFI Corporation, also does not license its proprietary technologies to other vendors, and other vendors cannot integrate with a GFI farebox system or provide spare parts for GFI systems.

Evaluating staff has experience completing similar projects for other transit agencies and are well aware of the appropriate and competitive market price for the system. With this knowledge, staff negotiated the terms and scope of the contract to ensure a competitive price that is fair, reasonable and acceptable to the City. The not-to-exceed amount for this project is \$19 million, which includes refurbished fareboxes on all SFMTA revenue vehicles, computer hardware and software to account for fares and manage the fareboxes, and support and training for SFMTA staff.

The \$19 million will be funded from the FY2007-08 Public Transportation Modernization, Improvement, and Service Enhancement Account funds from the State of California as approved by the Board on March 18, 2008.

Strategic Plan

This project supports Goals 1, 2 and 4 of the SFMTA's Strategic Plan, namely, Customer Focus, System Performance and Financial Capacity.

Recommendation

As compared to procuring a new farebox system, based on the lower cost of refurbishing the existing system, the time it will take to complete the refurbishment and upgrades, and the needs of the SFMTA, staff recommends approval of a contract with Cubic to refurbish the existing farebox system.

Board of Supervisors' approval of the contract is necessary under Charter section 9.118 because the amount of the contract exceeds ten million dollars.

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

RESOLUTION No. _____

WHEREAS, The SFMTA procured its existing farebox system in 1990 from Cubic Automatic Revenue Collection Group, now called Cubic Transportation System, Inc. ("Cubic"); and

WHEREAS, The existing farebox system is far beyond its design life of ten years, and has become a critical service issue as many of its components are outdated or worn out, it frequently breaks down, and requires new parts; and

WHEREAS, The SFMTA conducted an analysis and determined that refurbishing the existing farebox system is more cost effective and is of greater benefit to the Agency than replacing it; and

WHEREAS, Due to the proprietary design of the existing farebox system and system integration requirements, the proposed refurbishment can only be conducted by Cubic; and

WHEREAS, The San Francisco Human Rights Commission has granted a sole source contract waiver to SFMTA to implement this project; and

WHEREAS, Upgrades to the farebox system will require execution of licenses for new or upgraded software to support the system; and

WHEREAS, The contract for this project is for an amount not to exceed \$19 Million, and a term not to exceed 26 months, which includes a 15-month installation period followed by a 12-month support services period; and

WHEREAS, Board of Supervisors' approval of the contract is required under Charter section 9.118; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO or his designee to execute a contract with Cubic Transportation Systems, Inc. for the refurbishment of the farebox system, including the fareboxes, computer hardware and software to account for fares and manage the fareboxes, and to provide support services for SFMTA staff, for a term not to exceed 26 months and an amount not to exceed \$19,000,000; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO or his designee to execute such software and other technology license agreements with Cubic Transportation Systems, Inc. as are necessary for the full implementation of the project described herein at no additional cost and upon such other terms as the Executive Director/CEO determines are in the best interests of the SFMTA; and be it further

RESOLVED, That the SFMTA Board of Directors recommends that the Board of Supervisors approve the proposed contract.

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

Secretary, Municipal Transportation
Agency Board

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

**AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
AND**

**CUBIC TRANSPORTATION SYSTEMS, INC.
FOR FARE SYSTEM REHABILITATION AND UPGRADES**

This Agreement [for Fare System Rehabilitation and Upgrades, dated for convenience as June 1, 2008](#), in the City and County of San Francisco, State of California, by and between: [Cubic Transportation Systems, Inc., with its offices at 5650 Kearny Mesa Road, San Diego, CA 92111](#), hereinafter referred to as "Cubic" or "Contractor," and the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency, hereinafter referred to as "City" or "SFMTA."

RECITALS

WHEREAS, The SFMTA wishes to refurbish its existing fare collection system, hereinafter "Fare System," to improve the customer experience, improve operator interaction with the Farebox, and improve the reliability of the system and data retrieval/reporting; and,

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by the SFMTA as set forth under this Agreement; and,

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Agreement number 4137-07/08 on April 21, 2008;

Now, THEREFORE, the parties agree as follows:

1. DEFINITIONS

The following words and phrases shall have the meanings set forth below when used in this Agreement:

A. **Agreement:** This document, its Appendices, the Program Plan and Project Schedule, as adopted in accordance with Appendix A to this Agreement, and other documents attached hereto or specifically incorporated herein by reference.

B. **Confidential Information.** Information owned or controlled by a party that is provided to the other party and that is identified as proprietary or confidential.

C. **Days.** Consecutive calendar days, including weekends and holidays, unless otherwise specified.

D. **Deliverables.** The hardware, software, Equipment, reports, documentation or other materials, supplies or documents to be provided by Contractor to City as specified within each Task listed in Appendix A.

E. **Director of Transportation:** The Executive Director/Chief Executive Officer of the Municipal Transportation Agency of the City and County of San Francisco.

F. **Documentation.** All written technical publications, reference manuals, installation or Equipment specifications, user guides, and training materials relating to the use of the System provided by Contractor to City as a Deliverable.

G. **Effective Date.** The date upon which all required approvals are obtained and all signatures of the parties have been affixed hereto.

H. **Equipment.** The computers, servers, and other computer hardware or components, software, farebox modules and other farebox components, vaulting equipment, optical probes, and other parts and electronic, mechanical or electrical components Contractor shall provide to the SFMTA to complete the Project under this Agreement.

I. **Fare System.** The fareboxes used on SFMTA vehicles and each of their modules, components and auxiliary control panels, electrical, mechanical and electronic parts, the Central Computer System, Depot Computers, software, network system and , cabling, vaulting, optical probes and all other Equipment that comprise the fare collection system at the SFMTA.

J. **Final Acceptance.** Written notice to be provided by City to Contractor of City's determination that the Fare System and Equipment to be provided under this Agreement meet all requirements of this Agreement in accordance with the testing and Acceptance criteria to be developed as part of the Program Plan by mutual agreement of the parties.

K. **Force Majeure.** Any event arising subsequent to Effective Date which is beyond the control, and not caused by the fault or negligence, of either party, including governmental actions, war or war conditions, acts of terrorism, riots, sabotage, fire, flood, typhoons, earthquakes, accidents, hurricanes, explosions, pandemics, epidemics, quarantine restrictions, embargoes, or strikes, failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approval, authorizations, licenses or permits (including but not limited to import or export approvals or licenses).

L. **Milestone.** Work, services, delivery of Equipment, or other portion of the Project that when completed pursuant to mutually agreed upon Acceptance Criteria triggers the City's duty to issue payment to Contractor for that work, services, or Equipment. Appendix B Cost Schedule.

M. **Notice to Proceed or "NTP".** Written notice from the SFMTA to the Contractor that the City's Controller has certified funds for this Agreement and the Project, and that Contractor shall proceed with the Project.

N. **Project or Work.** The work, services, and Equipment that Contractor shall provide to the SFMTA under this Agreement.

O. **Project Manager.** The individual designated by City to be the primary liaison to Contractor for the purposes of this Agreement. As of the Effective Date, the Senior Operations Manager, SFMTA Operations is designated by City as Project Manager, and City will provide Contractor advance written notice of any change in the designation of the individual to serve as Project Manager in accordance with Section 25 herein.

P. **System.** The combined and integrated Equipment and software that has been Accepted by City following completion and Acceptance of all milestones.

Q. **Acceptance Criteria.** The parties will prepare and agree upon specific, objective written criteria to determine if a particular Milestone shall be accepted. The Acceptance Criteria shall be completed within ninety (90) days of the City's issuing NTP to Contractor.

R. **Work.** The services Contractor shall provide and the Equipment Contractor shall procure for the benefit of the SFMTA under this Agreement.

AGREEMENT

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

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

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

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

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from the Effective Date and shall remain in effect for twenty six (26) months thereafter, but shall be extended by any additional period authorized by the SFMTA during which Contractor completes any work

required for System Acceptance, and including any extension of this Agreement by agreement of the parties.

3. Effective Date of Agreement

This Agreement shall become effective on the date that the City provides to the Contractor Notice to Proceed ("NTP") with the Work under the Agreement.

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services and provide the Equipment as set out in this Agreement including but not limited to the services and Equipment described in Appendix A, "Services to be provided by Contractor", attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation shall be made in payments for work in accordance with the Milestone Payment Schedule set out in Appendix B, Cost Schedule, that the Director of Transportation, in his sole discretion, concludes has been performed as of the last day of the immediately preceding month, or that such Milestone has been accepted in accordance with Appendix A, Test and Acceptance Sections. In no event shall the amount of this Agreement exceed Nineteen Million dollars (\$19,000,000.00). The breakdown of charges associated with this Agreement appears in Appendix B - Cost Schedule, attached hereto and incorporated by reference as though fully set forth herein.

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

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

6. Guaranteed Maximum Costs

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

b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

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

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

7. Payment; Invoice Format

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

Payment shall be made by City to Contractor at the following address:

Cubic Transportation Systems, Inc.
PO Box 13410
Newark, NJ 07188-0410

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or 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.

9. Disallowance

If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At

its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

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

10. Taxes

a. City shall be responsible for paying Contractor for all Equipment to be provided to SFMTA under this Agreement, including all applicable sales taxes that are not included in the Equipment prices listed in this Agreement.

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

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

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

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

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

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, Equipment, or materials, although the unsatisfactory character of such work, Equipment or materials may not have been apparent or detected at the time such payment was made. Materials, Equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay, subject to the warranty provisions of 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 Contractor. Contractor 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 Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for and Ownership of Equipment

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

b. Contractor shall transfer legal title and ownership to the City of every Fare System component, farebox module, computer, server, and any and all other Equipment procured by Contractor to be provided to the SFMTA under this Agreement. Upon Contractor's receipt of said Equipment, Contractor shall in writing transfer legal title and ownership of the Equipment to the SFMTA and shall include in said notification the brand, type, number, and serial numbers (or other manufacturer's identifying information) of the Equipment. Upon transfer of legal title and ownership of the Equipment from Contractor to the SFMTA, said Equipment shall become an asset of the SFMTA held by Contractor for the sole benefit of the SFMTA. The City may in its absolute discretion withhold from any required payment the value of Equipment received by Contractor for which title has not transferred to the SFMTA.

c. When ordering any Equipment or any component of Equipment to be provided to the SFMTA under this Agreement, Contractor shall include in such order forms submitted to a supplier the following:

Cubic purchases this Equipment on behalf of and for the benefit of the City and County of San Francisco. Upon payment by Cubic for said Equipment or upon delivery of said Equipment to Cubic, FOB the supplier, legal title to the Equipment shall pass to the City and County of San Francisco, irrespective of who may actually have said Equipment in their possession, care, custody or control.

d. Contractor shall guard and keep safe said Equipment that is the property of the SFMTA and shall insure it (as provided in Section 15 of this Agreement) against all loss for its full value, which shall be the value charged by Contractor to the SFMTA under this Agreement.

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

a. Independent Contractor

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

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

b. Payment of Employment Taxes and Other Expenses.

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

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

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

15. Insurance

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

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

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

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

(4) Shipping Insurance with limits not less than the price charged by Contractor to the SFMTA for all Equipment Contractor shall provide to the SFMTA under this Agreement; said insurance coverage to be effective at anytime the Equipment or any part of the Equipment is not in the possession of the Contractor or of the SFMTA. Contractor shall fully indemnify the City for any applicable deductible for any claim under said Shipping Insurance.

(5) Inventory Insurance, which may be a rider to the General Liability or property policies, with limits not less than the price charged by Contractor to the SFMTA for all Equipment Contractor shall provide to the SFMTA under this Agreement; said insurance protect against loss of the Equipment and shall remain in effect at all times that the Equipment or any part of the Equipment is in the possession, care, custody or control of the Contractor or its subcontractors. Contractor shall fully indemnify the City for any applicable deductible for any claim under said Inventory Insurance.

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

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

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

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

Senior Operations Manager, SFMTA Operations
San Francisco Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, CA 94103

Copies to: Contracts and Procurement and
Chief Financial Officer
San Francisco Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, CA 94103

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

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

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

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

coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

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

16. Indemnification

Contractor 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 Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or Equipment provided by City or others, 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 Contractor, 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.

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

Contractor agrees to defend City against any claims, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of any action by a third party that is based upon a claim that the Deliverables provided under the Agreement infringe any U.S. patent, trademark, trade secret, copyright or other intellectual property right that is existing or issued as of the date the Agreement is executed and settle or pay damages related to such claims; provided that City give Contractor prompt written notice of such claim, grants Contractor control of the defense and any settlement thereof, and reasonably cooperates with Contractor, at Contractor's expense. In case the Deliverables or any part thereof is held to constitute an infringement and is enjoined, Contractor shall, at its own expense and option, either (i) obtain for City the right to continue using the Deliverables; (ii) modify the Deliverables so as to render them non-infringing; or, (iii) accept the return of the Deliverables and refund the total amount paid for the Deliverables by City.

Notwithstanding the foregoing, Contractor shall have no liability to City if the claim of infringement is based upon or arises out of (1) alterations of the Deliverables by City or the agents of City that are not authorized by Contractor; (2) failure of City to use modifications provided by Contractor for avoiding infringement; or, (3) use of the Deliverables in combination with hardware or software not approved by Contractor if the claim could have been avoided if such unapproved combination had not been used.

17. Incidental and Consequential Damages.

In no event shall either party be liable to the other for any special, incidental, indirect, consequential, exemplary or punitive damages or losses which may be suffered by either of them with respect to the Agreement, including but not limited to, loss of present or prospective profits, loss of income or revenue, expenditures, investments or commitments, or loss of business or data, even if such party has been advised of the possibility of such damages.

18. Limitation of Liability

The total aggregate liability of either party for claims asserted under the Agreement shall be limited to the amounts paid during the most recent six (6) month period preceding the events giving rise to such liability.

Each party has a duty to mitigate the damages that would otherwise be recoverable from the other pursuant to the Agreement by taking appropriate and reasonable actions to reduce or limit the amount of such damages.

18a. Performance and Payment Bond.

Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force and furnish to the City within 15 calendar days after the SFMTA issues Notice to Proceed to Contractor, a corporate surety performance bond and a labor and materials bond (or a single combined performance, labor and materials bond), each in the amount not less than the total contract value of this Agreement to guarantee Contractor's faithful performance of all obligations of this Agreement and to guarantee Contractor's payment to all suppliers of labor and materials under this Agreement.

Within 20 days of receipt of a written Change Order from SFMTA adding work to the project that will increase the project price by more than five percent (of the total project price), Contractor shall increase performance and labor and materials bond amounts by 100 percent of the cost of the additional work to be performed or shall purchase additional bonds each of which shall cover 100 percent of the cost of the additional work, and Contractor shall furnish evidence of such increase to City.

Additions or increases in bond coverage shall not replace or reduce existing bond coverage, but shall augment existing bond coverage. Contractor may meet required increases in bond coverage as required by either increasing the amount of the bond(s) previously obtained for the Project, or by purchasing additional bonds.

All bonds must meet all requirements of this Agreement and shall be furnished to the City on the form provided by the City without any revisions.

18b. Surety Requirements

The corporate surety on all bonds obtained by Contractor must be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties must be satisfactory to the SFMTA Executive Director/CEO and to the Controller of the City and County of San Francisco. The surety issuing bonds for this Agreement shall have a minimum rating AM Best rating of A- VIII. Should the surety fall below that standard, the Contractor may meet surety requirements by purchasing reinsurance acceptable to the City's Risk Manager or employing a co-surety with an AM Best rating of XV.

During the period covered by applicable statutes of limitation, if the surety on these bonds shall, in the opinion of the City, become insolvent or unable to pay promptly the amount of such bonds to the extent to which surety might be liable, Contractor, within 30 days after notice given by the City to Contractor, shall by supplemental bonds or otherwise substitute another and sufficient surety approved by the City in place of the surety becoming insolvent or unable to pay. If Contractor fails within such 30 day period to substitute another and sufficient surety, Contractor shall, if the City so elects, be deemed to be in default in the performance of its obligations hereunder, and the City in addition to any and all other remedies may terminate the contract or bring any proper suit or proceeding against Contractor and the surety, or may deduct from any monies then due Contractor or which thereafter may become due under the Agreement for work which the insolvent (or otherwise unable to pay) surety would have guaranteed with the bonds, and the monies so deducted shall be held by the City as collateral security in lieu of the bonds.

18c. Warranty

The Warranties provided under this Agreement and the limitations thereto are set forth in the attached Appendix A, IV. The City waives any applicable warranties of merchantability.

19. Liquidated Damages

By entering into this Agreement, Contractor agrees that in the event that the Delivery/Installation/Test/SFMTA Acceptance of Fareboxes or Final Acceptance Milestones, as set out in Appendix B, are delayed beyond the Milestones and Work timelines provided in this Agreement, Contractor shall notify City and provide information relating to the estimated length of delay. The parties shall work to develop a plan to resolve any delays in the Delivery/Installation/Test/SFMTA Acceptance of Fareboxes and Final Acceptance milestones.

If Contractor is solely responsible for a delay in either the Delivery/Installation/Test/SFMTA Acceptance of Fareboxes or Final Acceptance Milestones, and such delay continues for forty-five (45) days after the particular Milestone dates specified in the Project Plan, then Contractor agrees that, subject to the limits set forth below, the City may deduct One Thousand dollars (\$1,000) per day for either or each of those two Milestone payments until the particular Milestone(s) is Accepted.

The deduction of these sums represents liquidated damages related to the delayed Milestone, from payment due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City and the public or loss of use of the delayed services or Equipment because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by the SFMTA.

Liquidated damages under this section for each Milestone shall not exceed \$250,000 and in no event in combination exceed \$500,000.

20. Default; Remedies

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

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

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

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

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

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

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

21. Termination for Convenience

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the Term hereof, for convenience and without cause. City shall exercise this option by giving Contractor at least thirty (30) days' written notice of termination. The notice shall specify the date on which termination shall become effective.

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

(1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(3) The reasonable cost to Contractor of handling material or Equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

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

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to

the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

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

22. Rights and Duties upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13, 14, 15(d), 15(h)-(i), 16, 17, 18, 24, 26, 27, 28, 50 through 52, 56, 57, and 61.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the Term, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, excluding any and all of Contractor's intellectual property, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, Equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

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

24. Proprietary or Confidential Information

Each party agrees to exercise the same degree of care in protecting the disclosing party's Confidential Information that it does with its own Confidential Information and to confine knowledge of the disclosing party's Confidential Information only to its employees or agents who require such knowledge for use in the ordinary course and scope of their performance under this Agreement. The receiving party shall not, both before and after termination of this Agreement, use the disclosing party's Confidential Information except for the purposes of this Agreement or disclose, divulge or make available the disclosing party's Confidential Information to any third party, either directly or indirectly, in any manner whatsoever, without obtaining the prior written permission of

the disclosing party, and, if required by the disclosing party without the prior execution of a Non-Disclosure Agreement in form and substance consistent with this provision, and which includes the disclosing party as a third party to such an agreement, or as a third party beneficiary.

25. Notices to the Parties

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

To City: Senior Operations Manager, SFMTA Operations
San Francisco Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, CA 94103

To Contractor: Cubic Transportation Systems, Inc.
1308 South Washington Street
Tullahoma, Tennessee 37388
Attention: Contracts Manager
Phone: (931) 455-8524
Fax: (931) 455-1108

With a copy to: Cubic Corporation Legal Department
9333 Balboa Avenue
San Diego, California, USA
Fax: 1 858 505 1559
Email: Law@cubic.com

Any notice of default must be sent by registered mail.

26. Intellectual Property Rights.

In the performance of this Agreement Contractor shall provide to the SFMTA software, Documentation and other materials (listed in Appendix A to this Agreement) that are the proprietary and valuable intellectual property of Contractor or of third parties, and will authorize the use of such intellectual property by City as provided below:

a. License of Contractor's Software. Contractor agrees to grant the City a perpetual license to use the software to be provided pursuant to this Agreement in accordance with the terms of software license agreement(s) to be negotiated by the parties.

b. License of Third Party Software. Contractor agrees to procure for the City the third party software products as listed in Appendix A to this Agreement to which the City shall be licensee subject to all license terms applicable to the use of such software.

c. License of Documentation. The Documentation to be provided pursuant to this Agreement is the intellectual property of Contractor or of the third party software licensor or manufacturer. Contractor shall provide to City a non-exclusive and perpetual license to use, copy and modify such Documentation exclusively for the internal use of the SFMTA, which shall be license agreements separate from this Agreement.

27. Works for Hire

If, solely in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes or audiotapes, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

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

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing, such approval not to be unreasonably withheld. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by

the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement, [such approval shall not be unreasonably withheld.](#)

31. Non-Waiver of Rights

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

32. Earned Income Credit (EIC) Forms

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

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the Term of this Agreement.

