

THIS PRINT COVERS CALENDAR ITEM NO.: 10.3

**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: To provide safe, accessible, reliable, clean and environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy
Objective - 1.1 – Improve safety and security across all modes of transportation
- Goal 2 – System Performance: To get customers where they want to go, when they want to be there
Objective - 2.4 – Reduce congestion through major corridors
Objective - 2.5 – Manage parking supply to align with SFMTA and community goals

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. ESTABLISH – NO PARKING ANYTIME – Treat Avenue, 600 block, at the southerly terminus, from 9 feet to 27 feet west of the east side of Treat Avenue (18-foot zone).
PH: 6/13/08 Requested by Resident
- B. ESTABLISH – RED (NO PARKING ANYTIME) ZONES – Hyde Street, 200 Block, east side from Turk Street to 49-feet northerly; and, Turk Street, 300 Block, north side from Hyde Street to 44-feet easterly. **PH: 6/13/08 Requested by SFPD**
- C. ESTABLISH – MUNI BUS ZONE – 25th Avenue, west side, from Fulton Street to 100 feet northerly. **PH: 6/13/08 Requested by SFMTA**

- D. EXTEND – MUNI BUS ZONE – 25th Avenue, east side, from 50 feet to 100 feet south of California Street (extends 50-foot zone southward an additional 50 feet, removing two parking spaces). **PH: 6/13/08 Requested by SFMTA**
- E. ESTABLISH – DIAGONAL (45-DEGREE ANGLE) PARKING – Folsom Street, west side, between Precita Avenue and Cesar Chavez Street. **PH: 6/13/08 Requested by SFMTA**
- F. ESTABLISH – PART-TIME PASSENGER LOADING ZONE, 7 AM TO 9 AM, SCHOOLDAYS – “1210” 20TH Avenue, east side, from 145 feet to 200 feet south of Ortega Street (55-foot zone). **PH: 6/13/08 Requested by Resident**
- G. INSTALL - STOP SIGN - Sanchez Street at Randall Street, stopping the stem of this currently uncontrolled T-intersection. **PH: 6/27/08 Requested by Resident**
- H. ESTABLISH - SCHOOL BUS LOADING ZONE, FROM 9:00 AM TO 2:00 PM, SCHOOLDAYS - "656" 7th Avenue, west side, from 19 feet to 69 feet north of the south property line of the school. **PH: 6/27/08 Requested by Resident**
- I. INSTALL - STOP SIGN - Hampshire Street at 26th Street, making this intersection an All-Way STOP. **PH: 6/27/08 Requested by Resident**
- J. RESCIND -TWO-HOUR PARKING TIME LIMIT, 7 AM - 6 PM, MONDAY THROUGH SATURDAY - Leo Street, north side, between Mission Street and Alemany Boulevard. **PH: 6/27/08 Requested by Resident**
- K. ESTABLISH - POLICE VEHICLE PARKING ONLY - 6th Avenue, east side, from 110 to 272 feet south of Geary Boulevard. **PH: 6/27/08 Requested by SFPD**
- L. ESTABLISH - RED (NO PARKING ANYTIME) ZONE - Jessie Street, north side, from New Montgomery Street to 15 feet easterly (eliminating five motorcycle parking spaces). **PH: 6/27/08 Requested by Resident**
- M. ESTABLISH - METERED MOTORCYCLE PARKING - Jessie Street, north side, from 43 feet west of 2nd Street to 44 feet westerly (creating eleven motorcycle spaces to compensate for the loss near New Montgomery Street). **PH: 6/27/08 Requested by Resident**
- N. ESTABLISH – CROSSWALK – Hayes Street, south side, crossing Gough Street (crosswalk currently closed). **PH: 5/30/08 Requested by Board of Supervisors**

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

RESOLUTION No. _____

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

- A. ESTABLISH – NO PARKING ANYTIME – Treat Avenue, 600 block, at the southerly terminus, from 9 feet to 27 feet west of the east side of Treat Avenue.
- B. ESTABLISH – RED (NO PARKING ANYTIME) ZONES – Hyde Street, 200 Block, east side from Turk Street to 49-feet northerly; and, Turk Street, 300 Block, north side from Hyde Street to 44-feet easterly.
- C. ESTABLISH – MUNI BUS ZONE – 25th Avenue, west side, from Fulton Street to 100 feet northerly.
- D. EXTEND – MUNI BUS ZONE – 25th Avenue, east side, from 50 feet to 100 feet south of California Street.
- E. ESTABLISH – DIAGONAL (45-DEGREE ANGLE) PARKING – Folsom Street, west side, between Precita Avenue and Cesar Chavez Street.

- F. ESTABLISH – PART-TIME PASSENGER LOADING ZONE, 7 AM TO 9 AM, SCHOOLDAYS – “1210” 20TH Avenue, east side, from 145 feet to 200 feet south of Ortega Street.
- G. INSTALL - STOP SIGN - Sanchez Street at Randall Street.
- H. ESTABLISH - SCHOOL BUS LOADING ZONE, FROM 9:00 AM TO 2:00 PM, SCHOOLDAYS - "656" 7th Avenue, west side, from 19 feet to 69 feet north of the south property line of the school.
- I. INSTALL - STOP SIGN - Hampshire Street at 26th Street, making this intersection an All-Way STOP.
- J. RESCIND -TWO-HOUR PARKING TIME LIMIT, 7 AM - 6 PM, MONDAY THROUGH SATURDAY - Leo Street, north side, between Mission Street and Alemany Boulevard.
- K. ESTABLISH - POLICE VEHICLE PARKING ONLY - 6th Avenue, east side, from 110 to 272 feet south of Geary Boulevard.
- L. ESTABLISH - RED (NO PARKING ANYTIME) ZONE - Jessie Street, north side, from New Montgomery Street to 15 feet easterly.
- M. ESTABLISH - METERED MOTORCYCLE PARKING - Jessie Street, north side, from 43 feet west of 2nd Street to 44 feet westerly.
- N. ESTABLISH – CROSSWALK – Hayes Street, south side, crossing Gough Street.

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

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

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

Secretary, Municipal Transportation Agency Board

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

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Resolution authorizing the San Francisco Municipal Transportation Agency, through its Executive Director/CEO, to accept and expend \$41,180,417 of capital assistance from FTA Section 5309 Fixed Guideway grant funds for various Municipal Railway capital projects and activities.

SUMMARY:

- The San Francisco Municipal Transportation Agency (SFMTA) must apply to the Federal Transit Administration (FTA) to have funds included in a federal grant once the Metropolitan Transportation Commission (MTC) programs the projects and the funds in the region's Transportation Improvement Program (TIP).
- The projects planned are consistent with the priorities established by the SFMTA Board, as affirmed in Muni's Short Range Transit Plan, and are embodied in the Regional TIP and the San Francisco County Transportation Authority's Congestion Management and Strategic Plan.
- SFMTA seeks authority to accept and expend grant funding in the amount of \$41,180,417 from FTA Section 5309 Fixed Guideway funds. Required matching funds of \$10,295,105 will be obtained from a variety of state and local sources.

ENCLOSURES:

1. MTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING CALENDAR ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

TO BE RETURNED TO: Bob Hom

ASSIGNED MTAB CALENDAR DATE: _____

EXPLANATION:

Each year, the Metropolitan Transportation Commission (MTC), in its role as the region's designated metropolitan planning organization, establishes the San Francisco region's transit funding program through the Transit Capital Priorities (TCP) process. MTC also develops a current year regional Program of Projects (POP) for federal formula and discretionary funding under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) for mass transportation projects. These funding programs include the Surface Transportation Program, Congestion Mitigation for Air Quality, and Section 5307 and Section 5309, which provide capital funding. These funding sources are also elements of the Regional Transportation Improvement Program (TIP).

The established TCP and POP incorporate and are consistent with MUNI's priorities as established by the SFMTA in the adopted Short Range Transit Plan and Capital Investment Plan adopted by the SFMTA Board. MTC recently amended the region's TIP to program fiscal year 2008 funds to certain San Francisco transit projects.

SFMTA will apply, under FTA grant CA-05-0225, for funding for the projects listed below. The Section 5309 Fixed Guideway program includes funds to modernize and enhance existing fixed guideway systems. The funds are apportioned to grantees based on a statutory formula and the TCP process.

Grant CA-05-0225 Projects	Federal Amount	Match Amount
Cable Car Infrastructure Rehab - Various improvements to cable car system guideways and infrastructure such as hatch covers, power controller turntable and pulley replacements.	\$7,500,000	\$1,875,000
Muni Rail Replacement - Phased replacement of rail on the Light Rail or Cable Car systems.	\$13,000,000	\$3,250,000
Wayside Central Train Control - Includes rehabilitation of subway data transmission systems, subway signal crossovers, signaling and electrifying switches, train control and switching.	\$3,200,000	\$800,000
Cable Car Vehicle Rehab - Phased rehabilitation of Muni's Cable Car fleet to extend the useful life of the vehicles by about 30 - 35 years.	\$483,114	\$120,729
LRV Rehab - Phased rehabilitation of major components to enhance reliability and efficiency. Each rehab will include brakes, trucks, couplers and HVAC systems.	\$3,997,303	\$999,326
Overhead Lines Reconstruction—Phased replacement/upgrade of Muni's traction power system.	\$13,000,000	\$3,250,000
TOTAL	\$41,180,417	\$10,295,105

This action would authorize the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend Section 5309 Fixed Guideway funding for the projects listed above.

The required non-federal matching funds of \$10,295,105 will be secured separately. Various state, regional and local fund sources will be tapped to provide matching funds to these projects, including State Transportation funds, Bridge Toll funds, Transit Impact Development Fees, San Francisco Municipal Railway fare revenue, San Francisco Municipal Railway Improvement Corporation funds, and San Francisco County Transportation Authority sales tax revenue.

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

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

The City Attorney has reviewed this calendar item.

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

RESOLUTION No. _____

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

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) is an eligible claimant for fixed guideway capital investment grants under Section 5309 of SAFETEA-LU; and

WHEREAS, Section 5309 fixed guideway grant funds are apportioned according to a statutory formula and may be used to modernize and enhance existing fixed guideway systems; and

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

WHEREAS, The local share of project costs will be funded through a variety of sources, which may include San Francisco Municipal Railway fare revenue, San Francisco Municipal Railway Improvement Corporation funds, Regional Bridge Toll net revenues, and/or sales taxes from the San Francisco County Transportation Authority; and

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

WHEREAS, It is the goal of the applicant that disadvantaged business enterprises (DBEs) be utilized to the fullest extent possible in connection with these projects, and that definitive procedures shall be established and administered, consistent with federal law, to ensure that DBEs be utilized to the

fullest extent possible and shall have the maximum possible opportunity to compete for contracts, supplies, equipment contracts, or consultant and other services; and

WHEREAS, The Metropolitan Transportation Commission (MTC) has prepared a regional program of projects that are funded through Section 5309 capital assistance; and

WHEREAS, The following projects that are included in the regional program are high priority Municipal Railway capital improvements listed in the current Short Range Transit Plan and consistent with the Regional Transportation Plan

CA-05-0225 Program of Projects	Federal Amount	Match Amount
Cable Car Infrastructure Rehabilitation	\$7,500,000	\$1,875,000
Muni Rail Replacement	\$13,000,000	\$3,250,000
Wayside Central Train Control	\$3,200,000	\$800,000
Cable Car Vehicle Rehabilitation	\$483,114	\$120,729
LRV Rehabilitation	\$3,997,303	\$999,326
Overhead Lines Reconstruction	\$13,000,000	\$3,250,000
TOTAL	\$41,180,417	\$10,295,105

and

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

RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA, through its Executive Director/CEO, to accept and expend \$41,180,417 in federal Section 5309 Fixed Guideway capital investment funds for the following projects:

- Cable Car Infrastructure Rehabilitation
- Muni Rail Replacement
- Wayside Central Train Control
- Cable Car Vehicle Rehabilitation
- LRV Rehabilitation
- Overhead Lines Reconstruction; and, be it

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

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

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to seek \$10,295,105 in non-federal matching funds.

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

Secretary, Municipal Transportation Agency Board

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

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Resolution authorizing the San Francisco Municipal Transportation Agency, through its Executive Director/CEO, to accept and expend \$38,169,738 of capital assistance from FTA Section 5307 grant funds for various Municipal Railway capital projects and activities.

SUMMARY:

- The San Francisco Municipal Transportation Agency (SFMTA) must apply to the Federal Transit Administration (FTA) to have funds included in a federal grant once the Metropolitan Transportation Commission (MTC) programs the projects and the funds in the region's Transportation Improvement Program (TIP).
- The projects planned are consistent with the priorities established by the SFMTA Board, as affirmed in Muni's Short Range Transit Plan, and are embodied in the Regional TIP and the San Francisco County Transportation Authority's Congestion Management and Strategic Plan.
- SFMTA seeks authority to accept and expend grant funding in the amount of \$38,169,738 from FTA Section 5307. Required matching funds of \$9,542,436 will be obtained from a variety of state and local sources.

ENCLOSURES:

1. MTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

TO BE RETURNED TO _____ Bob Hom

ASSIGNED MTAB CALENDAR DATE _____

EXPLANATION:

Each year, the Metropolitan Transportation Commission (MTC), in its role as the region's designated

metropolitan planning organization, establishes the San Francisco region's transit funding program through the Transit Capital Priorities (TCP) process. MTC also develops a current year regional Program of Projects (POP) for federal formula and discretionary funding programs authorized under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) for mass transportation projects. These funding programs include the Surface Transportation Program, Congestion Mitigation for Air Quality, Section 5309, and Section 5307 capital funding. These funding sources are also elements of the larger regional Transportation Improvement Program (TIP).

The established TCP and POP incorporate and are consistent with SFMTA's priorities as established in the Short Range Transit Plan and Capital Investment Plan adopted by the SFMTA Board. MTC recently amended the region's TIP to program fiscal year 2008 funds for certain San Francisco transit projects.

SFMTA will apply for Section 5307 funding for the following projects under FTA Grant No. CA-90-Y624.

Grant CA-90-Y624 Projects	Federal Amount	Match Amount
Paratransit Assistance - Funding supports various Muni ADA/Accessibility improvements, including paratransit operations.	\$3,921,868	\$980,467
Escalator Rehab - Incremental funding required to rehab/rebuild 28 Metro escalators. These funds will rehab 5 escalators in 3 stations.	\$2,000,000	\$500,000
Muni Rail Replacement - Phased replacement of sections of rail on the light rail and cable car systems	\$800,000	\$200,000
Cable Car Infrastructure Rehab - Various improvements to cable car system guideways and infrastructure such as hatch covers, power controllers, turntables and pulley replacement.	\$500,000	\$125,000
Flynn Facility - Upgrade and/or replacement of the inadequate ventilation system at Flynn Facility.	\$1,470,431	\$367,608
Woods Facilities Lift Rehab/Replacement - A combination of in-ground and portable lifts will replace the original lifts, now nearly 30 years old.	\$1,000,000	\$250,000
Miscellaneous Support Equipment Purchase - Purchases may include heavy equipment for maintenance shops.	\$300,000	\$75,000
Potrero-Presidio Hoists - Installation of new hoists/lifts at both Potrero and Presidio maintenance facilities.	\$2,500,000	\$625,000

Islais Creek Facility –Design and construction of new maintenance facility.	\$1,000,000	\$250,000
Articulated Trolley Bus-Rehab/Rebuild - Program to overhaul Muni’s articulated New Flyer trolley coaches.	\$2,798,000	\$699,500
Cable Car Vehicle Rehab - Phased rehabilitation of Muni’s cable car fleet to extend the useful life of the vehicles by about 30-35 years.	\$355,542	\$88,886
Light Rail Vehicle-Rehab/Rebuild - Phased rehabilitation of major components to enhance reliability and efficiency. Each rehab will include brakes, trucks, couplers and HVAC systems.	\$12,002,697	\$3,000,674
Metro East Maintenance Facility - Construction funds for LRV maintenance facility to support 3 rd St. and other rail maintenance needs.	\$2,400,000	\$600,000
Wayside Fare Collection Equipment Purchase - Incremental funding toward the purchase of 57 Ticket Vending Machines and 100 faregates.	\$700,000	\$175,000
Subway Fire Alarm and Detection Systems Procurement - Replacement of existing fire alarm and detection systems in the Muni-only subway stations.	\$1,500,000	\$375,000
Overhead Lines Reconstruction - Phased replacement/upgrade of Muni’s traction power system.	\$500,000	\$125,000
Radio Replacement – Incremental funding to design, engineer and construct/purchase replacement radio communications and computer aided dispatch systems.	\$4,017,066	\$1,004,267
Miscellaneous Safety Improvements and Graffiti Prevention - Transit vehicle yard security and vehicle protection enforcement.	\$404,134	\$101,034
TOTAL	\$38,169,738	\$9,542,436

This action would authorize the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend FTA Section 5307 funding for the projects listed above.

The required non-federal matching funds of \$9,542,436 will be secured separately. Various state, regional and local fund sources will be tapped to provide matching funds to these projects, which may include State transportation funds, bridge toll funds, Transit Impact Development Fees, San Francisco

Municipal Railway fare revenue, San Francisco Municipal Railway Improvement Corporation funds, and San Francisco County Transportation Authority sales tax revenue.

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

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

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

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

RESOLUTION No. _____

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

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA), is an eligible claimant for capital or operating assistance projects under Section 5307 of SAFETEA-LU; and

WHEREAS, Section 5307 is a formula-apportioned resource that may be used for any eligible planning or capital purpose; and

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

WHEREAS, The local share of project costs will be funded through a variety of sources, which may include San Francisco Municipal Railway Fare Revenue, San Francisco Municipal Railway Improvement Corporation funds, Regional Bridge Toll net revenues, and/or sales taxes administered by the San Francisco County Transportation Authority; and

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

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

WHEREAS, The Metropolitan Transportation Commission has prepared a regional program of projects that includes Section 5307 funds; and

WHEREAS, The following projects that are included in the regional program are high priority Municipal Railway capital improvements listed in the current Short Range Transit Plan and consistent with the Regional Transportation Plan;

CA-90-Y624 Program of Projects	Federal Amount	Match Amount
Paratransit Assistance	\$3,921,868	\$980,467
Escalator Rehab	\$2,000,000	\$500,000
Muni Rail Replacement	\$800,000	\$200,000
Cable Car Infrastructure Rehab	\$500,000	\$125,000
Flynn Facility-Rehab/Renovate Ventilation System	\$1,470,431	\$367,608
Woods Facility Lift Rehab/Replacement	\$1,000,000	\$250,000
Miscellaneous Support Equipment Purchase	\$300,000	\$75,000
Potrero-Presidio Hoist Rehab/Renovate/Purchase	\$2,500,000	\$625,000
Islais Creek Facility Design/Construction	\$1,000,000	\$250,000
Articulated Trolley Bus Rehab/Rebuild	\$2,798,000	\$699,500
Cable Car Vehicle Rehab	\$355,542	\$88,886
LRV Rehab/Rebuild	\$12,002,697	\$3,000,674
Metro East Facility Construction	\$2,400,000	\$600,000
Wayside Fare Collection Equipment Purchase	\$700,000	\$175,000
Subway Fire Alarm and Detection Systems Procurement	\$1,500,000	\$375,000
Overhead Lines Reconstruction	\$500,000	\$125,000
Radio Replacement	\$4,017,066	\$1,004,267
Miscellaneous Safety Improvements	\$404,134	\$101,034
Total	\$38,169,738	\$9,542,436

and

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

RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA, through its Executive Director/CEO to accept and expend \$38,169,738 in federal Section 5307 capital assistance for the following projects:

- Paratransit Assistance
- Escalator Rehab
- Muni Rail Replacement
- Cable Car Infrastructure Rehab

- Flynn Facility- Rehab/Renovate Ventilation System
- Woods Facility Lift Replacement
- Miscellaneous Support Equipment
- Potrero-Presidio Hoist Rehab/Renovate/Purchase
- Islais Creek Facility Design/Construction
- Articulated Trolley Bus Rehab/Rebuild
- Cable Car Vehicle Rehab
- Light Rail Vehicle Rehab
- Metro East Facility Construction
- Wayside Fare Collection Equipment Purchase
- Subway Fire Alarm and Detection Systems Procurement
- Overhead Lines Reconstruction
- Radio Replacement
- Miscellaneous Safety Improvements; and, be it

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

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

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to seek \$9,542,436 in non-federal matching funds.

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

Secretary, Municipal Transportation Agency Board

THIS PRINT COVERS CALENDAR ITEM NO.: 10.5

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

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Resolution authorizing the San Francisco Municipal Transportation Agency, through its Executive Director/CEO, to accept and expend \$11,760,000 of earmarked federal Section 5309 New Starts funds for the design and construction of the Third Street Phase II- Central Subway Project.

SUMMARY:

- The San Francisco Municipal Transportation Agency (SFMTA) must apply to the Federal Transit Administration (FTA) to have funds included in a federal grant once the Metropolitan Transportation Commission (MTC) programs the project in the region's Transportation Improvement Program (TIP).
- The projects planned are consistent with the priorities established by the SFMTA Board, as affirmed in Muni's Short Range Transit Plan, and are embodied in the Regional TIP and the San Francisco County Transportation Authority's Congestion Management and Strategic Plan.
- The Third Street Phase II- Central Subway project is a congressional priority for funding in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).
- SFMTA seeks authority to accept and expend grant funding in the amount of \$11,760,000 from the Section 5309 New Starts program. Required matching funds of \$2,940,000 will be obtained from a variety of sources.

ENCLOSURES:

1. MTAB Resolution

APPROVALS:

DATE

DEPUTY OF DIVISION

PREPARING CALENDAR ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

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

ASSIGNED MTAB CALENDAR DATE: _____

EXPLANATION:

Each year, the Metropolitan Transportation Commission (MTC), in its role as the region's designated metropolitan planning organization, develops a current year regional Program of Projects (POP) for federal formula and discretionary funding programs authorized for mass transportation projects under SAFETEA-LU. These funding programs include the federal earmarks. These funding sources are also elements of the regional Transportation Improvement Program (TIP).

The established POP incorporates and is consistent with SFMTA's priorities as established in the adopted Short Range Transit Plan (S RTP) and Capital Investment Plan adopted by the SFMTA Board. MTC recently amended the region's TIP to program fiscal year 2008 Section 5309 earmark funds to include the Third Street Phase II- Central Subway project.

This action would authorize the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend \$11,760,000 in FTA Section 5309 New Starts funding for the Third Street Phase II- Central Subway project. Section 5309 New Starts funding is a dedicated resource that may be used to build a new fixed guideway system or extend an existing fixed guideway.

The SFMTA will apply for these funds under FTA Grant No. CA-03-0767-01.

The required non-federal matching funds of \$2,940,000 will be secured separately. Various state, regional and local fund sources will be tapped to provide matching funds for this project, which may include State transportation funds, bridge toll funds, Transit Impact Development Fees, San Francisco Municipal Railway fare revenue, San Francisco Municipal Railway Improvement Corporation funds and/or sales tax revenue administered by the San Francisco County Transportation Authority.

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

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

The City Attorney's Office has reviewed this Calendar Item.

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

RESOLUTION No. _____

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

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) is an eligible claimant for New Starts funds under Section 5309 of SAFETEA-LU; and

WHEREAS, Section 5309 New Starts funding is a dedicated resource that may be used to build new fixed guideway systems or extend an existing fixed guideway; and

WHEREAS, In Fiscal Year 2008, Congress appropriated \$11,760,000 New Starts funding to the proposed Third Street Phase II Central Subway project; and

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

WHEREAS, SFMTA's non-federal share of project costs of \$2,940,000 will be funded through a variety of sources, which may include State transportation funds, bridge toll funds, Transit Impact Development Fees, San Francisco Municipal Railway fare revenue, San Francisco Municipal Railway Improvement Corporation funds and/or sales tax revenue administered by the San Francisco County Transportation Authority; and

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

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

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

RESOLVED, That the SFMTA Board authorizes the SFMTA, through its Executive Director/CEO, to accept and expend \$11,760,000 in federal Section 5309 New Starts capital assistance for the design and construction of Muni's Third Street Phase II- Central Subway project; and, be it

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

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

FURTHER RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO to seek \$2,940,000 in non-federal matching funds.

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

Secretary, Municipal Transportation Agency Board

THIS PRINT COVERS CALENDAR ITEM NO. : 10.6

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

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Resolution authorizing the San Francisco Municipal Transportation Agency, through its Executive Director/CEO, to accept and expend \$5,900,000 in Transit Security Grant Program funds to create a sustainable effort for the protection of regional transit systems' critical infrastructure from terrorism.

SUMMARY:

- The SFMTA requests authority to accept and expend \$5,900,000 in Transit Security Grant Program (TSGP) funds from the federal Department of Homeland Security (DHS) through the State Administrative Agency, the California Office of Homeland Security (OHS), to ensure a coordinated response and improved capability to detect, prevent, and respond to all possible acts of terrorism.
- Funds will be used to further the implementation of the SFMTA's Transit Security Improvement Plan by improving its existing security system with the procurement and installation of critical security equipment, including but not limited to close circuit television cameras, motion detectors, communications equipment, and security fencing.
- The project is expected to enhance transit security at the SFMTA's bus and rail facilities and facilitate communication and response in an event of an incident.

ENCLOSURES:

1. MTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION Bob Hom 1 So Van Ness, 7th Flr
BE RETURNED TO

ASSIGNED MTAB CALENDAR DATE: _____

EXPLANATION:

The federal Department of Homeland Security (DHS) has created the Transit Security Grant Program (TSGP). The purpose of the TSGP is to create a sustainable effort for the protection of regional transit

systems' critical infrastructure from terrorism, with emphases on explosives and non-conventional threats that would cause major loss of life and severe disruption of transit systems.

TSGP funding is distributed through designated State Administrative Agencies (SAA). The SAA in California is the Office of Homeland Security (OHS). The TSGP also adds a regional planning element, the Regional Transit Security Working Group (RTSWG), comprised of the SAA, eligible transit systems in the region, and other regional systems. The objective of RTSWG is to coordinate the use of available funds on a regional basis to ensure a coordinated response and improved capability to detect, prevent, and respond to all possible acts of terrorism. In the Bay Area, the eligible members of the RTSWG are the SFMTA, SamTrans, BART, Santa Clara Valley Transportation Authority (VTA), Golden Gate Bridge Highway and Transportation District (GGBHTD), AC Transit and Altamont Commuter Express (ACE).

DHS allocates grant funds through OHS to the various RTSWGs based on federal formulas. The allocation for rail transit funding is based on a formula that includes ridership, track miles, number of stations, and significant threat. The allocation of intra-city bus funding is based on ridership. The Bay Area RTSWG then agrees on how to distribute its allocation to its member agencies. The Bay Area RTSWG has agreed that the SFMTA will receive a total of \$5,900,000 in TSGP funding through the OHS. The Federal Fiscal Year 2007 TSGP included a Supplemental Grant in addition to its normal Base Grant. SFMTA applied for some \$3,600,000 under the Base Grant and some \$2,300,000 under the Supplemental Grant.

The funds under the Base Grant will be used to further the implementation of SFMTA's Transit Security Improvement Plan by improving its existing security system with the procurement and installation of critical security equipment, including but not limited to close circuit television cameras, motion detectors, communications equipment, and security fencing in and around the perimeter of rail yards, subway system, and facilities. Funds from the Supplemental Grant will be used for terrorism awareness training, security administration and management, and continued procurement and installation of security equipment enhancements for our subway system.

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

- Goal 1 – To provide safe, accessible, reliable, clean and environmentally sustainable service.
Objective 1.1 – Improve safety and security across all modes of transportation
- Goal 5 – To provide a flexible, supportive work environment and develop a workforce that is capable of leading the agency into the ever-evolving technology driven future.
Objective 5.1 – Increase resources available for employees in performing their jobs.
Objective 5.3 – Improve internal communication.

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

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

WHEREAS, The federal Department of Homeland Security (DHS) has created the Transit

Security Grant Program (TSGP) to create a sustainable effort for the protection of regional transit systems' critical infrastructure from terrorism; and,

WHEREAS, As a DHS-designated State Administrative Agency, the California Office of Homeland Security (OHS) has the authority to distribute grant funds to eligible transit agencies through the Regional Transit Security Working Groups (RTSWG), created under the TSGP to allocate available funds on a regional basis to ensure a coordinated response and improved capability to detect, prevent, and respond to possible acts of terrorism; and,

WHEREAS, As a member of the RTSWG, the San Francisco Municipal Transportation Agency (SFMTA) participated in the formulation of a regional security plan for the protection of critical assets and mass transportation infrastructure; and,

WHEREAS, The SFMTA is an eligible recipient for assistance under the TSGP; and,

WHEREAS, The SFMTA has applied for and received an award of \$5,900,000 in TSGP funds to purchase and install critical security equipment to enhance the security of SFMTA's bus and rail system; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend \$5,900,000 of Fiscal Year 2007 TSGP funds to purchase and install critical security equipment to enhance the security of Muni's bus and rail system; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO (or his designee(s), including the Director of Finance and Administration and the Director of Security and Enforcement) to execute any documents and perform any actions necessary for the purpose of obtaining financial assistance provided by the OHS.

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

Secretary, Municipal Transportation Agency Board

THIS PRINT COVERS CALENDAR ITEM NO.: 10.7

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

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Resolution authorizing the San Francisco Municipal Transportation Agency, through its Executive Director/CEO, to accept and expend \$1,956,240 of earmarked federal Section 5309 Bus and Bus Facilities capital assistance for the design and construction of the Islais Creek Bus Maintenance Facility and the purchase of Automatic Vehicle Locator equipment.

SUMMARY:

- The San Francisco Municipal Transportation Agency (SFMTA) must apply to the Federal Transit Administration (FTA) to have funds included in a federal grant once the Metropolitan Transportation Commission (MTC) programs the project in the region's Transportation Improvement Program (TIP).
- The projects planned are consistent with the priorities established by the SFMTA Board, as affirmed in Muni's Short Range Transit Plan, and are embodied in the Regional TIP and the San Francisco County Transportation Authority's Congestion Management and Strategic Plan.
- The Islais Creek Facility project and the Automatic Vehicle Locator equipment purchase are congressional priorities for earmarked funding under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).
- SFMTA seeks authority to accept and expend grant funding in the amount of \$1,956,240 from FTA Section 5309 funds. Required matching funds of \$489,060 will be obtained from a variety of state and local sources.

ENCLOSURES:

1. MTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

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

ASSIGNED MTAB CALENDAR DATE: _____

EXPLANATION:

Each year, the Metropolitan Transportation Commission (MTC), in its role as the region's designated metropolitan planning organization, develops a current year regional Program of Projects (POP) for federal formula and discretionary funding programs authorized for mass transportation projects under Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users. These funding programs include the federal earmarks. These funding sources are also elements of the regional Transportation Improvement Program (TIP).

The established POP incorporates and is consistent with SFMTA's priorities as established in the Short Range Transit Plan and Capital Investment Plan adopted by the SFMTA Board. MTC recently amended the region's TIP to program fiscal year 2008 Section 5309 earmark funds to include certain San Francisco transit projects.

SFMTA will apply for funding for the following projects under FTA grant CA-04-0051-01. Section 5309 bus and bus facilities assistance will be used for the design and construction of the Islais Creek Facility as well as the purchase of automatic vehicle locator (AVL) equipment to expand the intelligent transportation system (ITS) on Muni.

CA-04-0051-01 Program of Projects	Federal Amount	Match Amount
Islais Creek Facility — Partial funding for design and construction of a new motor coach maintenance facility.	\$1,304,160	\$326,040
AVL Equipment Purchase -- Partial funding required to complete the expansion of ITS throughout the Muni system.	\$652,080	\$163,020
TOTAL	\$1,956,240	\$489,060

This action would authorize the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend FTA Section 5309 bus and bus facilities capital assistance for the projects listed above.

The required non-federal matching funds of \$489,060 will be secured separately. Various state, regional and local funding sources will be tapped to provide matching funds to these projects, which may include State transportation funds, bridge toll funds, Transit Impact Development Fees, San Francisco Municipal Railway fare revenue, San Francisco Municipal Railway Improvement Corporation funds, and sales tax revenue administered by the San Francisco County Transportation Authority.

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

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

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

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

RESOLUTION No. _____

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

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) is an eligible claimant for capital assistance under Section 5309 of SAFETEA-LU; and

WHEREAS, For Fiscal Year 2008, \$1,956,240 of Section 5309 Bus and Bus Facilities has been earmarked for the design and construction of the Islais Creek Bus Maintenance Facility and for the purchase of Automatic Vehicle Locator (AVL) equipment to expand the intelligent transportation system (ITS) on Muni; and

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

WHEREAS, SFMTA's non-federal share of project costs, \$489,060, will be funded through a variety of sources, which may include Regional Bridge Toll Net Revenues, San Francisco Municipal Railway Improvement Corporation Funds and/or sales taxes administered by the San Francisco County Transportation Authority; and

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

WHEREAS, It is the goal of the SFMTA that Disadvantaged Business Enterprises (DBEs) be utilized to the fullest extent possible in connection with this project, and that definitive procedures shall be established and administered to ensure that DBEs shall have the maximum possible opportunity to compete for contracts, supplies, equipment contracts, or consultant and other services; and

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

RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA, through its Executive Director/CEO, to accept and expend \$1,956,240 in Section 5309 Bus and Bus Facilities capital assistance for design and construction of the Islais Creek Bus Maintenance Facility and the purchase of Automatic Vehicle Locator equipment to expand Intelligent Transportation System on Muni; and, be it further

RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO to seek \$489,060 in non-federal matching funds; and, be it further

RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO to furnish

whatever additional information might be requested by the funding agencies in connection with this request; and, be it further

RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO or his designee to execute any and all agreements necessary to transfer the funds.

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

Secretary, Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO.: 10.8

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

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the San Francisco Municipal Transportation Agency to accept and expend \$1,331,550 in Highway Safety Improvement Program grant funds from the State of California to implement various projects that improve public safety on City streets.

SUMMARY:

- The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) established the Highway Safety Improvement Program (HSIP) as a Federal Highway Administration “core” program and provided a significant increase in the funding available for infrastructure-related highway safety improvement projects. This program is established as section 148 of Title 23, United States Code.
- The State of California, through the California Department of Transportation (Caltrans), makes available HSIP grant funds to local governmental agencies based on the results of a statewide competition that requires submission of proposals for funding.
- The San Francisco Municipal Transportation Agency (SFMTA) applied to the State of California, through Caltrans, for \$1,331,550 in HSIP grant funds to implement various projects that improve public safety on City streets.
- This action authorizes the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend \$1,331,550 in HSIP funds from the State of California.

ENCLOSURES:

1. SFMTA Board Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM_____

FINANCE_____

EXECUTIVE DIRECTOR/CEO_____

SECRETARY_____

ADOPTED RESOLUTION

BE RETURNED TO Leda Young - 1 South Van Ness, 7th Floor

ASSIGNED SFMTA CALENDAR DATE_____

EXPLANATION:

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) established the Highway Safety Improvement Program (HSIP) as a Federal Highway Administration “core” program and provided a significant increase in the funding available for infrastructure-related highway safety improvement projects. This program is established as section 148 of Title 23, United States Code.

The State of California, through the California Department of Transportation (Caltrans), makes available HSIP grant funds to local governmental agencies based on the results of a statewide competition that requires submission of proposals for funding.

The SFMTA has applied to Caltrans for HSIP funds for the following projects:

- \$242,550 to construct curb ramps. The SFMTA seeks to construct 7 new and 6 reconstructed accessible curb ramps along Fulton Street. The scope of this work includes installing compliant curb ramps with detectable warning tile and related sidewalk, curb, gutter and roadway work in the public right-of-way.
- \$765,000 for emergency priority emitters and traffic controllers. The SFMTA seeks to install emergency priority emitters and upgrade traffic controllers along specific intersections in the Tenderloin area. The SFMTA will work simultaneously on both installations, saving time, resources and reducing costs.
- \$324,000 for full signal upgrade at the intersection of Bayshore Boulevard and Paul Avenue. The SFMTA will implement a full signal upgrade of intersection, including pedestrian signals and mast arms.

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

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

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

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

Objective 4.2 – Ensure efficient and effective use of resources.

This action authorizes the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend \$1,331,550 in HSIP funds from the State of California.

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

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

RESOLUTION No. _____

WHEREAS, The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) established the Highway Safety Improvement Program (HSIP) as a Federal Highway Administration “core” program and provided a significant increase in the funding available for infrastructure-related highway safety improvement projects; and

WHEREAS, The State of California through the California Department of Transportation (Caltrans) makes available HSIP grant funds to local governmental agencies; and

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) is an eligible sponsor of projects for HSIP funding; and

WHEREAS, The SFMTA has applied to the State of California, through Caltrans, for a total of \$1,331,550 in HSIP grant funds to construct curb ramps along Fulton Street (\$242,550), to install emergency priority emitters and upgrade traffic controllers in the Tenderloin area (\$765,000), and to implement a full signal upgrade at the intersection of Bayshore Boulevard and Paul Avenue (\$324,000); now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the San Francisco Municipal Transportation Agency, through its Executive Director/CEO (or his designee), to accept and expend \$1,331,550 in Highway Safety Improvement Program grant funds to construct curb ramps along Fulton Street (\$242,550), to install emergency priority emitters and upgrade traffic controllers in the Tenderloin area (\$765,000), and to implement a full signal upgrade at the intersection of Bayshore Boulevard and Paul Avenue (\$324,000); and, be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO (or his designee) to furnish whatever additional information that may be requested by the State of California in connection with this request; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO (or his designee) to execute any and all agreements necessary to complete the transfer of funds.

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

Secretary, Municipal Transportation Agency Board

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

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Resolution authorizing the San Francisco Municipal Transportation Agency, through its Executive Director/CEO, to accept and expend \$980,000 of earmarked federal Section 5309 Bus and Bus Facilities capital assistance for the rehabilitation and repowering of Muni's NABI and Neoplan motor coaches.

SUMMARY:

- The San Francisco Municipal Transportation Agency (SFMTA) must apply to the Federal Transit Administration (FTA) to have funds included in a federal grant once the Metropolitan Transportation Commission (MTC) programs the project in the region's Transportation Improvement Program (TIP).
- The projects planned are consistent with the priorities established by the SFMTA Board, as affirmed in Muni's Short Range Transit Plan, and are embodied in the Regional TIP and the San Francisco County Transportation Authority's Congestion Management and Strategic Plan.
- The Muni Bus Rehabilitation project is a congressional priority for earmarked funding under the Safe, Accountable, Flexible, Efficient Transportation Equity Act-A Legacy for Users (SAFETEA-LU).
- SFMTA seeks authority to accept and expend grant funding in the amount of \$980,000 from FTA Section 5309 Bus and Bus Facilities funds. Required matching funds of \$245,000 will be obtained from a variety of state and local sources.

ENCLOSURES:

1. MTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

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

ASSIGNED MTAB CALENDAR DATE: _____

EXPLANATION:

Each year, the MTC, in its role as the region's designated metropolitan planning organization, establishes the San Francisco region's transit funding program through the Transit Capital Priorities (TCP) process. MTC also develops a current year regional Program of Projects (POP) for federal formula and discretionary funding programs authorized for mass transportation projects under Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). These funding programs include the Surface Transportation Program, Congestion Mitigation for Air Quality, Section 5309, and Section 5307 capital funding, among others. These funding sources are also elements of the larger regional TIP.

The established TCP and POP incorporate and are consistent with SFMTA's priorities as established in the Short Range Transit Plan and Capital Investment Program adopted by the SFMTA Board. MTC recently amended the region's TIP to program fiscal year 2008 funds to include certain San Francisco transit projects.

This action would authorize the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend \$980,000 in FTA Section 5309 Bus and Bus facilities capital assistance for the rehabilitation and repowering of MUNI's NABI and Neoplan motor coaches. The SFMTA will apply for these funds under FTA Grant No. CA-04-0072.

The required non-federal matching funds of \$245,000 will be secured separately. Various state, regional and local funding sources will be tapped to provide matching funds to these projects, which may include State transportation funds, bridge toll funds, Transit Impact Development Fees, San Francisco Municipal Railway fare revenue, San Francisco Municipal Railway Improvement Corporation funds, and sales tax revenue administered by the San Francisco County Transportation Authority.

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

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

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

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

RESOLUTION No. _____

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

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) is an eligible claimant for capital assistance under Section 5309 of SAFETEA-LU; and

WHEREAS, Section 5309 Bus and Bus Facilities funding is a dedicated resource that may be used for the rehabilitation of Muni's NABI and Neoplan motor coaches; and

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

WHEREAS, SFMTA's non-federal share of project costs, \$245,000, will be funded through a variety of sources, which may include Regional Bridge Toll Net Revenues, San Francisco Municipal Railway Improvement Corporation Funds and/or sales taxes administered by the San Francisco County Transportation Authority; and

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

WHEREAS, It is the goal of the SFMTA that Disadvantaged Business Enterprises (DBEs) be utilized to the fullest extent possible in connection with this project, and that definitive procedures shall be established and administered to ensure that DBEs shall have the maximum possible opportunity to compete for contracts, supplies, equipment contracts, or consultant and other services; and

WHEREAS, Congress has earmarked funding in SAFETEA-LU for a national program of projects using Section 5309 capital assistance; and

WHEREAS, The bus rehabilitation of Muni's NABI and Neoplan motor coaches is included in the national program and are high priority San Francisco capital improvement projects; and

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

RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA, through its Executive Director/CEO, to accept and expend \$980,000 in Section 5309 Bus and Bus Facilities capital assistance for the rehabilitation of Muni's NABI and Neoplan motor coaches; and, be it further

RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO to seek \$245,000 in non-federal matching funds; and, be it further

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

RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO or his designee to execute any and all agreements necessary to transfer the funds.

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

Secretary, Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 10.10

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

DIVISION: TRANSPORTATION PLANNING & DEVELOPMENT

BRIEF DESCRIPTION:

Authorizing the award of San Francisco Municipal Transportation Agency Contract No.1222, Job Order Contract, to Power Engineering Contractors, Inc., 1501 Viking Street, Suite 200, Alameda, CA 94501, as the lowest responsive and responsible bidder, for a contract amount not to exceed \$3,000,000, with an option to increase the contract amount by up to 50 percent of the original contract amount, and for a term not to exceed three years.

SUMMARY:

- On October 3, 2006, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 06-126, authorizing bid call for Contract No.1222, Job Order Contract.
- The Job Order Contracting System ("JOC") provides for an indefinite quantity contract with a predefined set of bid items that are assigned on a task order basis as needed for the performance of public work maintenance, repair, and minor construction projects.
- SFMTA is developing this JOC process for the purpose of performing construction and maintenance work in an efficient and expeditious manner. The contracting process will be performed in accordance with Section 6.62 of the San Francisco Administrative Code.
- SFMTA received and opened four bids on March 27, 2008. Staff recommends awarding Contract No.1222 to Power Engineering Contractors, Inc., the lowest responsive and responsible bidder, in the amount of \$3,000,000.
- The Contract Compliance Office has reviewed this calendar item and has confirmed that the contractor has committed to meet the Small Business Enterprise (SBE) goal of 17 percent.
- The City Attorney's Office has reviewed this calendar item.
- Federal, state, and local sources will provide funding for the services on an "as-needed," project-by-project basis.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION Contracting Section Attn: Gigi Pabros
BE RETURNED TO:

ASSIGNED SFMTAB CALENDAR DATE: _____

EXPLANATION:

The San Francisco Municipal Transportation Agency (SFMTA) has identified a need to develop a competitively bid procurement process to expeditiously acquire maintenance, repair and construction services for its facilities. This requirement will be satisfied through the use of the Job Order Contracting (JOC) System, which is authorized under Section 6.62 of the San Francisco Administrative Code.

A JOC contract is a unique, indefinite-quantity type of contract that enables SFMTA to accomplish a large number of smaller repairs, maintenance and construction projects with a single, competitively bid contract. It eliminates the time and expense of completing the normal design-bid-construct cycle for each project. It allows SFMTA to decrease project duration and cost, while increasing quality.

Job Order Contracting utilizes a Unit Price Book (Construction Task Catalog) containing at least 60,000 to 100,000 unit prices covering material, equipment and labor costs for various units of construction, adjusted to current conditions. Contractors competitively bid an adjustment factor (e.g. 1.75) to be applied to this catalog of construction tasks with pre-set unit prices.

The overall contract amount (the sum of the individual projects that may be performed) will not exceed \$3,000,000. The contractor will be asked to perform a series of projects on an as needed basis. When a project is first identified, a joint scoping meeting will be held between the SFMTA staff and the Contractor to define the scope and calculate quantities of work to be used. The price for each project will be the quantity multiplied by the pre-set unit prices and multiplied by the competitively bid adjustment factor. A task order will be issued for every project.

Task orders up to \$400,000 will be authorized within SFMTA's Transportation Planning and Development Division. As per Section 6.62 of the San Francisco Administrative Code, no single task order may exceed \$400,000, including all modifications, except upon the Executive Director/CEO's written determination establishing the urgency of the work and the justification for proceeding under Section 6.62 rather than by a formal competitive process.

On October 3, 2006, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 06-126, authorizing bid call for Contract No.1222, Job Order Contract in an amount not to exceed \$3,500,000. The San Francisco Administrative Code limits the maximum amount of a Job Order Contract to \$3,000,000. However, the Administrative Code permits modifications to a JOC contract such that the final contract sum does not exceed 150 percent of the original contract amount. Under this Contract No. 1222, SFMTA retains the option to modify the contract in an amount not to exceed \$1,500,000 using the same adjustment factor as bid by the contractor. Any such modification will be subject to the approval of the SFMTA's Board of Directors as required by the San Francisco Administrative Code.

On October 3, 2006, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 06-126, authorizing bid call for Contract No.1222, Job Order Contract.

The SFMTA received and opened the following three responsive bids on March 27, 2008:

Bidder	Adjustment Factor
1. Power Engineering Contractors, Inc. 1501 Viking Street, Suite 200, Alameda, CA 94501	1.625

2. Yerba Buena Engineering & Construction, Inc. 1340 Egbert Avenue, San Francisco, CA 94124	1.798
3. NTK Construction, Inc. 501 Cesar Chavez Street, San Francisco, CA 94124	1.820

Another bid from Torres Construction Corp., 7330 N. Figueroa St., Los Angeles, CA 90041, was determined to be non-responsive for failing to acknowledge issued addenda, and for submitting an incorrect proposal form and schedule of bid prices.

SFMTA Contract No. 1222, Job Order Contract, would assist in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

Strategic Plan Goal 1: To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy.

- 1.1 Improve safety and security across all modes of transportation.
- 1.5 Increase percentage of trips using more sustainable modes.

Strategic Plan Goal 2: To get customers where they want to go, when they want to be there.

- 2.1 Improve transit reliability

No new funds are required for this contract since all tasks will be funded through existing project budgets.

The Contract Compliance Office has established an SBE goal of 17% for this contract and confirmed that the contractor has committed to meet this goal.

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

Staff recommends that this Board approve the lowest responsive and responsible bid and authorize award of SFMTA Contract No. 1222, Job Order Contract, to Power Engineering Contractors, Inc., in the amount of \$3,000,000 with an option to increase the contract amount by an additional \$1,500,000, and a term not to exceed three years.

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

RESOLUTION No. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1222, Job Order Contract, provides for an indefinite quantity contract with a predefined set of bid items that are assigned on a task order basis as needed for the performance of public work maintenance, repair, and minor construction projects; and,

WHEREAS, SFMTA is developing this job order contracting process for the purpose of performing construction and maintenance work in an efficient and expeditious manner in accordance with Section 6.62 of the San Francisco Administrative Code; and,

WHEREAS, On October 3, 2006, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 06-126, authorizing bid call for Contract No.1222, Job Order Contract; and

WHEREAS, SFMTA received and opened four bids on March 27, 2008; the lowest responsive and responsible bidder was Power Engineering Contractors, Inc., 1501 Viking Street, Suite 200, Alameda, CA 94501, with an adjustment factor of 1.625 on unit prices established in the Construction Task Catalog; and,

WHEREAS, Federal, state, and local sources will provide funding for the services on an as-needed and on a project-by-project basis; and,

WHEREAS, The contractor has agreed to meet the Small Business Enterprise goal of 17 percent; and

WHEREAS, This Contract will assist SFMTA in meeting the objectives of Strategic Plan Goal No. 1 – to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy; and Goal No. 2 – to improve transit reliability; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the award of San Francisco Municipal Transportation Agency Contract No. 1222, Job Order Contract, to Power Engineering Contractors, Inc., in the amount of \$3,000,000, with an option to increase the contract amount by an additional \$1,500,000, and a term not to exceed three years.

I 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

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco

DIVISION: TRANSPORTATION PLANNING & DEVELOPMENT

BRIEF DESCRIPTION:

Authorizing the award of San Francisco Municipal Transportation Agency Contract No.1223, Job Order Contract, to Yerba Buena Engineering and Construction, Inc., 1340 Egbert Ave., San Francisco, CA 94124, as the lowest responsive and responsible bidder for a total contract amount not to exceed \$3,000,000, with an option to increase the contract amount by up to 50 percent of the original contract amount, and for a term not to exceed three years.

SUMMARY:

- On October 3, 2006, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 06-126, authorizing bid call for Contract No.1223, Job Order Contract.
- The Job Order Contracting System ("JOC") provides for an indefinite quantity contract with a predefined set of bid items that are assigned on a task order basis as needed for the performance of public work maintenance, repair, and minor construction projects.
- SFMTA is developing this JOC process for the purpose of performing construction and maintenance work in an efficient and expeditious manner. The contracting process will be performed in accordance with Section 6.62 of the San Francisco Administrative Code.
- SFMTA received and opened four bids on March 27, 2008. Staff recommends awarding Contract No.1223 to Yerba Buena Engineering and Construction, Inc., the lowest responsive and responsible bidder, in the amount of \$3,000,000.
- The Contract Compliance Office has reviewed this calendar item and has confirmed that the contractor has committed to meet the Small Business Enterprise (SBE) goal of 17 percent.
- The City Attorney's Office has reviewed this calendar item.
- Federal, state, and local sources will provide funding for the services on an "as-needed," project-by-project basis.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION Contracting Section Attn: Gigi Pabros
BE RETURNED TO: 1 South Van Ness Avenue, 3rd Floor

ASSIGNED SFMTAB CALENDAR DATE: _____

EXPLANATION:

The San Francisco Municipal Transportation Agency (SFMTA) has identified a need to develop a competitively bid procurement process to expeditiously acquire maintenance, repair and construction services for its facilities. This requirement will be satisfied through the use of the Job Order Contracting (JOC) System, which is authorized under Section 6.62 of the San Francisco Administrative Code.

A JOC contract is a unique, indefinite-quantity type of contract that enables SFMTA to accomplish a large number of smaller repairs, maintenance and construction projects with a single, competitively bid contract. It eliminates the time and expense of completing the normal design-bid-construct cycle for each project. It allows SFMTA to decrease project duration and cost, while increasing quality.

Job Order Contracting utilizes a Unit Price Book (Construction Task Catalog) containing at least 60,000 to 100,000 unit prices covering material, equipment and labor costs for various units of construction, adjusted to current conditions. Contractors competitively bid an adjustment factor (e.g. 1.75) to be applied to this catalog of construction tasks with pre-set unit prices.

The overall contract amount (the sum of the individual projects that may be performed) will not exceed \$3,000,000. The contractor will be asked to perform a series of projects on an as needed basis. When a project is first identified, a joint scoping meeting will be held between the SFMTA staff and the Contractor to define the scope and calculate quantities of work to be used. The price for each project will be the quantity multiplied by the pre-set unit prices and multiplied by the competitively bid adjustment factor. A task order will be issued for every project.

Task orders up to \$400,000 will be authorized within SFMTA's Transportation Planning and Development Division. As per Section 6.62 of the San Francisco Administrative Code, no single task order may exceed \$400,000, including all modifications except upon the Executive Director/CEO's written determination establishing the urgency of the work and the justification for proceeding under Section 6.62 rather than by formal competitive process.