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

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

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

33. Left blank by agreement of the parties.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts

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

c. Nondiscrimination in Benefits

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

d. Condition to Contract

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not

limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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

38. Resource Conservation

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

39. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further

agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records

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

42. Limitations on Contributions

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

chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

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

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

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

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

reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

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

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

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

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

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

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

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

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

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

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

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

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

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

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

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for

consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

(7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

(8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

(9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. Hiring Decisions

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. Exceptions

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. Liquidated Damages

Contractor agrees:

(1) To be liable to the City for liquidated damages as provided in this section;

(2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this Agreement; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and

other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

(5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

A. The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the Agreement or at law; and

(7) That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

46. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, “Political Activity”) in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City’s Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor’s use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term “preservative-treated wood containing arsenic” shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term “saltwater immersion” shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement and Changes

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. Any changes to the Agreement, including, but not limited to, any instruction or modification of the schedule, design, quality or quantity of the services or the addition, omission or substitution of any services or modification of any of the terms of Agreement shall be accomplished only by written modification (change order) to the agreement and must be executed by a duly authorized representative of each party.

49. Administrative Remedy for Agreement Interpretation

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

50. Agreement Made in California; Venue

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

51. Construction

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

52. Entire Agreement

This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 48.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Services Provided by Attorneys

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

55. [Left blank by agreement of the parties](#)

56. Severability

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

57. Protection of Private Information

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and

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

58. Graffiti Removal

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

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor’s (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term “graffiti” means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner’s authorized agent, and which is visible from the public right-of-way. “Graffiti” shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements

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

60. Left blank by agreement of the parties

61. Dispute Resolution Procedure

Any disputes that cannot be resolved between the SFMTA & Contractor, will be elevated for resolution to the SFMTA Chief Operating Officer and Cubic Senior Vice President and General Manager.

62. Force Majeure

In the case of a Force Majeure event, the Contractor shall inform the City in writing of the event affecting the performance of the Agreement, within ten (10) business days of becoming aware of the event, and shall submit to the City a statement providing specific details of the event and the extent to which the performance of the Agreement has been affected, including any documentation of delays required by Section 19.

63. Approval by Counterparts

The parties may execute this Agreement in counterparts, each of which shall be deemed an original and all of which together shall be considered one and the same Agreement. Original ink-signed counterparts shall be delivered by one party to the other party by U.S. Mail, but copies may be delivered by telephone facsimile or email in PDF format for purposes of obtaining expedited approval of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the last date indicated below.

CITY

**San Francisco Municipal
Transportation Agency**

NATHANIEL P. FORD, SR.
Executive Director/CEO

Date: _____

Approved as to Form:

DENNIS J. HERRERA
City Attorney

By: _____
Robert K. Stone
Deputy City Attorney

Date: _____

AUTHORIZED BY:

MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS

Resolution No. _____

Adopted: _____

Attest: _____
Roberta Boomer
Secretary to the
SFMTA Board of Directors

CONTRACTOR

Cubic Transportation Systems, Inc.

By signing this Agreement, Cubic certifies that it complies 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.

Richard Wunderle
Chief Financial Officer
5650 Kearny Mesa Road
San Diego, CA 92111
Federal Tax ID No.: 95-2773786.

City vendor number: 52238

Included Appendices

- A: Services to be provided by Contractor
- B: Cost Schedule

APPENDIX A

SCOPE OF WORK AND SERVICES TO BE PROVIDED BY CONTRACTOR

SFMTA Fare System Refurbishment

2. INTRODUCTION AND SUMMARY OF WORK

San Francisco Municipal Transportation Agency (SFMTA) requires the existing Automatic Fare Collection System ("AFCS" or "Fare System") be refurbished ("the Project") to improve the customer experience, improve operator interaction with the Farebox, and improve the reliability of the Farebox System and fare data retrieval/reporting.

Fare System Refurbishment

As more specifically described in Section III below, Contractor shall refurbish or replace with current technology the following elements of the Fare System:

Fareboxes Contractor shall refurbish every Farebox. The upgrade shall include the replacement of all Farebox Modules, the addition of a Driver Control Unit, and the replacement of locks and keys for the Cashbox.

Driver Control Unit The existing Farebox includes a 12-key keypad that is integral to the Farebox. Over the years, access to the keypad has become restricted, precluding reasonable access by the vehicle operator. Contractor shall replace the keyboard with a new Driver Control Unit (DCU) to facilitate operator interaction and control of the Farebox. The DCU shall provide for standardized operation across the fleet and integration with and control of other on-board systems, including automatic vehicle location and automatic passenger counters. The DCU shall be mounted onto the Farebox.

Garage Equipment Contractor shall replace or refurbish all Garage Equipment in the six Garages (Woods Division, Flynn Division, Kirkland Division, Potrero Division, Presidio Division, and Green Division), including Optical Probes, Mobile Safes, Receiver/Vaults, and Depot Computers. Contractor shall upgrade keys and software at Metro East Maintenance Facility.

Data System Contractor shall replace the existing data system, which was originally installed by Contractor in 1991, with a new Data System that will include the Central Computer System, Depot Computers in the Garages, and Software. Contractor shall also upgrade the Depot Computer at the Metro East Facility and install a new Depot Computer at the Geneva Repair Facility.

See Figure 1 for a representation of the new SFMTA Fare System to be installed by

Contractor.

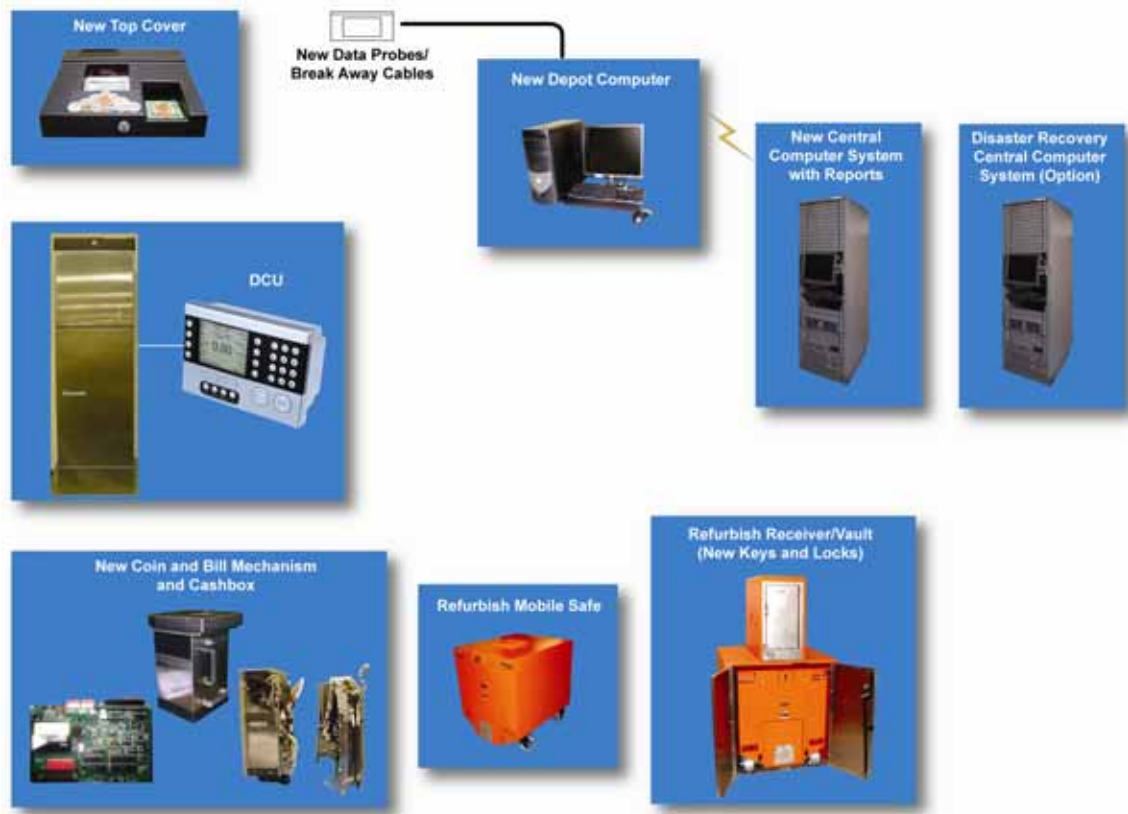


Figure 1 SFMTA Fare System Agreement Scope

Project Objectives

The primary objectives of the Project are to upgrade the Fare System to improve its reliability, expand its functionality, extend for ten years the its useable life in the shortest possible time, and to upgrade the Data System and data reporting functions of the Fare System to ensure timely, accurate, and flexible reporting of revenue data.

Summary Services and Equipment to be Provided by Contractor

As more specifically described in Section III, Contractor shall provide the Equipment and services listed below to accomplish the Work required under this Agreement.

A “Float” of seventy two (72) new Fareboxes to facilitate exchange of the Fareboxes currently installed in all SFMTA vehicles (including motors coaches, trolley coaches, Light Rail Vehicles, Presidents’ Conference Committee streetcars (PCC) and all other streetcars) for refurbishment and upgrade.

All parts, modules, and assemblies required for the refurbishment and upgrade of one thousand three hundred twenty-two (1322) Fareboxes, of which one thousand two

hundred fifty (1250) will be installed in transit vehicles, and seventy-two will be delivered to the SFMTA as spares.

One thousand three hundred twenty-two (1322) new Driver Control Units installed on the refurbished Fare Boxes.

Refurbish all Mobile Safes and Receiver Vaults in six SFMTA Garages and provide all parts and assemblies necessary to complete that refurbishment.

Replace the Optical Data Probes in six SFMTA Garages.

At the Metro East Maintenance Facility, replace the keys in the Receiver/Vaults and update the Software in the Depot Computer to integrate it into the new Data System.

Provide a complete new set of Garage Equipment for the Geneva Repair Facility, including one Depot Computer, two Receiver/Vaults, four Mobile Safes, two Optical Data Probes, and installation and testing of the new system.

Provide labor required to perform the refurbishment of the Fare System, including:

Removal of Fareboxes from all transit vehicles,

Removal of old or worn Vault Receiver and Mobile Safe parts, cleaning of the Vault/Receiver cabinet and Mobile Safes, and installation of new parts,

Installation of the refurbished Fareboxes on all transit vehicles,

Installation of Driver Control Units on all Fareboxes,

Installation and testing of new a Data System (including replacement of the Central Computer System, Depot Computers, and Software) capable of supporting the operation of the existing SFMTA transit vehicle fleet and provide expansion capabilities to support future growth of the SFMTA transit fleet and transit services.

Temporary storage of Fare System parts during refurbishment, and new components, new parts and new Farebox modules during refurbishment,

Disposal of all salvaged material when refurbishment completed, as directed by SFMTA.

Documentation and Training Materials, including:

DCU Operations Manual,

Central Computer System Operations Manual,

Transit operator Training (including Train the Trainer materials),

Field Maintenance Training (for new Equipment only),

Program Reports, including:

Program Plan and Schedule (to be delivered for SFMTA review and approval within 45 days of NTP)

Monthly Project Status Reports

Miscellaneous Work, as directed by the SFMTA, to be billed against allowance.

Extend the usable life of the Fare System another ten years, commencing upon Final Acceptance, as provided in this Agreement.

Implementation and Program Management

Qualified Personnel Contractor and personnel assigned by Contractor to this Project shall be knowledgeable of the operation of the existing Fare System. Contractor shall provide resources as necessary to verify the current system operation within 45 days of the SFMTA issuing NTP.

Program Plan and Schedule Contractor shall within 45 days of the SFMTA issuing NTP submit to the SFMTA for its review and approval a Program Plan Schedule setting out tasks and work to be completed within each Milestone, sequence of Work, dates for completion of Milestones, , and detailing support to Contractor or actions required of the SFMTA. The SFMTA shall review and approve or provide comments and direct changes to the Program Plan and Schedule. Contractor shall incorporate into the Program Plan and Schedule the Price and Payment Schedule set out in Appendix B to the Agreement, so that SFMTA payment obligations are clearly tied to progress of the Work, completion of Milestones, and SFMTA acceptance of deliverables.

Transition to New System Contractor shall implement the refurbished Farebox System as specified in this Agreement to ensure a seamless transition from the existing Fare System to the refurbished Fare System. Contractor shall ensure that during the transition period in which Contractor is installing, testing and implementing the new Fare System, the existing Fare System shall provide revenue and ridership data in the same format and manner as it did before Contractor started work on this Project.

Refurbished System Contractor shall provide a Maintenance Information System. Contractor shall use incident reports completed by SFMTA to create timely reports on the number and nature of maintenance incidents of the Fare System and its components, including Data System Problems, module repair histories, and other system failures, times for Relief and Resolution, and corrective actions proposed to maintain appropriate levels of Fare System reliability and availability.

Refurbishment Facility Contractor shall provide a Farebox Refurbishment Facility located in the San Francisco Bay Area for its warehousing and refurbishment of Fare System components.

Reports, Submittals, and Requests for Information

2.1.1. Contractor shall timely submit reports, submittals, testing procedures, requests for information, and written recommendations as required by the Program Schedule, this Agreement, and as necessary to inform the SFMTA of the progress of the Work. The SFMTA shall have 30 days from its receipt of said reports to approve the report or return it with comments or other directives. If a report is returned by the SFMTA for changes or additional work, Contractor shall have 15 days to make the required changes and

resubmit the report to the SFMTA, which will have an additional 15 days to review the resubmitted report.

Training and Implementation Assistance Contractor shall assign qualified personnel to train and assist SFMTA managers and garage personnel in the use and maintenance of the new Fare System, in accordance with Section III.AA.

3. DEFINITIONS AND TRADEMARKS

AFC Device Network – The dedicated network established in support of the Automatic Fare Collection (AFC) system.

Bill Module – The mechanism within the Farebox that recognizes a bill has been inserted.

Cashbox – The secure repository within the Farebox for collected Fare Media.

Central Computer System Application Server – The specific server within the Central Computer System that communicates with the Depot Computers and interfaces to the Oracle® Server.

Central Computer System – The collection of centralized computers allowing data collection, reporting and analysis, and system configuration.

Coin Module – The mechanism within the Farebox that recognizes deposited coins.

Collaboration E-Room – Electronic, web-based document depository in which authorized personnel from Cubic and SFMTA may access Project plans and documents.

Data System – The Depot Computers, the Central Computer System, and the Software.

Depot Computer – The computer located within a Garage that communicates with the on-bus AFC devices, the Central Computer System, and that Garage's Receiver/Vaults.

DMZ Environment – A Demilitarized Zone (DMZ) is a network area existing between two other networks that are unknown to and untrusting of each other.

DNS/Tools Server – The specific server within the Central Computer System that hosts infrastructure tools and services such as the Domain Name System (DNS) and Active Directory.

Driver Control Unit – An enhanced display and keypad unit that allows a transit operator or maintenance technician to input and receive information to and from the Farebox.

Farebox – The Cubic fare collection equipment installed on SFMTA transit vehicles that registers, records and retains bills and coins inserted for fare payment.

Farebox Components – The Components of a refurbished Farebox are the Bill Module, Coin Module, the Master Controller, the Cashbox, the Top Cover, the Main Farebox

Power Cable, the Driver Control Unit, the Bill Viewing Window, and the Farebox Housing.

Farebox Refurbishment Facility – A shop and warehouse facility located in the San Francisco Bay Area where Contractor will refurbish Fareboxes.

Fare Media – United States currency (coins and bills), tokens, and other material approved by SFMTA for payment of fare that must be deposited in the Farebox.

Fare System – (also "Automatic Fare Collection System" or "AFCS") – As described in this Agreement, the Fareboxes and all components of the Fareboxes and the Data System,

Farebox Maintenance and Inventory System (FMIS) – A software application and related hardware used for tracking data of inventory of Farebox parts and Farebox maintenance history.

Final Acceptance – Approval by SFMTA of all acceptance test results verifying that the refurbished Fare System and Equipment meet the specifications and requirements of this Agreement.

Float – A quantity of equipment in excess of what is required to be installed that is used to replace non-refurbished equipment.

Garage – A SFMTA transit maintenance facility equipped with Garage Equipment for the removal and processing of cash fares from Fareboxes. The Garages are in the following eight facilities: Woods, Flynn, Kirkland, Potrero, Presidio, Green, and Geneva, and Muni Metro East.

Garage Equipment – The equipment installed at each Garage, consisting of the Depot Computer, Optical Data Probes, Mobile Safes, and Receiver/Vaults.

Farebox Implementation Team – Contractor's Personnel assigned to perform refurbishment of Fareboxes under this Agreement, consisting of Depot Repair Technicians, Field Maintenance and Inventory System Administrator.

IT Implementation Team - Contractor's personnel assigned to perform Work on the Data System, including a System Administrator and a Report Writer

Main Farebox Power Cable – The internal cable that routes power from the bottom of the Farebox to the Master Controller.

Maintenance Information System – Database tool that uses the Oracle database program in the CCS that the SFMTA can configure to track maintenance history of Fare System components.

Master Controller – The circuit board within the Farebox that controls the Coin and Bill Modules and communicates with the Depot Computer via the Optical Data Probe.

Milestone – An operationally significant portion of the Work.

Mobile Safe – The removable vault that is housed within the Receiver/Vault into which Fare Media is deposited from Fareboxes.

NTP - Notice to Proceed issued by the SMFTA to Contractor confirming that the City's Controller has certified funds for the Project and authorizing Contractor to begin the Work.

Optical Data Probe – A data communication device that opens the Farebox cabinet and transmits revenue information and other data between the Depot Computer and Farebox.

Problem – A software, imbedded code, hardware or other technology fault or failure that causes loss of Data System function.

Program Plan and Schedule – The document prepared by Contractor for SFMTA review and approval describing in detail the Work to be performed by Contractor, and how and in what order Contractor shall perform the various elements of the Work., and the dates by which the elements of the Work shall be completed. Contractor shall include a cost-loaded project schedule (using Primavera or Microsoft Project software) that identifies Milestones, dates for completion of Milestones, and agreed payment/compensation for the Milestones or other elements of the Work.

Receiver / Vault – The device used to securely empty Cashboxes into a Mobile Safe.

Relief - A temporary fix, patch or work around of a Problem to restore Data System function.

Resolution - A permanent fix , patch, or work around or other solution to a Problem.

Revenue Center – The SFMTA facility that receives the Mobile Safes from the Garages and that removes and processes Fare Media from the Mobile Safes.

RSA Key Fob – A digital display key fob that provides security codes for authorized access to a Depot Computer or the CCS. The RSA Key Fob shall use the authentication parameter used with the Rivest-Shamir-Adleman (RSA) encryption key.

SFMTA Facility – Space provided by the SFMTA to house the Central Computer System and basic office space for Contractor's personnel assigned to work with SFMTA personnel.

Software – The software programs utilized in the Data System, as listed in Table 4.

System Documentation –Documents showing the operations and connections of Data System components, as installed by Contractor, including a network diagram of the CCS, wireless network diagram, security system diagram, server specifications, and Depot Computer specifications.

Top Cover – The hinged top of the Farebox allowing maintenance access.

TCP/IP – Transmission Control Protocol/Internet Protocol is the technology implementing the network.

VPN Access – Virtual Private Network access allows remote users to access the system as if they were on a system local to the AFC Device Network.

Work – The services Contractor shall provide and the Equipment Contractor shall procure for the benefit of the SFMTA under this Agreement.

LIST OF TRADEMARKS

BI Query™ is a trademark of Hummingbird Ltd.

BI Web™ is a trademark of Hummingbird Ltd.

Cisco® is a registered trademark of Cisco Systems, Inc.

Cubic® is a registered trademark of Cubic Corporation.

Hummingbird® is a registered trademark of Hummingbird Ltd.

Metrix™ is trademark of Metrix, Inc.

Oracle® is a registered trademark of the Oracle Corporation.

Veritas® is a registered trademark of Veritas Operating Corporation.

WebLogic® is a registered trademark of BEA Systems, Inc.

Windows® is a registered trademark of the Microsoft Corporation.

4. SCOPE OF WORK - SFMTA FARE SYSTEM COMPONENT REFURBISHMENTS AND UPGRADES

Contractor shall refurbish the following Fareboxes and other Fare System components as described below. Where a requirement or specification is stated in this Agreement in the passive voice or is otherwise not specifically identified, the parties understand and agree that Contractor shall be responsible for implementing or otherwise taking such action as is necessary to ensure that the Fare System or any component of the Fare System meets that requirement or specification. The City or SFMTA's obligations under this Agreement are limited to those requirements specifically assigned to the City or the SFMTA.

Fareboxes

Farebox Installation

Contractor shall remove the existing fareboxes from each SFMTA transit vehicle and replace it with a refurbished farebox from the Float. Contractor shall install the DCU at the same time it installs the refurbished Farebox.