On October 3, 2006, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 06-126, authorizing bid call for Contract No.1223, Job Order Contract in an amount not to exceed \$3,500,000. The San Francisco Administrative Code limits the maximum amount of a JOC contract to \$3,000,000. However, the Administrative Code permits modifications to a JOC contract such that the final contract sum does not exceed 150 percent of the original contract amount. Under this Contract No. 1223, SFMTA retains the option to modify the contract in an amount not to exceed \$1,500,000 using the same adjustment factor as bid by the contractor. Any such modification will be subject to the approval of the SFMTA's Board of Directors as required by the San Francisco Administrative Code.

On October 3, 2006, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 06-126, authorizing bid call for Contract No.1223, Job Order Contract.

The SFMTA received and opened the following three responsive bids on March 27, 2008:

Bidder	Adjustment Factor
--------	-------------------

Bidder	Adjustment Factor
1. Yerba Buena Engineering & Construction, Inc. 1340 Egbert Avenue, San Francisco, CA 94124	1.649
2. Power Engineering Contractors, Inc 1501 Viking Street, Suite 200, Alameda, CA 94501	1.734
3. NTK Construction, Inc. 501 Cesar Chavez Street, San Francisco, CA 94124	1.820

Another bid from Torres Construction Corp., 7330 N. Figueroa St., Los Angeles, CA 90041, was determined to be non-responsive for failing to acknowledge issued addenda, and for submitting an incorrect proposal form and schedule of bid prices.

SFMTA Contract No. 1223, Job Order Contract, would assist in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

Strategic Plan Goal 1: To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy.

- 1.1 Improve safety and security across all modes of transportation.
- 1.5 Increase percentage of trips using more sustainable modes.

Strategic Plan Goal 2: To get customers where they want to go, when they want to be there.

- 2.1 Improve transit reliability

No new funds are required for this contract since all tasks will be funded through existing project budgets.

The Contract Compliance Office has established an SBE goal of 17% for this contract and confirmed that the contractor has committed to meet this goal.

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

Staff recommends that this Board approve the lowest responsive and responsible bid and authorize award of SFMTA Contract No. 1223, Job Order Contract, to Yerba Buena Engineering and Construction, Inc., in the amount of \$3,000,000 with an option to increase the contract amount by an additional \$1,500,000, and for a term not to exceed three years.

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

RESOLUTION No. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1223, Job Order Contract, provides for an indefinite quantity contract with a predefined set of bid items that are assigned on a task order basis as needed for the performance of public work maintenance, repair, and minor construction projects; and,

WHEREAS, SFMTA is developing this job order contracting process for the purpose of performing construction and maintenance work in an efficient and expeditious manner in accordance with Section 6.62 of the San Francisco Administrative Code; and,

WHEREAS, On October 3, 2006, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 06-126, authorizing bid call for Contract No.1223, Job Order Contract; and

WHEREAS, SFMTA received and opened four bids on March 27, 2008; the lowest responsive and responsible bidder was Yerba Buena Engineering and Construction, Inc., 1340 Egbert Avenue, San Francisco, CA 94124, with an adjustment factor of 1.649 on unit prices established in the Construction task Catalog; and,

WHEREAS, Federal, state, and local sources will provide funding for the services on an as-needed and on a project-by-project basis; and,

WHEREAS, The contractor has agreed to meet the Small Business Enterprise goal of 17 percent; and

WHEREAS, This Contract will assist SFMTA in meeting the objectives of Strategic Plan Goal No. 1 – to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy; and Goal No. 2 – to improve transit reliability; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the award of San Francisco Municipal Transportation Agency Contract No. 1223, Job Order Contract, to Yerba Buena Engineering and Construction, Inc., in the amount of \$3,000,000 with an option to increase the contract amount by an additional \$1,500,000, and a term not to exceed three years.

I 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

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco

DIVISION: Operations / Service Delivery

BRIEF DESCRIPTION:

Requesting approval of Amendment No. 1 to Contract No. 350 ESR (CCO 05-915) Engineering Support For Bus Procurement Projects with Booz Allen Hamilton Inc., to increase the contract amount by \$762,301 for a total amount not to exceed \$2,499,961 for continued engineering support to implement and monitor engineering modifications, post-delivery support, warranty, and project close out for San Francisco Municipal Transportation Agency's (SFMTA) procurement of diesel hybrid electric buses.

SUMMARY:

- On November 1, 2005, the SFMTA Board of Directors approved Resolution No. 05-168 which authorized the Director of Transportation to execute a 5-year contract with Booz Allen Hamilton (BAH) in the amount of \$1,737,660 to provide bus engineering consulting services support for SFMTA's Alternative Fuel Bus Procurement Program.
- At the time SFMTA had one procurement contract for 56 40-foot diesel hybrid electric buses.
- On June 30, 2006, the SFMTA Board approved Resolution No. 06-075 which authorized the Executive Director/CEO to award a contract to Orion Bus Industries for the purchase of 30 30-foot diesel hybrid electric buses.
- The new 30-foot bus procurement contract required additional engineering consulting services support.
- Amendment No. 1 to Contract No. 350ESR will increase the Contract with BAH by an amount not to exceed \$762,301 for a total contract amount not to exceed \$2,499,961 with no extension of time. This increase will allow the consultants to continue to provide the necessary engineering support which includes monitoring of the engineering modifications, post-delivery support, warranty, and project close out through November 30, 2010.
- BAH has submitted documentation indicating its commitment to maintain the integrity of the 26% DBE goal established for the contract.

ENCLOSURES: (List numerically and by title)

1. SFMTA Board Resolution
2. Amendment No. 1

APPROVALS:

DATE

Director of Division

Preparing Item _____

Finance _____

Executive Director/CEO _____

Secretary _____

ADOPTED RESOLUTION TO BE RETURNED TO: ENOCH CHU

ASSIGNED MTAB CALENDAR DATE _____

EXPLANATION:

On November 1, 2005, the San Francisco Municipal Transportation Agency (SFMTA) Board approved Resolution No. 05-168 which authorized the Director of Transportation to execute Contract No. 350ESR (CCO No. 05-915) with Booz Allen Hamilton (“the Agreement”) to provide engineering consulting services support for SFMTA’s Alternative Fuel Bus Procurement Program in an amount not to exceed \$1,737,660 for a term not to exceed five years from notice to proceed (“NTP”). At the time, SFMTA had one contract for procurement of alternative fuel buses. This contract (Contract No. 350) was with Orion Bus Industries to purchase 56 40-foot diesel hybrid electric buses.

On June 30, 2006, the SFMTA Board approved the procurement of 30 30-foot diesel hybrid electric buses. This second procurement (Contract No. 350-30) also with Orion Bus Industries required additional engineering and inspection services support from the consultant. SFMTA staff combined the consulting services for the two projects in order to achieve savings through economies of scale, but did not request funding at that time because there were funds remaining and the extent of the additional consultant support needed had not been established.

The key tasks conducted by Booz Allen Hamilton under this contract include the following:

1. Performance of design analysis, calculation and investigation of the various sub-systems of the vehicle to enable the SFMTA project team to make sound decisions regarding reliability and feasibility of the vehicles being offered by Orion.
2. Review and recommendations on all designs, including, but not limited to, preliminary and final design reviews.
3. Advising SFMTA on key issues, including deviation from project requirements.
4. Review, coordinate and recommend approval of drawings, reports and other submittals from the vehicle manufacturer.
5. Full time inspection of the prototype bus at the manufacturer’s facilities in Canada and New York and support of the prototype testing and First Article Inspections for the 40-foot and 30-foot diesel hybrid electric bus procurements.
6. Full time production vehicle inspection and testing at the manufacturer's facilities in Canada and New York as well as documenting the final configuration and nonconforming items for each vehicle in the 40-foot and 30-foot diesel hybrid electric bus procurements.
7. Ensure all required tests, operations, measurements and inspections were satisfactorily performed and documented. Management of key contract and engineering issues including assisting the manufacturer's instructors with training set-up and oversight for SFMTA personnel in San Francisco and reviewing and responding to engineering and test reports.
8. Prepare Contract Modifications, Independent Engineers’ estimates and final contract, and technical terms for the 30-foot bus contract award.
9. Provide daily inspection reports, weekly progress reports and meeting minutes.
10. Witness, review and conduct acceptance test of vehicles.
11. Engineering support for post delivery tracking of reliability issues, manufacturer modifications, and fleet status.

The contract modification amount was established based on an engineering estimate performed by Operations Engineering for the consultant to provide continued engineering support with monitoring of

the engineering modifications, post delivery support, warranty and project closeout for the procurement of 86 diesel hybrid electric buses.

The following activities require continued support:

Post Delivery Support: Coordination, support and monitor the status of the fleet to proactively resolve warranty and non-warranty engineering issues, warranty concerns, engineering modifications, and parts upgrades. The manufacturer and OEM supplier campaigns include the wheelchair ramp, fuel transfer pump, throttle position sensor, and rear destination sign housing upgrades.

Warranty: Review SHOPS / Documentation to validate warranty claims and fleet defects and provide formal notification to Contractor. Monitor the warranty status of each bus on a daily basis to provide the necessary information to responsible parties, including the manufacturer and major component suppliers, in order to expedite repairs and keep the fleet operable.

Engineering Modifications: Monitor proposed design changes from Contractor and suppliers. Coordinate field testing of designs and track fleet retrofit implementation.

The length of time it takes to issue a new RFP, receive proposals, rank proposers and negotiate a contract with the most qualified proposer would negatively impact completion of these tasks and disrupt other existing service. Section 6.64 of the San Francisco Administrative Code allows amendments to as-needed contracts with cumulative increases not exceeding 50% of the original contract amount.

Funding for this modification is available from federal CA90-0424, State Bridge Tolls, and local Proposition K funds.

The SFMTA's Contract Compliance Office has reviewed this calendar item.

Booz Allen Hamilton, Inc. has committed to maintain the integrity of the 26% DBE goal established for the contract.

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

Strategic Plan

This Amendment furthers the following goals and objectives of the Strategic Plan:

Goal 1: Customer Focus

To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit first Policy.

- 1.3 Reduce emissions as required by SFMTA Clear Air Plan
- 1.4 Improve accessibility across transit service

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

- 2.1 Improve transit reliability to meet 85% on-time performance standard

Recommendation

Staff recommends that the San Francisco Municipal Transportation Agency Board authorize the Executive Director/CEO to execute Contract Amendment No. 1 to Contract No. 350ESR (CCO No. 05-915) with Booz Allen Hamilton to provide engineering and support services for the procurement of diesel hybrid electric buses in an amount not to exceed \$2,499,961 and for a term not to exceed 5 years from notice to proceed ("NTP").

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

RESOLUTION NO. _____

WHEREAS, On November 1, 2005, after a competitive bid process, the San Francisco Municipal Transportation Agency Board adopted Resolution No. 05-168, which authorized the Director of Transportation to execute Contract No. 350 ESR (CCO No. 05-915) with Booz Allen and Hamilton, Inc., to provide engineering consulting support services for SFMTA's Alternative Fuel Bus Procurement Program, which at that time encompassed one contract (Contract No. 350) for the procurement of 56 40-foot diesel hybrid electric buses; and

WHEREAS, The consulting support contract was for an amount not to exceed \$1,737,660, and for a term not to exceed 5 years from the notice to proceed; and

WHEREAS, The notice to proceed was issued to the Consultant on December 1, 2005; and

WHEREAS, On June 30, 2006, The SFMTA Board approved a second bus procurement contract, Contract No. 350-30, for procurement of 30 30-foot diesel hybrid electric buses; and

WHEREAS, This second bus procurement contract required additional engineering consulting support services from the consultant; and

WHEREAS, SFMTA staff did not request to increase the contract amount of the engineering consulting support services after the award of the second bus procurement contract because funds were still available in the contract and the full extent of the need for additional consulting support had not been established; and

WHEREAS, SFMTA requires continued engineering support with monitoring of the engineering modifications, post-delivery support, warranty, and project close out; and,

WHEREAS, SFMTA staff has negotiated a contract modification for these additional services for \$762,301; and

WHEREAS, Funding is available for this modification from federal, state, and local sources; now therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO of San Francisco Municipal Transportation Agency to execute Amendment No. 1 to Contract No. 350 ESR (CCO 05-915) with Booz Allen Hamilton Inc., to provide continued engineering support services for the procurement of diesel hybrid electric buses, at a cost not to exceed \$762,301 for a total contract amount not to exceed \$2,499,961 with no extension of time.

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

Secretary, Municipal Transportation Agency

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

**AMENDMENT NO. 1
TO
AGREEMENT BETWEEN
CITY AND COUNTY OF SAN FRANCISCO
AND
BOOZ ALLEN HAMILTON, INC.
FOR PROFESSIONAL SERVICES**

CONTRACT NO. 350 ESR (CCO 05-915)

This Amendment No. 1 is entered into this _____ day of _____, 2008, by and between the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA"), and Booz Allen & Hamilton, Inc. ("Consultant").

RECITALS

- A. On November 1, 2005, the SFMTA Board of Directors adopted Resolution No. 05-168, which authorized the Director of Transportation to execute Contract No. 350 ESR (CCO No. 05-915) with Booz Allen and Hamilton, Inc., to provide engineering consulting support services for SFMTA's Alternative Fuel Bus Procurement Program.
- B. At that time, SFMTA had entered into Contract No. 350 with Orion Bus Industries for the procurement of 56 40-foot diesel hybrid electric buses.
- C. On June 30, 2006, the SFMTA Board of Directors approved Resolution No. 06-075 which authorized the Executive Director/CEO to award a contract to Orion Bus Industries for the purchase of 30 30-foot diesel electric hybrid buses.
- D. The current contract is for an amount not to exceed \$1,737,660 and for a term not to exceed 5 years from notice to proceed ("NTP").
- E. The additional procurement in 2006 has required additional engineering consulting services support from Consultant beyond what was projected at the time the agreement was originally executed.
- F. This Amendment increases the contract by \$762,301 for a total amount not to exceed \$2,499,961.

NOW, THEREFORE, it is mutually understood and agreed that all other terms and conditions shall remain in full force and effect and that Contract No. 350ESR shall be amended as follows:

1. Article 5 (Compensation) is amended in its entirety to read as follows:

5. Compensation

Compensation under this Agreement shall be based upon actual direct costs plus a fixed fee. The City agrees to pay the Consultant as compensation for work performed, including all expenses incurred and incidental thereto, an amount not to exceed

\$2,499,961, which includes a fixed fee of **\$159,122**.

Consultant shall charge its actual direct labor costs, which shall be burdened with fringe, overhead, and general and administrative (G&A) costs.

Consultant shall charge its other direct costs and subcontractor costs at cost with no additional burdens.

Exhibit B contains a detailed explanation and breakdown, by task, of the application of the billing and accounting structure for this contract, including the DBE goals projected for each task. Exhibits B-1 and B-2 contain breakdowns by task and firm, respectively, of the work to be performed under Amendment 1.

Pending establishment of final indirect rates for the Consultant by a U.S. government audit agency (for the overhead and fringe rates) and Booz Allen's independent auditor (for the G&A rates), the Consultant shall invoice the City at its then-current provisionally approved rates. The attached Exhibit B sets forth the projected indirect rates for this effort. This exhibit is for informational purposes. The Consultant shall invoice at its then-current provisionally approved rates unless such provisionally approved rates are five percent (5%) or more about the projected rates, in which case the Consultant shall obtain the approval of the Executive Director/CEO prior to invoicing.

The Consultant compensation under this Agreement will be based on and shall not exceed the combined overhead and salary burden rates as shown on Exhibit B-1. The rates in Exhibit B-1, may be adjusted annually with the Project Manager's prior written approval. The consultants and sub-consultants combined overhead and salary burden rates are subject to audit.

The Consultant hereby 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 for SFMTA from its funding agencies in accordance with Circular A-87, and that all payments under this Agreement are subject to audit and adjustment.

2. Exhibits B-1 and B-2 are attached to this Amendment and incorporated by reference as though fully set forth herein.

WHEREAS, City and Consultant have executed this Amendment No. 1 as of the day and year first written above.

CITY AND COUNTY OF SAN FRANCISCO

Municipal Transportation Agency

CONSULTANT

Booz Allen Hamilton, Inc.
101 California St., Suite 3300
San Francisco, CA 94111

Nathaniel P. Ford
Executive Director/CEO
Municipal Transportation Agency

By: ____

City and County of San Francisco

Gary Schulman, Vice President

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

Deputy City Attorney

Municipal Transportation Agency

Resolution No. _____

Adopted: _____

Attest:

Secretary, MTA Board

Estimated Costs by Tasks

Tasks	Description	Hours (est.)	BAH Labor	Subcontracts	Profit	Total
Task A	Engineering Analysis	416	\$47,880	\$4,500	\$4,923	\$57,303
Task C	Advising Muni on key issues, including deviation from project requirements	80	\$10,242	\$0	\$1,024	\$11,266
Task G	Project Coordination	2432	\$224,955	\$62,606	\$24,374	\$311,935
Task I	Warranty and Closeout	3791	\$160,531	\$183,825	\$21,568	\$365,924
Task L	Final Project Report	100	\$14,430	\$0	\$1,443	\$15,873
Total - Amendment No. 1		6819	\$458,038	\$250,931	\$53,332	\$762,301

Cost Summary by Firm

Company	Labor	Profit	Total	% to Total
BAH	\$458,038	\$45,804	\$503,842	66%
Lansor Associates	\$42,270	\$1,268	\$43,538	6%
Cornerstone Transportation Consulting, Inc.	\$6,864	\$206	\$7,070	1%
Railcar Quality Services	\$188,325	\$5,650	\$193,975	25%
ASE, Inc.	\$13,472	\$404	\$13,876	2%
Total - Amendment No. 1	\$708,969	\$53,332	\$762,301	100%
Estimate DBE Percentage				34%

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

DIVISION: Safety and Training/Substance Abuse Program

BRIEF DESCRIPTION: Authorizing the Executive Director/CEO to issue a request for proposals, evaluate proposers and negotiate a contract or contracts for breath and urine collection services for the San Francisco Municipal Transportation Agency's (SFMTA) drug and alcohol testing program.

SUMMARY:

- Collection of breath and urine samples must be executed by qualified persons who meet the requirements for such collections as defined in 49 C.F.R. Parts 40 and 655.
- The SFMTA will issue a proposal for on-site breath and urine collection of specimens for required testing through use of a mobile unit (recreational or similar vehicle) or through use of SFMTA facilities; and off-site collection of pre-employment, post accident, reasonable suspicion and return-to-duty specimens for required testing during normal working hours (8:30 am – 5:00 pm). The off-site collector must also have the capacity to perform after-hour collection of specimens for reasonable suspicion and post-accident testing at an off-site facility.
- Approval of the resolution will authorize the Executive Director/CEO to issue a request for proposals, evaluate proposers and negotiate a contract with a qualified firm or firms with the intent to award one contract for on-site collection services, one contract for off-site collection services, or one contract for on-site and off-site collection services.

ENCLOSURES:

1. MTAB Resolution
2. Request for Proposal for Breath and Urine Collection Services

APPROVALS:

DATE

DEPUTY OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION

BE RETURNED TO

Reggie Smith

ASSIGNED MTAB CALENDAR DATE: _____

EXPLANATION:

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

for testing for the common drugs of abuse: marijuana, cocaine, opiates, phencyclidine and amphetamines.

The SFMTA contracts with Howger Services to perform on-site UDC and BAT services for random, reasonable suspicion and post-accident testing. Howger provides a mobile unit that travels from yard to yard randomly to perform these services. The contract with Howger Services is due to expire on September 30, 2008.

The SFMTA has also been contracting with Concentra Medical Centers to perform off-site UDC and BAT services for pre-employment, reasonable suspicion, return-to-duty, and after-hours post-accident testing. Staff has previously submitted a calendar item to this Board requesting an amendment to the Concentra contract to extend the contract to December 31, 2008.

The SFMTA will issue a proposal for on-site breath and urine collection of specimens for required testing through use of a mobile unit (recreational or similar vehicle) or through use of SFMTA facilities; and off-site collection of pre-employment, post accident, reasonable suspicion and return-to-duty specimens for required testing during normal working hours (8:30 am – 5:00 pm). The off-site collector must also have the capacity to perform after-hour collection of specimens for reasonable suspicion and post-accident testing at an off-site facility.

In this calendar item, the SFMTA seeks authorization to issue an RFP to select a vendor or vendors to conduct breath and urine collections as defined in 49 C.F.R. Part 40 for the SFMTA's alcohol and drug testing program. The Manager of the Substance Abuse Program will appoint a selection committee to evaluate proposals submitted and select the best qualified and experienced firm or firms for negotiation and possibly award one contract for on-site collection services, one contract for off-site collection services, or one contract for on-site and off-site collection services. The amount for the collection services (off-site and on-site) shall not exceed the amount of \$900,000 for a term of three years with an option for two additional years. Staff will submit the contract or contracts to this Board for award.

Operating funds required for the services are budgeted in the SFMTA's current year budget.

The Local Business Enterprise (LBE) sub-consulting participation goal has been waived for this contract. Firms submitting proposals are strongly encouraged to use their good faith efforts to include LBE subconsultants, where feasible, for work under this contract.

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

EXPLANATION:

The RFP includes the SFMTA Board policy regarding communication prior to contract award between bidders and the SFMTA.

Benefit to the SFMTA:

The SFMTA will further the following goals of the Strategic Plan through continuation of the breath and urine collection contract:

- Goal 1-Customer Focus
 - 1.1-Improve safety and security across all modes of transportation.
- Goal 3 –External Affairs-Community Relations
 - 3.3-Provide a working environment that fosters a high standard of performance,

- recognition for contributions, innovations, mutual respect and a healthy quality of life
- Goal 5-MTA Workforce
- 5.5-Improve SFMTA's ability to grow and retain strong leadership
- 5.8-Improve work/life balance of employees.

This resolution will authorize the Executive Director/CEO to issue a Request for Proposals, evaluate proposers, negotiate a three-year contract, with the option of two additional years, with the highest rated firm or firms and bring the contract or contracts to the SFMTA Board for approval.

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

RESOLUTION No. _____

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

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

WHEREAS, Federal regulations require that transit agencies use the services of a qualified urine drug collector and breath alcohol technician in accordance with 49 Code of Federal Regulations Parts 40 and 655; and

WHEREAS, The SFMTA requires the services of a firm or firms to conduct off-site and on-site urine collection services after the contracts with the current vendors expire; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to request proposals, evaluate proposers and negotiate a contract or contracts with a qualified urine drug collector and breath alcohol technician or technicians to perform either on-site collection services or off-site collection services, or both on-site and off-site collection services for the SFMTA's drug and alcohol testing program for a term of three years with an option to extend the agreement for an additional two year period in an amount not to exceed \$900,000.

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

Secretary, Municipal Transportation Agency Board

REQUEST FOR PROPOSALS

DATE: August 11, 2008

SUBJECT: REQUEST FOR PROPOSALS (RFP) – CCO# 08-1002 and 08-1003

To All Interested Parties:

The San Francisco Municipal Transportation Agency ("SFMTA") is requesting proposals for Breath and Urine Collection Services. Particulars regarding the Scope of Services and Sample Form of the Agreement are contained in the attached RFP.

Sealed proposals must be delivered to the Substance Abuse Program Office at the address below by 5:00 pm PDT on September 12, 2008. Prospective proposers may obtain a copy of the RFP providing additional information on this contract at the following address or email to Reggie.Smith@sfmta.com.

San Francisco Municipal Transportation Agency
Substance Abuse Program
949 Presidio Avenue, Room 224
San Francisco, California 94115

Each submission must include one (1) original and nine (9) copies and must be enclosed in a sealed envelope addressed to the Manager, Substance Abuse Program, endorsed: PROPOSAL FOR BREATH AND URINE COLLECTION SERVICES.

A pre-proposal conference will be held on August 25, 2008. The meeting will convene at 11:00 am PDT at 949 Presidio Avenue, Presidio Conference Room, Room 220, San Francisco, CA 94115. At the pre-proposal conference, the Scope of Services, Local Business Enterprise Program (LBE)/Non-discrimination Requirements, and other proposal items will be discussed. Interested prospective competitors are requested to make every effort to attend the only scheduled pre-proposal conference.

The LBE subconsulting participation goal has been waived for this project. However, proposers are strongly encouraged to include LBEs to perform commercially useful functions where feasible.

The selected consultant will be required to comply with all applicable Equal Employment Opportunity/Non-discrimination laws and regulations, including Chapter 12B of the City and County of San Francisco, Administrative Code.

The City and County of San Francisco notifies all consultant firms that it will ensure that in regard to any contract entered into pursuant to this advertisement, local-owned business enterprises will be afforded opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex or national origin.

Submission of a proposal shall constitute a firm offer to the SFMTA for ninety (90) days from the last day for receipt of proposals.

The City reserves the right to reject any and all proposals.

Please direct your questions regarding this proposal to William R. Smith via email at Reggie.Smith@sfmta.com.

Sincerely,

William R. Smith, CEAP, CSAP
Substance Abuse Professional

San Francisco Municipal Transportation Agency
Request for Proposals for Breath and Urine Collection Services



CCO Nos. 08-1002 AND 08-1003

Date issued:	AUGUST 11, 2008
Pre-proposal conference:	11.00 a.m. PDT, August 25, 2008
Proposal due:	5:00 p.m. PDT, September 12, 2008

CCO Nos. 08-1002 & 08-1003

Request for Proposals for Breath and Urine Collection Services

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Appendices:

- A. HRC Attachment 2: Requirements for Architecture, Engineering and Professional Services Contracts, for contacts \$29,000 and over (separate document). Proposers must submit the following forms:
 - Form 2A HRC Contract Participation form
 - Form 2B HRC “Good Faith” Outreach Requirements form
 - Form 3 HRC Non-discrimination Affidavit
 - Form 5 HRC Employment form

The following form may be required, depending on the circumstances:

 - Form 4 Joint Venture Participation Schedule
- B. Standard Forms: Listing and Internet addresses of Forms related to Taxpayer Identification Number and Certification, to Business Tax Declaration, and to Chapters 12B and 12C, and 14B of the S.F. Administrative Code. B-1
- C. Communications Prior to Contract Award
- D. Certification Regarding Debarment, Suspension, and Other Responsibility Matters
- E. Certification Regarding Lobbying
- F. Sample Agreement for Professional Services (form P-500)
 - Attachment A Outline of Services
 - Attachment B Calculation of Charges
 - Attachment C Code of Federal Regulations (CFR) Part 40

I. Introduction and Schedule

A. General

This Request for Proposals for breath and urine collection services is issued as one of the program elements required to support the San Francisco Municipal Transportation Agency’s (SFMTA) Substance Abuse Program. The objective of the program is to assure worker fitness for duty and to protect transit employees, passengers and the public from risks posed by the use of prohibited drugs. The program has

been designed to be in compliance with industry regulations and guidelines that have been developed specifically for transit properties. The relevant Federal Transit Administration (FTA) regulations are contained in 49 CFR Part 40.

The SFMTA is an agency of the City and County of San Francisco (“City”) that operates the San Francisco Municipal Railway (“Muni”), which provides public transportation services in San Francisco. The SFMTA currently has approximately 5,000 employees of which 3,000 are safety-sensitive. Employees are located in two administrative offices, seven operating divisions and eleven maintenance facilities.

In support of the Substance Abuse Program, the City requires the services of a consultant or consultants to perform on-site and off-site breath and urine collection services (“Consultant”) as described in APPENDIX F-Attachment A. Prospective consultants may submit proposals for on-site or off-site or both types of services. SFMTA presently intends to enter into a three-year agreement with the selected Consultant(s) with an option to extend the contract for two additional years.

B. Schedule

The anticipated schedule for selecting a consultant is:

Proposal Phase	Date
RFP is issued by the City	August 11, 2008
Pre-proposal conference	August 25, 2008 at 11:00 am PDT
Deadline for submission of written questions or requests for clarification	September 2, 2008
Proposals due	September 12, 2008 at 5:00 pm PDT
Technical Review (Short Listings)	September 17, 2008
Oral interview with firms selected for further consideration	September 24, 2008
Contract Start Date	December 1, 2008

II. Scope of Work

The services of the Consultant shall conform to procedures for Transportation Workplace Drug Testing Programs, as specified in 49 CFR Part 40, and described in the Sample Form Agreement (Appendix F). In addition, all services shall be in conformance with all applicable state and federal statutes and regulations, as they may be revised from time to time, including those pertaining to the confidentiality of medical information. In brief, the services consist of the following:

- A. On-site breath and urine collection of specimens for required testing through use of a mobile unit (recreational or similar vehicle) or through use of SFMTA facilities; and/or
- B. Off-site collection of pre-employment, post accident, reasonable suspicion and return-to-duty specimens for required testing during normal working hours (8:30 am – 5:00 pm). In addition, after-hour collection of specimens for reasonable suspicion and post-accident testing at an off-site facility.

Firms may submit proposals for A, A&B or B. If your firm is submitting proposals for both A&B, submit each proposal separately (one for A; one for B) according to the requirements in Section III.C.2 (Project Approach).

The proposer shall have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage and shipping or transportation of urine specimens to a DHHS-certified laboratory. The proposer must have an adequate facility within the boundaries of the City of San Francisco and/or mobile collection capabilities.

III. Submission Requirements

A. Time and Place for Submission of Proposals

Proposals must be received by 5:00 p.m. PDT, on September 12, 2008. Postmarks will not be considered in judging the timeliness of submissions. Proposals may be delivered in person and left with William R. Smith, 949 Presidio Avenue, Room 224, San Francisco, CA 94115 or mailed to:

Municipal Transportation Agency
Program Manager
Substance Abuse Program
949 Presidio Avenue, Room 224
San Francisco, California 94115

Proposers shall submit nine (9) copies of the proposal and two (2) copies, separately bound, of required HRC Forms (See Appendix A- HRC Attachment 2 – Requirements for Architecture, Engineering & Professional Services Contracts) in a sealed envelope clearly marked “Proposal for Off-Site Breath and Urine Collection Services” to the above location. Proposals that are submitted by fax will not be accepted. Late submissions will not be considered.

B. Format

The department will place proposals in three-ring binders for the review panel. Please use three-hole recycled paper, printed double-sided to the maximum extent practical, and bind the proposal with a binder clip, or single staple, or submit it in a three-ring binder. Please do not bind your proposal with a spiral binding, glued binding, or anything similar. You may use tabs or other separators within the document.

For word processing documents, the department prefers that text be unjustified (i.e., with a ragged-right margin) and use a serif font (e.g., Times Roman, and not Arial), and that pages have margins of at least 1” on all sides (excluding headers and footers).

If your response is lengthy, please include a Table of Contents.

You must also submit an electronic version of the proposal on a CD.

C. Content of Each Proposal

Firms interested in responding to this RFP must include the following information, in the order specified below, for each proposal:

1. Introduction and Executive Summary

Submit a letter of introduction and executive summary of the proposal, indicating whether the proposal is for on-site or off-site services. 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.

2. Project Approach

a. Off-site Collection Services. The proposer shall describe the **off-site collection services** and activities that it proposes to provide the SFMTA, and address the following:

- i. What is the procedure for the SFMTA to schedule alcohol and drug testing?
- ii. What is the procedure for collecting specimens for post-accident and reasonable suspicion testing during normal working hours?
- iii. What is the procedure for collecting post-accident and reasonable suspicion testing after normal working hours?
- iv. Does your firm provide back-up personnel in case of the unavailability of the primary staff person?
- v. Describe how your firm will handle staffing for urine testing under the revised direct observation procedure which will be effective on August 25, 2008.
- vi. Describe how your firm handles cold specimen, shy bladder and shy breath collections.
- vii. Describe how your firm handles affidavit requests from the lab.
- viii. How does your firm monitor donors before and during the testing process?
- ix. How does your firm control liquid intake by donors?
- x. How does your firm transmit CCF/ATF forms and other documentation after collections are completed?

b. On-Site Collection Services (using mobile unit). The proposer shall describe the **on-site collection services using a mobile unit** that it proposes to provide the SFMTA, and address the following:

- i. What is the make, model, year, size and operating condition of the mobile unit? Please provide documentation.
- ii. Does the firm have a back-up mobile unit in case of the breakdown of the primary unit? Please provide documentation.
- iii. Describe the bathroom facility including water shutoff procedure.
- iv. Does your firm have personnel that can be solely assigned to the SFMTA on a full time basis?
- v. Does your firm provide back-up personnel in case of the unavailability of the primary staff person(s)?
- vi. What is the procedure for collecting specimens for post-accident and reasonable suspicion testing after normal working hours?
- vii. What is your firm's communication protocol if your firm is unable to arrive at the scheduled testing time?
- viii. How much lead-time is necessary for your firm to accommodate schedule changes? (For example, if the monthly random testing schedule designates that testing is to occur on a Friday, second shift and the SFMTA wanted to change the testing to Saturday, first shift)
- ix. Describe how your firm handles cold specimen, shy bladder and shy breath collections.

- x. Describe how your firm will handle staffing for urine testing under the revised direct observation procedure which will be effective on August 25, 2008.
- xi. Describe how your firm handles affidavit requests from the lab.
- xii. How does your firm monitor donors before and during the testing process?
- xiii. How does your firm control liquid intake by donors?
- xiv. How does your firm transmit CCF/ATF forms and other documentation after collections are completed?

c. On-Site Collection Services (using SFMTA facilities, without mobile unit). The proposer shall describe the **on-site collection services using SFMTA facilities** that your firm proposes to provide the SFMTA, and address the following:

- i. What is the procedure for the SFMTA to schedule alcohol and drug testing?
- ii. Describe your setup process for a SFMTA facility bathroom.
- iii. What is the procedure for collecting specimens for post-accident and reasonable suspicion testing after normal working hours?
- iv. Does your firm have personnel that can be solely assigned to the SFMTA on a full time basis?
- v. Does your firm provide back-up personnel in case of the unavailability of the primary staff person(s)?
- vi. What is your firm's communication protocol if your firm is unable to arrive at the scheduled testing time?
- vii. How much lead-time is necessary for your firm to accommodate schedule changes? (For example, if the monthly random testing schedule designates that testing is to occur on a Friday, second shift and the SFMTA wanted to change the testing to Saturday, first shift.)
- viii. Describe how your firm handles cold specimen, shy bladder and shy breath collections.
- ix. Describe how your firm will handle staffing for urine testing under the revised direct observation procedure which will be effective on August 25, 2008.
- x. Describe how your firm handles affidavit requests from the lab.
- xi. How does your firm monitor donors before and during the testing process?
- xii. How does your firm control liquid intake by donors?
- xiii. How does your firm transmit CCF/ATF forms and other documentation after collections are completed?

3. **Firm Qualifications and Team Qualifications**

The proposer shall discuss its history and experience relevant to SFMTA's needs, including a description of the proposer's direct experience performing the tasks described in the solicitation. The proposer shall emphasize experience with organizations of similar size, scope and complexity as the SFMTA. The proposer shall demonstrate the ability of its staff to work with the designated employer representative, testing laboratories, substance abuse professionals and employees. This section shall contain the proposer's staffing plan, which shall identify the project manager(s) and any key personnel who will be assigned to the project and discuss the direct qualifications and experience of each key individual. At a minimum, this section should include:

- a. A list of companies/organizations for which collection services have been provided within the last five (5) years, including the dates of service, with the names, addresses, contact persons and telephone numbers of the client organizations serviced.
- b. Documentation of relevant experience working within the transit and /or transportation industries.

- c. Documentation of relevant experience working with federal, state or local agencies.
- d. Experience testifying as an expert witness, at a deposition or for court or administrative proceedings.
- e. Information on any contracts terminated for cause or convenience in the last three (3) years.
- f. Resumes of the project manager(s) and key personnel (inclusive of all relevant joint venture and subcontractor personnel) who will be assigned to the project. Resumes must be complete and concise. Resumes must be dated (e.g. dates of education, experience, employment, etc.) and must state function(s) to be performed on the project by key personnel.
- g. Two (2) references, with company names, addresses, telephone numbers and contact persons for each key personnel.
- h. An organizational chart, complete with a listing of all job classifications and the number of full and part-time employees in each job classification, who will participate in the performance of work. The proposer shall identify which job classifications, if any, relate to subcontractor personnel.
- i. Number of cancelled tests due to collector error in 2006 and 2007.
- j. Number of collectors retrained in 2006 and 2007 due to collection errors.
- k. Description of the specimen courier process including typical schedule.
- l. If providing off-site services, what is (are) the location(s) of your collection facility(ies) within the boundaries of the City of San Francisco?

4. Fee Proposal

The proposer shall submit a fee proposal with each proposal in a separately sealed envelope on the form attached as APPENDIX F, Attachment B to this RFP.

The City intends to award this contract to the firm that it considers will provide the best overall program services. The City reserves the right to accept other than the lowest-priced offer and to reject any proposals that are not responsive to this RFP.

IV. Evaluation and Selection Criteria

A. Minimum Qualifications

SFMTA will first review proposals to determine which are technically acceptable to the SFMTA. In order to be considered technically acceptable, proposals must meet or exceed the following minimum requirements by the deadline for submittal of proposals or they will be considered non-responsive and will not be eligible for award of the contract

- 1. The proposer shall have at least five (5) years experience in providing urine and alcohol collection services for a DOT-regulated agency.
- 2. The proposer shall meet the qualification and training requirements of 49 CFR Subparts 40.33 and 40.213.
- 3. The proposer shall submit a list of equipment and software currently utilized to conduct urine and breath collections. As indicated in the Outline of Services, the proposer must meet the facility and equipment requirements as specified in 49 CFR Part 40 Subparts D and K.
- 4. If submitting a proposal for off-site collection, the proposer shall have a location within

the boundaries of the City and County of San Francisco that will be utilized to perform the services required for the SFMTA should the proposer be selected

5. If submitting a proposal for mobile on site collection, the proposer shall have a mobile recreational vehicle (or equivalent) that is registered and licensed by the State of California Department of Motor Vehicles.

6. The proposer must confirm that it will be able to provide services for the entire term of the contract, commencing on the contract start date.

B. Selection Criteria

The proposals will be evaluated by a selection committee comprised of persons with expertise in federal drug and alcohol testing. The City intends to evaluate the proposals generally in accordance with the criteria itemized below. Proposals for on-site services will be evaluated separately from proposals for off-site services. The firms in the competitive range for each type of services may be interviewed by the committee to make the final selection. The SFMTA reserves the right to award this contract without conducting an oral interview.

1. Project Approach (40 points)

- a. Understanding of the project and the tasks to be performed, etc.
- b. Reasonableness of work schedule.
- c. Whether the fees for urine and breath collection services are reasonable in relation to the number of individuals to be tested at the SFMTA and when compared with the range of fees for such services within the industry.

2. Assigned Project Staff (40 points)

- a. Recent experience of staff assigned to the project and a description of the tasks to be performed by each staff person.
- b. Professional qualifications and education.
- c. Facility and staff availability and accessibility
- d. Results of reference checks.

3. Oral Interview (20 points)

Following the evaluation of the written proposals, the proposers found to be in the competitive range may be invited to an oral interview. The interview, which may, at the option of the SFMTA, be by telephone, will consist of standard questions asked of each of the selected proposers. The selection committee will combine both the written and oral interview scores of the short-listed proposers in determining the selection of the highest-rated proposers. The SFMTA reserves the right to not hold oral interviews and select a firm based on the written proposal only.

V. Pre-proposal Conference and Contract Award

A. Pre-Proposal Conference

Proposers are encouraged to attend a pre-proposal conference on August 25, 2008 at 11:00 am PDT to be held at 949 Presidio Avenue, Room 220, San Francisco, California 94115. All questions will be addressed at this conference and any available new information will be provided at that time. Ms. Naomi Steinway, assigned Contact Compliance Officer, will be available to answer questions regarding the city's Local Business Enterprise/Nondiscrimination Requirements and HRC forms. If you have further questions regarding the RFP, please contact the individual designated in Section VI.B.

B. Contract Award

The SFMTA will select a proposer for each type of services with whom SFMTA staff shall commence contract negotiations. 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. If a satisfactory contract cannot be negotiated in a reasonable time the SFMTA, in its sole discretion, may terminate negotiations with the highest ranked proposer and begin contract negotiations with the next highest ranked proposer. The SFMTA may award one contract for on-site collection services, one contract for off-site collection services, or one contract for on-site and off-site collection services.

VI. Terms and Conditions for Receipt of Proposals

A. Errors and Omissions in RFP

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

B. Inquiries Regarding RFP

Inquiries regarding the RFP and all oral notifications of an intent to request written modification or clarification of the RFP, must be directed to:

William R. Smith, CEAP, CSAP
Substance Abuse Professional
San Francisco Municipal Transportation Agency
949 Presidio Avenue, Room 224
San Francisco, CA 94115
Tel: (415) 923-6291
Fax: (415) 923-6287
E-mail: Reggie.Smith@sfmta.com

C. 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.

D. Change Notices

The Department may modify the RFP, prior to the proposal due date, by issuing Change Notices, which will be posted on the website. The proposer shall be responsible for ensuring that its proposal reflects any and all Change Notices issued by the SFMTA prior to the proposal due date regardless of when the proposal is submitted. Therefore, the City recommends that the proposer consult the website frequently, including shortly before the proposal due date, to determine if the proposer has downloaded all Change Notices.

E. Term of Proposal

Submission of a proposal signifies that the proposed services and prices are valid for 120 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

F. Revision of Proposal

A proposer may revise a proposal on the proposer's own initiative at any time before the deadline for submission of proposals. The proposer must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any proposer.

At any time during the proposal evaluation process, the Department may require a proposer to provide oral or written clarification of its proposal. The Department reserves the right to make an award without further clarifications of proposals received.

G. 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 vendor from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

H. Financial Responsibility

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

I. 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.

J. 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.

K. Public Access to Meetings and Records

If a proposer 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 S.F. Administrative Code, the proposer must comply with Chapter 12L. The proposer must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to proposer's meetings and records, and (2) a summary of all complaints concerning the proposer'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 proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in proposer's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

L. Reservations of Rights by the City

The issuance of this RFP does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right at any time to:

1. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Reissue a Request for Proposals;
4. 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;
5. Procure any materials, equipment or services specified in this RFP by any other means; or
6. Determine that no project will be pursued.

M. 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.

N. Local Business Enterprise Goals and Outreach

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") shall apply to this RFP.

1. LBE Subconsultant Participation Goals

The LBE subconsulting goal has been waived for this project. However, proposers are strongly encouraged to include LBEs to perform commercially useful functions where feasible.

If an LBE subconsulting participation goal is set for a project, each firm responding to this solicitation shall demonstrate in its response that it has used good-faith outreach to select LBE subcontractors as set forth in S.F. Administrative Code §§14B.8 and 14B.9, and shall identify the particular LBE subcontractors solicited and selected to be used in performing the contract. For each LBE identified as a subcontractor, the response must specify the value of the participation as a percentage of the total value of the goods and/or services to be procured, the type of work to be performed, and such information as may reasonably be required to determine the responsiveness of the

proposal. LBEs identified as subcontractors must be certified with the San Francisco Human Rights Commission at the time the proposal is submitted, and must be contacted by the proposer (prime contractor) prior to listing them as subcontractors in the proposal. Any proposal that does not meet the requirements of this paragraph will be non-responsive.

In addition to demonstrating that it will achieve the level of subconsulting participation required by the contract, a proposer shall also undertake and document in its submittal the good faith efforts required by Chapter 14B.8(C)&(D) and HRC Attachment 2, Requirements for Architecture, Engineering and Professional Services Contracts.

Proposals which fail to comply with the material requirements of S.F. Administrative Code §§14B.8 and 14B.9, HRC Attachment 2 and this RFP will be deemed non-responsive and will be rejected. During the term of the contract, any failure to comply with the level of LBE subcontractor participation specified in the contract shall be deemed a material breach of contract. Subconsulting goals can only be met with HRC-certified LBEs located in San Francisco.

2. LBE Participation

The City strongly encourages proposals from qualified LBEs. Pursuant to Chapter 14B, the following rating discount will be in effect for the award of this project for any proposers who are certified by HRC as a LBE, or joint ventures where the joint venture partners are in the same discipline and have the specific levels of participation as identified below. Certification applications may be obtained by calling HRC at (415) 252-2500. The rating discount applies at each phase of the selection process. The application of the rating discount is as follows:

- a. A 10% discount to an LBE; or a joint venture between or among LBEs; or
- b. A 5% discount to a joint venture with LBE participation that equals or exceeds 35%, but is under 40%; or
- c. A 7.5% discount to a joint venture with LBE participation that equals or exceeds 40%; or
- d. A 10% discount to a certified non-profit entity.

If applying for a rating discount as a joint venture: The LBE must be an active partner in the joint venture and perform work, manage the job and take financial risks in proportion to the required level of participation stated in the proposal, and must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the LBE joint venture's work shall be set forth in detail separately from the work to be performed by the non-LBE joint venture partner. The LBE joint venture's portion of the contract must be assigned a commercially useful function.

3. HRC Forms to be Submitted with Proposal

a. All proposals submitted must include the following Human Rights Commission (HRC) Forms contained in the HRC Attachment 2: 1) HRC Contract Participation Form 2A, 2) HRC "Good Faith Outreach" Requirements Form 2B, 3) HRC Non-Discrimination Affidavit Form 3, 4) HRC Joint Venture Form 4 (if applicable), and 5) HRC Employment Form 5. If these forms are not returned with the proposal, the proposal may be determined to be non-responsive and may be rejected.

b. Please submit only two copies of the above forms with your proposal. The forms should be placed in a separate, sealed envelope labeled HRC Forms.

If you have any questions concerning the HRC Forms, you may call Naomi Steinway, assigned Contract Compliance Officer for SFMTA at (415) 701-4363.

VII. Contract Requirements

A. Standard Contract Provisions

The successful proposer will be required to enter into a contract substantially in the form of the Agreement for Professional Services, attached hereto as Appendix F. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsement, surety 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 are urged to pay special attention to the requirements of Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits, (§34 in the Agreement); the Minimum Compensation Ordinance (§43 in the Agreement); the Health Care Accountability Ordinance (§44 in the Agreement); and applicable conflict of interest laws (§23 in the Agreement), as set forth in paragraphs B, C, D, E and F below.

B. Nondiscrimination in Contracts and Benefits

The successful proposer will be required to agree to comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the HRC's website at www.sfhrc.org.

C. 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.

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/mco.

D. Health Care Accountability Ordinance (HCAO)

The successful proposer will 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. Contractors 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/olse/hcao.

E. First Source Hiring Program (FSHP)

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 and from the First Source Hiring Administrator, (415) 401-4960.

F. Conflicts of Interest

The successful proposer will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including 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. The successful proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the successful proposer might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful proposer that the City has selected the proposer.

VIII. Protest Procedures

A. PROTEST OF NON-RESPONSIVENESS DETERMINATION

Within five working days of the City's issuance of a notice of non-responsiveness, any firm that has submitted a proposal and believes that the City has incorrectly determined that its proposal is non-responsive may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day following the City's issuance of the notice of non-responsiveness. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

B. Protest of Contract Award

Within five working days of the City's issuance of a notice of intent to award the contract, any firm that has submitted a responsive proposal and believes that the City has incorrectly selected another proposer for award may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day after the City's issuance of the notice of intent to award.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent

the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

C. Delivery of Protests

All protests must be received by the due date. If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the City received the protest. Protests or notice of protests made orally (e.g., by telephone) will not be considered. Protests must be delivered to:

William R. Smith, CEAP, CSAP
San Francisco Municipal Transportation Agency
Substance Abuse Program
949 Presidio Avenue, Room 224
San Francisco, CA 94115
Fax: (415) 923-6287
E-mail: Reggie.Smith@sfmta.com

D. Attestation of Compliance

It is the policy of the SFMTA that only employees identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from Proposers or potential Proposers seeking to influence the contractor selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the contractor selection is finally approved by the SFMTA Board of Directors.

All firms and subcontractor(s) responding to this RFP are prohibited from contacting any Board member, elected official, SFMTA or SFMTA staff member, other than the contact person listed in Section VI.B or as otherwise expressly authorized herein, from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA. This prohibition does not apply to communications with a Board member, elected official, SFMTA or SFMTA staff member regarding normal SFMTA business not regarding or related to this RFP.

All firms and subcontractor(s) responding to this RFP are notified that any written communications sent to one or more members of the SFMTA Board of Directors concerning a pending contract solicitation will be distributed by the SFMTA to all members of the SFMTA Board of Directors and the designated staff contact person(s) identified in the RFP.

Additionally, the firms and subcontractor(s) will not provide any gifts, meals, transportations, materials or supplies or any items of value or donations to or on behalf of any Board member, elected official, SFMTA or SFMTA staff member from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA.

All lobbyists or any agents representing the interests of proposing prime contractors and subcontractor(s) shall also be subject to the same prohibitions.

An executed Attestation of Compliance (Appendix C) certifying compliance with this section of the RFP will be required to be submitted signed by all firms and subcontractor(s) as part of the response to the this RFP. Any proposal that does not include the executed Attestation of Compliance as required by this section will be deemed non-responsive and will not be evaluated. Any Proposer who violates the

representations made in such Attestation of Compliance, directly or through an agent, lobbyist or subcontractor will be disqualified from the selection process.

City & County of San Francisco HUMAN RIGHTS COMMISSION

HRC ATTACHMENT 2

Requirements for Architecture, Engineering, & Professional Services Contracts For Contracts \$29,000 and over

PART I. GENERAL

1.01 SAN FRANCISCO ADMINISTRATIVE CODE CHAPTERS 12B AND 14B

- A. To be eligible for this contract award, prime proposers must agree to comply with the Local Business Enterprise (LBE) requirements sanctioned by San Francisco Administrative Code Chapter 12B, Section 12B.4 and Chapter 14B, and its implementing Rules and Regulations. Chapters 12B and 14B are administered and monitored by the San Francisco Human Rights Commission (HRC).
- B. Chapters 12B and 14B and their implementing Rules and Regulations are incorporated by reference herein as though fully set forth and provide that the failure of any proposer or consultant to comply in good faith with these requirements shall be deemed a material breach of contract. Copies of both Chapters 12B and 14B and their implementing rules and regulations are available on the HRC website at www.sfgov.org/sfhumanrights.
- C. Chapter 14B allows for a ten percent (10%) rating discount for firms and non-profit organizations certified by HRC on Architecture, Engineering, and Professional services contracts. The term “rating discount” hereafter shall be known as “rating bonus” in HRC Attachment 2
- D. Questions regarding HRC Attachment 2 and accompanying forms for this Professional Services Contract(s), namely, RFP(s) (08-1002/08-1003) Mobile On and Offsite Breath and Urine Collection Services should contact SFMTA’s Contract Compliance Office(CCO) at (415) 701-4363, One South Van Ness Ave., 3rd Floor, San Francisco, CA 94103.
- E. In addition, for assistance with LBE Certification or compliance with the Equal Benefits Program, please contact the HRC Main Office at (415) 252-2500 or LBE Certification Unit (415) 252-2537 or (415) 252-2530.
- F. The LBE subconsulting participation goal has been waived on this contract(s). Firms submitting proposals are strongly urged to use their good faith efforts to, where feasible, include LBE subconsultants for work under this proposal(s).
- G. **Certification Application**
LBE Certification Application
 - a. Prime proposers must be certified as LBEs on the proposal due date to qualify for a rating bonus.
 - b. Any proposer who is in the process of appealing the Director’s denial of certification or revocation of certification for other contracts shall not be considered an LBE.
 - c. The Certification Application is available on the HRC website at

1.02 SUBMISSION OF HRC FORMS

- A. Unless otherwise authorized by SFMTA's CCO, the prime proposer must submit the following HRC forms in a separate envelope marked "HRC Forms" with the proposal. Failure to complete or submit any of the HRC Forms may cause the proposer to be deemed non-responsive and ineligible for contract award.