Contractor shall refurbish and clean the removed farebox to restore the Float, continuing until every transit vehicle has a refurbished Farebox and DCU installed. The Float of Fareboxes and DCUs remaining after the last transit vehicle has been equipped with an installed refurbished Farebox and DCU will be delivered to the SFMTA for use as spares.

The position of the Farebox and DCU when mounted in the vehicle shall allow for clear view by the operator from a normal, upright driving position of the coin and bill insertion areas and the DCU display. Contractor shall install the refurbished fareboxes using the existing farebox mounting holes in the transit vehicles.

Power Cable Not Included Replacement of the existing power and signal cabling to the Farebox from a transit vehicle is not included in this Agreement

Farebox Modules Contractor shall replace the Master Controller Module, Coin Module, and Bill Module within the Farebox with new modules that are compatible with the existing Fare System design and fit in the existing Farebox. The functions, specifications, and requirements of these modules are described below

4.1.1. Contractor shall replace the main internal farebox power and communications cable. The new cable shall be compatible with the existing cable. The new cable shall include an RS-422 port provided by the DCU. The cable connector shall be routed to the bottom of the farebox.

4.1.2. Contractor shall remove the old top cover of each Farebox and replace it with a new top cover of the same design.

4.1.3. Contractor shall replace the main internal farebox power and communications cable. The new cable shall be compatible with the existing cable. The new cable shall include an RS-422 port provided by the DCU. The cable connector shall be routed to the bottom of the farebox.

(i)

4.1.4. Contractor shall provide new coin and bill viewing windows.

Master Controller Contractor shall replace the Master Controller in each Farebox with a new Master Controller. The Master Controller shall be responsible for the overall operation of the Farebox. The Master Controller shall interface to the new Driver Control Unit, the Coin Module and Bill Module, and record the Fare Media deposited in the Cashbox. All revenue collection data shall be created and stored by the Master Controller for later transmission to the Depot Computer. The Master Controller shall communicate with the Depot Computer via the Optical Data Probe.

When the Optical Data Probe is inserted in the Farebox and a successful connection is made between the Master Controller and the Depot Computer, the Depot Computer shall authorize the Master Controller to cause the Farebox cabinet door locks to release so that the Cashbox may be removed from the lower portion of the Farebox. The Master Controller shall control the electric motor that locks and unlocks the Farebox cabinet door, as directed by the Depot Computer.

Coin Module The Coin Module shall be an intelligent Farebox component that accepts coins and tokens inserted by the patron and accurately determines

the coin or token's denomination. The Coin Module shall communicate with the Master Controller via a serial communications interface. The Coin Module shall use an inductive sensor to properly classify the coin/tokens. The Farebox shall accept coins at a rate of not less than 10 coins per second. The Coin Module entry bezel opening shall be large enough to allow multiple coins to pass through it at the same time. Under no circumstances shall a patron be required to insert one coin at a time to prevent coins from jamming in the bezel.

After the Coin Module classifies a coin, it shall advance the coin and hold it in a display window that is visible to the transit operator until either the operator clears (dumps) the coins into the Cashbox or a Timeout elapses. A Timeout is a set period of time after which the Coin Module will release coins in the display window into the Cashbox.

The Coin Module shall read and communicate the Cashbox serial number to the Master Controller.

The sockets for all Integrated Circuits (ICs) installed on the Coin Modules shall have 28 pins or more.

The service loops of the Electric Lock cable must be shielded to prevent the cable from being damaged by contact with mechanical components of the Farebox or by rubbing and vibration.

Bill Module. The Bill Module shall classify bills (paper currency) and other Fare Media inserted to the Farebox.. The Bill Module shall measure the length of inserted media and determine the value of the media based on measured length; all currency or other materials inserted to the Farebox that are the length of a US Dollar bill shall be classified as one Dollar. The transit operator shall be able to view currency inserted to the Farebox and reclassify a bill as a \$5, \$10, or \$20 bill using the Driver Control Unit keypad.

The entry bezel for the Bill Module shall be positioned such that it shall fit within the existing opening in the Farebox top cover. All media inserted shall be advanced to a display window that can be seen through an opening in the Farebox cabinet. The display window shall allow the transit operator to verify the media inserted and determine if reclassification is required. All media inserted shall be retained in the display window until the operator clears (dumps) the bill, another paper media is inserted, or a Timeout elapses.

All currency accepted by the Bill Module shall be securely advanced within the Farebox cabinet for subsequent insertion into the Cashbox.

The Bill Module shall communicate to the Master Controller via a serial communications interface.

Integrated circuit sockets in the Bill Module shall accommodate integrated circuits with 28 pins or more.

Contractor shall modify the mounting of all bill length sensor printed circuit boards to ensure that the circuit boards are protected from damage caused by shock and vibration, and mishandling. .

Contractor shall improve the microprocessor logic in the new Bill Modules so that the Bill Module will detect bill jams and prevent the bill advance mechanism motor from burning.

Every Bill Module shall accurately count the number of bills inserted into the Farebox, and shall not record a bill except when one is actually inserted to the Farebox.

Cashbox

Replacement of Cashboxes Contractor shall replace all Cashboxes, including all Cashbox keys and locks. All Cashboxes shall be the same size, shape and design. Contractor shall ensure that every Cashbox fits within the dimensions of the lower portion of every Farebox and in every Receiver/Vault. Cashboxes shall be interchangeable and shall be accepted by all Fareboxes and Receiver/Vaults. A Cashbox shall have separate compartments to receive and retain coins and tokens in one compartment, and bills, tickets and other paper Fare Media in another compartment. A Cashbox shall be of sufficient volume to hold and transfer not less than \$500 mixed coins and 800 bills. The coin and bill compartments of each Farebox shall align with the respective coin and bill compartments in the Mobile Safes.

Serial Number Each Cashbox shall have a unique serial number. The serial number shall be capable of being read by the Farebox and the Receiver/Vault. The Farebox and the Receiver/Vault shall each report the serial number of a Cashbox to the Data System via the Depot Computer.

Optical Probe Reporting The Farebox shall report via the Optical Probe to the Depot Computer the revenue counts for each Cashbox, and the Receiver/Vault shall report to the Depot Computer all Vaulting activity for each Cashbox. The reporting functions of the Cashbox and the Receiver/Vault shall be designed so that the SFMTA may perform accurate revenue audits and track revenues collected.

Cashbox Improvements Contractor shall make the following improvements to the existing Cashbox design and construction:

Contractor shall replace all Cashbox locks and keys with new keys and locks that do not utilize the small leading tooth of the current key design. Existing keys now in use by SFMTA shall not operate in the new Cashbox locks

Cashbox keys shall be unduplicable. Cashbox keys shall be of a proprietary design, and blank keys and replacement keys shall not be available for purchase by the general public.

Each Cashbox key shall be marked with a unique serial identification number that is sequential within a group of keys provided by Contractor. Contractor shall provide the SFMTA a log of the serial numbers of all Cashbox keys, so that the Agency may inventory and account for them.

Contractor shall provide replacement keys to SFMTA only upon a confirmed purchase order signed by the SFMTA's Executive Director/CEO, Chief of Staff, Director of Operations, Director of Revenue, or Chief Financial Officer. Contractor may confirm a purchase order for replacement keys by fax or email sent to the SFMTA signatory on the purchase order.

The Cashbox lid pin shall be case hardened.

The edges of the Cashbox handles shall be rounded or given a radius edge so that they are not sharp and may be comfortably carried even when full.

The Cashbox flag retainer shall be redesigned to provide greater Cashbox lid closing clearance.

The Cashbox lid guides shall be redesigned to minimize jams and to protect the lid edges from damage when the lid is closed.

Contractor shall install three additional serial or identification number labels to the Cashbox (2 on body, 1 additional on lid)

Contractor shall ensure internal fingers on the bill side of each Cashbox are recessed to prevent contact with the lid.

All lock retainers shall be stainless steel.

Contractor shall investigate and provide recommendations to redesign or otherwise improve the durability of the Cashbox ID sensor mount in the Receiver/Vault . Contractor shall report to the SFMTA as to the practicability of replacing the current unit with a spring loaded floating connector.

Driver Control Unit (DCU) Design and Installation

Contractor shall design, manufacture and install the Driver Control Unit on the Farebox in conformance with the following specifications and criteria:

Single Interface The Driver Control Unit (DCU) shall provide operators, management and maintenance personnel with a single interface for bus systems log-on and operation, system configuration management, collection and communications of fare transactions and execution of maintenance diagnostics.

Integration with Other Technology The DCU shall be capable of integrating with intelligent transportation systems including automatic passenger counters (APC), smart card validators, ticket issuers, magnetic processors, passenger signage, security monitoring, automated vehicle announcement (AVA), automated vehicle monitoring (AVM), and computer-aided dispatch and automated vehicle location (Computer Aided Dispatch/AVL) systems.

DCU Design Criteria

Contractor shall design and build the DCU to have the following characteristics:

Open Architecture, Flexible Operating System:

Industry standard Windows® CE operating system

Large processing capacity with 300 MHz CPU

Memory with up to 512 MB of Flash and up to 256 MB of DRAM for on-board data and program storage

Connectivity with Universal Serial Bus (USB)

Single interface for log-on, operations and communications of all on-board devices:

from a Clear, non-glare, transfective liquid crystal display that is easy to read distance of four feet in bright or low light

16 programmable soft keys, numeric keypad, large enter button

Distinct audible tones to alert transit operator of Farebox status

modem Communications — WLAN, optional GPS Receiver, optional cellular (GPRS, CDPD, CDMA)

fare Fare processing intelligence for managing fare tables and new methods of and/or multi- payment, including complex fare structures using time, zone, value trip factors

payment. Ability to use the following fare payment methods: cash, proof-of-

Case Construction and Power Requirements The DCU shall meet the following specifications:

Case Material: high impact plastic

Power requirement: 9 to 36 Volts Direct Current, protected to 120 VDC

Power Dissipation: 16W Max, .8W Min

Overall dimensions for the DCU: 9 inches (W) x 6.5 inches (H) x 3.75 inches (D)

External Interfaces The DCU shall meet the following specifications:

RS-232 (1 Std) – reserved for interfacing with the Farebox

RS-422/485 (1 Std)

PCMCIA Type II Slot (2, 1 assigned to WLAN)

specification) USB (1) (Used for expansion capabilities – Not included in this

GPS Connector

TTL for GPS

Speaker

User Interfaces The DCU shall meet the following specifications:

x 240 Operator Interface/Display: 120 mm (4.7 inches) monochrome LCD, 320 pixels, 33 key.

deposited Text size for soft key descriptors shall be approximately 14 point while cash numeric text size is approximately 67 points, as adjusted by the screen resolution.

and **Environmental Operating Parameters** The DCU shall be designed to function and shall operate within the following environmental parameters:

Storage Temperature: -30°C to +85°C (-22°F to +185°F)

Operating Temperature: -20°C to +60°C (-4°F to +140°F)

Relative Humidity: 15% to 95%

axes, 5 Vibration: Mil-Std-810D, Method 514.3, Category 8,1g (RMS) all three to 200 Hz

Shock: Mil-Std-810D, Procedure I, half-sine pulse, 5g peak, 11 msec

Ingress Protection: IP54

Immunity: EN61000-6-2, EN50121-4

Emissions: EN61000-6-3, FCC 15B, Class B, C

Flammability: UL 94V-0

Depot Refurbishment Facility

4.2. Contractor shall establish a Depot Refurbishment Facility in the San Francisco Bay Area to perform repair and refurbishment operations on SFMTA Equipment. Contractor shall not perform repair or refurbishment of fareboxes or other equipment other than SFMTA Equipment and Fareboxes at the Bay Area Depot Refurbishment Facility. The facility shall include the required tools, hardware, supplies, parts and administrative material necessary to provide local repairs, which shall be provided by Contractor. Contractor shall provide two technicians to operate and maintain the Depot Refurbishment Facility. The technicians shall be experienced in repairing SFMTA's Fareboxes. The technicians shall test and repair Farebox parts and modules returned by SFMTA for repair. The technicians shall complete all repairs in a timely manner providing a one-for-one module or Farebox exchange. Repaired items shall be returned to SFMTA's inventory locations. SFMTA shall be responsible for the packaging and shipment of all failed modules to Contractor's Depot Refurbishment Facility. Contractor shall be responsible for transporting all Fareboxes to and from the Depot Refurbishment Facility.

Contractor Shall Not Alter Transit Vehicles

4.3. Contractor shall not alter any part of a transit vehicle or other SFMTA equipment, including but not limited to cutting holes for wiring or security equipment, except as expressly provided in this Agreement or as directed by the SFMTA in writing.

Contractor Shall Not Operate a Transit Vehicle

4.4. Contractor's activities on a transit vehicle shall be limited to removal of existing Farebox Components and installation of new or refurbished Farebox components. Contractor shall not at anytime operate, attempt to operate, or otherwise physically move any transit vehicle for any reason.

Installation Schedule and Vehicle In-Service Requirements.

Contractor shall manage its Work so that no transit vehicle is ever out of service for an scheduled run to which it is assigned. Contractor shall schedule Work to refurbish, replace, and install Fareboxes per the Program Plan. Contractor shall refurbish and

install no fewer than 60 Fareboxes per week, until it has refurbished, installed on transit vehicles, tested, and the City has accepted 575 Fareboxes (approximately 50 percent of the Fareboxes Contractor is to refurbish and install). Contractor shall then refurbish and install no fewer than 30 Fareboxes per week, until it has refurbished, installed on transit vehicles, tested, and the City has accepted an additional 285 Fareboxes (for an approximate total of 80 percent of the Fareboxes Contractor is to refurbish). Contractor shall then refurbish and replace no fewer than 15 Fareboxes per week, until it has refurbished, installed on transit vehicles, tested, and the City has accepted an additional 173 Fareboxes (for an approximate total of 90 percent of the Fareboxes Contractor is to refurbish). Contractor shall then refurbish and replace no fewer than 7 Fareboxes per week, until it has refurbished, installed on transit vehicles, tested, and the City has accepted the all of the Fareboxes that Contractor is to refurbish. Contractor shall incorporate this installation schedule into its Program Plan and Schedule.

If the SFMTA is unable to produce a transit vehicle for Contractor to install a Farebox, the SFMTA may in its sole discretion waive the installation of a Farebox on a transit vehicle, and may elect to have Contractor deliver the Farebox to the SFMTA as a spare.

Probing/Vaulting Equipment

Optical Probes Contractor shall provide and install 40 new Optical Data Probes in the Garages. The Optical Data Probes shall be compatible with the optical port on the Farebox Master Controller. Contractor shall provide protective sleeving and grips on the Optical Data Probes similar to those that have been installed by the SFMTA on the Probes currently in use in the Garages.

Receiver/Vault

Contractor shall provide parts and labor to refurbish the Receiver/Vaults in the Garages. Contractor shall provide the SFMTA a detailed plan describing how Contractor shall refurbish the Receiver Vaults without interrupting the SFMTA's daily transit and vehicle maintenance operations as part of the Preliminary Refurbishment Readiness meeting discussed in Section II.X..

Contractor shall make the following improvements to the Receiver/Vaults:

Contractor shall replace all Receiver/Vault locks and keys. Existing keys now in use by SFMTA shall not operate in the new Receiver/Vault locks

Receiver/Vault keys shall be unduplicable. Receiver/Vault keys shall be of a proprietary design, and blank keys and replacement keys shall not be available for purchase by the general public.

Each Receiver/Vault key shall be marked with a unique serial identification number that is sequential within a group of keys provided by Contractor. Contractor shall provide the SFMTA a log of the serial numbers of all Receiver/Vault keys, so that the Agency may inventory and account for them.

Contractor shall provide replacement keys to SFMTA only upon a confirmed purchase order signed by the SFMTA's Executive Director/CEO, Chief of Staff, Director of Operations, Director of Revenue, or Chief Financial Officer.

Contractor may confirm a purchase order for replacement keys by fax or email sent to the SFMTA signatory on the purchase order.

Contractor shall replace existing microswitches with sealed microswitches.

Contractor shall replace each Receiver's dash pot style door-open alarm timer with an electronic timer.

Contractor shall replace the Receiver lock plate with a stainless steel plate to prevent the plate from bending.

Contractor shall redesign the large connector that plugs into the Receiver to make it more robust and prevent wires from breaking, similar to the improvement already implemented by SFMTA in some Receivers.

Receiver/Vault Functions The contents of a Cashbox shall be deposited into a Mobile Safe using the Receiver/Vault, as follows. When SFMTA personnel insert an Optical Data Probe into a Farebox, the Depot Computer shall establish a connection to and communicate with the Farebox Master Controller; the Depot Computer, through the Optical Data Probe shall read and record the identification number of the Cashbox. Only when that communication between the Master Controller and Depot Computer has been established shall the Farebox cabinet door release, allowing access to the lower portion of the Farebox, so that the Cashbox may be removed by SFMTA personnel. When removed from the Farebox, the Cashbox shall have been automatically closed and locked by the Farebox so that no person may access the contents of the Cashbox, except with an authorized key. The contents of the Cashbox shall be deposited into a Mobile Safe by inserting the Cashbox into the Receiver/Vault so that the key located at the back of the Receiver/Vault engages the Cashbox lock. The Receiver/Vault shall sense and report to the Depot Computer the identification numbers of the Mobile Safes and Cashboxes inserted into it, and shall also transmit that information to the Central Computer System. When the Cashbox is turned in the Receiver/Vault, the Cashbox and the Mobile Safe shall open so that the contents of the Cashbox fall through the Receiver/Vault into the Mobile Safe. At no time shall any person be able to access the contents of a Cashbox while it is inserted in a Receiver/Vault. The Receiver/Vault shall operate such that if a Mobile Safe is not securely inserted in the Receiver/Vault, the Cashbox inserted in the Receiver/Vault cannot open. It shall not be possible to open a Mobile Safe except when it is properly inserted into a Receiver/Vault or is opened by a Mobile Safe key.

New Parts Contractor shall replace all the parts of the Receiver/Vault as shown in

Table 1.

Table 1. Receiver/Vault Kit Parts

PART NUMBER	PART DESCRIPTION	QTY PER	BOM UM
801-1394-3	ASSY-VIBRATOR	1	EA
827-1854	CASHBOX ID ASY-PHS 3 RCVR	1	EA
827-2115-7	BLOCK GUIDE, CASHBOX	1	EA
827-2115-8	BLOCK GUIDE, CASHBOX	1	EA
827-2116	BLOCK-GUIDE, ARM, RATCHET P	1	EA
827-2118	RAIL-SHUTTER PHS 3 RCVR	2	EA
827-2122	BLOCK-GUIDE, C.B. STOP PH	1	EA
827-2131	BLOCK-GUIDE, ACT. ROD PHAS	1	EA
827-2149	WINDOW-FLAG, TIMER PHASE I	1	EA
827-2165	GUIDE-C.B. I.D. PHASE III	1	EA
827-2167	HOUSING, KEY HOLDER PHASE	1	EA
827-2168	HOLDER-KEY PHASE III RECE	1	EA
827-2169	ACTUATOR-LOCK MOVEMENT PH	1	EA
827-2170	SPACER-ALIGNMENT, LOCK PH	1	EA
827-2200	TIMER ASSY-PH III RECEIVE	1	EA

PART NUMBER	PART DESCRIPTION	QTY PER	BOM UM
827-2204	SKID PLATE ASSY PHASE III	1	EA
827-2235	BEARING BLOCK ASSY-RECEIV	1	EA
827-2243	HANDLE, SHAFT-RATCHET PH I	1	EA
827-2262	ROLLER, GUIDE-C.B. STOP PH	1	EA
827-2265-7	STRIP, SUPPORT-CASHBOX CO	1	EA
827-2265-8	STRIP, SUPPORT- CASHBOX C	1	EA
827-2270	INSERT, GUIDE BLOCK-PHASE	2	EA
	Status LEDs	3	EA

4.4.1.

Mobile Safes

A Mobile Safe is used to transport Fare Media securely between a Garage and the SFMTA's Revenue Center. Each Mobile Safe must be compatible with every Receiver/Vault. Contractor shall refurbish the Mobile Safes in the six SFMTA Garages in conformance with the functional requirements and specifications described herein.

The Mobile Safe shall contain a coin/token compartment that is emptied by an authorized person unlocking and opening an access door to permit the coins to fall (by gravity) into a container. The Mobile Safe shall also contain a bill/ticket compartment that is emptied by an authorized person unlocking and opening an access door to manually empty the bills/tickets.

When removed from the Receiver Vault Housing, the Mobile Safe shall be in a closed and locked condition so that no person other than authorized Revenue Center personnel may access the Fare Media inside the Mobile Safe.

Contractor shall replace all Mobile Safe access door locks and keys to those locks. Existing Mobile Safe keys shall not operate in the new Mobile Safe locks. Each new Mobile Safe key shall be marked with a unique serial identification number that is sequential within a group of new keys provided by Contractor. Contractor shall

provide the SFMTA a log of the serial numbers of all new Mobile Safe keys, so that the agency may inventory and track them.