Review the specific instructions and requirements on each HRC form.

1. **Form 2A: HRC Contract Participation Form:** Identify LBE subconsultants, vendors, and lower tier subconsultants listed on this form for LBE subconsultant credit. Check the appropriate box under Ratings Bonus.
2. **Form 2B: HRC "Good Faith Outreach" Requirements Form:** Document solicitation of LBE participation. This form must be submitted EVEN IF the LBE subconsultant goal has been met. Attach supporting documentation. (**Note: LBE sub participation goal waived on this project.**)
3. **Form 3: HRC Non-Discrimination Affidavit:** Must be signed by Proposer under penalty of perjury.
4. **Form 4: HRC Joint Venture Form:** Submit ONLY if the firms are requesting a rating bonus based on LBE participation in a joint venture partnership.
5. **Form 5: HRC Employment Form:** List the key personnel and responsibilities of the Proposer, Joint Venture partners, and Subconsultants.
6. **HRC 12B-101 Form:** Submit only if the Prime Consultant is not already in compliance with Equal Benefits Requirements. This form is available on the HRC website at www.sfgov.org/sfhumanrights.
7. Note the following information:
 1. HRC Attachment 2 forms are available on the HRC website at www.sfgov.org/sfhumanrights.
 2. For contracts over \$10 million, the rating bonus is not applicable.
 3. Except where the contract awarding authority has obtained a waiver from HRC, any proposal submitted without a completed Form 2A and Form 2B may be deemed non-responsive and rejected.
 4. LBE subconsultant goal can only be met with HRC certified LBEs identified on the HRC LBE directory website at www.sfgov.org/sfhumanrights.

C. HRC Contract Performance Forms

The following HRC forms are submitted with progress and final payment requests.

Review instructions and specific information requested on each form:

1. **Form 7: HRC Progress Payment Form:** Submit to Contract Awarding Authority and to HRC for each payment request. **Note:** Page 2; column "A" of the form, ALL firms must be continuously listed including lower tier subconsultants for each payment request.
2. **Form 9: HRC Payment Affidavit:** Submit within ten (10) working days to Contract Awarding Authority and HRC following receipt of each progress payment from the Contract Awarding Authority. This form must be submitted EVEN IF there is no subconsultant

payment and until completion of the contract.

3. **Form 8: HRC Exit Report and Affidavit:** Submit with Form 7 to Contract Awarding Authority and HRC. Each LBE subconsultant and vendor (including lower tier subconsultants and vendors) must complete this form.
4. **Form 10: HRC Contract Modification Form:** Submit with appropriate documentation when original contract amount increases more than 20%.

Failure to submit any HRC contract performance forms may result in sanctions under Section 14B.11.C including but not limited to withholding or delaying progress and final payments.

1.03 “GOOD FAITH OUTREACH” REQUIREMENTS

- A. All proposers shall achieve the LBE goal and undertake good faith outreach as set forth in Section 14B.8(C) of the ordinance to select subconsultants to meet the LBE goal. Proposals that do not meet the LBE goal set under 14B.8(A) of the ordinance will be rejected as non-responsive unless the HRC Director finds that the proposer diligently undertook all the good faith efforts required by the Ordinance and that the failure to meet the goal resulted from an excusable error. The contract awarding authority shall require proposers on the contracts to contact an LBE before listing that LBE as a subconsultant in the proposal. A proposal that fails to comply with this requirement will be rejected as non-responsive.
- B. The proposer must perform the following seven (7) “good faith outreach” requirements:
 - (1) Attending any presolicitation or proposal meetings scheduled by the City to inform all proposers of LBE program requirements for the project for which the contract is awarded;
 - (2) Identifying and selecting subconsulting opportunities to meet LBE goals;
 - (3) Advertising for LBE subconsultants and vendors by posting the opportunity in an accessible location, specified by the City, not less than 10 calendar days before the date the proposals can first be submitted. This applies only if the City gave public notice of the project not less than 15 calendar days prior to the date the proposals can first be submitted;
 - (4) Contacting LBEs certified to perform the identified work;
 - (5) Providing LBEs that have notified the proposers of their interest with adequate information about the plans, specifications, and requirements for the work, provided that the Director may cap the number of contacts required;
 - (6) Negotiating in good faith with LBEs, and not unjustifiably rejecting their bids or proposals; and
 - (7) Advising and assisting interested LBEs to obtain bonds, lines of credit, or insurance required by the City or the Proposer.

Note: Proposers are required to document and submit Form 2B and supporting documentation EVEN IF the LBE subconsultant goal has been met.

- C. Each proposer shall document “good faith outreach” and include the documentation with the proposal. Such documentation shall include: (a) the dollar amount of each subconsultant and a statement of the scope of work to be performed under the subcontract; (b) the identification of each subcontract awarded to an LBE; (c) for each subcontract, copies of the subconsultant billing rates submitted. Such documentation shall contain at least the billing rates and a description of the scope of work. If no written billing rates were submitted by some or all of the subconsultants who bid the job, the proposer shall submit a written statement containing

(i) the amount of each contract amount; and separately, for each subcontract, a full and complete statement of the reason(s) for selection of the subconsultant. If the reason is based on relative qualifications, the statement must address the particular qualifications at issue. If the reason is the respective billing rates, the statement must state the amounts and describe the similarities and/or dissimilarities in the scope of work covered by the billing rates. Proposers also shall maintain the documentation described in this paragraph for three years following submission of the proposal or completion of the contract, whichever is later.

1.04 NON COMPLIANCE AND SANCTIONS

A. Non-Compliance with Chapter 14B

1. A complaint of discrimination or non-compliance concerning LBE participation initiated by any party after contract award will be processed in accordance with Chapter 14B and its implementing rules and regulations.
 - a. If the HRC Director determines that there is cause to believe that a consultant has failed to comply with any of the requirements of the 14B ordinance, HRC rules and regulations, or contract provisions pertaining to LBE participation, the HRC Director shall notify the contract awarding authority and attempt to resolve the non-compliance through conference and conciliation.
 - b. If the non-compliance is not resolved through conference and conciliation, the HRC Director shall conduct an investigation and, where the Director so finds, issue a written Finding of Non-Compliance.
 - c. The Director's finding shall indicate whether the consultant acted in good faith or whether noncompliance was based on willful or bad faith noncompliance with the requirements of Chapter 14B, HRC rules and regulations, or contract provisions pertaining to LBE participation.
2. Where the Director finds that the consultant acted in good faith, after affording the consultant notice and an opportunity to be heard, the Director shall recommend that the contract awarding authority take appropriate action. Where the Director finds willful or bad faith noncompliance, the Director shall impose sanctions for each violation of the ordinance, HRC rules and regulations, or contract provisions pertaining to LBE participation, which may include:
 - i) reject all proposals;
 - ii) declare a proposal non-responsive;
 - iii) suspend a contract;
 - iv) withhold funds;
 - v) assess penalties;
 - vi) debarment;
 - vii) deny HRC certification;
 - viii) revoke HRC certification; or
 - ix) pursuant to 14B.7(H)(2), assess liquidated damages in an amount equal to the consultant's net profit on the contract, 10% of the total amount of the contract or \$1,000, whichever is greatest as determined by HRC.
3. The Director's determination of non-compliance is subject to appeal pursuant to Rule XV.B(7).
4. An appeal by a consultant to the Commission shall not stay the Director's findings.
5. The HRC Director may require such reports, information and documentation from consultants, subconsultants, contract awarding authorities, and heads of departments,

divisions, and offices of the City and County as are reasonably necessary to determine compliance with the requirements of Chapter 14B.

B. Procedure for the Collection of Penalties is as follows:

1. The HRC Director shall send a written notice to the Controller, the Mayor and to all contract awarding authorities or City and County department officials overseeing any contract with the proposer or consultant that a determination of bad faith non-compliance has been made and that all payments due the proposer or consultant shall be withheld as agreed to by the prime consultant or subconsultant and the City and County.
2. The HRC Director shall transmit a report to the Controller and other applicable City departments to ensure that the liquidated damages are paid to the City.

PART II. RATING BONUS

2.01 APPLICATION

- A. **Eligibility for the LBE Rating bonus:** Certified local business enterprises (LBEs) and non-profit organizations are eligible for an LBE rating bonus on Architecture, Engineering, or Professional Service contracts that have an estimated cost that exceeds \$10,000.
- B. **Application of the Rating bonus:** The following rating bonus will apply to all proposals for Architecture, Engineering, or Professional contracts estimated to cost over \$10,000. The rating bonus shall apply at each stage of the selection process, i.e., qualifications, proposals, and interviews. After Proposers have been scored at each of the stages, the rating bonus will be applied to the scores as follows:
 1. 10% for HRC certified LBEs.
 2. 10% for each joint venture, which is composed of only LBEs.
 3. 5% for each joint venture which includes at least 35% (but less than 40%) prime participation by certified LBEs.
 4. A maximum of 7.5% for each joint venture that includes 40% or more in prime participation by certified local LBEs.
 5. The rating bonus will be applied by adding 5%, 7.5%, or 10% (as applicable) to the score of each firm eligible for a bonus for purposes of determining the highest ranked firm.
- C. The Rating Bonus does not apply for contracts estimated by the Contract Awarding Authority to be \$10 million and over.

2.02 JOINT VENTURE/PRIME ASSOCIATION

- A. The LBE joint venture partner must be responsible for a clearly defined portion of the work to be performed. The ratings bonus is applied only when the LBE partner has sufficient skill,

experience, and financial capacity to perform the portion of the work identified for the LBE. This portion must be set forth in detail separately from the work to be performed by the non-LBE JV partner. The joint venture partners must be of the same or similar discipline in order to be eligible for a rating bonus. The joint venture partners will be jointly responsible for the overall project management, control, and compliance with 14B requirements.

1. The LBE JV partner's work must be assigned a commercially significant dollar value of the prime work and use its own employees and equipment.
 2. Each member of the joint venture partner must perform a “commercially useful function” as that term is defined by Section 14B.2 of the Chapter 14B ordinance. An LBE that relies on the resources and personnel of a non-LBE firm will not be deemed to perform a “commercially useful function.”
 3. Unless permission is granted by the HRC Director for good cause shown, the following actions are prohibited: i) the non-LBE partner performing work for the LBE partner; ii) leasing of equipment or property by the LBE partner from the non-LBE partner; and iii) the hiring of the non-LBE partner’s employees by the LBE partner.
 4. The LBE JV partner must share in the ownership, control, management and administrative responsibilities, risks, and profit of the JV in direct proportion to its stated level of JV participation.
 5. The LBE JV partner must perform work that is commensurate with its experience.
 6. A JV must submit an executed JV agreement and management plan detailing each JV partner’s responsibilities and tasks.
- B. A prime association or partnership is considered the same as a joint venture and will need to comply with all the requirements stated above. Prior to award of the contract, the prime association partners must also meet the following requirements:
1. A prime association must apply to the IRS for a new Federal ID number for that entity.
 2. A new tax registration certificate must be obtained from the City Tax Collectors Office for that entity.
- C. The proposal items to be performed by LBE joint venture partners must be identified separately and all work must be accounted for, including subconsulting work.
- D. The cost of the work to be performed by the LBE JV partners is to be calculated as a percentage of the work to be performed by the joint venture partners. The joint venture should deduct the amount of work to be performed by subconsultants from its total contract amount. This percentage is used to determine whether or not the joint venture is eligible for a rating bonus.

EXAMPLE:

Step 1. Calculate total JV partner work:

Total Contract Work	=	100%
Percentage of Total Contract Work Performed by Subconsultants	-	40%
Percentage of Total Contract Work Performed by JV partners	=	60%

Step 2. Calculate LBE JV partner work:

	A	B	C
Description of JV Partners' Scopes of Work	JV Partners' Work as a % of the total contract	% of Task by Non-LBE JV Partner	% of Task by LBE JV Partner
TASK 1	5%	3%	2%
TASK 2	20%	11%	9%
TASK 3	25%	12.5%	12.5%
TASK 4	10%	6%	4%
TOTAL JV Partner %	60%	32.5%	27.5%

Step 3. Calculate LBE JV partner work as a percentage of the total JV partner work for the rating bonus.

Total LBE JV %	27.5%	÷	Total JV %	60%	=	45.8%
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The LBE JV partner's participation is 45.8%. The JV is therefore eligible for a 7.5% rating bonus.

PART III SUBCONSULTANT PARTICIPATION

3.01 SUBCONSULTING GOAL

- A. All proposers shall achieve the LBE subconsulting goal (is the LBE goal has not been waived) and undertake good faith outreach as set forth in Section 14B.8(C) of the ordinance to select subconsultants to meet the LBE goal. Where there are LBEs available for doing portions of the work normally performed by the proposer with its own staff, the proposer will be expected to make good faith efforts to make portions of such work available for LBEs.

Proposals that do not meet the LBE participation goal set under 14B.8(A) of the ordinance will be rejected as non-responsive unless the HRC Director finds that the proposer diligently undertook all the good faith efforts required by this ordinance and that the failure to meet the goal resulted from an excusable error.

- B. Proposers must identify on Form 2A the particular LBE subconsultants and lower tier subconsultants to be utilized in performing the contract, specifying for each the percentage of participation, the type of work to be performed and such information as the HRC reasonably shall require to determine the responsiveness of the proposal.

The proposer must contact LBE subconsultants prior to listing them. LBEs must be certified with HRC by the proposal due date to receive LBE subconsulting credit. Failure to comply with this requirement will render a proposal non-responsive.

Additionally, subconsultants should not enter into any agreement that limits their ability to be listed or utilized by more than one proposer.

For a directory of certified LBEs, please go to www.sfgov.org/sfhumanrights.

- C. Any subconsultant who is in the process of appealing the Director's denial of certification or revocation of certification shall not be considered an LBE.

- D. The awarding proposer shall submit performance reports on LBE participation at 30%, 50%, 70%, and 90% completion to the Contracting Awarding Authority and HRC.
- E. Determination and calculation of LBE subconsultant participation:

1. The LBE subconsultant shall be listed to perform a specific task, which is described in the RFP or RFQ.
2. If the LBE subconsultant forms a joint venture with a non-LBE subconsultant, the LBE subconsultant joint venture partner will be credited only for its portion of the work, as follows:

EXAMPLE:

If the total subcontract amount = \$ 1,000,000 of which
\$510,000 is the LBE subcontract amount and \$490,000 is the non-LBE subcontract amount,
then \$510,000 is credited toward the LBE goal.

3. All work done by lower-tier LBE subconsultants will be credited toward meeting the goal.

EXAMPLE:

If the total subcontract amount = \$1,000,000,
of which \$200,000 is the lower-tier LBE subconsultant's portion,
then \$200,000 is credited toward the LBE goal.

4. The work provided by the LBE subconsultant must be the same or similar type of work performed by the LBE in the normal course of its business.
5. If a Proposer owns or controls more than one business that is HRC certified as an LBE, the proposer will not receive credit if it lists its other firms to meet the LBE subconsulting goal when submitting as a prime. In determining ownership of a business, a business owned by proposer's spouse or domestic partner shall be deemed to be owned by the proposer.
6. It is the responsibility of the proposer to verify the subconsultant's LBE certification status.
7. A certified LBE can only be utilized in the discipline(s) for which it is certified by HRC.
8. The LBE subconsultant must be utilized on the contract to perform a commercially useful function. No credit will be given for a LBE that serves as a pass-through or conduit.
9. An LBE Prime proposer cannot list itself to meet the LBE subconsultant goal.

F. Substitution, removal, or contract modification of LBE:

No LBE subconsultant listed on Form 2A shall be substituted, removed from the contract or have its contract, purchase order or other form of agreement modified in any way without prior HRC approval. Additionally, no new subconsultants shall be added without prior HRC approval.

PART IV EMPLOYMENT NON-DISCRIMINATION AND ECONOMICALLY DISADVANTAGED WORKFORCE HIRING PROVISIONS

4.01 GENERAL

As a condition of contract award, Consultants and subconsultants shall comply with the nondiscrimination in employment provisions required by Chapter 12B of the Administrative Code and the hiring of economically disadvantaged persons as required by the City's First Source

4.02 NONDISCRIMINATION PROVISIONS

- A. Prior to the award of the contract, the consultant must agree that it does and will not, during the time of the contract or any contract amendment, discriminate in the provision of benefits between its employees with spouses and employees with domestic partners.
- B. The consultant and subconsultants on this contract will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status, weight, height, or association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Discrimination on the basis of sex includes sexual harassment as defined in Section 16.9-25(b) of this Code. The Consultant, Contractor or Subconsultant/Subcontractor will take action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to the fact or perception of their race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or AIDS/HIV status. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

C. Non-Compliance with Chapter 12B Prior to Contract Award

The consultant and any subconsultants must be in compliance with the nondiscrimination provisions of Chapter 12B, on all existing City contracts prior to award of this contract.

Prior to the award of any City contract, the HRC has the authority to review the consultant's and subconsultant's prior performance to ensure compliance with the nondiscrimination provisions of Chapter 12B.

If the HRC determines that there is cause to believe that a consultant or subconsultant is not in compliance with the nondiscrimination provisions of Chapter 12B, the HRC shall notify the contract awarding authority and attempt to resolve the non-compliance through conciliation.

- 1. If the non-compliance cannot be resolved, the HRC shall submit to the consultant or subconsultant and the contract awarding authority a written Finding of Non-compliance.
- 2. The HRC shall give the consultant or subconsultant an opportunity to appeal the Finding.
- 3. The HRC may stay the award of any contract to a consultant where the consultant or any subconsultant is the subject of an investigation by written notice to the contract-awarding agency.

D. Complaints of Discrimination after Contract Award

- 1. A complaint of discrimination in employment initiated by any party after contract award shall be processed in accordance with the HRC Rules of Procedure, adopted pursuant to Chapter 12B of the San Francisco Administrative Code.
- 2. A finding of discrimination may result in imposition of appropriate sanctions, including:
 - a. There may be deducted from the amount payable to the consultant or subconsultant under this contract a penalty of \$50 for each person for each calendar day the person was discriminated against in violation of the provisions of the contract.

- b. The contract may be canceled, terminated or suspended in part by the contract awarding authority.
- c. The consultant, subconsultant or vendor may be determined ineligible to perform work or supply products on any City contract for a period not to exceed two years.

4.03 TRAINEES – FIRST SOURCE HIRING PROGRAM

- A. **Trainee Requirements:** Consultants are required to comply with the City's First Source Program, Administrative Code Section 83, which fosters employment opportunities for economically disadvantaged individuals. Consultants are required to notify the First Source Program 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. These hires count toward the First Source Hiring requirements. Trainees may be obtained through the City's One Stop Employment Center, which works with various employment and job training agencies/organizations or other employment referral source.

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

NOTE: (> = \$14M, for each additional \$3 million in consultant fees, add one additional trainee)

1. The trainee must be hired by the prime consultant or by any subconsultant on the project team.
2. No trainee may be counted towards meeting more than one contract goal.
3. A trainee must meet qualifications for enrollment established under the City's First Source Hiring Program as follows:
 - (i) "Qualified" with reference to an economically disadvantaged individual shall mean an individual who meets the minimum bona fide occupational qualifications provided by the prospective employer to the San Francisco Workforce Development System in the job availability notices required by the Program, and
 - (ii) "Economically disadvantaged individual" shall mean an individual who is either: (1) eligible for services under the Workforce Investment Act of 1988 (WIA) (29 U.S.C.A 2801 et seq.), as determined by the San Francisco Private Industry Council; or (2) designated "economically disadvantaged" for the First Source Hiring Administration, as an individual who is at risk of relying upon, or returning to, public assistance.
4. On-the-job Training (to be provided by the consultant): The consultant shall hire the trainee on a full-time basis for at least 12 months or on a part-time basis for 24 months, with prior approval offering him/her on-the-job training which allows the trainee to progress on a career path.

5. A summary of a job description and training for the trainee with the rate of pay should be submitted for approval.
6. The trainee's commitment does not require that he/she is used only on this project, but also on other projects under contract to the Architect, Engineering, or Professional firm, which is appropriate for the trainee's skill development.

FORM 2A: HRC CONTRACT PARTICIPATION FORM

Section 1: This form must be submitted with the proposal or the proposal may be deemed non-responsive and rejected. Prime Proposer, each Joint Venture Partner, Subconsultants, Vendors, and lower sub tiers must be listed on this form. Only HRC certified LBEs can be used to meet the LBE subconsultant goal.

Be sure to check box for Rating Bonus. If more space is needed, attach additional copies of this form. This form is also completed and submitted for all contract modifications, which exceed the original contract amount by more than 20%.

Contract:	RFP (08-1002 and 08-1003): On-Site and Offsite Breath and Urine Collection Services	RATING BONUS	
		<input type="checkbox"/> LBE 10%	<input type="checkbox"/> Joint Venture 7.5%
Firm:		<input type="checkbox"/> Joint Venture 5%	<input type="checkbox"/> Joint Venture 10% (LBEs ONLY)
Contact Person:		<input type="checkbox"/> No Rating Bonus Requested	
Address:		LBE Goal 0%	
City/ZIP			
Phone			

***Type: Identify if prime (P), JV partner (J), Subconsultant (S), or Vendor (V)**

TYPE *	Firm	PORTION OF WORK (describe scope(s) of work)	% OF WORK	INDICATE LBE YES/NO	If an LBE, Identify MBE, WBE, or OBE *	% OF LBE SUBWORK
			%			%
			%			%
			%			%
			%			%
		Total % of Work: 100%		Total LBE Subconsulting%		%
I declare, under penalty of perjury under the laws of the State of California, that I am utilizing the above contractors for the portions of work and amounts as reflected in the Bid Documents for this Contract.						
Owner/Authorized Representative (Signature):				Date:		
Print Name and Title:						

MBE = Minority Business Enterprise, WBE = Women Business Enterprise, OBE = Other Business Enterprise. See HRC website (http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS_1.htm) for each firm's status.

Section 2. Prime Proposer, Joint Venture Partners, Subconsultant, and Vendor Information

Provide information of each firm listed in Section 1 of this form. Firms which have previously worked on City contracts may already have a vendor number. Vendor numbers of LBE firms are located in the HRC LBE website at www.sfgov.org/sfhumanrights. Use additional sheets if necessary.

FIRM				VENDOR #:	
ADDRESS:				FEDERAL	
CITY, ST,		PHON		FAX:	
SERVICE:					

FIRM				VENDOR #:	
ADDRESS:				FEDERAL	
CITY, ST,		PHON		FAX:	
SERVICE:					

FIRM				VENDOR #:	
ADDRESS:				FEDERAL	
CITY, ST,		PHON		FAX:	
SERVICE:					

FIRM				VENDOR #:	
ADDRESS:				FEDERAL	
CITY, ST,		PHON		FAX:	
SERVICE:					

FIRM				VENDOR #:	
ADDRESS:				FEDERAL	
CITY, ST,		PHON		FAX:	
SERVICE:					

FIRM				VENDOR #:	
ADDRESS:				FEDERAL	
CITY, ST,		PHON		FAX:	
SERVICE:					

FORM 2B: HRC “GOOD FAITH OUTREACH” REQUIREMENTS FORM

The Good Faith Outreach” form with the required supporting documentation must be completed and submitted with the proposal EVEN IF the LBE subconsultant goal has been met. (**Chapter 14B Ordinance, Section 14B.8 – Subcontracting – C. “Good Faith Outreach”**).

A proposer who fails to undertake the required “good faith outreach” steps listed below and who fails to submit the documentation of “good faith outreach” shall be declared non-responsive, and the proposal will be rejected. Answering “No” to any of the items below may result in the proposal being deemed non-responsive and rejected.

Attach sheet(s) and respond to each numbered item and submit with this form.

1. Did your firm attend the pre-proposal meeting scheduled by the City to inform all Proposers of LBE program requirements for this contract?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Did your firm identify and select subconsulting opportunities to meet the LBE goal?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
a. Has your firm enclosed a list of disciplines and/or services selected?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Did your firm advertise, not less than 10 calendar days before the due date of the proposal, in one or more daily or weekly Newspapers, trade association publications, LBE trade oriented publications, trade journals, or other media, such as the Daily Pacific Builder, Daily Construction Service, or the Bid and Contracts Section of the Office of Contract Administration’s website?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
a. Has your firm attached a copy of the “Advertisement?” (The requirement of this item 3 only applies if the City gave public notice of the RFP/RFQ not less than 15 calendar days prior to the proposal due date.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4. Did your firm obtain from the HRC website www.sfgov.org/sfhumanrights for the list of certified LBEs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Did your firm provide notice of interest in bidding on the contract to the certified LBEs for each identified item (by trade) not less than 10 (ten) calendar days prior to the proposal due date?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
The number of firms to be notified:		
If the HRC list identifies 1-25 available LBEs for the identified item (by trade), your firm must notify all of them.		
If the HRC list identifies 26-50 LBEs for the identified item (by trade), your firm must notify 75% of the identified firms.		
If the HRC list identifies 51-75 LBEs for the identified item (by trade), your firm must notify 50% of the identified firms.		
If the HRC list identifies 76-100 LBEs for the identified item (by trade), your firm must notify 30% of the identified firms.		
If the HRC list identifies 101 or more LBEs for the identified item (by trade), your firm must notify 25% of identified firms.		
Did your firm contact the required number of LBE firms?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Include documentation to verify the above-contacts:		
▪ If contact was made in writing, has your firm enclosed a copy of the request?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
▪ If contact was made via telephone, has your firm enclose copies of telephone logs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

5. Did your firm provide LBEs that have notified you of their interest with adequate information about the plans, specifications, and requirements for the work?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6. Did your firm negotiate in good faith with LBEs, and not unjustifiably reject their proposals?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7. Did your firm advise and assist interested LBEs to obtain bonds, lines of credit, or insurance required by the City?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8. For each discipline and/or service your firm identified for LBE subconsulting outreach:		
▪ Has your firm enclosed copies of all written bids/proposals submitted, including those from non-LBEs?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
▪ If oral bids/proposals were received, has your firm included a list of all such bids/proposals, including those from non-LBEs (specify the discipline/service and dollar amounts for each such bid/proposal)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
▪ Has your firm included a full and complete statement of the reasons for selection of the subconsultant for that trade? (If the reason is based on relative qualifications, the statement must address the particular qualifications at issue. If the reason is based on the proposal amounts, the statement must include the amounts and describe the similarities and/or dissimilarities in the scope of work covered by the proposals.)	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Signature of Owner/Authorized Representative:	
Owner/Authorized Representative (Print)	
Name of Firm (Print)	
Title and Position	
Address, City, ZIP	
E-mail:	
Date:	

FORM 3: HRC NON-DISCRIMINATION AFFIDAVIT

- I will ensure that my firm complies fully with the provisions of Chapter 14B of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
- I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the Human Rights Commission shall be payable to the City and County of San Francisco upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.
- I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

Signature of Owner/Authorized Representative:	
------------------------------------------------------	--

Owner/Authorized Representative (Print)	
Name of Firm (Print)	
Title and Position	
Address, City, ZIP	
Federal Employer Identification Number (FEIN):	
Date:	

FORM 4: HRC JOINT VENTURE FORM

This form must be submitted ONLY if the proposer is requesting a Joint Venture partnership with an LBE firm for the rating bonus. The Joint Venture partners must submit a joint venture agreement and management plan with the proposal. All work must be accounted for including subconsulting work.

SECTION 1: GENERAL INFORMATION

1. Name of Contract or Project:

2. Name of all JV partners: (Check LBE if applicable)

	LBE	<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>
		<input type="checkbox"/>

Attach a copy of Joint Venture Agreement and Management plans.

4. The management plan must include the following information:

- a. Describe in detail how decisions will be made for work distribution and compliance of LBE Joint Venture participation.
- b. Provide each Joint Venture partner's specific duties and responsibilities (include organizational chart)
- c. Identify the Location of Joint Venture Office.
- d. Provide in detail how decision will be made for work distribution to LBE subconsultants and/or vendors.
- e. Submit copies of bank signature cards with authorized names, titles, and address/city of the bank (required after award of contract.)

5. Calculation of the Rating Bonus. See §2.02D of HRC Attachment 2 for an example.

If the joint venture partners are dividing the work according to a different formula than that described below, please contact HRC staff and describe the arrangement in detail prior to submittal of proposal.

Joint venture partners are encouraged to meet with HRC regarding their joint venture prior to submitting their proposal.

The rating bonus is awarded based on the LBE JV partner tasks calculated as a percentage of the

total JV partner tasks.

Step 1. Calculate total JV partner tasks.

Total Contract Tasks	=	100%
Percentage of Total Work to be Performed by Subconsultants	-	%
Percentage of JV partner tasks	=	%

Step 2. Calculate LBE JV partner tasks:

	A	B	C
Description of JV partner Scopes of Work (Specific details of work)	JV Partners' Work as a % of the total	% of Task by Non-LBE JV Partner	% of Task by LBE JV Partner
	%	%	%
	%	%	%
	%	%	%
	%	%	%
	%	%	%
TOTAL JV %	%	%	%

Step 3. Calculate LBE JV partner work as a percentage of the total JV partner work for the rating bonus.

Total LBE JV Partner %		÷	Total JV %		=	%
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JOINT VENTURE PARTNERS MUST SIGN THIS FORM

Owner/Authorized Representative (Signature)		Owner/Authorized Representative (Signature)	
Name and Title (Print)		Name and Title (Print)	
Firm Name		Firm Name	
Telephone	Date	Telephone	Date

FORM 5: HRC EMPLOYMENT FORM

This form is to be submitted with the proposal.

1. Indicate personnel designated to work on this project for the entire project team (prime proposer, joint venture partners, subconsultants, and vendors).

The employees listed should include all those listed in other sections of the proposal.

NAME OF FIRM	NAME OF EMPLOYEE	PROJECT ROLE	RACE	SEX

Indicate the Number of disadvantaged individuals that will be hired as on –the-job-trainees by the entire project team. See §4.03 of HRC Attachment 2.

a. Estimated Project Fee:		\$
b. HRC on-the-job training goal:		
c. Number of on-the-job-trainees that will be hired by the project team		
d. If less than HRC goal, explain:		
e. Length of training:		If less than 12 months, explain

Sign below including each joint venture partner.

Owner/Authorized Representative (Signature)		Owner/Authorized Representative (Signature)	
Name and Title (Print)		Name and Title (Print)	
Firm Name		Firm Name	
Telephone	Date	Telephone	Date

FORM 7: HRC PROGRESS PAYMENT FORM

To be completed by Consultant and submitted to the Contract Awarding Authority and HRC with its monthly progress payment application (transmit to the following):

TRANSMITTAL

TO:	Project Manager/Designee	COPY TO:	HRC Contract Compliance Officer
Firm:		Date:	

SECTION 1. Fill in all the blanks

Contract Number:		Contract Name:	
Reporting Period From:		To:	
		Progress Payment No:	

The information submitted on Sections 1 and 2 of this form must be cumulative for the entire contract as opposed to individual task orders. Additionally, the information submitted on Sections 1 and 2 of this form must be accurate for the progress payment period immediately preceding that of the current payment application attached herewith

1. Amount of Prime Contract:	\$
2. Amount of Amendments and Modifications to Date:	\$
3. Total Contract to Date including Amendments and Modifications (Line 1 + Line 2):	\$
4. Sub-total Amount Invoiced this submittal period: Professional Fees	\$
5. Sub-total Amount Invoiced this submittal period: Reimbursable Expenses	\$
6. Total Amount Invoiced this submittal period (Line 4 + Line 5):	\$
7. Total Amount Paid to Date including Retainage Received:	\$
8. Amount of Progress Payments Requested to Date:	\$
9. Percent Completed (Line 8 ÷ Line 3):	%

Consultant, including each joint venture partner, must sign this form.

Owner/Authorized Representative (Signature)		Owner/Authorized Representative (Signature)	
Name (Print)		Name (Print)	
Title (Print)		Title (Print)	
Firm Name		Firm Name	
Telephone	Fax	Telephone	Fax
	Date		Date

SECTION 2. For column “A”, list the Prime Consultant, each joint venture partner and ALL subconsultants and vendors including 2nd and 3rd tier subconsultants. Make copies if more space is 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.

**Notes: 1) ALL firms must be CONTINUOUSLY listed on column “A” regardless if a firm is not requesting payment and
2) Failure to submit all required information may lead to partial withholding of progress or final payment.**

Identify LBE Goal of this contract:	%
--------------------------------------------	----------

A	B	C	D	E	F	G	H
Name of Firm. List prime consultant, including each JV partner, and all subconsultants including lower tier LBE subconsultants & vendors. Indicate if the firm is an LBE	Service Performed	Amount of Contract or Purchase order at time of Award	Amount of Modifications to Date	Total Amount of Contract or Purchase Order to Date +/- Modifications (C + D) or (C–D)	Amount Invoiced this Reporting Period	Amount of Progress Payments received and Invoiced to Date, including amount invoiced this reporting period (F).	Percent Complete to Date (G÷E)
							%
							%
							%
							%
							%
							%
							%
LBE Sub-Totals							%
Professional Fees							%
Reimbursable							%

A	B	C	D	E	F	G	H
CONTRACT							%

FORM 9: HRC PAYMENT AFFIDAVIT

Consultant or Joint Venture partners must submit this form to the Contract Awarding Authority and HRC within ten (10) working days following receipt of each progress payment from the Contract Awarding Authority. This form must be submitted EVEN if there is no sub payment of this reporting period and until completion of the contract.

☐ Check box and sign below if there is no sub payment for this reporting period.

TO:	Project Manager/Designee	COPY TO:	HRC Contract Compliance Officer
Firm:		Date:	

List the following information for each progress payment received from the Contract Awarding Authority. Use additional sheets to include complete payment information for all subconsultants and vendors (including lower tiers utilized on this Contract. Failure to submit all required information may lead to partial withholding of progress payment.

Contract Number:		Contract	
Contract Awarding			
Progress Payment		Period	
Amount Received:	\$	Date:	Warrant/Check

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, that the tabulated amounts paid to date are accurate and correct.

Prime consultant, including each joint venture partner, must sign this form (use additional sheets if necessary)

Owner/Authorized Representative (Signature)		Owner/Authorized Representative (Signature)	
Name (Print)	Title	Name (Print)	Title

Firm Name			Firm Name	
Telephone	Date		Telephone	Date
<u>FORM 8: HRC EXIT REPORT AND AFFIVADIT</u>				
Prime Consultant must complete and sign this form (Sections 1 and 3) for each LBE subconsultant (incl. lower tier LBE subconsultants) and supplier. LBE Subconsultants must complete and sign Section 2 of this form. These forms should be submitted to the Contract Awarding Authority with the final progress payment request.				
TRANSMITTAL				
TO:	Project Manager/Designee	COPY:	HRC Contract Compliance Officer	
FROM (Consultant):		Date Transmitted:		

SECTION 1.			
Reporting Date:		Contract Name:	
Name of LBE:		Portion of Work (Trade):	
Original LBE Contract Amount:	\$		
Change Orders, Amendments, Modifications	\$		
Final LBE Contract Amount:	\$		
Amount of Progress Payments Paid to Date:	\$		
Amount further subbed out to non LBE firms:	\$		
Amount Owning including all Change Orders, Amendments and Modifications	\$		
Explanation by Consultant if the final contract amount for this LBE is less than the original contract amount:			

SECTION 2.		
To be signed by the LBE Subconsultant or vendor:		
<input type="checkbox"/> I agree	<input type="checkbox"/> I disagree	
Explanation by LBE if it is in disagreement with the above explanation, or with the information on this form:		
Owner/Authorized Representative (Signature)		Name and Title (Print)

Firm Name		Telephone	Date
SECTION 3.			
<p>I declare, under penalty of perjury under the laws of the State of California, that the information contained in Section 1 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 three (3) days after the date of the City's final payment under the Contract.</p>			
Owner/Authorized Representative (Signature)			
Name and Title (Print)			
Firm Name			
Telephone	Date		

<u>FORM 10: HRC CONTRACT MODIFICATION FORM</u>	
<p>Consultant or Joint Venture Partners must submit this form with the required supporting documentation when processing the first contract amendment, modification or change order that cumulatively increases the original contract amount by more than 20%, and then for all subsequent requests. (This provision applies only to contracts originally valued at \$29,000 or more).</p>	
Name of Project/Contract Title:	
Original Contract Amount:	
Contract Amount as Modified to Date:	
Amount of Current Modification Request:	

REQUIRED ATTACHMENTS:

1. Revised Form 2A reflecting the new overall contract amounts for the prime consultant, joint venture partners, subconsultants, and vendors.
2. A list of all prior contract amendments, modifications, supplements and/or change orders leading up to this modification, including those leading up to the amendment which increased the original contract amount by more than 20%.
3. A list of the consultants, joint venture partners, and vendors working on this amendment, modification, or change order with the contract dollars for each individual firm.

4. A brief description of the work to be performed under this amendment, modification, or change order.

Owner/Authorized Representative			Owner/Authorized Representative	
Name (Print)	Title		Name (Print)	Title
Firm Name			Firm Name	
Telephone	Date		Telephone	Date

Appendix B Standard Forms

The requirements described in this Appendix are separate from those described in Appendix A.

Before the City can award any contract to a contractor, that contractor must file three standard City forms (items 1-3 on the chart). Because many contractors have already completed these forms, and because some informational forms are rarely revised, the City has not included them in the RFP package. Instead, this Appendix describes the forms, where to find them on the Internet (see bottom of page 2), and where to file them. If a contractor cannot get the documents off the Internet, the contractor should call (415) 554-6248 or e-mail Purchasing (purchasing@sfgov.org) and Purchasing will fax, mail or e-mail them to the contractor.

If a contractor has already filled out items 1-3 (see note under item 3) on the chart, **the contractor should not do so again unless the contractor's answers have changed.** To find out whether these forms have been submitted, the contractor should call Vendor File Support in the Controller's Office at (415) 554-6702.

If a contractor would like to apply to be certified as a local business enterprise, it must submit item 4. To find out about item 4 and certification, the contractor should call Human Rights Commission at (415) 252-2500.

Item	Form name and Internet location	Form	Description	Return the form to; For more info
1.	Request for Taxpayer Identification Number and Certification www.sfgov.org/oca/purchasing/forms.htm www.irs.gov/pub/irs-fill/fw9.pdf	W-9	The City needs the contractor's taxpayer ID number on this form. If a contractor has already done business with the City, this form is not necessary because the City already has the number.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102 (415) 554-6702
2.	Business Tax Declaration www.sfgov.org/oca/purchasing/forms.htm	P-25	All contractors must sign this form to determine if they must register with the Tax Collector, even if not located in San Francisco. All businesses that qualify as "conducting business in San Francisco" must register with the Tax Collector.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102 (415) 554-6702
3.	S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits www.sfgov.org/oca/purchasing/forms.htm – In Vendor Profile Application	HRC-12B-101	Contractors tell the City if their personnel policies meet the City's requirements for nondiscrimination against protected classes of people, and in the provision of benefits between employees with spouses and employees with domestic partners. Form submission is not complete if it does not include the additional documentation asked for on the form. Other forms may be required, depending on the answers on this form. Contract-by-Contract Compliance status vendors must fill out an additional form for each contract.	Human Rights Comm. 25 Van Ness, #800 San Francisco, CA 94102-6059 (415) 252-2500

Item	Form name and Internet location	Form	Description	Return the form to; For more info
4.	HRC LBE Certification Application www.sfgov.org/oca/purchasing/forms.htm – In Vendor Profile Application		Local businesses complete this form to be certified by HRC as LBEs. Certified LBEs receive a bid discount pursuant to Chapter 14B when bidding on City contracts. To receive the bid discount, you must be certified by HRC by the proposal due date.	Human Rights Comm. 25 Van Ness, #800 San Francisco, CA 94102-6059 (415) 252-2500

Where the forms are on the Internet

Office of Contract Administration

Homepage: www.sfgov.org/oca/
Purchasing forms: Click on “Required Vendor Forms” under the “Information for Vendors and Contractors” banner.

Human Rights Commission

HRC’s homepage: www.sfgov.org/sfhumanrights
Equal Benefits forms: Click on “Forms” under the “Equal Benefits” banner near the bottom.
LBE certification form: Click on “Forms” under the “LBE” banner near the bottom

Appendix C Communications Prior to Contract Award

It is the policy of the SFMTA that only employees identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from Proposers or potential Proposers seeking to influence the contractor selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the contractor selection is finally approved by the SFMTA Board of Directors and, if required, by the San Francisco Board of Supervisors.

All firms and subcontractor(s) responding to this RFP are hereby notified that they may not contact any SFMTA staff member, other than a person with whom contact is expressly authorized by this RFP for the purpose of influencing the contractor selection process or the award of the contract from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA and, if required, by the San Francisco Board of Supervisors. This prohibition does not apply to communications with SFMTA staff members regarding normal City business not regarding or related to this RFP.

All firms and subcontractor(s) responding to this RFP are hereby notified that any written communications sent to one or more members of the SFMTA Board of Directors concerning a pending contract solicitation shall be distributed by the SFMTA to all members of the SFMTA Board of Directors and the designated staff contact person(s) identified in the RFP.

Except as expressly authorized in the RFP, where any person representing a Proposer or potential Proposer contacts any SFMTA staff for the purpose of influencing the content of the competitive solicitation or the award of the contract between the date when the RFP is issued and the date when the final selection is approved by the SFMTA Board of Directors, and, if required, by the San Francisco Board of Supervisors, the Proposer or potential Proposer shall be disqualified from the selection process. However, a person who represents a Proposer or potential Proposer may contact City elected officials and may contact the Executive Director/CEO of the SFMTA if s/he is unable to reach the designated staff contact person(s) identified in the RFP or wishes to raise concerns about the competitive solicitation.

Additionally, the firms and subcontractor(s) responding to this RFP will not provide any gifts, meals, transportation, materials or supplies or any items of value or donations to or on behalf of any SFMTA staff member from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA and if required, by the San Francisco Board of Supervisors.

All lobbyists or any agents representing the interests of proposing prime contractors and subcontractor(s) shall also be subject to the same prohibitions.

An executed Attestation of Compliance (See Below) certifying compliance with this section of the RFP will be required to be submitted signed by all firms and named subcontractor(s) as part of the response to this RFP. Any proposal that does not include the executed Attestation of Compliance as required by this section will be deemed non-responsive and will not be evaluated. Any Proposer who violates the representations made in such Attestation of Compliance, directly or through an agent, lobbyist or subcontractor will be disqualified from the selection process.

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: **Off-site Breath and Urine Collection Services**

1. I attest that I and all members of the firm listed above will and have complied to date

with Appendix C 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 Appendix C 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 D
CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS

By signing and submitting its Proposal, the Proposer or proposed subcontractor certifies as follows:

(Proposer or Proposed Subcontractor Business Name)

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 contracting with any federal, state or local governmental department or agency;
 - b. Have not within a three-year period preceding the date of this Proposal 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) contract; 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 the date of this Proposal had one or more public contracts (federal, state, or local) terminated for cause or default.
- (2) Where the firm executing this RFP Appendix D is unable to certify to any of the statements in this certification, such firm shall attach a detailed explanation of facts that prevent such certification.
- (3) The certification in this clause is a material representation on fact relied upon by the San Francisco Municipal Transportation Agency (SFMTA).

As the authorized certifying official, I hereby certify that the above-specified certifications are true.

Business Name: _____

Authorized Representative Name (print)

Authorized Representative Title (print)

Authorized Representative Signature

Date

Appendix E
CERTIFICATION REGARDING LOBBYING

(Proposer or Proposed Subcontractor Business Name)

Certifies that it will not and has not paid any person or organization for influencing or attempting to influence a member of the San Francisco Municipal Transportation (“SFMTA”) Agency Board of Directors, or an officer or employee of the SFMTA in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in this Request for Proposals. The Proposer or proposed subcontractor submitting this certification shall also disclose the name of any lobbyist registered under Article II of the San Francisco Campaign and Governmental Conduct Code who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals.

This certification is a material representation of fact upon which reliance was placed for the purposes of the SFMTA's evaluation of Proposals and award of a contract pursuant to the Request for Proposals. Submission of this certification is a prerequisite for submitting a Proposal responsive to the Request for Proposals.

Following submission of Proposals with this signed certification, any firm who 1) pays any person or organization for influencing or attempting to influence a member of the San Francisco Municipal Transportation Agency Board of Directors, or an officer or employee of the SFMTA in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in the RFP, 2) fails to disclose the name of any lobbyist registered under Article II of the San Francisco Campaign and Governmental Conduct Code who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals, or 3) pays or agrees to pay to any SFMTA employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the SFMTA any fee or commission, or any other thing of value contingent on the award of a contract, will disqualify any Proposal in which that firm is named as a prime contractor, joint venture partner or subcontractor from the selection process.

By signing and submitting its proposal, the Proposer or proposed subcontractor also certifies to the SFMTA that the Proposer or proposed subcontractor has not paid, nor agreed to pay, and will not pay or agree to pay, any fee or commission, or any other thing of value contingent on the award of a contract to any SFMTA employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the SFMTA. As the authorized certifying official, I hereby certify that the above-specified certifications are true.

Business Name: _____

Authorized Representative Name (print)

Authorized Representative Title (print)

Authorized Representative Signature

Date

Appendix F
Sample Professional Services Contract

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
Contractor

This Agreement is made this _____ day of _____ 2008, in the City and County of San Francisco, State of California, by and between: **[insert name and address of contractor]**, hereinafter referred to as “Contractor,” and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Municipal Transportation Agency (“SFMTA”)

Recitals

WHEREAS, the SFMTA (“Department”) wishes to engage the services of a breath and urine specimen collector for off-site collections; and,

WHEREAS, a Request for Proposal (“RFP”) was issued on **[insert date]**, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number **[insert PSC number]** on **[insert date of Civil Service Commission action]**;

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 October 1, 2008 to June 30, 2011.

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 Attachment A, "Outline of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

Compensation shall be made in monthly payments on or before the thirtieth (30th) day of each month for work, as set forth in Section 4 of this Agreement, that the Executive Director/Chief Executive Officer, in his or her sole discretion, concludes has been performed as of the thirtieth (30th) day of the immediately preceding month. In no event shall the amount of this Agreement exceed _____ (\$_____). The breakdown of costs associated with this Agreement appears in Attachment 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

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:

Municipal Transportation Agency
Substance Abuse Program
949 Presidio Avenue, Room 224
San Francisco, California 94115

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, 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. Liquidated Damages

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum listed below is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by the SFMTA.

Failure to Submit monthly EBT calibration checks	100 for each failure to submit monthly check
Specimen not sent to lab next business day after collection	\$200 for each day of delay

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: William R. Smith, Substance Abuse Professional
Municipal Transportation Agency
Substance Abuse Program
949 Presidio Avenue, Room 224
San Francisco, California 94115
Fax: (415) 923-6291
Reggie.Smith@sfmta.com

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

Any notice of default must be sent by registered mail.

26. Ownership of Results

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

27. Works for Hire

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

28. Audit and Inspection of Records

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

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

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

31. Non-Waiver of Rights

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

32. Earned Income Credit (EIC) Forms

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

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

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

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

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

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

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

b. Compliance and Enforcement

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 the SFMTA) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

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

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

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

35. MacBride Principles—Northern Ireland

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

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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

38. Resource Conservation

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

39. Compliance with Americans with Disabilities Act

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

40. Sunshine Ordinance

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

41. Public Access to Meetings and Records

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

42. Limitations on Contributions

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

43. Requiring Minimum Compensation for Covered Employees

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

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

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

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

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

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

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

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

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

44. Requiring Health Benefits for Covered Employees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

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

b. First Source Hiring Agreement

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

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

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to

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

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

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

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

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

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

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

c. Hiring Decisions

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

d. Exceptions

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

e. Liquidated Damages

Contractor agrees:

- (1) To be liable to the City for liquidated damages as provided in this section;
- (2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
- (3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.
- (4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;
- (5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

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

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

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

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

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

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

f. Subcontracts

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

46. Prohibition on Political Activity with City Funds

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

from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic

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

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the 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 the SFMTA, who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue

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

51. Construction

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

52. Entire Agreement

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

53. Compliance with Laws

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

54. Services Provided by Attorneys

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

55. Left Blank by Agreement of the Parties

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

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

CITY	CONTRACTOR
Municipal Transportation Agency	[company name]
<hr/>	
Nathaniel P. Ford, Sr. Executive Director/CEO	By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.
Approved as to Form:	
Dennis J. Herrera City Attorney	
By: <hr/>	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.
Deputy City Attorney	
Municipal Transportation Agency Board of Directors Resolution No. <hr/>	
Dated: <hr/>	
Attest:	
<hr/>	<hr/>
Secretary, MTAB	[name of authorized representative] [title] [address] [city, state, ZIP]
	City vendor number: [vendor number]

Attachments

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: 49 CFR Part 40 Subparts-C,D,E,J,K,LM,N

OUTLINE OF SERVICES

The services to be performed by CONTRACTOR shall consist of services requested by the Program Manager, including, but not limited to, the following:

Except as expressly directed by the Program Manager or as otherwise provided herein, the furnishing of Collection Services shall conform to Federal drug and alcohol testing requirements contained in 49 CFR Parts 40 and 655, as they may be amended from time to time (“DOT and FTA regulations”). In addition, all services shall be in conformance with all other applicable state and federal statutes and regulations, including those pertaining to the confidentiality of medical information.

CONTRACTOR REQUIREMENTS

A. Project Manager

Assign a Project Manager to the Agreement, subject to the approval of the SFMTA Program Manager, who shall be the primary contact with the SFMTA Program Manager and shall coordinate the furnishing of all specified services. It is expressly understood that any change or substitution in personnel requires the written notification and evidence of certification to the SFMTA Program Manager.

B. Collection Site Personnel

- (1) Collection site personnel shall be trained by Contractor in procedures designed to comply with 49 CFR Part 40, Subparts C and J, and shall demonstrate proficiency in complying with these procedures prior to serving as collection site personnel for the Contractor. They shall be provided with detailed written instructions for all steps in collection and documentation process, and chain of custody of the specimen for both urine and breath alcohol collections.
- 2) These instructions shall clearly specify that the collection site personnel are responsible for maintaining the integrity of the specimen and breath alcohol collection and transfer process, including the proper utilization of SFMTA-required consent forms. Collection site personnel shall also be trained to ensure the modesty and privacy of the employee and directed to avoid any conduct or remarks that might be construed as accusatory or otherwise offensive or inappropriate.

C. Collection Sites

The designated collection site shall comply with all requirements specified in 49 CFR Part 40, Subparts D and K.

Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe a particular individual may alter or substitute the specimen to be provided.

No unauthorized personnel shall be permitted in any part of the designated collection site where specimens are collected or stored.

Contractor shall provide for the collection site to be secure at all times. The collection site shall be dedicated to drug and alcohol testing and the portion of the facility used for testing shall be secure at all times.

D. Collection Site Procedures for Urine Drug Testing

Contractor shall comply with the provisions of Part 40 as they may be further amended from time to time. To the extent that amendments to Part 40 differ from the provisions in this Appendix, the amendments to Part 40 will take precedence over these provisions and Contractor will be bound by them as if they were incorporated into these provisions.

Collection procedures should be designed to comply with 49 CFR Subparts D and E, including, but not limited to: a) security of samples and site; b) specimen control; c) completion of Specimen Custody and Control forms; d) completion of SFMTA Consent to Test and Use of Disclosure of Medical Information forms; e) SFMTA employee identification procedures; f) privacy; g) inspection of sample to ensure integrity and identity of specimen; h) specimen examination and documentation of temperature measurement; i) conditions indicating need for observed specimen; j) observed procedure to follow in case of failure of employee to cooperate or to provide sufficient sample volume (45 ml.); k) submission of “expedited” specimens to laboratory; and l) routine specimen transportation to laboratory.