The new Mobile Safe keys shall be unduplicable; Mobile Safe keys shall be of a proprietary design, and blank keys and replacement keys shall not be available for purchase by the general public. Contractor shall provide replacement keys to SFMTA only upon the confirmed purchase order signed by the SFMTA's Executive Director/CEO, Chief of Staff, Director of Operations, Director of Revenue, or Chief Financial Officer. Contractor may confirm a purchase order for replacement keys by fax or email.

The Mobile Safes shall utilize a “deadman” braking system that engages when the operator releases the steering handles mounted to the Mobile Safe.

The Mobile Safe shall have a minimum capacity of 10,000 U.S. bills in the bill compartment and minimum capacity of not less than 10,000 coins in the coin compartment.

The Receiver/Vault ID plug shall electronically read the Mobile Safe serial number when the Mobile Safe is inserted into the Receiver Vault Housing. The Mobile Safe serial number shall be transmitted to the Depot Computer for later transmission to the Central Computer System. Contractor shall improve the Mobile Safe ID plug to provide better protection for the cable that transmits the Mobile Safe serial number from the Receiver Vault to the Depot Computer.

Contractor shall provide parts and labor to refurbish the Mobile Safes. The Mobile Safe kit shall consist of the parts shown in Table 2.

Table 2. Mobile Safe Kit Parts

PART NUMBER	PART DESCRIPTION	QTY PER	BOM UM
1438-8	CASTERS SERIES 1400 MYE	2	EA
71601	PERCH, CLUTCH, SUNLINE	2	EA
827-0108-2	BRAKE CABLE ASSY-SHORT	2	EA
827-0109-1	BRAKE CABLE ASSY-LONG	2	EA
827-2435-1	LEVER ARM ASSY	2	EA
827-2439-7	DOOR RAIL-PHASE III MOBIL	2	EA

PART NUMBER	PART DESCRIPTION	QTY PER	BOM UM
827-2452-1	DOOR-TOP	1	EA
827-2485-7	MOUNTING BLOCK-MOD.	1	EA
827-2501-7	RETAINER-KEY, CASHBOX LOCK	1	EA
PO-16	BEARING-OPEN	1	EA
TMC 1106	C0360-029-1000-M	1	EA
827-2470-7	LENS-PHASE III MOBILE SAF	4	EA
827-2488-1	BRAKE HUB SYSTEM ASSY- PH	2	EA
827-2815-7	PIN, CATCH, COIN DOOR	1	EA
90099A031	3/8-16 ELASTIC LOCKNUT S/	16	EA
A-1676	CORNER BUMPER	4	EA
MS15795-814	WSHR FLT.406X.812X.065SS	16	EA
S-1272	SPRING-COMP .359D,.029 TH	1	EA

Integration of Metro East Maintenance Facility

Contractor shall replace the keys and locks in the Receiver Vaults at the Metro East Maintenance Facility to match the keys in the Receiver Vaults in the other Garages. Contractor shall update the Software in the Depot Computer at the Metro East Maintenance Facility so that it is fully integrated into the Data System.

Data System Components to be Replaced

Contractor shall replace with new the Data System components (the Depot Computers, the Central Computer, the Wireless Local Area Network, and all associated software) listed or described below. Contractor shall procure for the SFMTA licenses and associated maintenance agreements for the software listed or described below, for which the City shall be the licensee.

Depot Computers

Contractor shall procure, configure, install and test in the Woods, Flynn, Kirkland, Potrero, Presidio, Green, and Geneva Garages the Depot Computers meeting the functional requirements and specifications described herein. Contractor shall also update the Software in the Depot Computer at the Metro East Facility.

Each Depot Computer shall be a personal computer (PC) based system. The Depot Computer shall be located in the SFMTA Depot Operations Center at each SFMTA Maintenance Facility. The main function of the Depot Computer is to store and transfer files between the Central Computer System and the bus equipment.

The Depot Computer shall communicate with the CCS via a dedicated private network provided by SFMTA to upload transactions and equipment status and download configuration data, including software updates and fare tables.

The Depot Computer console shall consist of a commercial-off-the-shelf PC, keyboard, mouse, monitor, and Uninterruptible Power System (UPS). Screen selection shall be menu-driven from either the mouse or keyboard.

In addition to providing an interface to the system, the Depot Computer shall control the Garage Equipment, perform daily operations and diagnostics, display table data and device status information, maintain an activity and message log, and store and/or routes data.

Depot Computer Design Requirements Each Depot Computer shall meet the following design requirements:

Integrated operator console for depot control, monitoring and administration:

- Manage data between central system and bus equipment

- Communications via a dedicated network

- Upload transactions and equipment status

- Download software updates, fare tables

- Simple and secure operations of Garage Equipment:

- Release the Farebox Cashbox via an infrared probing event

- Track Farebox Cashbox cycles, Receiver/Vault Cashbox cycles and Mobile Safe cycles

- User-friendly interfaces:

- Simple graphical user interface for operator

Standard PC, keyboard and mouse
432 mm (17 inches) monitor

Depot Computer Specifications Each Depot Computer shall have components and operation/environment tolerances meeting the following specifications:

External Interface Requirements:

USB Version 2.0,

Ethernet with RJ45 connector (2)

Serial port with DB-9 connector (2)

DB-25 Parallel or USB port

Communications Expansion board (4 Farebox communications channels)

Monitor output

Wireless Access Point

Environmental/Operating Requirements:

Storage Temperature: 0°C to +40°C (+32°F to +104°F)

Operating Temperature: +10°C to +32.5°C (+50°F to +90.5°F)

Relative Humidity: 20% to 80%

Wireless Local Area Network Security Contractor shall provide, configure, install and test a Wireless Local Area Network (WLAN) that will allow WPA encryption secured wireless transmission of data from a Farebox to the Depot Computer that meets SFMTA requirements. Where hardware for the WLAN (that meets the specifications and requirements of this Agreement) is already present in a Garage, Contractor shall use said existing hardware and credit the SFMTA the cost of hardware Contractor did not have to purchase for the Project. Contractor shall maintain the WLAN during the Term of this Agreement.

WLAN security with the on-bus equipment shall be based on the Wi-Fi Protected Access (WPA) with multiple authentication types, such as the Cisco 1310 series access points using the Cisco Internetwork Operating System (IOS) to provide Cisco LEAP with WPA authentication and Temporal Key Integrity Protocol (TKIP) encryption.

Standard Operating Procedures for Equipment Testing

For every component of the Fare System, Contractor shall develop recommended Standard Operating Procedures for field testing of the proper operation and full functionality of the Equipment. Said tests shall include field testing methods and procedures to ensure that the Farebox modules (Bill Module, Coin Module, Master Controller) are correctly counting cash deposited in the Farebox and are not counting cash and other Fare Media not deposited in the Farebox (i.e. Contractor shall design test procedures to ensure that the Fareboxes do not "self-count" or "double count"). Said field tests shall also include tests to ensure that the Optical Data Probe is communicating required Data to the Depot Computer.

Central Computer System

Contractor shall procure, configure, install and test a Central Computer System meeting the functional and design specifications described herein.

Overview. The Central Computer System (CCS) serves as the computational focal point for data processing, analysis, management, and control for the entire Fare System. This provides a system solution that reflects the characteristics of open systems architecture, high performance, reliability, availability, system security, and expandability.

The CCS software shall support the existing functionality of the SFMTA bus fleet. In addition, the CCS software architecture shall support multiple modes of transportation services, rail, bus, transit van, and parking plus the additional functionality associated with contactless smart cards.

Configuration The CCS shall consist of a series of servers each dedicated to a defined functionality.

Figure 2 presents an overview of the CCS. The hardware configuration is presented in Table 3. The CCS software configuration is presented in Table 4.

Figure 2. Central Computer System Overview

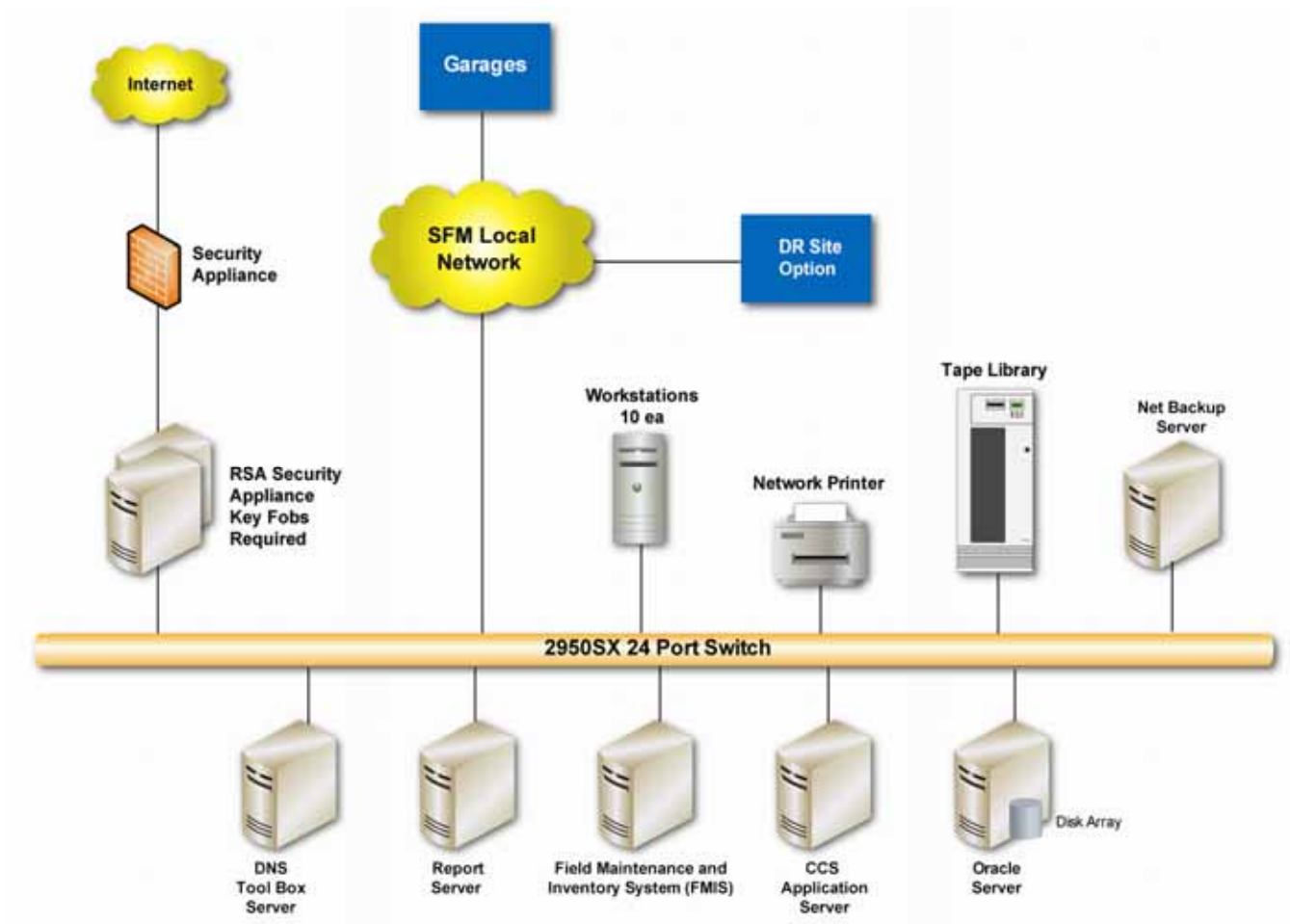


Table 3. Central Computer System Software Configuration

DESCRIPTION	SPECIFICATION
24 Port Switch	Cisco 2950 SX
CCS Application Server	ProLiant DL360 G5 3.00 GHz High Performance Server, 2x Quad Core, 4gb RAM, 2x146 Raid 1, Windows 2003
Reports Server	ProLiant DL360 G5 3.00 GHz High Performance Server, 2x Quad Core, 4gb RAM, 2x146 Raid 1, Windows 2003
Field Maintenance and Inventory System	ProLiant DL360 G5 3.00 GHz High Performance Server, 2x Quad Core, 4gb RAM, 2x146 Raid 1, Windows 2003
Net backup Server	ProLiant DL360 G5 3.00 GHz High Performance Server, 2x Quad Core, 4gb RAM, 5x146 Raid 5, Windows 2003
Oracle	ProLiant DL360 G5 3.00 GHz High Performance Server, 2x Quad Core, 4gb RAM, 5x146 Raid 5, Windows 2003
Disk Array - SAS MD3000	Proliant DL 160 G5 1.2tb SAS storage 1u; Quad Core, 4gb RAM, 5x300gb HDD, Dual embedded NC105i PCIe gigabit
DNS/Tools Server	ProLiant DL360 G5 3.00 GHz High Performance Server, 2x Quad Core, 2gb RAM, 2x146 Raid 1, Windows 2003
Tape Library, TL2000	HP StorageWorks MSL4048 2 LTO-4 Ultrium 1840 SCSI Tape Library
Rack	APC NetShelter SX 42U 750mm Wide x 1070mm Deep Enclosure, wide enclosure with increased cable management options for high density server
KVM Switch	16 x USB connection Server Interface Pod, includes CAT5 cable
Keyboard, LCD	16 Port Keyboard/Video/Mouse Digital Switch, 2161DS/2 PowerEdge
UPS	3000VA UPS 208 Volt, Battery Backup and Protection ,

DESCRIPTION	SPECIFICATION
Workstations	HP Compaq dc7800 Small Form Factor; Intel Core 2 Duo processor E6750 2.66 GHz 4mb L2 cache; 1333 MHz front side bus; 2GB 800 MHz DDR2 SDRAM Windows XP
Series adaptive security appliance	Cisco ASA 5510
Token Key Fobs	Quantity of 10

Table 4. Central Computer System Software Configuration

SOFTWARE & LICENSOR	SPECIFICATION	QUANTITY
Oracle Enterprise 10G 4X CPU License	CPU Enterprise perpetual license	4
Oracle Enterprise 10G - Maintenance	3 Years Maintenance Agreement Prepaid	4
Metrix	Perpetual license with 3 Years Maintenance Agreement Prepaid	1
Hummingbird	BI Start No Encryption, TFG BI Query, BI Query Admin, BI Query User, BI Ad Hoc User Named perpetual license	1
BI Web Starter Maintenance	3 Years Maintenance Agreement Prepaid	1
Single BI Query User (Named Ports)	40 Named Ports for Web Users perpetual license	1
BI Query User Maintenance	3 Years Maintenance Agreement Prepaid	1

SOFTWARE & LICENSOR	SPECIFICATION	QUANTITY
Weblogic	2 CPU perpetual license with Annual Maintenance renewed for a total of 3 years	1
Weblogic - Maintenance	3 Years Maintenance Agreement Prepaid	1
Legato Enterprise/BMR	Perpetual license with 3 Years Maintenance Agreement Prepaid	1
Legato DB Oracle Agent	Perpetual license with 3 Years Maintenance Agreement Prepaid	1
Antivirus Software	Perpetual license with 3 Years Maintenance Agreement Prepaid	16
Cisco Smartnet	Perpetual license with 3 Years Maintenance Agreement Prepaid	1

Software Licenses and Maintenance Agreements

Contractor shall procure from and pay the license fee to the licensor for a perpetual use license for each of the software products listed in Table 4 for use by the SFMTA; the City and County of San Francisco shall be listed as the licensee on each license. Contractor shall also procure from and pay to each licensor the maintenance fee for the software products and maintenance periods listed in Table 4. The City and County of San Francisco shall be listed in each maintenance agreement as the licensee or user to benefit from the maintenance agreement. Contractor may bill the SFMTA for the license and maintenance agreement for a software product listed in Table 4 upon Contractor's receipt of documentation from the software vendor granting the perpetual license to the City and execution of the maintenance agreement.

Oracle Server

4.4.2. Contractor shall procure and install the Oracle software (listed in Table 4) on a Windows platform to make maximum utilization of the Netbackup/Bare Metal Restore software and functionality. Contractor shall install or cause to be installed the Oracle application on a ProLiant DL360 G5 3.00 GHz High Performance Server, 2x Quad Core, 4gb RAM, 5x146 Raid 5, Windows 2003. The Disk Array shall be ProLiant DL 160 G5 1.2tb SAS storage 1u; Quad Core, 4gb RAM, 5x300gb HDD, Dual embedded NC105i PCIe gigabit.

The server shall run the Oracle 10G application Database software used by the CCS application. The Oracle database shall reside on an attached SAS Disk Array configured in Raid 10 with one terabyte usable storage, which shall provide higher performance on disk transactions and provide ample space for the data retention and expandability.

Oracle Database Software

4.4.3. Contractor shall procure and install the Oracle database software and management tools described below to facilitate database administration:

Oracle Diagnostic Pack The Oracle Diagnostic Pack enhances the performance of Oracle Enterprise Manager by helping to effectively monitor, diagnose, and plan within the Oracle database environment. The product also ensures high availability of mission-critical business systems by reducing the complex task of diagnosing and correcting performance problems.

Oracle Tuning Pack The Oracle Tuning Pack enhances the performance and functionality of Oracle Enterprise Manager by optimizing the database environment, avoiding costly upgrades of hardware, memory, and disks. Automated identification and tuning result in more efficient resource utilization, higher transaction throughput and faster query performance. Oracle Tuning Pack allows the administrator to tune every dimension of the database, including SQL, access methods, environmental parameters, and storage optimization. In addition, the tool shall also permit the database administrator to quickly identify and eliminate bottlenecks.

Oracle Partitioning The Oracle Partitioning Pack enhances Oracle Database's data management for OLTP, data mart and data warehouse applications. Oracle Partitioning improves the performance, availability and manageability of large underlying database tables and indexes. Oracle Partitioning enables large tables to be broken into individually managed smaller pieces, while retaining a single application-level view of the data. Range, hash, composite (range combined with hash), and list partitioning methods are supported.

Oracle Change Management Pack The Oracle Change Management Pack enhances the functionality of Oracle Enterprise Manager by enabling the administrator to devise, implement and track database and schema object changes to support new application requirements in the production environment. With this pack the administrator can minimize downtime by eliminating errors or data loss when making changes. It also allows the administrator to respond rapidly to new requirements with built in impact analysis, dependency correlation, change deployment, and change propagation results.

CCS Application Server The CCS Application server shall be a Windows platform installed on a , ProLiant DL360 G5 3.00 GHz High Performance Server, 2x Quad Core, 4gb RAM, 2x146 Raid 1, Windows 2003 server. The server runs the CCS back office application that consists of JAVA applications running on the WebLogic 8.1 server platform interfacing to devices and Oracle platform.

Reports Server The reports server shall be a Windows platform installed on a , ProLiant DL360 G5 3.00 GHz High Performance Server, 2x Quad Core, 4gb RAM, 2x146 Raid 1, Windows 2003 server. The server shall run the COTS Hummingbird report software to enable users to run reports from different workstation over the web. The report software has the capability to run canned and ad-hoc reports manually or

scheduled. In addition, the Hummingbird reports can be setup to be automatically emailed once ran to the requesting user or users.

DNS/Tools Server The Tool server shall be a Windows platform installed on a , ProLiant DL360 G5 3.00 GHz High Performance Server, 2x Quad Core, 4gb RAM, 2x146 Raid 1, Windows 2003 server.. The tools server is used to host infrastructure tools and services. This may include DNS, Active Directory, and other support applications such as WinZip and Toad.

Field Maintenance and Inventory System The Field Maintenance and Inventory System shall be a Windows platform installed on a ProLiant DL360 G5 3.00 GHz High Performance Server, 2x Quad Core, 4gb RAM, 2x146 Raid 1, Windows 2003 server. The server shall run the Metrix software used for asset management of the AFC system devices. Metrix shall enable users to track field issues by job number, device, open, closed and part disposition.

Netbackup Server The Netbackup server shall be a ProLiant DL360 G5 3.00 GHz High Performance Server, 2x Quad Core, 4gb RAM, 5x146 Raid 5, Windows 2003 server. The server shall run the EMC Legato Enterprise Backup software for backup of files and the Oracle database to disk and then to tape, and for restoration and reimaging of servers.

RSA Security To provide maximum network security, VPN access control shall be implemented with a firewall appliance to enable imposing firewall rules and creating a DMZ environment. Users requiring access to the Central Computer System shall require RSA Key Fob authentication to access the system. Two RSA appliances shall support the RSA appliance authentication software.

Substitution of Data System Equipment The SFMTA may in its sole discretion direct Contractor to substitute any of the computers, servers or other hardware listed herein with similar hardware from another manufacturer that is a functional equivalent. If the SFMTA directs Contractor to substitute Equipment at or prior to NTP, SFMTA shall bear the additional expense if it specifies substitute hardware that is more expensive than is listed in this Agreement, but SFMTA shall be credited the difference in price if the substituted hardware costs less than that specified in this Agreement. SFMTA shall compensate Contractor for its actual additional direct costs, including delay, if any, caused by the SFMTA's direction issued after NTP to substitute listed hardware.

Central Computer System AFC Software

The Central Computer System AFC Software shall be grouped into the following modules:

- Data Transport Framework,
- Operational Management,
- Data Acquisition,
- Data Summarization,
- Reports Framework, and
- Cash Collection and Reconciliation Reporting.

The required functionality of these Software modules is described below.

Data Transport Framework Module

The data transport framework module shall be the controlling process that moves data between the CCS and the AFC device network. This process shall perform the following functions:

Manages data transfer between various parts of the Data System;

Distributes various types of data including:

- Transaction data
- Audit register data
- Tables (fare, configuration, etc.)
- Software executables/images

Is configurable:

- Where data transfers are initiated
- Frequency of transfer (time-based, number bytes-based, or on demand)
- Supports TCP/IP
- Supports configuration management of deployed objects
- Is a guaranteed delivery system

The data transport framework module shall manage and distribute new versions of software to individual devices on the AFC network.

The SFMTA provided communication network must provide the bandwidth required to support software download, if this capability is to be implemented. The CCS shall send new versions of software to the garages for distribution to the AFC devices. Management of the configuration and authorization of software versions, which are utilized in the AFC system, is controlled by the Operational Management module.

Operational Management Module The Data System shall have a sufficient number of downloadable parameters to meet SFMTA needs that define the operational characteristics of the Fare System. Functions such as fare tables and peak/off-peak time periods are all controlled by variables downloaded from the CCS. The Operational Management Module controls and manages this variable data and the configuration and authorization of software versions for downloading to the AFC devices.

This process shall support:

- Definition of the garages, equipment, business rules, and fare policy;
- Collection and validation of the variable parameter data;
- Collection, validation, and authorization of versions of downloadable software;
- Definition of system users, user roles, and data access rights;
- Edit of variables; and

- Automatic broadcast of variables.

Distribution of variable data and downloadable software shall be automatic. The Operational Management Module shall support features that detect an improper set of variable data or software file in a processing location and re-establishes the required set.

Data Acquisition Module Data Acquisition shall be the process by which the CCS handles data received from AFC devices deployed in the system. The Data Acquisition Module supports a standard set of APIs that allow compliant devices to connect to and send data to the CCS. It supports the addition of translators that transform legacy device data into a compliant form. This application also validates and authenticates data.

Data Summarization Module The Data Summarization Module shall process the detail data and to create summary data in support of the standard and Ad Hoc report processes. This module provides the summary of transaction/rides and value for the following transaction attributes:

- Product type;
- Method of payment;
- Location (including route);
- Processing AFC device;
- Operator (transit operator); and
- Configurable transit operating periods (peak, lunch, off-peak and weekend).

During day-to-day operations, utilizing these summary tables in conjunction with the location configuration tables, report users shall be able to generate daily and monthly informational reports for each piece of equipment, vehicle, operator, operating period, or location in a timely and efficient manner.

The Data Summarization Module shall allow SFMTA to create ad hoc reports and sort data in customized reports.

Reports Framework Module

Reports The Reports Framework Module shall provide users with access to the standard set of reports, as well as Ad Hoc access to the database via Microsoft Excel, via Comma Separated Value. All reports that are required to support the various applications described herein shall be accessible from this framework. The reports framework provides:

- Secure access to the standard suite of reports.
- Common engine for scheduling and distributing reports including:
- Ridership Reports,
- Planning Reports,
- Performance Reports, and
- Accounting Reports.

- Generation of Ad Hoc reports:
- Use a common third party tool.

Reports Framework Module The Reports Framework Module shall utilize Hummingbird's Business Intelligence (BI) Suites for all of its reporting needs. BI Suites allows the CCS to provide the standard reports described in this section and also facilitates Ad Hoc reporting as performed by transit operators.

Sample Reports The Data System shall generate, in addition to Ad Hoc reports, at a minimum the following reports;

- (1) Bus Facility Cash Breakdown
- (2) Vaulted Bus Cashbox Summary by Facility
- (3) Vaulted Bus Cashbox Cash Breakdown by Facility
- (4) Unvaulted Bus Cashbox Summary by Facility
- (5) Unvaulted Bus Cashbox Cash Breakdown by Facility
- (6) Mobile Safe Removal Summary by Facility
- (7) Mobile Safe Removal Cash Breakdown by Facility
- (8) Mobile Safe Reconciliation
- (9) Mobile Safe Counted Cash Breakdown
- (10) Bus Cashbox Reconciliation (Cashboxes Not Vaulted)
- (11) Bus Cashbox Counted Cash Breakdown
- (12) Farebox revenue by Run Identification Number

BI Suites BI Suites is a collection of applications for support of large enterprise business intelligence/ reporting operations. The CCS implementation of BI Suites shall consist of the components that are described below:

BI Broker BI Broker is an enterprise application server providing centralized report security and administration, a common model and report repository, report scheduling, and report notification and distribution for BI Query and BI Web clients. BI Broker is the foundation of Hummingbird's multi-tier business intelligence architecture. BI Broker runs on the Report Server.

BI Query Admin Hummingbird BI Query is an enterprise-strength query and reporting application that helps users ask questions about data and visualize the answers for more effective decision-making. BI/Query utilizes data models (graphical representations of underlying database structures) and a powerful reporting environment to access and analyze enterprise data sources quickly and easily. The product also allows the creation of models and reports containing data from multiple sources and present in a variety of styles, cross tabs, charts, maps, tables, rich text, and OLE objects, which can then be made available to BI Web users via BI Broker.

BI Web BI Web brings the powerful functions of Hummingbird's BI Query to corporate Intranets and Extranets. It is a Java-based client that enables users to conduct business intelligence tasks using their Web browsers. This creates a near zero administrative environment. Utilizing CORBA technology to communicate with BI Broker, BI Web requires no configuration, as all security information and content reside on BI Broker. BI Web allows the user to view and print BI

Broker generated reports, create ad hoc queries, use On Line Analytical Processing (OLAP) to analyze data, view and navigate data models, qualify with interactive queries and reports, and organize work in a personal portfolio.

BI Named Port License: Allows a user to interface with BI Broker and BI Web via a Web Browser.

Cash Reconciliation Software Module The Cash Reconciliation Module is a series of financial reports used for cash counting and reconciliation functions. This module shall provide reconciliation of revenue and Fare Media registered by Fareboxes against. revenue and Fare Media counted from Mobile Safes,.

Implementation and Program Management

Contractor shall provide Implementation and Program Management to ensure the successful completion of the Work under this Agreement. Contractor shall provide an Implementation Team, which will utilize Cubic's standard task tracking and resolution processes, as described herein.

I.T. Implementation Team

Contractor's I.T. Implementation Team shall consist of two system technicians experienced and expert in all aspects of the Data System. Responsibilities of the Implementation Team shall include maintenance reporting support, fault management, system monitoring, CCS backup and recovery, application support, AFC system report support, and providing on-the-job training to SFMTA personnel.

Applications and Operations Support Contractor shall provide during the Term of this Agreement the following CCS applications support:

- Hardware/software/communication monitoring and reporting,
- System maintenance system tuning, table management,
- Software management, configuration, reports management,
- Third party software maintenance management,
- Database backup and database disk space monitoring,
- Ad hoc reporting support,
- Database archiving,
- Transaction re-processing when needed.

Automatic Fare Collection CCS Fault Management

Response Time The I.T. Implementation Team shall respond to the SFMTA to CCS faults detected either through monitoring, observation, or by reports from users, log fault and capture pertinent data (e.g., record state of system components, take appropriate system dumps, record observations of users) and make necessary and appropriate notifications to SFMTA management and affected users, diagnose nature/cause of Problem(s), and determine responsibility for correction of fault. The Implementation Team shall respond within one business day of SFMTA reporting a fault, correct faults or follow system procedures to contact the appropriate service provider and

initiate response from/resolution by that provider. The I.T. Implementation Team shall then monitor and log response of service provider to trouble call.

Correction Verification The I.T. Implementation Team shall verify that the fault has been appropriately and completely corrected and that there are no uncorrected collateral problems either from the original fault or from the measures taken to correct the fault.

Fault and Response Log The I.T. Implementation Team shall log return to proper operation and record all pertinent data regarding fault: fault description and symptoms, how it was detected, impact on system operation, how it was diagnosed, diagnosis and response times, how it was corrected, and elapsed time to restored system operation.

4.5. Communications

SFMTA Contact Representatives

SFMTA shall, designate, in writing, up to three employees to serve as the contact representatives. SFMTA may, by notice in writing to Contractor, substitute other employees as its designated representatives, or designate particular SFMTA employees as contact persons for certain issues, project or problems.

Cubic Contact Representative

The process for technical support is as described in Section III.M.2. SFMTA shall submit initial requests to Contractor for technical support to a telephone contact number which shall be provided once the Contractors local office is in use.

VPN Access

SFMTA shall provide VPN access to Cubic support staff. Cubic may by notice in writing to SFMTA request to substitute its support staff as necessary.

Liaison with SFMTA

During the resolution stage in connection with all problems, Contractor's support engineer shall maintain contact with SFMTA to inform SFMTA of Contractor's progress. When a resolution is available, the support engineer will guide SFMTA's staff through any necessary resolution, configuration or setup procedures.

Collaboration E-Room

Cubic will establish a Collaboration E-room for the purposes of exchange of information. The periodic activity reports, progress report on open items and report on the consumption of the available hours will be posted and updated in the Collaboration E-room.

Maintenance Reporting Support

Contractor shall design and implement a Maintenance Reporting System in the CCS that

is configurable by SFMTA that tracks maintenance incidents, such as Farebox jams, Fare Media jams, Farebox module and other component failures. The contractor shall identify all maintenance failure modes to the SFMTA. The Maintenance Reporting System shall calculate reliability, and identify the most common failure modes.

Contractor shall provide the SFMTA a full time, on-site Field Maintenance and Inventory System Administrator once the Maintenance Reporting System is installed. The I.T. Implementation Team shall remain on site at SFMTA for the Term of this Agreement to assist and train SFMTA staff. Information from the FMIS shall be available for use by the SFMTA to improve the performance of the Fare System, provide weekly maintenance reports, optimize reliability, minimize maintenance costs and extend the effective life of the system.

System Monitoring

On a scheduled basis, as approved by the SFMTA, the Implementation Team shall monitor the hardware and software components of the Data System to ensure that all components are operating within specified parameters. Based on these reviews, the Implementation Team will perform needed system upkeep (e.g., defragmenting disk files, purging obsolete files from directories, etc.) to ensure optimal operation of the system. The Contractor shall provide the list of tools used to monitor the CCS and Depot Computers.

The I.T. Implementation Team shall on a scheduled basis, as approved by the SFMTA, check system monitoring devices and programs, run-time system utilization parameters, and other diagnostic tools (e.g., file size and allocations, processor loading, response times, etc.) to ensure that all aspects of the system are operating properly and the system is meeting all specified performance criteria.

On scheduled and real-time basis, as approved by the SFMTA, the Implementation Team shall review system databases (including tables, indexes, and views/queries) to ensure that all databases are properly updated and appropriate integrity and synchronization of all system databases is maintained.

The I.T. Implementation Team shall maintain logs or other appropriate records of all monitoring and system upkeep activities and logs of all anomalies found during any monitoring activities and measures taken to correct those anomalies.

Confidentiality of Repair and Maintenance Information

4.6. To maintain the security of Fare Media at all times, Contractor shall treat all requests for maintenance, Problem assistance, fault diagnosis and other Equipment failure and repair matters as confidential, and shall communicate on those issues only with SFMTA personnel identified to Contractor as authorized by the SFMTA work on those issues. Under no circumstances shall Contractor discuss with any person not employed by Contractor or not identified by the SFMTA as authorized to work on those matters the potential weaknesses in the Fare System that might be exploited to steal or otherwise access Fare Media.

Central Computer System Back-ups and Archiving

The I.T. Implementation Team shall recommend standard operating procedures ("Operations Procedures") for the back-up and archiving of Data System records and data. The Implementation Team shall perform and shall train SFMTA personnel to perform said scheduled data, application, and system backups, as specified in the Operations Procedures, and shall further ensure that back-up media are properly stored, rotated on schedule, periodically tested and replaced appropriately and damaged tapes are properly discarded. The I.T. Implementation Team shall maintain logs of all back-up activity, rotation of back-ups, and usage/rotation of back-up media and records of any off-site data storage.

Fare System Report Services

During the Term of this Agreement, the I.T. Implementation Team shall provide SFMTA support in standardized report generation and interpretation, and creation of any customized reports beyond the standardized set. The standardized report set includes the following reports:

- Bus Device Event History
- Device Transaction History
- Bus Route Activity
- Bus Route Activity Summary
- Ridership Totals by Category and Time of Day
- Ridership Totals by Route, Category and Time of Day
- Ridership Averages by Route, Category and Time of Day
- Ridership Averages by Category and Time of Day
- Ridership Totals by Device and Time of Day
- Ridership Totals by Device and Category
- Ridership Totals by Facility
- Ridership Averages by Facility
- Bus Facility Probe and Vault Activity
- Buses from This Facility Probed at Another Facility
- Buses from Another Facility Probed at This Facility
- Buses not Probed
- Cashboxes Probed not Vaulted
- Cashboxes Vaulted not Probed
- Buses not Heard from since Selected Date
- Mobile Safe Removal Summary by Facility
- Vaulted Bus Cashbox Summary by Facility
- Bus Facility Cash Breakdown
- Summary of Total Reported Cash

During the Term of the Agreement, the I.T. Implementation Team shall provide on-the-job-training, instruction, and assistance to SFMTA staff to sort data and generate custom reports, so that upon expiration of the Term of the Agreement, SFMTA staff may generate custom reports themselves. Contractor shall review and correct documentation created by SFMTA staff memorializing how to create custom reports. A sample customized report is shown in Figure 4.

	Week	26						
Ridership	Budget			Budget	Actual		YTD	
	Annual	Weekday	Weekly	YTD	Weekly	YTD	Variance	Weekly ridership
Motor Bus	40,000	132	769	20,000	576	14,998	(5,002)	
Trolley bus	40,000	128	769	20,000	790	20,470	470	
Light rail	14,000	59	269	7,000	280	7,360	360	
Cable Car	8,000	10	154	4,000	160	4,185	185	
	102,000	329	1,962	51,000		47,013	(3,987)	
Revenue	Budget			Budget	Actual			
	Annual	Weekday	Weekly	YTD	Weekly	YTD	Variance	Weekly revenue
Motor Bus	\$ 50,000	\$ 167	\$ 962	\$ 25,000	\$ 700	\$ 18,300	(6700.00)	
Trolley bus	\$ 50,000	\$ 167	\$ 962	\$ 25,000	\$ 970	\$ 25,260	260.00	
Light rail	\$ 17,500	\$ 58	\$ 337	\$ 8,750	\$ 330	\$ 8,620	(130.00)	
Cable Car	\$ 10,000	\$ 33	\$ 192	\$ 5,000	\$ 195	\$ 5,095	95.00	
	\$ 127,500	\$ 425	\$ 2,452	\$ 63,750		\$ 57,275	(6475.00)	
Revenue per ride		Budget		Actual	Payment type (YTD)			
Motor Bus	\$ 1.25		\$ 1.22		Cash	58210		
Trolley bus	\$ 1.25		\$ 1.23		Cr/Db	0		
Light rail	\$ 1.25		\$ 1.17		EFT	0		
Cable Car	\$ 1.25		\$ 1.22		Other	10969		
					Total	109179		
Distribution	Bus	Vendors	Ticket Offices	3rd Party	Web	Industry	Other	
	0	15000	15000	0	0	5000	0	
MUNI	69600	0	0	0	0	0	0	
On board	0	0	0	0	5000	0	0	
Web sales	0	0	0	13100	0	0	0	
Third Party	0	0	0	13100	0	0	0	
Total	69600	15000	15000	13100	5000	5000	0	
				Availability	Target	Current period		
				Gates	99%	99.20%		
				Vendors	99.70%	99.80%		
				Bus	99.94%	99.80%		

Figure 4 1. General Manager's Report (simulated data)

I.T. Implementation Team Support

The I.T. Implementation Team shall also provide specialized support services as required to set-up and maintain the Data System, which shall include but is not limited to entry of the tables to support fare policy changes and management of the system configuration parameters, and the employee and equipment tables necessary for proper CCS operation. The I.T. Implementation Team shall coordinate with Contractor's engineering staff and the SFMTA to apply approved Fare System application upgrades.

Installation/Refurbishment – Order of Work

Contractor shall install the Fare System under the general direction of SFMTA staff, but Contractor is responsible for the means and methods of its Work. Contractor shall supply supervision and oversight and materials required for the proper installation of the equipment in the vehicles, Garages, and CCS facility. The tasks associated with this installation in general order in time are:

- Install the Central Computer.
- Build 72 new fareboxes and refurbish the spare units provided by SFMTA.
- Build and procure the equipment listed in Table 5, Equipment Deliverables.
- Deliver the equipment and stage the depots for the refurbishment/installation.
- Build the "Float" of 72 Fareboxes before removing Fare Boxes from transit vehicles.
- Perform an on-site survey of the vehicles and shall advise SFMTA if any changes are required to existing power and signal cabling.
- Install the Fareboxes on the transit vehicles.
- Install and refurbish the Garage Equipment.

Project Organization The people below are included in the pricing for this Firm Fixed Price contract

Project Oversight Contractor shall assign a dedicated Project Implementation Team within 15 days following NTP. Contractor's Project Implementation Team must include a Program Manager, Project Engineer, and a Contract Administrator. Each key member of the Project Implementation Team shall be full time employees and familiar with the existing SFMTA Fare System. The Project Implementation Team shall remain assigned to this Project until its successful completion. Contractor shall assign additional engineering, installation and support personnel to the Project, as required, to support the Project.

Project Management Contractor shall ensure that the Project is effectively and efficiently managed and implemented to the benefit of the SFMTA. Contractor shall employ as necessary the personnel, personnel hours, tools, and systems to manage and deliver the Project.

Contractor's Project Manager Contractor shall assign a qualified and Project Manager, subject to SFMTA approval, who shall be responsive to the needs of SFMTA as required by this Agreement. Contractor's Project Manager shall be competent and fully qualified in all aspects of the SFMTA Fare System, the Project, and the Agreement. Contractor shall not assign its Project Manager other work than under this Agreement

without the written consent of the SFMTA. Contractor may reassign or replace the Project Manager only be with approval of SFMTA.

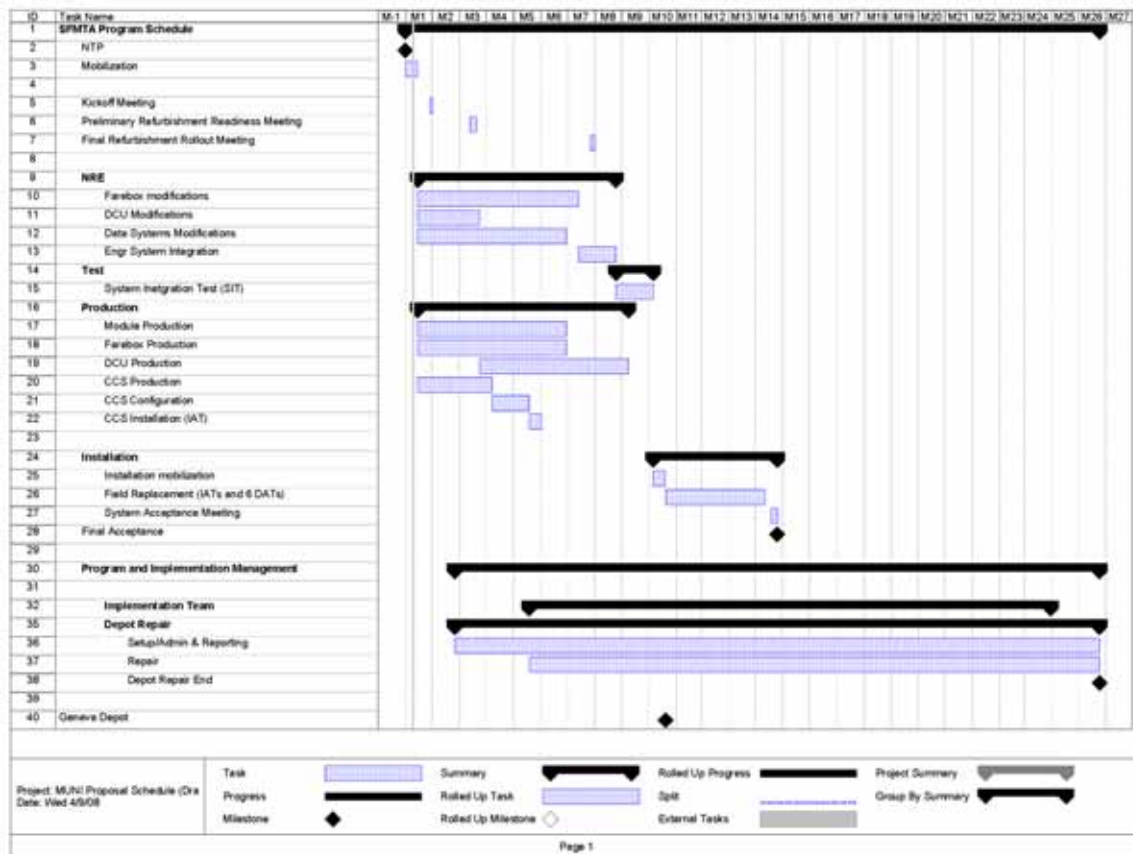
Contractor's Project Manager shall ensure that Project tasks are completed as provided in the Program Plan and Schedule. Contractor's Project Manager shall coordinate Contractor's design and engineering activities. Contractor's Project Manager shall keep the SFMTA fully informed of the status of the Project, shall promptly, and regularly notify SFMTA of any problems or difficulties that may affect the timely or effective completion of a task, a Milestone, or the Project. Contractor's Project Manager shall be responsible to coordinate and supervise work and services provided by personnel or groups outside the Project Implementation Team. Contractor's Project Manager shall have full authority from Contractor to assign priority to tasks as may be required to meet the requirements of the Project.