E. Shipment of Specimens to Lab

Contractor shall ship specimens to the laboratory on the day of the test, except in those instances where the test was performed after the last shipment has been picked up by the laboratory's courier or on weekends. In those instances, the Contractor shall ensure that the specimen is picked up on the next business day.

F. Collection Under Direct Observation

The circumstances outlined in 49 CFR Section 40.67 shall be the exclusive grounds for believing that an individual may alter or substitute a specimen. The decision to obtain a specimen under direct observation shall be made only after review with the Program Manager or designee.

G. Collection for Breath Alcohol

Collection procedures should be designed to comply with 49 CFR Part 40, Subparts J, K, L, M, and N, including, but not limited to: a) Breath alcohol collection shall be administered by a certified Breath Alcohol Technician (BAT) or Screening Test Technician (STT); b) BAT shall only use an Evidential Breath Testing Device (EBT) and STT shall only use an Alcohol Screening Device (ASD) that is approved by the National Highway Traffic Safety Administration (NHTSA); c) All EBT's used must be externally calibrated in accordance with the plan developed by the manufacturer of the device for quality assurance; d) BAT and STT shall only use U.S. DOT Breath Alcohol Testing Forms; e) SFMTA consent to test

forms must be completed; f) BAT and STT shall follow all rules in 49 CFR Part 40, Subparts L, M and N for operation of the EBT or ASD; g) If initial test is .02 or greater, BAT or STT shall perform a confirmation test at least 15 minutes and no later than 30 minutes after the completion of the screening test.

H. Calibration Checks

Contractor shall submit copies of calibration checks to the SFMTA with each monthly invoice.

I. Documentation of Employee Refusal to Cooperate

If the employee refuses to cooperate with the collection process (refuses to provide a complete specimen, or an inadequate amount of breath, complete paperwork, or initial documentation of the specimen collected), the collection site person shall document the non-cooperation on the Custody and Control forms and inform the Program Manager or designee immediately.

J. Chain of Custody

Chain of custody standardized forms shall be properly executed by authorized collection site personnel upon receipt of urine specimens and/or breath alcohol collections.

K. Integrity and Identity of Specimen

The collection site shall take precautions to ensure that a urine specimen is not adulterated or diluted during the collection procedure and that information on the urine bottle and on the chain of custody form can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:

1. To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks so the reservoir of water in the toilet bowl always remains blue. There shall be no source of water (e.g., no shower or sink) in the enclosure where urination occurs.
2. When an individual arrives at the collection site, the collection site person shall request the individual to present photo identification. If the individual does not have proper photo identification, the collection site person shall contact the Testing Coordinator for assistance with contacting the supervisor of the employee for positive identification of the individual. If the individual's identity cannot be established, the collection site person shall not proceed with the collection.
3. Collection site personnel shall ask the individual to sign and complete a consent of release form.

4. If the individual fails to arrive at the collection site at the assigned time, the collection site person shall contact the testing coordinator or program manager to advise them of no-show status.
5. The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase, remain with the clothes, and that these items are secured. The individual may retain his or her wallet.
6. The individual shall be instructed to wash and dry his or her hands prior to submitting urine sample.
7. After washing hands, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleansing agent or any other materials which could be used to adulterate the specimen.
8. The collection site person shall provide the individual with a collection container.
9. The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.
10. The collection site person shall note any unusual behavior or appearance on the chain of custody form, as it relates to the collection process only.
11. Upon receiving the specimen from the individual, the collection site person is to transfer the urine from the collection container to the specimen bottle in the presence of the employee.
12. The collection site person shall determine that the specimen contains at least 45 milliliters of urine. If there are less than 45 milliliters of urine in the container, the specimen shall be discarded. If the individual is still unable to provide a complete specimen, the following rules apply:

The employee shall remain at the collection site and will be provided with no more than 40 oz of water to drink until a new specimen can be obtained. Another sample must be taken within three (3) hours. The three (3) hours do not start until the donor has made his/her first attempt.

The collection site will have in place a procedure to keep track of: 1) the amount of fluid that the donor intakes; and 2) the time allotted for the donor to provide a urine sample.

If the employee cannot provide a complete sample within the 3-hour period, the test is treated as positive and the collector shall notify the testing coordinator immediately of the situations.

The program manager or designee shall then contact the MRO. The MRO may refer the individual for a medical evaluation to develop pertinent information

concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to provide a specimen (in pre-employment testing, if the employer does not wish to hire the individual, the MRO is not required to make such a referral).

Upon completion of the examination, the MRO shall report his or her conclusions to the employer in writing.

13. After the specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.
14. The collection site person shall measure the temperature of the specimen. The temperature measuring device must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measurement is critical and in no case shall exceed 4 minutes.
15. Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the chain of custody form.
16. Whenever there is reason to believe that a particular individual has altered or substituted the specimen, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.
17. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
18. Both the individual being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled.
19. The collection site person shall complete the chain of custody form and the labeling and securing of the specimen container, and prepare the specimen for shipment to the laboratory.
20. If the specimen is not immediately prepared for shipment, it shall be appropriately safeguarded during temporary storage.
21. If a test is cancelled due to collector error, Contractor shall perform a new test collection at no charge.

L. Collection Control

To the maximum extent possible, collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has submitted a urine sample. After the specimen is collected, it shall be properly sealed and labeled. An approved DOT chain of custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date shall be documented on an approved DOT chain of custody form each time a specimen is handled and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

Collection personnel must be familiar with the DOT guidelines identifying “fatal flaws” that should result in a specimen rejection by the laboratory. “Fatal flaws” include a mismatch of identification numbers between the specimen bottle and the chain of custody form, omission of the specimen identification number, omission of the collector’s signature, incomplete chain of custody block, omission of the employee identification number on the custody and control form except when the collection includes a refusal to provide, insufficient quantity (primary specimen is less than 30 ml., the Federal provision requires a total of 45 ml, 30 ml in the primary specimen and 15 in the secondary specimen), specimen bottle is broken or shows evidence of tampering or the specimen shows obvious adulteration (color, foreign objects, unusual odor).

M. Equipment

Documentation on the year, make, model, size and operating condition of equipment must be provided. Detailed information on back-up equipment must also be provided.

N. Records Management

The collection site shall maintain and make readily available to the SFMTA the following material for all urine drug collections: a) records for the training of each collector; b) records related to the collection process; c) collection log book; and d) the employer copy of the Chain of Custody and Control Form. Contractor shall provide the Testing Coordinator with copies of the Chain of Custody and Control Form at the end of each testing shift. For tests performed after regular business hours, Contractor shall submit the Form to the SFMTA no later than the next business day.

In reference to the collection of breath alcohol: a) alcohol results of 0.02 or greater; b) documentation of refusals to take required alcohol tests; c) calibration documentation for evidential breath testing device; d) records related to the collection process; e) collection log book (if used); f) documentation of breath alcohol technician training; g) records of the inspection and maintenance of each EBT and STT used in employee testing; and h) documentation of the employer's compliance with the QAP for EBT and/or STT it uses for alcohol testing under this part.

O. Qualifications

The SFMTA reserves the right to disapprove or approve any employee who is hired to perform a collection for an SFMTA employee.

ATTACHMENT B CALCULATION OF CHARGES

CONTRACTOR to provide services described and directed in the Outline of Services.

Fee per drug/alcohol screen for all services described in the Outline of Services.

Drug Screen _____

Alcohol Test _____

After Hours Testing (5:00 pm -8:00 am) _____

Alcohol Test Confirmation Fee _____

Off-Site Waiting Time Charge _____

On-Site Standby Time per Minute* _____

Observer of opposite sex of the collector if
required to be provided by contractor. Rate
per hour during all scheduled testing. _____

In the event that an individual is unable to provide a specimen/sample for either urine drug screen or breath alcohol, the San Francisco Municipal Transportation Agency may request either a shy lung evaluation or a shy bladder evaluation from a licensed physician to determine the donor's ability to provide an adequate specimen/sample.

Fee for shy bladder/lung evaluation: _____

Staff witness testimony: _____

Expert witness testimony (physician): _____

Mileage _____

Other, describe: _____

- * Standby time for on-site collection is calculated by taking the total minutes on the job (minimum four (4) hours per scheduled shift) and subtracting 30 minutes for each Random or Follow Up (both drug and alcohol) and subtracting 20 minutes for each test other than random or follow up (both drug and alcohol).

ATTACHMENT C

CODE OF FEDERAL REGULATIONS (CFR) PART 40

Subpart C - Urine Collection Personnel

§ 40.31 Who may collect urine specimens for DOT drug testing?

(a) Collectors meeting the requirements of this subpart are the only persons authorized to collect urine specimens for DOT drug testing.

(b) A collector must meet training requirements of §40.33.

(c) As the immediate supervisor of an employee being tested, you may not act as the collector when that employee is tested, unless no other collector is available and you are permitted to do so under DOT agency drug and alcohol regulations.

(d) You must not act as the collector for the employee being tested if you work for a HHS-certified laboratory (e.g., as a technician or accessioner) and could link the employee with a urine specimen, drug testing result, or laboratory report.

§ 40.33 What training requirements must a collector meet?

To be permitted to act as a collector in the DOT drug testing program, you must meet each of the requirements of this section:

(a) Basic information. You must be knowledgeable about this part, the current “DOT Urine Specimen Collection Procedures Guidelines,” and DOT agency regulations applicable to the employers for whom you perform collections, and you must keep current on any changes to these materials. The DOT Urine Specimen Collection Procedures Guidelines document is available from ODAPC (Department of Transportation, 400 7th Street, SW., Room 10403, Washington DC, 20590, 202–366–3784, or on the ODAPC web site (<http://www.dot.gov/ost/dapc>)).

(b) Qualification training. You must receive qualification training meeting the requirements of this paragraph. Qualification training must provide instruction on the following subjects:

(1) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;

(2) “Problem” collections (e.g., situations like “shy bladder” and attempts to tamper with a specimen);

(3) Fatal flaws, correctable flaws, and how to correct problems in collections; and

(4) The collector's responsibility for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate;

(c) Initial Proficiency Demonstration. Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in collections under this part by completing five consecutive error-free mock collections.

(1) The five mock collections must include two uneventful collection scenarios, one insufficient quantity of urine scenario, one temperature out of range scenario, and one scenario in which the employee refuses to sign the CCF and initial the specimen bottle tamper-evident seal.

(2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are “error-free.” This person must be a qualified collector who has demonstrated necessary knowledge, skills, and abilities by—

i) Regularly conducting DOT drug test collections for a period of at least a year;

(ii) Conducting collector training under this part for a year; or

(iii) Successfully completing a “train the trainer” course.

(d) Schedule for qualification training and initial proficiency demonstration. The following is the schedule for qualification training and the initial proficiency demonstration you must meet:

(1) If you became a collector before August 1, 2001, and you have already met the requirements of paragraphs (b) and (c) of this section, you do not have to meet them again.

(2) If you became a collector before August 1, 2001, and have yet to meet the

requirements of paragraphs (b) and (c) of this section, you must do so no later than January 31, 2003.

(3) If you become a collector on or after August 1, 2001, you must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform collector functions.

(e) Refresher training. No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.

(f) Error Correction Training. If you make a mistake in the collection process that causes a test to be cancelled (i.e., a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.

(1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (c)(2) of this section.

(2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.

(3) As part of the error correction training, you must demonstrate your proficiency in the collection procedures of this part by completing three consecutive error-free mock collections. The mock collections must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock collections were “error-free.”

(g) Documentation. You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services. [65 FR 79526, Dec 19, 2000; 66 FR 3885, Jan. 17, 2001, as amended at 66 FR 41950, Aug. 9, 2001]

§ 40.35 What information about the DER must employers provide to collectors?

As an employer, you must provide to collectors the name and telephone number of the appropriate DER (and C/TPA, where applicable) to contact about any problems or issues that may arise during the testing process.

§ 40.37 Where is other information on the role of collectors found in this regulation?

You can find other information on the role and functions of collectors in the following sections of this part:

§40.3—Definition.

§40.43—Steps to prepare and secure collection sites.

§§40.45–40.47—Use of CCF.

§§40.49–40.51—Use of collection kit and shipping materials.

§§40.61–40.63—Preliminary steps in collections.

§40.65—Role in checking specimens.

§40.67—Role in directly observed collections.

§40.69—Role in monitored collections.

§40.71—Role in split specimen collections.

§40.73—Chain of custody completion and finishing the collection process.

§40.103—Processing blind specimens.

§40.191—Action in case of refusals to take test.

§40.193—Action in “shy bladder” situations.

§40.199–40.205—Collector errors in tests, effects, and means of correction.

Subpart D - Collection Sites, Forms, Equipment and Supplies Used in DOT Urine Collections

§ 40.41 Where does a urine collection for a DOT drug test take place?

(a) A urine collection for a DOT drug test must take place in a collection site meeting the requirements of this section.

(b) If you are operating a collection site, you must ensure that it meets the security requirements of §40.43.

(c) If you are operating a collection site, you must have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, temporary storage, and shipping of urine specimens to a laboratory, and a suitable clean surface for writing.

(d) Your collection site must include a facility for urination described in either paragraph (e) or paragraph (f) of this section.

(e) The first, and preferred, type of facility for urination that a collection site may include is a single-toilet room, having a full-length privacy door, within which urination can occur.

(1) No one but the employee may be present in the room during the collection, except for the observer in the event of a directly observed collection.

(2) You must have a source of water for washing hands, that, if practicable, should be external to the closed room where urination occurs. If an external source is not available, you may meet this requirement by securing all sources of water and other substances that could be used for adulteration and substitution (e.g., water faucets, soap dispensers) and providing moist towelettes outside the closed room.

(f) The second type of facility for urination that a collection site may include is a multistall restroom.

(1) Such a site must provide substantial visual privacy (e.g., a toilet stall with a partial-length door) and meet all other applicable requirements of this section.

(2) If you use a multi-stall restroom, you must either—

(i) Secure all sources of water and other substances that could be used for adulteration and substitution (e.g., water faucets, soap dispensers) and place bluing agent in all toilets or secure the toilets to prevent access; or

(ii) Conduct all collections in the facility as monitored collections (see §40.69 for procedures). This is the only circumstance in which you may conduct a monitored collection.

(3) No one but the employee may be present in the multistall restroom during the collection, except for the monitor in the event of a monitored collection or the observer in the event of a directly observed collection.

(g) A collection site may be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements of this section.

§ 40.43 What steps must operators of collection sites take to protect the security and integrity of urine collections?

(a) Collectors and operators of collection sites must take the steps listed in this section to prevent unauthorized access that could compromise the integrity of collections.

(b) As a collector, you must do the following before each collection to deter tampering with specimens:

(1) Secure any water sources or otherwise make them unavailable to employees (e.g., turn off water inlet, tape handles to prevent opening faucets);

(2) Ensure that the water in the toilet is blue;

- (3) Ensure that no soap, disinfectants, cleaning agents, or other possible adulterants are present;
- (4) Inspect the site to ensure that no foreign or unauthorized substances are present;
- (5) Tape or otherwise secure shut any movable toilet tank, or put bluing in the tank;
- (6) Ensure that undetected access (e.g., through a door not in your view) is not possible;
- (7) Secure areas and items (e.g., ledges, trash receptacles, paper towel holders, under-sink areas) that appear suitable for concealing contaminants; and
- (8) Recheck items in paragraphs (b)(1) through (7) of this section following each collection to ensure the site's continued integrity.
- (c) If the collection site uses a facility normally used for other purposes, like a public rest room or hospital examining room, you must, as a collector, also ensure before the collection that:
 - (1) Access to collection materials and specimens is effectively restricted; and
 - (2) The facility is secured against access during the procedure to ensure privacy to the employee and prevent distraction of the collector. Limited-access signs must be posted.
- (d) As a collector, you must take the following additional steps to ensure security during the collection process:
 - (1) To avoid distraction that could compromise security, you are limited to conducting a collection for only one employee at a time. However, during the time one employee is in the period for drinking fluids in a “shy bladder” situation (see §40.193(b)), you may conduct a collection for another employee.
 - (2) To the greatest extent you can, keep an employee's collection container within view of both you and the employee between the time the employee has urinated and the specimen is sealed.
 - (3) Ensure you are the only person in addition to the employee who handles the specimen before it is poured into the bottles and sealed with tamper-evident seals.
 - (4) In the time between when the employee gives you the specimen and when you seal the specimen, remain within the collection site.
 - (5) Maintain personal control over each specimen and CCF throughout the collection process.
- (e) If you are operating a collection site, you must implement a policy and procedures to prevent unauthorized personnel from entering any part of the site in which urine specimens are collected or stored.
 - (1) Only employees being tested, collectors and other collection site workers, DERs, employee and employer representatives authorized by the employer (e.g., employer policy, collective bargaining agreement), and DOT agency representatives are authorized persons for purposes of this paragraph (e).
 - (2) Except for the observer in a directly observed collection or the monitor in the case of a monitored collection, you must not permit anyone to enter the urination facility in which employees provide specimens.
 - 3) You must ensure that all authorized persons are under the supervision of a collector at all times when permitted into the site.
 - (4) You or the collector may remove any person who obstructs, interferes with, or causes a delay in the collection process.
- (f) If you are operating a collection site, you must minimize the number of persons handling specimens.

§ 40.45 What form is used to document a DOT urine collection?

- (a) The Federal Drug Testing Custody and Control Form (CCF) must be used to

document every urine collection required by the DOT drug testing program. The CCF must be a five-part carbonless manifold form. You may view this form on the Department's web site (<http://www.dot.gov/ost/dapc>) or the HHS web site (<http://www.workplace.samhsa.gov>).

(b) You must not use a non-Federal form or an expired Federal form to conduct a DOT urine collection. As a laboratory, C/TPA or other party that provides CCFs to employers, collection sites, or other customers, you must not provide copies of an expired Federal form to these participants. You must also affirmatively notify these participants that they must not use an expired Federal form (e.g., that beginning August 1, 2001, they may not use the old 7-part Federal CCF for DOT urine collections).

(c) As a participant in the DOT drug testing program, you are not permitted to modify or revise the CCF except as follows:

(1) You may include, in the area outside the border of the form, other information needed for billing or other purposes necessary to the collection process.

(2) The CCF must include the names, addresses, telephone numbers and fax numbers of the employer and the MRO, which may be preprinted, typed, or handwritten. The MRO information must include the specific physician's name and address, as opposed to only a generic clinic, health care organization, or company name. This information is required, and it is prohibited for an employer, collector, service agent or any other party to omit it. In addition, a C/TPA's name, address, fax number, and telephone number may be included, but is not required. The employer may use a C/TPA's address in place of its own, but must continue to include its name, telephone number, and fax number.

(3) As an employer, you may add the name of the DOT agency under whose authority the test occurred as part of the employer information.

(4) As a collector, you may use a CCF with your name, address, telephone number, and fax number preprinted, but under no circumstances may you sign the form before the collection event.

(d) Under no circumstances may the CCF transmit personal identifying information about an employee (other than a social security number (SSN) or other employee identification (ID) number) to a laboratory.

(e) As an employer, you may use an equivalent foreign-language version of the CCF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and collector understand and can use the form in that language.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001]

§ 40.47 May employers use the CCF for non-Federal collections or non-Federal forms for DOT collections?

(a) No, as an employer, you are prohibited from using the CCF for non-Federal urine collections. You are also prohibited from using non-Federal forms for DOT urine collections. Doing either subjects you to enforcement action under DOT agency regulations.

(b) (1) In the rare case where the collector, either by mistake or as the only means to conduct a test under difficult circumstances (e.g., post-accident or reasonable suspicion test with insufficient time to obtain the CCF), uses a non-Federal form for a DOT collection, the use of a non-Federal form does not present a reason for the laboratory to reject the specimen for testing or for an MRO to cancel the result.

(2) The use of the non-Federal form is a "correctable flaw." As an MRO, to correct the problem you must follow the procedures of §40.205(b)(2).

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001]

§ 40.49 What materials are used to collect urine specimens?

For each DOT drug test, you must use a collection kit meeting the requirements of Appendix A of this part.

§ 40.51 What materials are used to send urine specimens to the laboratory?

(a) Except as provided in paragraph (b) of this section, you must use a shipping container that adequately protects the specimen bottles from shipment damage in the transport of specimens from the collection site to the laboratory.

(b) You are not required to use a shipping container if a laboratory courier hand-delivers the specimens from the collection site to the laboratory.

Subpart E - Urine Specimen Collections

§ 40.61 What are the preliminary steps in the collection process?

As the collector, you must take the following steps before actually beginning a collection:

(a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's work site, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing. In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test (see §40.191(a)(1)).

(b) Ensure that, when the employee enters the collection site, you begin the testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or is unable to urinate or because an authorized employer or employee representative is delayed in arriving.

(1) If the employee is also going to take a DOT alcohol test, you must, to the greatest extent practicable, ensure that the alcohol test is completed before the urine collection process begins.

Example to Paragraph (b)(1): An employee enters the test site for both a drug and an alcohol test. Normally, the collector would wait until the BAT had completed the alcohol test process before beginning the drug test process. However, there are some situations in which an exception to this normal practice would be reasonable. One such situation might be if several people were waiting for the BAT to conduct alcohol tests, but a drug testing collector in the same facility were free. Someone waiting might be able to complete a drug test without unduly delaying his or her alcohol test. Collectors and BATs should work together, however, to ensure that post-accident and reasonable suspicion alcohol tests happen as soon as possible (e.g., by moving the employee to the head of the line for alcohol tests).

(2) If the employee needs medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to collect a specimen.

(3) You must not collect, by catheterization or other means, urine from an unconscious employee to conduct a drug test under this part. Nor may you catheterize a conscious employee. However, you must inform an employee who normally voids through self-catheterization that the employee is required to provide a specimen in that manner.

(4) If, as an employee, you normally void through self-catheterization, and decline to do so, this constitutes a refusal to test.

(c) Require the employee to provide positive identification. You must see a photo ID

issued by the employer (other than in the case of an owner-operator or other self-employed individual) or a Federal, state, or local government (e.g., a driver's license). You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.

(d) If the employee asks, provide your identification to the employee. Your identification must include your name and your employer's name, but does not have to include your picture, address, or telephone number.

(e) Explain the basic collection procedure to the employee, including showing the employee the instructions on the back of the CCF.

(f) Direct the employee to remove outer clothing (e.g., coveralls, jacket, coat, hat) that could be used to conceal items or substances that could be used to tamper with a specimen. You must also direct the employee to leave these garments and any briefcase, purse, or other personal belongings with you or in a mutually agreeable location. You must advise the employee that failure to comply with your directions constitutes a refusal to test.

(1) If the employee asks for a receipt for any belongings left with you, you must provide one.

(2) You must allow the employee to keep his or her wallet.

(3) You must not ask the employee to remove other clothing (e.g., shirts, pants, dresses, underwear), to remove all clothing, or to change into a hospital or examination gown (unless the urine collection is being accomplished simultaneously with a DOT agency-authorized medical examination).

(4) You must direct the employee to empty his or her pockets and display the items in them to ensure that no items are present which could be used to adulterate the specimen. If nothing is there that can be used to adulterate a specimen, the employee can place the items back into his or her pockets. As the employee, you must allow the collector to make this observation.

(5) If, in your duties under paragraph (f)(4) of this section, you find any material that could be used to tamper with a specimen, you must:

(i) Determine if the material appears to be brought to the collection site with the intent to alter the specimen, and, if it is, conduct a directly observed collection using direct observation procedures (see §40.67); or

(ii) Determine if the material appears to be inadvertently brought to the collection site (e.g., eye drops), secure and maintain it until the collection process is completed and conduct a normal (i.e., unobserved) collection.

(g) You must instruct the employee not to list medications that he or she is currently taking on the CCF. (The employee may make notes of medications on the back of the employee copy of the form for his or her own convenience, but these notes must not be transmitted to anyone else.)

§ 40.63 What steps does the collector take in the collection process before the employee provides a urine specimen?

As the collector, you must take the following steps before the employee provides the urine specimen:

(a) Complete Step 1 of the CCF.

(b) Instruct the employee to wash and dry his or her hands at this time. You must tell the employee not to wash his or her hands again until after delivering the specimen to you. You must not give the employee any further access to water or other materials that could be used to adulterate or dilute a specimen.

(c) Select, or allow the employee to select, an individually wrapped or sealed collection container from collection kit materials. Either you or the employee, with both of you present, must unwrap or break the seal of the collection container. You must not unwrap or break the seal on any specimen bottle at this time. You must not allow the employee to take anything from the collection kit into the room used for urination except the collection container.

(d) Direct the employee to go into the room used for urination, provide a specimen of at least 45 mL, not flush the toilet, and return to you with the specimen as soon as the employee has completed the void.

(1) Except in the case of an observed or a monitored collection (see §§40.67 and 40.69), neither you nor anyone else may go into the room with the employee.

(2) As the collector, you may set a reasonable time limit for voiding.

(e) You must pay careful attention to the employee during the entire collection process to note any conduct that clearly indicates an attempt to tamper with a specimen (e.g., substitute urine in plain view or an attempt to bring into the collection site an adulterant or urine substitute). If you detect such conduct, you must require that a collection take place immediately under direct observation (see §40.67) and note the conduct and the fact that the collection was observed in the “Remarks” line of the CCF (Step 2). You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

§ 40.65 What does the collector check for when the employee presents a specimen?

As a collector, you must check the following when the employee gives the collection container to you:

(a) Sufficiency of specimen. You must check to ensure that the specimen contains at least 45 mL of urine.

(1) If it does not, you must follow “shy bladder” procedures (see §40.193(b)).

(2) When you follow “shy bladder” procedures, you must discard the original specimen, unless another problem (i.e., temperature out of range, signs of tampering) also exists.

(3) You are never permitted to combine urine collected from separate voids to create a specimen.

(4) You must discard any excess urine.

(b) Temperature. You must check the temperature of the specimen no later than four minutes after the employee has given you the specimen.

(1) The acceptable temperature range is 32–38 °C/90–100 °F.

(2) You must determine the temperature of the specimen by reading the temperature strip attached to the collection container.

(3) If the specimen temperature is within the acceptable range, you must mark the “Yes” box on the CCF (Step 2).