Project Schedule

Contractor shall submit a Program Plan and Schedule for SFMTA review and approval within 45 days following NTP, which shall describe the Milestones and principal tasks necessary to complete the Work, including design, approval, manufacture, delivery, installation, and implementation of the Project. The Plan shall include a performance and payment schedule setting out the Milestones for the Work, dates by which Contractor shall complete the Milestones, and payments associated with each Milestone. The schedule shall be based in Primavera or Microsoft Project Planner. The Project Schedule shall include tasks assigned to Contractor and the SFMTA. Contractor shall update the Project Schedule and submit it on or before the last day of each month for the SFMTA's review and approval. .

Contractor's preliminary Program Schedule is shown in Figure 5.

Figure 5. Preliminary Program Schedule



4.7.

4.8.

Submittals

Contractor shall describe in the Program Plan and Schedule methods, procedures, and controls it will use to identify, track, and record the status and completion of all required submittals. In the course of the Project, the parties may identify additional submittals or action items as the responsibility of Contractor and/or SFMTA. Contractor shall maintain a record of such submittals and action items and submit it to SFMTA with the Monthly Project Report, showing the status of all submittals and action items.

Project Meetings

Coordination As described herein or as requested by the SFMTA, Contractor shall coordinate, schedule and facilitate/conduct Project meetings as necessary for implementation of the Project,. Unless otherwise approved by SFMTA, Project meetings shall be held on SFMTA property at locations made available and provided by SFMTA. Contractor shall make every effort to obtain and provide to the SFMTA in a timely manner Project data and other information necessary for Project meetings to be productive. Contractor shall include these meetings in its Program Plan and Schedule.

Types of Meetings Contractor shall coordinate and conduct the following Project Meetings:

Kickoff Meeting: The Kickoff meeting shall be held to review the Contractor's proposed Program Plan and Schedule and to identify any Contractor or SFMTA constraints that may affect the successful completion of the Project. This meeting shall be held immediately after Contractor submits its proposed Program Plan and Schedule to the SFMTA. Contractor shall conduct a detailed site survey prior to the Kickoff Meeting, and shall incorporate its findings into the Program Plan and Schedule. All key Project personnel should attend the Kickoff Meeting.

Preliminary Refurbishment Readiness Meeting: This meeting shall be held to review the preliminary Refurbishment/Installation Plan. The Plan shall include the identification of those tasks that must be performed by both SFMTA and Contractor. This meeting shall be held at Contractor manufacturing facility in Tullahoma, Tennessee so that SFMTA key Project participants can observe the manufacturing, production, and testing facilities used for the components to be used in the Farebox refurbishment. Contractor shall record action items to be resolved prior the Final Refurbishment Rollout Meeting.

Final Installation Rollout Meeting: This meeting shall be held to review the updated Installation Plan based on closure of the action items taken during the Preliminary Refurbishment Readiness Meeting and any subsequent follow up meetings held to monitor the disposition of these items. The Refurbishment/Installation Meeting shall not be held until the SFMTA approves Contractor's Refurbishment/Installation Plan. The primary objective of this meeting is to ensure that both Contractor and SFMTA are ready for Contractor to install the refurbished Fareboxes on the transit vehicles.

Final Acceptance Meeting: This meeting shall be held to validate and document system refurbishment and SFMTA acceptance within 30 days after the refurbishment of the Fare System has been completed.

Status Reporting

Contractor shall submit to SFMTA monthly Project status reports. The monthly Project status reports shall describe all Work Contractor performed and Milestones completed for the Project in that month, and the percentage of all Project tasks and Milestones Contractor has completed for the entire Project and since the previous Project status report. Contractor shall submit the monthly Project status report no later than the 14 days after the last day of the month reported. Contractor shall submit the monthly Project status report with the invoice for Work performed in the month reported, as a condition of payment for that Work.

In addition to status reports issued on an on-going basis, Contractor shall implement a separate problem tracking, resolution and reporting system.

Quality Assurance and Work Standards

Contractor is an ISO 9001:2000 certified company and fully comply with the rigorous international quality assurance standards promulgated by the International Organization for Standardization (ISO). Notwithstanding any other provision of this Agreement, Contractor shall at all times perform the Work under this Agreement with due care and the highest professional standards as is due the design and implementation of a highly secure automated cash handling system. Contractor shall provide its quality assurance plan for review within 45 days for NTP as part of the Program Plan and Schedule.

Documentation and Training

Documentation Contractor shall provide documentation and manuals for all new Equipment. Contractor shall provide documentation for Refurbished Equipment showing the Fare System as it exists at Final Acceptance.

Operation and maintenance manuals provided by Contractor shall be written in clear and concise English, and shall assume the reader has no more than a high school education, unless otherwise directed by the SFMTA. Care shall be taken to provide easily understood directions and explanations and step-by-step instructions with cross references to all drawings, diagrams and photos.

Manuals shall be presented in a format consistent with existing Contractor manuals and shall be delivered to SFMTA in Adobe Acrobat format.

Training Contractor shall provide a training program to educate SFMTA personnel in all aspects of the refurbished Fare System, Equipment and new Software so that SFMTA staff can operate, service, and maintain the Fare System satisfactorily. Contractor shall provide course development, instructors, handouts, manuals, and classroom aids. Training shall focus on practical training in the shop and in the field using the Equipment. Contractor shall provide direct training and train-the-trainer training to 20 SFMTA supervisors or senior transit operators so that they can train all other SFMTA transit operators in the use of the refurbished Fare System. Contractor shall provide direct training to 20 SFMTA maintenance personnel in the maintenance requirements and procedures of the refurbished Fare System. Contractor shall provide on-the-job training to ten SFMTA computer personnel in the use and maintenance of the Data System.

Prior to commencing training, Contractor shall provide the SFMTA for its review and approval a training plan, which shall include a proposed schedule for classes and outline the number of hours required to satisfactorily complete the course, with recommended class sizes.

Acceptance Testing

Fare System Testing Plan Contractor shall submit for SFMTA review and approval a Fare System Testing Plan to perform, monitor, and document all tests required to prove that the design and functionality of the refurbished Fare System meet the requirements of this Agreement and to establish that the Equipment meets approved design criteria. Contractor shall include in the Fare System Testing Plan a comprehensive test plan to demonstrate successful integration of all Fare System components and interfaces.

Contractor shall submit proof of successful test completion for every test required under this Agreement. A statement by Contractor, manufacturer, or supplier of any item, without appropriate substantiating evidence, shall not constitute adequate proof that a component meets the requirements of this Agreement, unless approved in writing by the SFMTA.

The Test Program Plan shall include descriptions, approximate scheduling, sequencing, and dependencies of all inspections, qualification tests, and revenue service acceptance

tests to be performed. These inspections and tests shall demonstrate that the equipment produced is in compliance with the specified requirements. This plan shall include the format for test results documentation including test script, pass/fail criteria, result (pass/fail/repeat), classification of failures, and procedure for resolution of failures.

Contractor shall identify the locations and estimated time and staff required for conducting the inspections and tests of each type of Equipment, and where the integrated testing, is to be performed. The plan shall include time and resources to allow for repeat tests.

Description of Fare System Tests Contractor shall conduct the following tests to confirm that the Fare System meets SFMTA requirements:

Fare System Integration Test (FSIT): This test shall verify that the individual elements of new system including the system as a whole perform as specified. This test shall be conducted at Contractors facility.

Vehicle Installation Acceptance Test (VIAT): This test shall be executed for each refurbished farebox and DCU installed on transit vehicles. The VIAT shall document the transactions (insertions of Fare Media) performed for each transit vehicle. This data shall be later used during the Garage Equipment Acceptance Test.

Garage Equipment Acceptance Test (GEAT): The GEAT shall be executed for each Garage. The GEAT shall verify that the Depot Computer, Optical Data Probes, Receiver/Vaults and all refurbished bus equipment properly function as a whole. SFMTA shall ensure that all transit vehicles are made available for refurbishment, so that GEATs are not delayed.

Final Acceptance

Contractor shall provide test results to SFMTA for review and approval. SFMTA will accept the System within 30 days of its approval of the results of the System Integration Test, Bus Installation Acceptance Test, and the individual Garage Equipment Depot Acceptance Tests.

Spare Parts and Post-Acceptance Services

Contractor shall supply Farebox spare parts and modules as identified in Table 6. Farebox modules and spare parts shall be functionally interchangeable with their corresponding parts provided in the original Equipment. All spare parts provided by Contractor for SFMTA inventory shall conform to the latest functional version.

Contractor shall provide the SFMTA with a list of recommended Farebox spare parts that the Agency will keep in inventory, as well a list of manufacturers and vendors that can provide those Farebox spare parts.

Contractor agrees that it shall provide SFMTA, for a reasonable price, spare parts, modules, and other components for Fareboxes, Receiver/Vaults, and Mobile Safes for a period of not less than ten years following Final Acceptance of the Work under this Agreement.

Contractor agrees that it shall provide SFMTA services necessary to upgrade Software, Depot Computers, and components of the CCS for a period of not less than ten

years following Final Acceptance of the Work under this Agreement as required with mutually acceptable price and terms

Contractor agrees that it shall provide SFMTA with remote Data System assistance via telephone on a time and materials basis for a reasonable charge and other such terms to be negotiated prior to Final Acceptance.

Equipment Deliverables

4.9. Contractor shall provide the SFMTA the Equipment Deliverables listed below in Table 6.

4.10.

Table 6. Equipment Deliverables

DESCRIPTION	QUANTITY
Fareboxes	72
Farebox Refurbishment Kit	1,250
Driver Control Unit (includes Farebox mounting installation kit)	1,322
Receiver/Vault Refurbishment Kit	18
Mobile Safe Refurbishment Kit	38
Optical Data Probes	40
Depot Computers	6
Central Computer System	1
Geneva Repair Facility:	
Depot Computer	1
Receiver/Vaults	2

DESCRIPTION	QUANTITY
Mobile Safes	4
Optical Data probes	2
Installation	
<u>Spares:</u>	
DCU	120
Bill Module	120
Coin Module	120
Cashbox	120
Depot Computer	2

5. WARRANTIES

Express Warranties

Contractor warrants that commencing at Final Acceptance, Contractor shall provide a one-year warranty covering the Fare System, during which time the Fare System and each of its components shall operate within stated design specifications without further refurbishment other than replacement of parts and modules due to expected and normal wear through use. In addition, Contractor warrants that all replacement parts and modules shall operate within stated design specifications for one year from date of purchase. This warranty is conditional upon the SFMTA maintaining and repairing the Fare System in accordance with the System Documentation. The City understands and agrees that the SFMTA is wholly responsible for the repair and maintenance of the Fare System. The failure of the SFMTA to repair and maintain the Fare System in accordance with the System Documentation provided by Contractor shall render this warranty null and void as to those components of the Fare System that the SFMTA failed to so repair or maintain. Contractor shall transfer to the SFMTA all manufacturers' warranties and maintenance agreements for Equipment and Software, including but not limited to

modules, computers, services, and other Fare System components. Contractor does not warrant that the computer and software components of the Fare System have a design life beyond the term of this Agreement or the applicable manufacturer's warranty or maintenance agreement, whichever is longer.

Design Life

Contractor states, but does not warrant, that the Fare System has an intended design life of ten years during which time the Fare System is expected to operate within stated design specifications without further refurbishment other than replacement of parts and modules due to expected and normal wear through use.

Replacement of Parts and Components

Contractor shall replace without charge parts and components of the Equipment that are defective or otherwise fail within the Term of this Agreement, except as parts and components that fail due to vandalism or intentional misuse.

Equipment Fleet Failure

Notwithstanding any other provision of this Agreement, should the same Farebox component in fifteen percent or more of all Fareboxes installed in Transit vehicles fail within the same 60 day period, (for one year after the final installation) a fleet failure may be declared. The SFMTA will cooperate with Contractor in determining the nature of the defect and to determine if said Farebox components are defective in manufacture and/or design. If the components are determined to be defective in manufacture or design the Contractor shall replace said Farebox Components without charge.

6. SFMTA'S PROJECT SUPPORT RESPONSIBILITIES

SFMTA shall provide the following personnel and facilities and will perform the following functions to support Contractor's Work on this Project:

Assign a Program Manager who shall be Contractor's main contact with the SFMTA and who shall coordinate the SFMTA's activities necessary to support Contractor's Work on the Project.

Assign an Installation Manager who shall coordinate availability of vehicles and maintenance space at SFMTA facilities for Contractor's removal and installation of Fareboxes and other Equipment.

Review and approve or provide comments and requested changes to reports, plans, and other submittals from Contractor within 30 days of receipt.

Provide meeting rooms and attend meetings with Contractor regarding the Project, as necessary.

Provide transit vehicles for Contractor to remove and replace Fareboxes and other Fare System refurbishment elements, as provided in the Program Plan and Schedule.

Determine if handrail modifications to transit vehicles are required within 60 days of receipt of Contractor survey of current vehicle types.

Provide transit operators, mechanics, and technicians, as needed to operate transit vehicles to facilitate Contractor's installation of Equipment on the vehicles.

At NTP, provide a Float of 48 spare Fareboxes to be refurbished.

Provide and maintain switches, routers and cable or Telco service necessary to network the Data System servers and Depot Computers and other networked components of the Fare System..

Provide SFMTA facilities for the Central Computer System and work space for Contractor's IT Implementation Team.

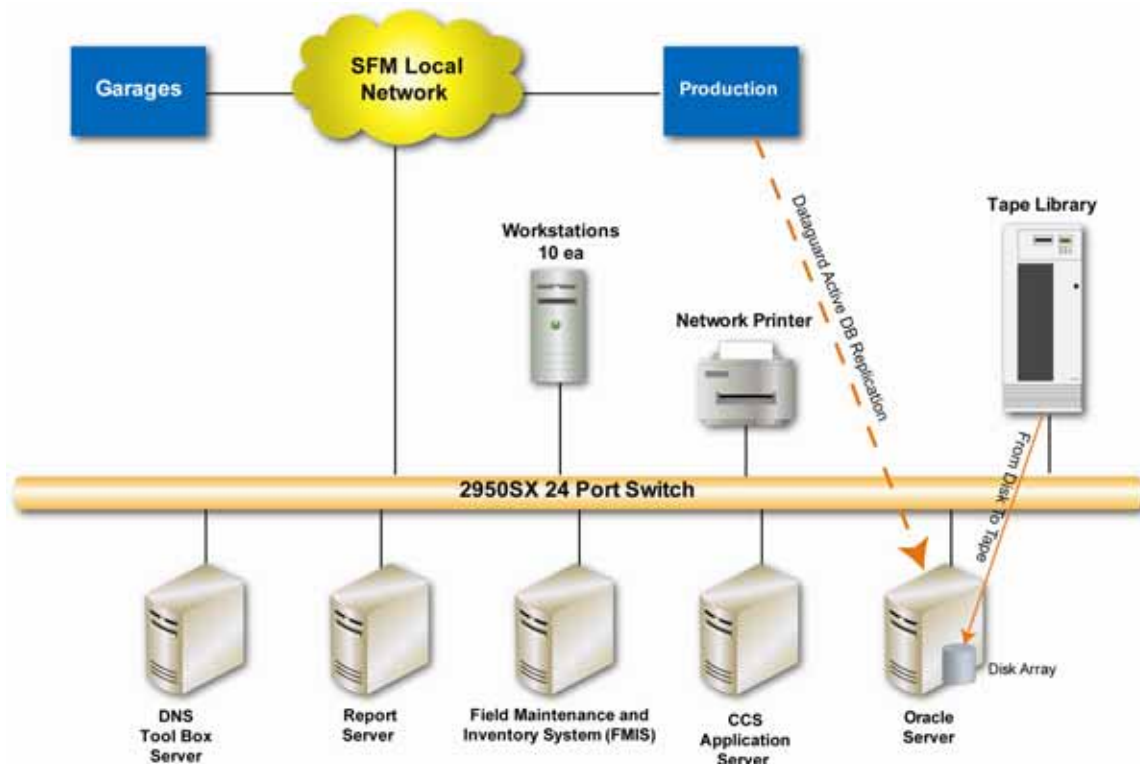
Determine and advise Contractor of SFMTA's data retention policies and data storage requirements CCS configuration.

Confer with Cubic staff to establish test and front end data collection during support and maintenance services.

7. DISASTER RECOVERY SITE DESIGN OPTION

The SFMTA has the option within the Term of this Agreement to direct Contractor to design a designated disaster recovery site to replace the production site in the event of a catastrophic failure as presented in Figure 6. The site would consist of production duplicate hardware and software that could be restored to production version utilizing the Bare Metal Restore imaging software. Oracle's Dataguard would be used as the primary method of backing up the database in near real time to the disaster recovery site. The Oracle database may also be replicated via Netbackup tapes through the tape library. If the SFMTA desires to exercise this option, the parties shall negotiate the price charged for these services.

Figure 6. Central Computer System with Optional Disaster Recovery



APPENDIX B

Cost Schedule

As provided in Section V.1. of Appendix A of the Agreement, within 45 days of NTP, Contractor shall incorporate the Equipment, deliverables, design elements, and services set out in Tables B-1 and B-2 into its Program Plan and Project Schedule to create a fully cost-loaded payment schedule. All Equipment and services are subject to SFMTA verification prior to payment becoming due. .

Table B-1. Design and Equipment Production and Installation Costs

Items 2, 3a, 3b, 3c, 4b, 5b, 5e, 6, and 7 are subject to SFMTA acceptance prior to payment.

Liquidated damages apply to Contractor's delay for Milestones listed below in 6, and 7, as further provided in Section 19 of the Agreement.

	Milestone Description	Milestone Value
1	Mobilization and Preliminary Costs (at NTP)	\$714,687
2	Program Plan, Project Schedule and Site Survey (due within 45 days of NTP)	\$714,687
3	Design Drawings	
a	50% Completion of Design	\$536,015

b	90% Completion of Design			\$536,015
c	Production Release of Drawings			\$536,015
4	Farebox Modules and Parts			
a	Contractor Issues Purchase Order for Farebox Parts to Vendors			\$804,023
b	Farebox Parts Delivered to Contractor for Assembly (95%)			\$2,807,986
5	Central and Depot Computer Systems (CCS)			
a	Contractor Issues Purchase Order for CCS Equipment to Vendors			\$848,000
b	CCS Equipment Delivered to Contractor, Software Installed and Configured at Contractor's Facility			\$848,000
c	CCS Installed in SFMTA Facilities			\$848,000
d	System Engineering Complete/Start System Integration Test(SIT)			\$1,000,000
e	Completion of SIT			\$1,216,090
6	Installation/Test/SFMTA Acceptance of Fareboxes	1,322 Total Fareboxes	\$1,092 per Farebox	\$1,443,624
7	Final Acceptance			\$1,403,910
	Total Equipment Price			\$14,257,052

Table B-2 - Personnel/Project Support Cost

Each marked box in the following Table B-2 indicates a fulltime equivalent employee assigned to perform the tasks in the position listed at the top of the column. The City's payment obligations for the services of the personnel listed below are subject to SFMTA verification, including but not limited to audit of payroll records.

Services Provided				
Month #	FMIS	Implementation Team	Depot Repair	Monthly Service Values
1				
2				
3	X			\$11,853
4	X			\$11,853
5	X			\$11,853
6	X	X	X	\$222,680
7	X	X	X	\$222,680
8	X	X	X	\$222,680
9	X	X	X	\$222,680

Month #	FMIS	Implementation Team	Depot Repair	Monthly Service Values
10	X	X	X	\$222,680
11	X	X	X	\$222,680
12	X	X	X	\$222,680
13	X	X	X	\$222,680
14	X	X	X	\$222,680
15	X	X	X	\$222,680
16	X	X	X	\$222,680
17	X	X	X	\$222,680
18	X	X	X	\$222,680
19	X	X	X	\$222,680
20	X	X	X	\$222,680
21	X	X	X	\$222,680
22	X	X	X	\$222,680
23	X	X	X	\$222,680
24	X	X	X	\$222,680
25	X		X	\$49,575
26	X		X	\$49,575
Total Services Price				\$4,365,629

Description	Value
Handrail and Misc. Items Allowance	\$286,688
Total Contract Price	\$18,909,369

MEMORANDUM

DATE: June 23, 2008

TO: SFMTA Board of Directors
Rev. Dr. James McCray, Jr., Chairman
Tom Nolan, Vice Chairman
Cameron Beach, Director
Shirley Breyer Black, Director
Malcolm Heinicke, Director
Jerry Lee, Director
Bruce Oka, Director

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

FROM: Kenneth A. McDonald
Chief Operating Officer

SUBJECT: SFMTA Farebox Refurbishment

The purpose of this memorandum is provide the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors with clarifying information in response to questions which arose at its May 20, 2008 Board meeting on the proposed agreement with Cubic Transportation Systems, Inc. for the refurbishment of the fareboxes on all SFMTA revenue vehicles, referred henceforth as "Agreement." The Agreement also includes the required equipment and software to collect and account for fares and manage the fareboxes as well as support and training for SFMTA staff. The term of the Agreement is 26 months and an amount no-to-exceed \$19 million.

As the Board is aware, the Agreement includes refurbishment of 1,250 existing fareboxes, which means each farebox will get a new bill module, coin module, newly designed master controller electric circuit board, new cashbox with new serialized keys and locks, and a new cover. The Agreement also includes 72 spare fareboxes.

Additionally, the scope in the Agreement includes Agency mandated design changes to the farebox and depot equipment. For example, each farebox will also get a new driver control unit for ease of use and allows for expansion capabilities. Furthermore, the Agreement includes refurbishment of all seven depots of equipment including data probes, receiver vaults and mobile safes and new keys and locks; establishment of a local facility at which the refurbishment

June 23, 2008

and depot repair services will be performed; and replacement of all the existing depot computers with new computers as well as a new central computer at 1 South Van Ness; and lastly, the Agreement requires the contractor to deliver a 10% complement of spare modules.

The following categories reflect that nature of the questions asked at the May 20, 2008 SFMTA Board meeting:

- A) Procurement Alternatives;
- B) Refurbishment vs. Replacement;
- C) Total Expenditures;
- D) Maintenance; and
- E) Warranty

Listed below is clarifying information relative to these five categories.

A) Procurement Alternatives

There were three possible alternatives considered: 1) completion of the project by SFMTA staff; 2) completion of the project by a vendor; and 3) not pursuing the project. The following section summarizes these three alternatives.

1) Refurbishment by staff

Staff assessed the practicality of doing an internal farebox refurbishment but found this alternative unfeasible due to lack of internal resources in Operations and Information Technology. The SFMTA does not have adequate Operations staff to maintain our current system; thus, it would not be possible to identify appropriate staffing for a refurbishment. Additionally, it would be impossible to undertake a replacement of the data system as the SFMTA does not have sufficient Information Technology resources for a farebox data system upgrade.

2) Refurbishment by a vendor

The SFMTA has conducted open bids since the installation of the fareboxes for materials and parts. As of Fiscal Year 2000, there have been 24 purchase orders issued to the marketplace totaling nearly \$1.8 million and Cubic has been the sole qualified responder, confirming the proprietary nature of the Cubic system.

An open procurement process was considered and staff explored the feasibility of using the only other farebox provider who could provide comparable modules for our fareboxes, GFI. However, as is customary in the revenue collection industry, vendors (i.e., GFI or Cubic) do not

refurbish other vendors' products given the proprietary nature of each system.

Cubic is the only vendor that supports its fareboxes and the only company that could provide a new data system as previously mentioned. Staff also requested a recommendation from Booz Allen Hamilton, one of our consultants with Automatic Fare Collection experience, and the fact that only Cubic would be able to complete the refurbishment was confirmed.

Based on the above, preparing a "Request for Proposals" would not only add significant time to this project but would undoubtedly result in a single response. Therefore, a sole source procurement approach provides the only alternative and this was confirmed by the Human Rights Commission's approval of the sole source on April 21, 2008.

It was at that point that staff began working directly with Cubic. Staff contacted Cubic and informed them of our requirements and Cubic submitted its proposal in mid-January. Since then staff has negotiated the project's scope and the not-to-exceed pricing which resulted in the Agreement presented to the Board for approval on May 20, 2008. The internal team included me (Kenneth McDonald), Sonali Bose our CFO, staff representing Operations Engineering and Maintenance, Contracts and Procurement, Information Technology and the City Attorney's office.

Cubic has designed and manufactured the same modules that the SFMTA is pursuing at the following North American transit properties:

Transit Agency	Farebox Quantity
NY Metro Region (NYCT, NYCDOT, Westchester County)	6500 (does not include bill module)
Miami Dade Transit	1000
Houston Metro	1300
New Jersey Transit	1500
Vancouver, British Columbia	1200

3) Not Pursuing the Project

SMTA staff looked at the option of doing nothing, which is obviously unsatisfactory. Our system would continue to decay at the current or accelerated rate costing us more and more revenue on a daily basis.

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The SFMTA's Revenue Collection section calculates that the average monthly farebox revenue collection is \$3700, which equates to \$925 weekly. SFMTA captures a weekly average of 201 farebox maintenance repairs and it is estimated that 20 percent of those repairs (40 defective fareboxes) results in a loss of revenue. Hence, \$925 x 40 defective fareboxes x 52 weeks = \$1.924 million. Therefore, the Agency runs the risk of a continual revenue loss at nearly \$2 million annually if farebox reliability is not addressed.

B) Refurbishment vs. Replacement

As stated during the May 20, 2008 Board presentation, the existing fareboxes are in a state of disrepair due to staffing constraints, physical disrepair, age of the current system and overall infrastructure neglect. A decision was made in mid-2007 to mitigate the problem. Staff was tasked to identify and evaluate all options to solve the fare system concerns.

It should be noted that "system" in this case includes more than just the fareboxes on the bus. The fareboxes on the bus are the means to collect the revenues due to the Agency for cash paying customers. Equally critical for the Agency is the depot equipment including receiver vaults, mobile safes and data probes that accept cash from the farebox and the bus depot computer system that collects, processes and forwards available revenue and ridership data to the central computer for report generation. The depot equipment and computers are just as old as the fareboxes and must also be replaced. Because the "green screen" technology is still in-place our revenue data, security measures and management reports are antiquated and essentially non-existent. To date, the management team has little insight to revenue and ridership reports which are needed to operate the transit system. So when staff initiated its review of the project requirements, the scope went beyond fareboxes on buses.

A complete system replacement is a major procurement process, normally a two-year implementation period, with new technology on the bus, the depot, and data system. Staff estimated the lead time to procure a new system as six months to hire consultant, six months to create a system specification, and at least six to nine months to conduct the competitive procurement. If directed to procure an entire new system, we would not reach the point of where we currently are for a minimum of 21 to 24 months.

C) Total Expenditures - \$19 million

The capital expenditure portion of the project is \$14.2 million. The actual cost to perform the refurbishment is approximately \$6000 for each farebox. Staff reviewed several other farebox procurements throughout the industry and compared the aggregate cost for our project to the calculated “farebox-to-

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farebox” aggregate cost per farebox to determine if we were paying too much on the project cost side. The per unit replacement cost, for similar quantities, for validating technology is in excess of \$10,000.

SFMTA’s aggregate cost for this project is \$10,784 per box:

	ty	nit Price	otal
quipment Refurbishment	,322	5,987	7,914,453
epot Equipment Refurbishment	7		496,497
ept Computers (New)	6	7,770	46,621
entral Computers (New)	1	537,433	537,433
nstallation	/A		1,006,988
ngineering	/A		1,404,913
rogram Management	/A		1,336,642
est, Training and Documentation	/A		891,094

pares 0% 622,411

OTAL 10,784 14,257,052

Comparison Farebox Data

Agency	SFMTA	WMATA	MARTA	MTA (Baltimore)
Year	2008	2001	2004	2001
Total Exp	\$14,257,052	\$20,103,368	\$17,683,216	\$15,176,693
Quantity	1,322	1,400	883	850
Aggregate Unit Price	\$10,784	\$14,360	\$20,026	\$17,855
Warranty	1 yr	1 yr	1 yr maintenance	1 yr + option yr

Clearly, the SFMTA is saving millions of dollars by refurbishing our system even without calculating inflation.

The services that are being procured for the project totals \$4.365 million. These services are not applicable to the comparable calculations above related to project costs for replacement because these are the costs to operate the system. SFMTA simply does not have the staff to provide depot repairs as stated at the May 20, 2008 SFMTA Board meeting. Operation of the data system requires expertise not available within our Information Technology subdivision. During the

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transition service period, Cubic will train our staff thereby allowing adequate time to hire staff to properly maintain the fareboxes and to operate the data system. It is imperative that we shift the paradigm to providing staff training so that critical operating systems can be maintained over their useful life cycle. SFMTA staff is comfortable that the staffing proposed and the labor rates proposed are reasonable.

Finally, only \$19 million is available for this project with the funds coming from the State's Proposition 1B bonds approved by the voters in 2006. There are no other funds identified or available for this project currently.

D) Maintenance

During the life of the 26-month contract Cubic will provide installation, warranty support and training for SFMTA staff. The contractor will provide updated drawings, manuals and field maintenance for the new equipment. Upon contract completion, all maintenance and operation of the farebox system will be transferred to and performed by SFMTA staff. Hence, at the conclusion of this project, SFMTA staff will be adequately trained to maintain the system over its useful life cycle.

E) Project Warranty

Pursuant to questions raised at the May 20, 2008 Board meeting, Cubic has submitted options to extend the base system contract for depot repair and warranty. Cubic will establish an on-site Fare System Refurbishment and Depot Repair Facility which will support SFMTA operations through the 26th month of the contract. This facility will be staffed by Cubic to perform warranty repairs. However, staff recommends that the warranty included in the contract as submitted to the Board on May 20, 2008 will adequately address the needs of the SFMTA.

The warranty as outlined in the scope of work is for a period of one year beginning at system acceptance. Warranty is the repair or replacement of any component or module that fails due to defect in design or workmanship, except for repairs due to vandalism, abuse, accident or improper maintenance such as failure to replace normal consumable parts, e.g., belts or rollers.

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Warranty Options

	description	labor	material	other	total
Option I	depot & Warranty Repair	272,287	94, 743	146,942	513,972

ption II	arranty Repair	97,136	67,641	98,305	263,082
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In conclusion, staff recommends that the Executive Director/CEO, or his designee, be authorized to execute an agreement, after approval by the Board of Supervisors, with Cubic Transportation Systems, Inc for the refurbishment of the fareboxes on all SFMTA revenue vehicles, equipment and software to account for fares and manage the fareboxes, and support for SFMTA staff for a term of 26 months and an amount not to exceed \$19 million.

THIS PRINT COVERS CALENDAR ITEM NO.:

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

DIVISION: Muni Service Delivery and Operations

BRIEF DESCRIPTION:

Authorizing the reroute of Line 71L-Haight-Noriega Limited in the weekday morning peak period from 7:00 a.m. to 9:00 a.m. in the inbound direction only, along with associated adjustments of parking regulations.

SUMMARY:

- As an unintended consequence of the removal of the Central Freeway and the establishment of Octavia Boulevard, traffic congestion has increased on City streets leading to Octavia Boulevard as it approaches the Central Freeway. This has significantly impacted and delayed the inbound Haight Street bus lines.
- Staff is recommending that Line 71L-Haight/Noriega Limited be rerouted in the inbound direction on weekday mornings from 7:00 a.m. to 9:00 a.m. to bypass this congestion. This is a short-term measure to benefit 71L customers; because lines 6 and 7 are trolley coaches, this measure is not applicable to them.
- The reroute of the 71L has no significant budgetary impacts but will significantly benefit reliability.
- Adjustments to red curb designations are necessary at Haight and Laguna streets to facilitate bus-turning movements.

ENCLOSURES:

1. MTAB Resolution
2. Notice of Statutory Exemption
3. Travel Time Charts, Line 71/71L, October 23 and November 14, 2007
4. Map of Proposed Reroute

APPROVALS:

DATE

DEPUTY OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION

RETURNED TO:

Peter Straus, Manager of Service

Planning

ASSIGNED MTAB CALENDAR DATE: _____

EXPLANATION:

As an unintended consequence of the removal of the Central Freeway and the establishment of Octavia Boulevard, traffic congestion has increased on City streets leading to Octavia Boulevard as it approaches the Central Freeway. This has significantly impacted and delayed the inbound Haight Street bus lines. There are now significant backups on the Haight corridor, especially on Page Street between Laguna and Octavia.

The attached charts indicate that it can take buses as long as 18 minutes to travel from Haight/Fillmore to Market/Van Ness. Buses are currently allotted approximately 6 minutes of scheduled running time to travel that distance.

To address this problem in the short-term, staff proposes a reroute of the 71L in the inbound direction, while long-term solutions are explored. The reroute will not apply to Lines 6 and 7, which are trolley coach lines, but staff will explore long-term solutions that will also benefit those lines. There is strong community support for two-way transit service on lower Haight Street, and this alternative is being evaluated.

The proposed reroute of Line 71L requires the establishment of two 20-foot long morning peak tow-away zones on either side of Laguna Street just south of Haight Street to facilitate the turning movements of the buses. This will result in the loss of two parking spaces Monday thru Friday during the morning peak.

A flag stop will be established on Laguna just south of Haight Street; buses will also stop at the island on Market Street at Gough Street.

Staff posted notices at each of the bus stops between Haight/Fillmore and Market/Van Ness, and along Laguna Street, to notify residents of a public hearing conducted on April 4, 2008, to discuss the proposed changes. A mailing was also sent to interested parties and neighborhood groups, and notice was posted on SFMTA's website. The traffic changes were approved and the route change supported at the public hearing. The proposal was also presented at a meeting of the Hayes Valley Neighborhood Association on March 27, 2008, and generally supported.

The proposed service changes are statutorily exempt under California Environmental Quality Act pursuant to California Public Resource Code Section 21080(b)(10).

The proposed service changes are consistent with the SFMTA Strategic Plan Goal 2 – “Customer Focus - To get customers where they want to go, when they want to get there,” including the objectives:

- 2.1 Improve transit reliability to meet 85% on-time performance standard.
- 2.4 Reduce congestion through major corridors.

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

RESOLUTION No. _____

WHEREAS, The removal of the Central Freeway and the establishment of Octavia Boulevard has resulted in increased traffic congestion on the city streets leading to the US 101 on-ramp, especially in the morning peak period; and

WHEREAS, This congestion has significantly impacted and delayed Municipal Railway buses along the Haight Street corridor, especially on Page Street between Laguna Street and Octavia Boulevard; and

WHEREAS, This has resulted in dramatically increased travel times for buses traveling inbound from Haight/Fillmore to Market/Van Ness from the normal 6 minutes allotted up to 18 minutes; and

WHEREAS, Staff is recommending the reroute of Line 71L-Haight-Noriega Limited in the inbound direction, during the weekday morning peak hours of 7:00 a.m. to 9:00 a.m.; and

WHEREAS, Staff will continue to investigate other strategies to improve the travel times on the Haight Street corridor, including two-way service on Haight Street to Market Street; and

WHEREAS, The service changes are statutorily exempt under the California Environmental Quality Act under California Resources Code section 21080(b)(10); now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to alter service on Municipal Railway Line 71L-Haight-Noriega Limited as follows:

Inbound, weekdays only, from 7:00 a.m. to 9:00 a.m., via regular route to Haight Street, then right Laguna and left Market Street, continuing via regular route;

and, be it further

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to implement parking modifications as follows to facilitate bus turning movements at Haight and Laguna streets:

ESTABLISH – TOW-AWAY NO STOPPING, 7AM TO 9AM, MONDAY
THROUGH FRIDAY – Laguna Street, east and west sides, from Haight Street to 20 feet southerly.

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

Secretary, Municipal Transportation Agency Board

NOTICE OF STATUTORY EXEMPTION
California Environmental Quality Act (CEQA)

TO:

City and County of San Francisco
City Hall
County Clerk
1 Carlton B. Goodlett Place
San Francisco, CA 94102

FROM:

City and County Of San Francisco
MTA/Dept. of Parking and Traffic
1 South Van Ness Ave
San Francisco, CA 94103

DATE: May 1, 2008

Project Title: Line 71L Municipal Railway morning inbound reroute.

Project Location – Specific: Line 71L – Haight-Noriega Limited existing route via Haight Street, Right Laguna, Left Market Street to regular route.

Description of Nature, Purpose, and Beneficiaries of Project:

Route change to Muni Line 71L-Haight/Noriega Limited required to by pass the traffic congestion that has developed as a result of the removal of the Central Freeway and the establishment of Octavia Blvd. This is a short-term measure to benefit the 71L customers by improving reliability.

No existing bus stops, routes or service will be impacted by this change.

Name of Public Agency Approving Project: City and County of San Francisco

Name of Person or Agency Carrying Out Project: Municipal Transportation Agency/
Department of Parking and Traffic

Exempt Status: Statutory Exemption

Reason why project is exempt: Statutory Exemption under CEQA California Public Resource Code 21080(b)(10) “a project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.”

Gerald Robbins


Date

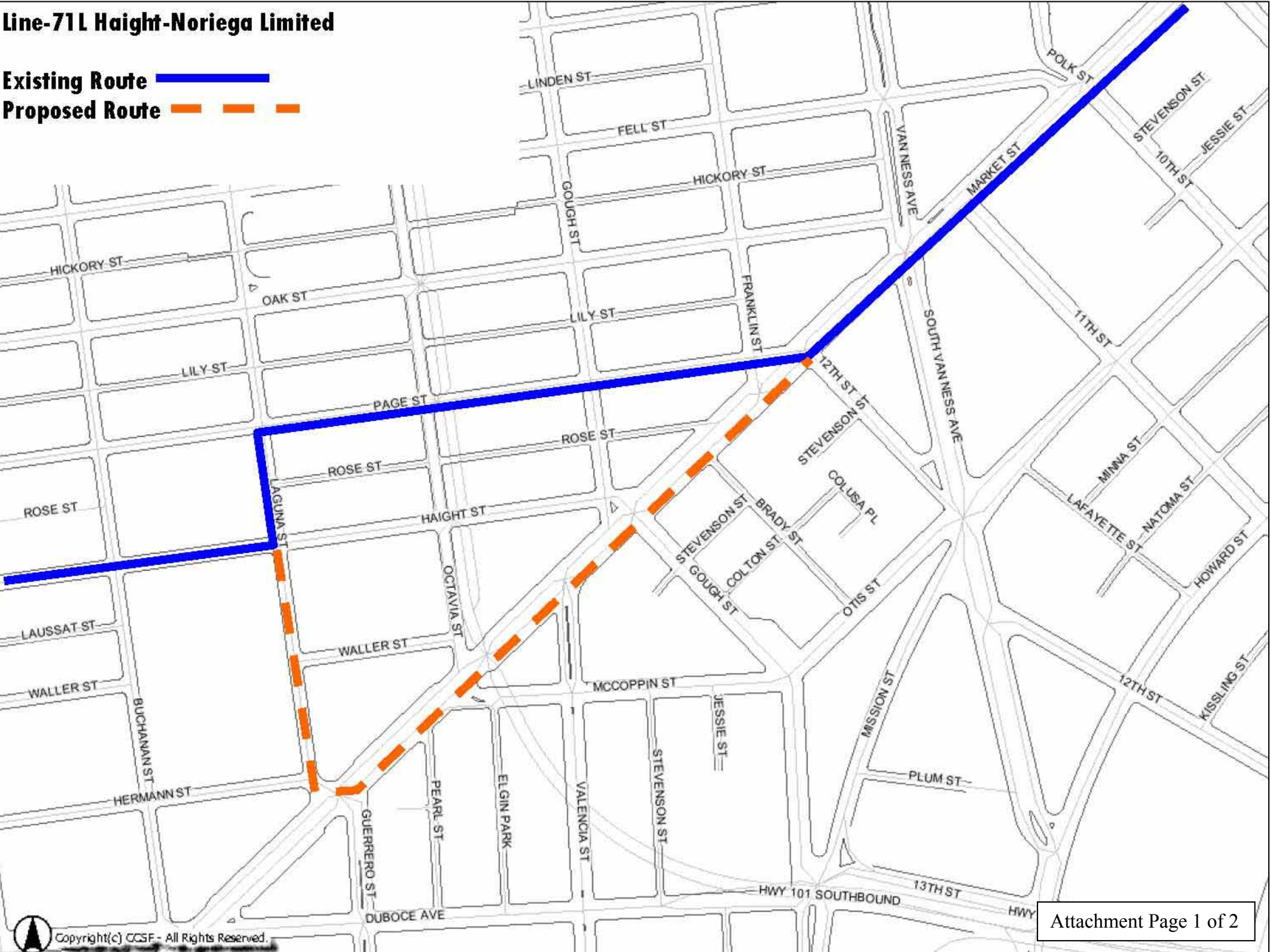
MTA/Department of Parking and Traffic

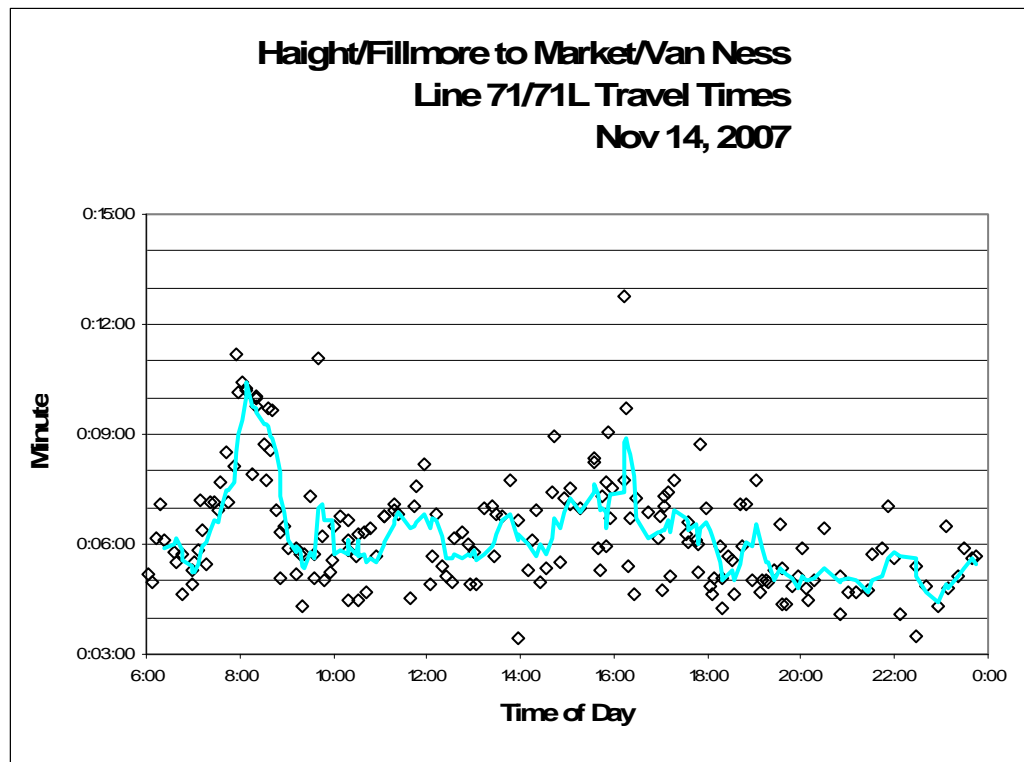
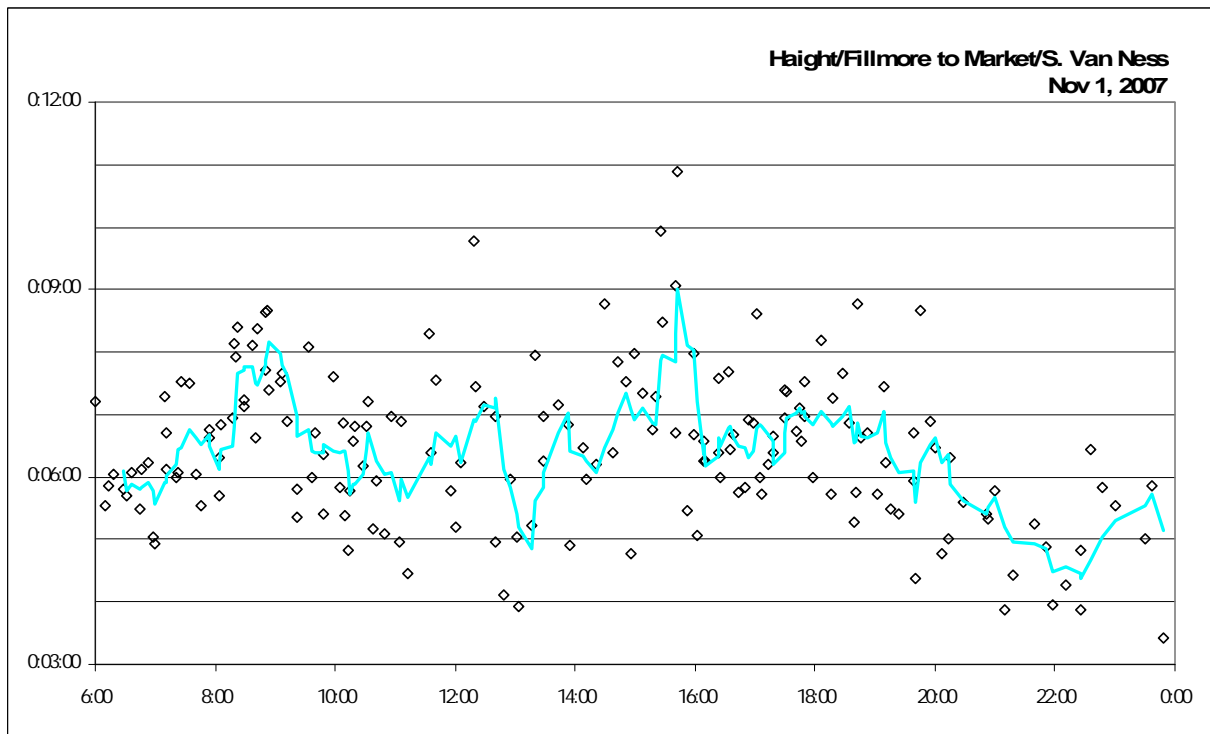
Contact Person: James Lowe, Transit Planner

Telephone: (415) 701-4375

Line-71L Haight-Noriega Limited

Existing Route 
Proposed Route 





The following is an accessible version of the above graphs:

Haight & Fillmore to Market & Van Ness 71/71L travel times

November 1, 2007

10 minutes, 54 seconds maximum

3 minutes, 25 seconds minimum

6 minutes, 27 seconds average

November 14, 2007

12 minutes, 45 seconds maximum

3 minutes, 27 seconds minimum

6 minutes, 21 seconds average

Complete data

November 1, 2007

Travel Time	Time of Day
0:07:12	6:00:27
0:05:33	6:09:43
0:05:52	6:12:54
0:06:02	6:18:01
0:05:48	6:28:51
0:05:42	6:30:45
0:06:04	6:36:08
0:05:29	6:45:24
0:06:08	6:46:51
0:06:13	6:52:51
0:05:02	6:57:36
0:04:56	6:59:49
0:07:18	7:09:47
0:06:07	7:10:54
0:06:42	7:11:16
0:05:59	7:21:23
0:06:04	7:22:42
0:07:31	7:25:39
0:07:30	7:33:35
0:06:02	7:40:45
0:05:33	7:45:26
0:06:46	7:53:31
0:06:38	7:54:52
0:05:42	8:03:34
0:06:18	8:04:14
0:06:50	8:05:27

Travel Time	Time of Day
0:06:57	8:16:44
0:08:08	8:18:56
0:07:56	8:20:52
0:08:24	8:23:01
0:07:07	8:28:47
0:07:14	8:29:15
0:08:06	8:36:57
0:06:37	8:39:44
0:08:22	8:42:45
0:08:38	8:50:11
0:07:42	8:50:27
0:08:40	8:51:44
0:07:24	8:54:17
0:07:32	9:04:50
0:07:39	9:06:16
0:06:53	9:11:14
0:05:21	9:21:44
0:05:48	9:22:32
0:08:05	9:32:45
0:06:00	9:36:34
0:06:43	9:40:07
0:05:24	9:47:37
0:06:22	9:48:12
0:07:36	9:58:15
0:05:50	10:04:44
0:06:52	10:08:14
0:05:23	10:09:32
0:04:50	10:13:23
0:05:46	10:15:27
0:06:34	10:18:45
0:06:49	10:19:39
0:06:11	10:28:21
0:06:49	10:31:36
0:07:12	10:32:08
0:05:11	10:38:29
0:05:57	10:40:55
0:05:05	10:48:44
0:06:59	10:56:45
0:04:57	11:04:14
0:06:53	11:05:31
0:04:27	11:12:08
0:08:18	11:34:06
0:06:23	11:36:21
0:07:33	11:40:11

Travel Time	Time of Day
0:05:47	11:55:25
0:05:12	12:00:57
0:06:14	12:06:18
0:09:47	12:19:24
0:07:27	12:19:58
0:07:07	12:29:15
0:04:58	12:40:25
0:06:58	12:40:53
0:04:07	12:48:16
0:05:58	12:55:26
0:05:03	13:01:19
0:03:56	13:03:59
0:05:13	13:17:08
0:07:57	13:19:23
0:06:59	13:27:47
0:06:15	13:28:24
0:07:09	13:42:27
0:06:51	13:52:20
0:04:54	13:54:59
0:06:28	14:07:37
0:05:58	14:11:42
0:06:12	14:21:10
0:08:46	14:30:10
0:06:24	14:38:09
0:07:51	14:42:07
0:07:32	14:51:21
0:04:47	14:55:15
0:07:59	14:58:50
0:07:20	15:06:43
0:06:45	15:17:36
0:07:18	15:20:21
0:09:56	15:25:59
0:08:28	15:28:02
0:06:43	15:40:00
0:09:03	15:40:46
0:10:54	15:41:48
0:05:27	15:52:02
0:07:59	15:58:21
0:06:40	15:59:24
0:05:04	16:01:21
0:06:35	16:08:12
0:06:15	16:08:52
0:06:15	16:10:36
0:07:35	16:22:47

Travel Time	Time of Day
0:06:24	16:23:34
0:06:00	16:25:58
0:07:41	16:34:15
0:06:26	16:35:23
0:06:40	16:38:20
0:05:45	16:42:38
0:05:50	16:49:41
0:06:55	16:53:01
0:06:52	16:59:02
0:08:37	17:02:13
0:06:00	17:04:45
0:05:43	17:06:15
0:06:12	17:13:32
0:06:23	17:17:34
0:06:39	17:18:51
0:06:56	17:29:20
0:07:23	17:30:04
0:07:22	17:30:36
0:06:44	17:41:07
0:07:06	17:44:01
0:06:34	17:46:20
0:07:31	17:49:25
0:06:58	17:50:10
0:05:59	17:57:28
0:08:11	18:05:31
0:05:43	18:16:40
0:07:16	18:17:07
0:07:40	18:27:32
0:06:52	18:33:37
0:05:16	18:39:43
0:05:45	18:40:52
0:08:47	18:42:06
0:06:38	18:46:01
0:06:42	18:51:49
0:05:43	19:02:10
0:07:27	19:08:44
0:06:14	19:10:19
0:05:30	19:15:40
0:05:24	19:23:34
0:05:57	19:37:54
0:06:43	19:38:17
0:04:22	19:40:33
0:08:40	19:45:37
0:06:54	19:55:02

Travel Time	Time of Day
0:06:28	19:59:40
0:04:47	20:06:54
0:05:00	20:12:44
0:06:18	20:14:43
0:05:36	20:28:53
0:05:24	20:51:35
0:05:20	20:52:59
0:05:47	21:00:17
0:03:52	21:09:31
0:04:26	21:18:13
0:05:15	21:38:37
0:04:53	21:50:11
0:03:57	21:57:31
0:04:17	22:10:45
0:03:52	22:25:58
0:04:50	22:26:20
0:06:26	22:36:09
0:05:50	22:47:32
0:05:33	23:00:36
0:05:01	23:30:54
0:05:51	23:36:50
0:03:25	23:48:47

November 14, 2007

Travel Time	Time of Day
0:05:11	6:02:28
0:04:57	6:07:19
0:06:10	6:13:51
0:07:07	6:16:45
0:06:07	6:22:50
0:05:47	6:36:55
0:05:30	6:38:08
0:04:39	6:45:05
0:05:44	6:46:57
0:05:18	6:59:05
0:04:53	6:59:32
0:05:30	7:02:04
0:05:51	7:07:53
0:07:11	7:09:28
0:06:22	7:10:42
0:05:27	7:16:56
0:07:10	7:22:43

Travel Time	Time of Day
0:07:10	7:26:00
0:06:56	7:32:22
0:07:41	7:36:03
0:08:31	7:42:44
0:07:08	7:45:20
0:08:07	7:53:40
0:11:12	7:56:27
0:10:08	7:58:37
0:10:25	8:03:23
0:10:11	8:08:02
0:10:15	8:08:23
0:07:56	8:16:29
0:09:46	8:20:24
0:10:01	8:21:25
0:09:58	8:21:39
0:08:45	8:31:55
0:07:44	8:33:01
0:09:42	8:36:56
0:08:34	8:38:07
0:09:38	8:42:52
0:06:54	8:45:32
0:05:04	8:52:11
0:06:18	8:52:21
0:06:31	8:56:26
0:05:53	9:02:56
0:05:11	9:11:45
0:05:53	9:12:20
0:05:44	9:16:47
0:04:19	9:19:31
0:05:43	9:21:34
0:07:19	9:31:36
0:05:05	9:34:59
0:05:44	9:36:18
0:11:04	9:41:38
0:06:14	9:44:38
0:05:02	9:48:40
0:05:14	9:54:57
0:05:35	9:59:41
0:06:30	10:02:16
0:06:47	10:08:16
0:04:28	10:17:57
0:06:40	10:18:53
0:06:05	10:19:22
0:05:51	10:20:06

Travel Time	Time of Day
0:05:41	10:30:18
0:06:17	10:31:09
0:04:29	10:32:43
0:06:19	10:39:02
0:04:40	10:43:04
0:06:27	10:47:26
0:05:41	10:54:32
0:06:47	11:05:31
0:06:47	11:06:11
0:06:55	11:19:04
0:07:07	11:19:09
0:06:48	11:23:14
0:04:33	11:39:03
0:07:01	11:44:14
0:07:36	11:45:26
0:08:12	11:56:36
0:04:56	12:03:54
0:05:42	12:05:38
0:06:49	12:12:06
0:05:25	12:18:29
0:05:09	12:25:00
0:04:58	12:32:44
0:06:10	12:35:39
0:06:19	12:44:43
0:05:59	12:52:50
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0:05:46	13:01:35
0:04:54	13:02:40
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0:07:03	13:22:57
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0:06:49	13:29:26
0:06:46	13:37:11
0:07:46	13:46:18
0:03:27	13:56:30
0:06:39	13:56:46
0:05:19	14:09:39
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0:06:55	14:20:34
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0:05:20	14:32:20
0:07:26	14:41:29
0:08:58	14:42:14
0:05:30	14:52:10

Travel Time	Time of Day
0:07:15	14:56:48
0:07:04	15:03:00
0:07:30	15:05:02
0:07:00	15:17:54
0:08:14	15:35:17
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0:05:18	15:42:39
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0:06:43	15:54:14
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0:07:45	16:13:06
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0:06:58	17:58:50
0:04:51	18:02:59
0:04:39	18:05:33
0:05:04	18:08:12
0:05:57	18:16:42
0:05:05	18:17:37
0:04:15	18:19:56

Travel Time	Time of Day
0:05:39	18:27:23
0:05:33	18:31:33
0:04:37	18:34:46
0:07:05	18:42:20
0:05:56	18:44:58
0:07:05	18:50:13
0:05:01	18:58:14
0:07:44	19:02:51
0:04:41	19:07:28
0:05:02	19:08:59
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0:04:52	22:41:30
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0:06:30	23:06:55
0:04:48	23:08:48
0:05:09	23:22:21
0:05:55	23:28:50
0:05:37	23:38:19
0:05:40	23:45:45

THIS PRINT COVERS CALENDAR ITEM NO. : 15

MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Presenting the Draft Better Streets Plan to the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors.

SUMMARY:

- The Better Streets Plan creates a unified vision for San Francisco streets by providing policy recommendations and design guidelines for improving the pedestrian environment.
- Development of the Better Streets Plan was led by the SFMTA and City Planning.
- The SFMTA Pedestrian Program led the development of the Plan on behalf of the SFMTA.
- Several city agencies also participated including the Department of Public Works, the Department of Public Health and the San Francisco Public Utilities Commission.
- The Plan follows from the Better Streets Policy, adopted by the Board of Supervisors on March 10, 2006.
- Intended users include decision-makers, street designers and managers, and stakeholders.
- If fully realized, the Better Streets Plan will help retain families in San Francisco, support Muni and advance the Transit-First Policy, help promote public safety, help to minimize sewer/storm water overflows into the Bay, decrease the likelihood of pedestrian injuries and fatalities, increase accessibility for all street users, create settings that make it safe and easy to be physically active, and enhance the everyday quality of life for residents.
- City staff have attended over 75 community meetings relating to the Better Streets Plan, held monthly meetings with a Community Advisory Committee, and received over 1,000 responses to the two Better Streets Plan surveys.
- The Draft Better Streets Plan is currently being distributed for review by City staff, Boards and Commissions, and the public.
- This item supports Goals 1 and 2 of the SFMTA Strategic Plan.

ENCLOSURES:

1. Draft Better Streets Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

Cristina C. Olea, 1 South Van Ness, 7th Floor

ASSIGNED MTAB CALENDAR DATE: _____

PAGE 2.

EXPLANATION:

In March 2006, the Board of Supervisors passed the Better Streets Policy, which requires the City to collaborate and consider the multiple uses for streets in all street improvement projects. Following passage of this policy, the Directors' Working Group decided to fully integrate the SFMTA Pedestrian Master Plan and City Planning's Streetscape Master Plan. The integrated plan is called the Better Streets Plan (BSP). The SFMTA and City Planning have led the development of the BSP jointly. The SFMTA Pedestrian Program has led the effort on behalf of the SFMTA. Other City departments that have participated in the development of the BSP include the San Francisco Public Utilities Commission, Department of Public Works, Department of Public Health, Mayor's Office on Disability, Mayor's Office on City Greening, and the San Francisco County Transportation Authority. Many of these departments and agencies have jurisdiction over the design, construction and management of streets. The goal of this partnership is to coordinate and streamline the design processes to improve the pedestrian realm. The Director's Working Group has also been very involved in the development of the BSP and have provided guidance and direction throughout the process.

The Better Streets Plan provides a blueprint for the future of San Francisco's pedestrian environment, primarily sidewalks and crossings. It describes a vision, provides policy recommendations and design guidelines, and identifies next steps to create a truly great pedestrian realm in San Francisco. The Plan reflects the understanding that the pedestrian environment is about more than just transportation – that streets serve a multitude of social, recreational and ecological needs. Intended Plan users include street designers and managers, decision-makers and stakeholders. For the SFMTA, the BSP will provide guidance to improve the quality of our projects and programs. We will also work closely with the partner agencies to implement joint projects, which will have the benefit of reducing project costs.

If fully realized, the Better Streets Plan will help decrease the likelihood of pedestrian injuries and fatalities, support Muni and a transit-first city, help promote public safety, help to minimize sewer/storm water overflows into the Bay, retain families in San Francisco, increase accessibility for all street users, create settings that make it safe and easy to be physically active, and enhance the everyday quality of life for San Francisco's residents.

The plan follows from a long public and technical process. City staff members have attended over 75 community meetings relating to the Better Streets Plan, held monthly meetings with a Community Advisory Committee, and received over 1,000 responses to the two Better Streets Plan surveys. As well, the Better Streets team has met with over 50 staff from 15 City departments to gather comments regarding technical feasibility of initial concepts and proposals.

The Draft Better Streets Plan consists of the following chapters:

1. Introduction
2. Context
3. Goals and Policies: The Path to Better Streets
4. Approach: Designing Great Streetscapes
5. Guide: Street Design
6. Guide: Streetscape Elements
7. Implementation

The budget for the plan is \$575,000. The San Francisco County Transportation Authority provided \$400,000 in Proposition K funding. The Mayor's Office on Disability provided \$125,000. SFMTA budget provided \$50,000 from fees collected from red light running violations. This funding was used for SFMTA staff, other City departments' tasks and consultant contracts (including a technical consultant and community involvement consultant).

Next steps include a third round of public input, incorporating feedback and refining the Plan, identifying code changes, performance measures, and implementation strategies, and finally reviewing and adopting the Plan.

The Draft Better Streets Plan and more information on the process can be found on the project website, www.betterstreets.org.

This calendar item advances the SFMTA Strategic Plan Goal 1 – To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy, and Goal 2 – To get customers where they want to go, when they want to be there.