(4) If the specimen temperature is outside the acceptable range, you must mark the “No” box and enter in the “Remarks” line (Step 2) your findings about the temperature.

(5) If the specimen temperature is outside the acceptable range, you must immediately conduct a new collection using direct observation procedures (see §40.67).

(6) In a case where a specimen is collected under direct observation because of the temperature being out of range, you must process both the original specimen and the specimen collected using direct observation and send the two sets of specimens to the laboratory. This is true even in a case in which the original specimen has insufficient volume but the temperature is out of range. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

(7) In a case where the employee refuses to provide another specimen (see §40.191(a)(3)) or refuses to provide another specimen under direct observation (see §40.191(a)(4)), you must notify the DER. As soon as you have notified the DER, you must discard any specimen the employee has provided previously during the collection procedure.

(c) Signs of tampering. You must inspect the specimen for unusual color, presence of foreign objects or material, or other signs of tampering (e.g., if you notice any unusual odor).

(1) If it is apparent from this inspection that the employee has tampered with the specimen (e.g., blue dye in the specimen, excessive foaming when shaken, smell of bleach), you must immediately conduct a new collection using direct observation procedures (see §40.67).

(2) In a case where a specimen is collected under direct observation because of showing signs of tampering, you must process both the original specimen and the specimen collected using direct observation and send the two sets of specimens to the laboratory. This is true even in a case in which the original specimen has insufficient volume but it shows signs of tampering. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

(3) In a case where the employee refuses to provide a specimen under direct observation (see §40.191(a)(4)), you must discard any specimen the employee provided previously during the collection procedure. Then you must notify the DER as soon as practicable.
[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001]

§ 40.67 When and how is a directly observed collection conducted?

(a) As an employer, you must direct an immediate collection under direct observation with no advance notice to the employee, if:

(1) The laboratory reported to the MRO that a specimen is invalid, and the MRO reported to you that there was not an adequate medical explanation for the result;

(2) The MRO reported to you that the original positive, adulterated, or substituted result had to be cancelled because the test of the split specimen could not be performed; or

(3) The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to you as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).

(b) As an employer, you may direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.

(c) As a collector, you must immediately conduct a collection under direct observation if:

(1) You are directed by the DER to do so (see paragraphs (a) and (b) of this section); or

(2) You observed materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen (see §§40.61(f)(5)(i) and 40.63(e)); or

(3) The temperature on the original specimen was out of range (see §40.65(b)(5)); or (4) The original specimen appeared to have been tampered with (see §40.65(c)(1)).

(d)(1) As the employer, you must explain to the employee the reason for a directly observed collection under paragraph (a) or (b) of this section.

(2) As the collector, you must explain to the employee the reason, if known, under this part for a directly observed collection under paragraphs (c)(1) through (3) of this section.

(e) As the collector, you must complete a new CCF for the directly observed collection.

(1) You must mark the "reason for test" block (Step 1) the same as for the first collection.

(2) You must check the "Observed, (Enter Remark)" box and enter the reason (see §40.67(b)) in the "Remarks" line (Step 2).

(f) In a case where two sets of specimens are being sent to the laboratory because of

suspected tampering with the specimen at the collection site, enter on the “Remarks” line of the CCF (Step 2) for each specimen a notation to this effect (e.g., collection 1 of 2, or 2 of 2) and the specimen ID number of the other specimen.

(g) As the collector, you must ensure that the observer is the same gender as the employee. You must never permit an opposite gender person to act as the observer. The observer can be a different person from the collector and need not be a qualified collector.

(h) As the collector, if someone else is to observe the collection (e.g., in order to ensure a same gender observer), you must verbally instruct that person to follow procedures at paragraphs (i) and (j) of this section. If you, the collector, are the observer, you too must follow these procedures.

(i) As the observer, you must watch the employee urinate into the collection container. Specifically, you are to watch the urine go from the employee's body into the collection container.

(j) As the observer but not the collector, you must not take the collection container from the employee, but you must observe the specimen as the employee takes it to the collector.

(k) As the collector, when someone else has acted as the observer, you must include the observer's name in the “Remarks” line of the CCF (Step 2).

(l) As the employee, if you decline to allow a directly observed collection required or permitted under this section to occur, this is a refusal to test.

(m) As the collector, when you learn that a directly observed collection should have been collected but was not, you must inform the employer that it must direct the employee to have an immediate recollection under direct observation.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 69 FR 64867, Nov.9, 2004]

§ 40.69 How is a monitored collection conducted?

(a) As the collector, you must secure the room being used for the monitored collection so that no one except the employee and the monitor can enter it until after the collection has been completed.

(b) As the collector, you must ensure that the monitor is the same gender as the employee, unless the monitor is a medical professional (e.g., nurse, doctor, physician's assistant, technologist, or technician licensed or certified to practice in the jurisdiction in which the collection takes place). The monitor can be a different person from the collector and need not be a qualified collector.

(c) As the collector, if someone else is to monitor the collection (e.g., in order to ensure a same-gender monitor), you must verbally instruct that person to follow the procedures of paragraphs (d) and (e) of this section. If you, the collector, are the monitor, you must follow these procedures.

(d) As the monitor, you must not watch the employee urinate into the collection container. If you hear sounds or make other observations indicating an attempt to tamper with a specimen, there must be an additional collection under direct observation (see §§40.63(e), 40.65(c), and 40.67(b)).

(e) As the monitor, you must ensure that the employee takes the collection container directly to the collector as soon as the employee has exited the enclosure.

(f) As the collector, when someone else has acted as the monitor, you must note that person's name in the “Remarks” line of the CCF (Step 2).

(g) As the employee being tested, if you decline to permit a collection authorized under this section to be monitored, it is a refusal to test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001]

§ 40.71 How does the collector prepare the specimens?

(a) All collections under DOT agency drug testing regulations must be split specimen collections.

(b) As the collector, you must take the following steps, in order, after the employee brings the urine specimen to you. You must take these steps in the presence of the employee.

(1) Check the box on the CCF (Step 2) indicating that this was a split specimen collection.

(2) You, not the employee, must first pour at least 30 mL of urine from the collection container into one specimen bottle, to be used for the primary specimen.

(3) You, not the employee, must then pour at least 15 mL of urine from the collection container into the second specimen bottle to be used for the split specimen.

(4) You, not the employee, must place and secure (i.e., tighten or snap) the lids/caps on the bottles.

(5) You, not the employee, must seal the bottles by placing the tamper-evident bottle seals over the bottle caps/lids and down the sides of the bottles.

(6) You, not the employee, must then write the date on the tamper-evident bottle seals.

(7) You must then ensure that the employee initials the tamper-evident bottle seals for the purpose of certifying that the bottles contain the specimens he or she provided. If the employee fails or refuses to do so, you must note this in the "Remarks" line of the CCF (Step 2) and complete the collection process.

(8) You must discard any urine left over in the collection container after both specimen bottles have been appropriately filled and sealed. There is one exception to this requirement: you may use excess urine to conduct clinical tests (e.g., protein, glucose) if the collection was conducted in conjunction with a physical examination required by a DOT agency regulation. Neither you nor anyone else may conduct further testing (such as adulteration testing) on this excess urine and the employee has no legal right to demand that the excess urine be turned over to the employee.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001]

§ 40.73 How is the collection process completed?

(a) As the collector, you must do the following things to complete the collection process. You must complete the steps called for in paragraphs (a)(1) through (a)(7) of this section in the employee's presence.

(1) Direct the employee to read and sign the certification statement on Copy 2 (Step 5) of the CCF and provide date of birth, printed name, and day and evening contact telephone numbers. If the employee refuses to sign the CCF or to provide date of birth, printed name, or telephone numbers, you must note this in the "Remarks" line (Step 2) of the CCF, and complete the collection. If the employee refuses to fill out any information, you must, as a minimum, print the employee's name in the appropriate place.

(2) Complete the chain of custody on the CCF (Step 4) by printing your name (note: you may pre-print your name), recording the time and date of the collection, signing the statement, and entering the name of the delivery service transferring the specimen to the laboratory,

(3) Ensure that all copies of the CCF are legible and complete.

(4) Remove Copy 5 of the CCF and give it to the employee.

(5) Place the specimen bottles and Copy 1 of the CCF in the appropriate pouches of the plastic bag.

(6) Secure both pouches of the plastic bag.
(7) Advise the employee that he or she may leave the collection site.
(8) To prepare the sealed plastic bag containing the specimens and CCF for shipment you must:

(i) Place the sealed plastic bag in a shipping container (e.g., standard courier box) designed to minimize the possibility of damage during shipment. (More than one sealed plastic bag can be placed into a single shipping container if you are doing multiple collections.)

(ii) Seal the container as appropriate.

(iii) If a laboratory courier hand-delivers the specimens from the collection site to the laboratory, prepare the sealed plastic bag for shipment as directed by the courier service.

(9) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must fax or otherwise transmit these copies to the MRO and DER within 24 hours or during the next business day. Keep Copy 3 for at least 30 days, unless otherwise specified by applicable DOT agency regulations.

(b) As a collector or collection site, you must ensure that each specimen you collect is shipped to a laboratory as quickly as possible, but in any case within 24 hours or during the next business day.

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006]

Subpart J - Alcohol Testing Personnel

§ 40.211 Who conducts DOT alcohol tests?

(a) Screening test technicians (STTs) and breath alcohol technicians (BATs) meeting their respective requirements of this subpart are the only people authorized to conduct DOT alcohol tests.

(b) An STT can conduct only alcohol screening tests, but a BAT can conduct alcohol screening and confirmation tests.

(c) As a BAT- or STT-qualified immediate supervisor of a particular employee, you may not act as the STT or BAT when that employee is tested, unless no other STT or BAT is available and DOT agency regulations do not prohibit you from doing so.

§ 40.213 What training requirements must STTs and BATs meet?

To be permitted to act as a BAT or STT in the DOT alcohol testing program, you must meet each of the requirements of this section:

(a) Basic information. You must be knowledgeable about the alcohol testing procedures in this part and the current DOT guidance. These documents and information are available from ODAPC (Department of Transportation, 400 7th Street, SW., Room 10403, Washington DC, 20590, 202-366-3784, or on the ODAPC web site, <http://www.dot.gov/ost/dapc>).

(b) Qualification training. You must receive qualification training meeting the requirements of this paragraph (b).

(1) Qualification training must be in accordance with the DOT Model BAT or STT Course, as applicable. The DOT Model Courses are available from ODAPC (Department of Transportation, 400 7th Street, SW., Room 10403, Washington DC, 20590, 202-366-3784, or on the ODAPC web site, <http://www.dot.gov/ost/dapc>). The training can also be provided using a course of instruction equivalent to the DOT Model Courses. On request, ODAPC will review BAT and STT instruction courses for equivalency.

(2) Qualification training must include training to proficiency in using the alcohol testing procedures of this part and in the operation of the particular alcohol testing device(s) (i.e., the ASD(s) or EBT(s)) you will be using.

(3) The training must emphasize that you are responsible for maintaining the integrity of the testing process, ensuring the privacy of employees being tested, and avoiding conduct or statements that could be viewed as offensive or inappropriate.

(4) The instructor must be an individual who has demonstrated necessary knowledge, skills, and abilities by regularly conducting DOT alcohol tests as an STT or BAT, as applicable, for a period of at least a year, who has conducted STT or BAT training, as applicable, under this part for a year, or who has successfully completed a “train the trainer” course.

(c) Initial Proficiency Demonstration. Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in alcohol testing under this part by completing seven consecutive error-free mock tests (BATs) or five consecutive error-free tests (STTs).

(1) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are “error-free.” This person must be an individual who meets the requirements of paragraph (b)(4) of this section.

(2) These tests must use the alcohol testing devices (e.g., EBT(s) or ASD(s)) that you will use as a BAT or STT.

(3) If you are an STT who will be using an ASD that indicates readings by changes, contrasts, or other readings in color, you must demonstrate as part of the mock test that you are able to discern changes, contrasts, or readings correctly.

(d) Schedule for qualification training and initial proficiency demonstration. The following is the schedule for qualification training and the initial proficiency demonstration you must meet:

(1) If you became a BAT or STT before August 1, 2001, you were required to have met the requirements set forth in paragraphs (b) and (c) of this section, and you do not have to meet them again.

(2) If you become a BAT or STT on or after August 1, 2001, you must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform BAT or STT functions.

(e) Refresher training. No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section. If you are a BAT or STT who completed qualification training before January 1, 1998, you are not required to complete refresher training until January 1, 2003.

(f) Error Correction Training. If you make a mistake in the alcohol testing process that causes a test to be cancelled (i.e., a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.

(1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (b)(4) of this section.

(2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.

(3) As part of the error correction training, you must demonstrate your proficiency in the alcohol testing procedures of this part by completing three consecutive error-free mock tests. The mock tests must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock tests were error-free.

(g) Documentation. You must maintain documentation showing that you currently meet

all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are negotiating to use your services.

(h) Other persons who may serve as BATs or STTs. (1) Anyone meeting the requirements of this section to be a BAT may act as an STT, provided that the individual has demonstrated initial proficiency in the operation of the ASD that he or she is using, as provided in paragraph (c) of this section.

(2) Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are deemed to be qualified as BATs. They are not required to also complete the training requirements of this section in order to act as BATs. In order for a test conducted by such an officer to be accepted under DOT alcohol testing requirements, the officer must have been certified by a state or local government to use the EBT or ASD that was used for the test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

§ 40.215 What information about the DER do employers have to provide to BATs and STTs?

As an employer, you must provide to the STTs and BATs the name and telephone number of the appropriate DER (and C/TPA, where applicable) to contact about any problems or issues that may arise during the testing process.

§ 40.217 Where is other information on the role of STTs and BATs found in this regulation?

You can find other information on the role and functions of STTs and BATs in the following sections of this part:

§40.3—Definitions.

§40.223—Responsibility for supervising employees being tested.

§§40.225–40.227—Use of the alcohol testing form.

§§40.241–40.245—Screening test procedures with ASDs and EBTs.

§§40.251–40.255—Confirmation test procedures.

§40.261—Refusals to test.

§§40.263–40.265—Insufficient saliva or breath.

§40.267—Problems requiring cancellation of tests.

§§40.269–40.271—Correcting problems in tests.

Subpart K - Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing

§ 40.221 Where does an alcohol test take place?

(a) A DOT alcohol test must take place at an alcohol testing site meeting the requirements of this section.

(b) If you are operating an alcohol testing site, you must ensure that it meets the security requirements of §40.223.

(c) If you are operating an alcohol testing site, you must ensure that it provides visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.

(d) If you are operating an alcohol testing site, you must ensure that it has all needed personnel, materials, equipment, and facilities to provide for the collection and analysis of breath and/or saliva samples, and a suitable clean surface for writing.

(e) If an alcohol testing site fully meeting all the visual and aural privacy requirements of paragraph (c) is not readily available, this part allows a reasonable suspicion or post-accident test

to be conducted at a site that partially meets these requirements. In this case, the site must afford visual and aural privacy to the employee to the greatest extent practicable.

(f) An alcohol testing site can be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements of this section.

§ 40.223 What steps must be taken to protect the security of alcohol testing sites?

(a) If you are a BAT, STT, or other person operating an alcohol testing site, you must prevent unauthorized personnel from entering the testing site.

(1) The only people you are to treat as authorized persons are employees being tested, BATs, STTs, and other alcohol testing site workers, DERs, employee representatives authorized by the employer (e.g., on the basis of employer policy or labor-management agreement), and DOT agency representatives.

(2) You must ensure that all persons are under the supervision of a BAT or STT at all times when permitted into the site.

(3) You may remove any person who obstructs, interferes with, or causes unnecessary delay in the testing process.

(b) As the BAT or STT, you must not allow any person other than you, the employee, or a DOT agency representative to actually witness the testing process (see §§40.241–40.255).

(c) If you are operating an alcohol testing site, you must ensure that when an EBT or ASD is not being used for testing, you store it in a secure place.

(d) If you are operating an alcohol testing site, you must ensure that no one other than BATs or other employees of the site have access to the site when an EBT is unsecured.

(e) As a BAT or STT, to avoid distraction that could compromise security, you are limited to conducting an alcohol test for only one employee at a time.

(1) When an EBT screening test on an employee indicates an alcohol concentration of 0.02 or higher, and the same EBT will be used for the confirmation test, you are not allowed to use the EBT for a test on another employee before completing the confirmation test on the first employee.

(2) As a BAT who will conduct both the screening and the confirmation test, you are to complete the entire screening and confirmation process on one employee before starting the screening process on another employee.

(3) You are not allowed to leave the alcohol testing site while the testing process for a given employee is in progress, except to notify a supervisor or contact a DER for assistance in the case an employee or other person who obstructs, interferes with, or unnecessarily delays the testing process.

§ 40.225 What form is used for an alcohol test?

(a) The DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test beginning February 1, 2002. The ATF must be a three-part carbonless manifold form. The ATF is found in Appendix G to this part. You may view this form on the ODAPC web site (<http://www.dot.gov/ost/dapc>).

(b) As an employer in the DOT alcohol testing program, you are not permitted to modify or revise the ATF except as follows:

(1) You may include other information needed for billing purposes, outside the boundaries of the form.

(2) You may use a ATF directly generated by an EBT which omits the space for affixing a separate printed result to the ATF, provided the EBT prints the result directly on the ATF.

(3) You may use an ATF that has the employer's name, address, and telephone number

preprinted. In addition, a C/TPA's name, address, and telephone number may be included, to assist with negative results.

(4) You may use an ATF in which all pages are printed on white paper. You may modify the ATF by using colored paper, or have clearly discernable borders or designation statements on Copy 2 and Copy 3. When colors are used, they must be green for Copy 2 and blue for Copy 3.

(5) As a BAT or STT, you may add, on the "Remarks" line of the ATF, the name of the DOT agency under whose authority the test occurred.

(6) As a BAT or STT, you may use a ATF that has your name, address, and telephone number preprinted, but under no circumstances can your signature be preprinted.

(c) As an employer, you may use an equivalent foreign-language version of the ATF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and BAT/STT understand and can use the form in that language.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

§ 40.227 May employers use the ATF for non-DOT tests, or non-DOT forms for DOT tests?

(a) No, as an employer, BAT, or STT, you are prohibited from using the ATF for non-DOT alcohol tests. You are also prohibited from using non-DOT forms for DOT alcohol tests. Doing either subjects you to enforcement action under DOT agency regulations.

(b) If the STT or BAT, either by mistake, or as the only means to conduct a test under difficult circumstances (e.g., post-accident test with insufficient time to obtain the ATF), uses a non-DOT form for a DOT test, the use of a non-DOT form does not, in and of itself, require the employer or service agent to cancel the test. However, in order for the test to be considered valid, a signed statement must be obtained from the STT or BAT in accordance with §40.271(b) .

§ 40.229 What devices are used to conduct alcohol screening tests?

EBTs and ASDs on the NHTSA conforming products lists (CPL) for evidential and non-evidential devices are the only devices you are allowed to use to conduct alcohol screening tests under this part. You may use an ASD that is on the NHTSA CPL for DOT alcohol tests only if there are instructions for its use in this part. An ASD can be used only for screening tests for alcohol, and may not be used for confirmation tests.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

§ 40.231 What devices are used to conduct alcohol confirmation tests?

(a) EBTs on the NHTSA CPL for evidential devices that meet the requirements of paragraph (b) of this section are the only devices you may use to conduct alcohol confirmation tests under this part. Note that, among devices on the CPL for EBTs, only those devices listed without an asterisk (*) are authorized for use in confirmation testing in the DOT alcohol testing program.

(b) To conduct a confirmation test, you must use an EBT that has the following capabilities:

(1) Provides a printed triplicate result (or three consecutive identical copies of a result) of each breath test;

(2) Assigns a unique number to each completed test, which the BAT and employee can read before each test and which is printed on each copy of the result;

(3) Prints, on each copy of the result, the manufacturer's name for the device, its serial number, and the time of the test;

(4) Distinguishes alcohol from acetone at the 0.02 alcohol concentration level;

- (5) Tests an air blank; and
- (6) Performs an external calibration check.

§ 40.233 What are the requirements for proper use and care of EBTs?

(a) As an EBT manufacturer, you must submit, for NHTSA approval, a quality assurance plan (QAP) for your EBT before NHTSA places the EBT on the CPL.

(1) Your QAP must specify the methods used to perform external calibration checks on the EBT, the tolerances within which the EBT is regarded as being in proper calibration, and the intervals at which these checks must be performed. In designating these intervals, your QAP must take into account factors like frequency of use, environmental conditions (e.g., temperature, humidity, altitude) and type of operation (e.g., stationary or mobile).

(2) Your QAP must also specify the inspection, maintenance, and calibration requirements and intervals for the EBT.

(b) As the manufacturer, you must include, with each EBT, instructions for its use and care consistent with the QAP.

(c) As the user of the EBT (e.g., employer, service agent), you must do the following:

(1) You must follow the manufacturer's instructions (see paragraph (b) of this section), including performance of external calibration checks at the intervals the instructions specify.

(2) In conducting external calibration checks, you must use only calibration devices appearing on NHTSA's CPL for "Calibrating Units for Breath Alcohol Tests."

(3) If an EBT fails an external check of calibration, you must take the EBT out of service. You may not use the EBT again for DOT alcohol testing until it is repaired and passes an external calibration check.

(4) You must maintain records of the inspection, maintenance, and calibration of EBTs as provided in §40.333(a)(2) .

(5) You must ensure that inspection, maintenance, and calibration of the EBT are performed by its manufacturer or a maintenance representative certified either by the manufacturer or by a state health agency or other appropriate state agency.

§ 40.235 What are the requirements for proper use and care of ASDs?

(a) As an ASD manufacturer, you must submit, for NHTSA approval, a QAP for your ASD before NHTSA places the ASD on the CPL. Your QAP must specify the methods used for quality control checks, temperatures at which the ASD must be stored and used, the shelf life of the device, and environmental conditions (e.g., temperature, altitude, humidity) that may affect the ASD's performance.

(b) As a manufacturer, you must include with each ASD instructions for its use and care consistent with the QAP. The instructions must include directions on the proper use of the ASD, and, where applicable the time within which the device must be read, and the manner in which the reading is made.

(c) As the user of the ADS (e.g., employer, STT), you must follow the QAP instructions.

(d) You are not permitted to use an ASD that does not pass the specified quality control checks or that has passed its expiration date.

(e) As an employer, with respect to breath ASDs, you must also follow the device use and care requirements of §40.233.

Subpart L—Alcohol Screening Tests

§ 40.241 What are the first steps in any alcohol screening test?

As the BAT or STT you will take the following steps to begin all alcohol screening tests,

regardless of the type of testing device you are using:

(a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's worksite, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing. In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test.

(b) Ensure that, when the employee enters the alcohol testing site, you begin the alcohol testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or because an authorized employer or employee representative is delayed in arriving.

(1) If the employee is also going to take a DOT drug test, you must, to the greatest extent practicable, ensure that the alcohol test is completed before the urine collection process begins.

(2) If the employee needs medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to conduct a test.

(c) Require the employee to provide positive identification. You must see a photo ID issued by the employer (other than in the case of an owner-operator or other self-employer individual) or a Federal, state, or local government (e.g., a driver's license). You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.

(d) If the employee asks, provide your identification to the employee. Your identification must include your name and your employer's name but is not required to include your picture, address, or telephone number.

(e) Explain the testing procedure to the employee, including showing the employee the instructions on the back of the ATF.

(f) Complete Step 1 of the ATF.

(g) Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.

§ 40.243 What is the procedure for an alcohol screening test using an EBT or non-evidential breath ASD?

As the BAT or STT, you must take the following steps:

(a) Select, or allow the employee to select, an individually wrapped or sealed mouthpiece from the testing materials.

(b) Open the individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.

(c) Instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.

(d) Show the employee the displayed test result.

(e) If the device is one that prints the test number, testing device name and serial number, time, and result directly onto the ATF, you must check to ensure that the information has been printed correctly onto the ATF.

(f) If the device is one that prints the test number, testing device name and serial number,

time and result, but on a separate printout rather than directly onto the ATF, you must affix the printout of the information to the designated space on the ATF with tamper-evident tape or use a self-adhesive label that is tamper-evident.

(g) If the device is one that does not print the test number, testing device name and serial number, time, and result, or it is a device not being used with a printer, you must record this information in Step 3 of the ATF.

§ 40.245 What is the procedure for an alcohol screening test using a saliva ASD or a breath tube ASD?

(a) As the STT or BAT, you must take the following steps when using the saliva ASD:

(1) Check the expiration date on the device or on the package containing the device and show it to the employee. You may not use the device after its expiration date.

(2) Open an individually wrapped or sealed package containing the device in the presence of the employee.

(3) Offer the employee the opportunity to use the device. If the employee uses it, you must instruct the employee to insert it into his or her mouth and use it in a manner described by the device's manufacturer.

(4) If the employee chooses not to use the device, or in all cases in which a new test is necessary because the device did not activate (see paragraph (a)(7) of this section), you must insert the device into the employee's mouth and gather saliva in the manner described by the device's manufacturer. You must wear single-use examination or similar gloves while doing so and change them following each test.

(5) When the device is removed from the employee's mouth, you must follow the manufacturer's instructions regarding necessary next steps in ensuring that the device has activated.

(6)(i) If you were unable to successfully follow the procedures of paragraphs (a)(3) through (a)(5) of this section (e.g., the device breaks, you drop the device on the floor), you must discard the device and conduct a new test using a new device.

(ii) The new device you use must be one that has been under your control or that of the employee before the test.

(iii) You must note on the "Remarks" line of the ATF the reason for the new test. (Note: You may continue using the same ATF with which you began the test.)

(iv) You must offer the employee the choice of using the device or having you use it unless the employee, in the opinion of the STT or BAT, was responsible (e.g., the employee dropped the device) for the new test needing to be conducted.

(v) If you are unable to successfully follow the procedures of paragraphs (a)(3) through (a)(5) of this section on the new test, you must end the collection and put an explanation on the "Remarks" line of the ATF.

(vi) You must then direct the employee to take a new test immediately, using an EBT for the screening test.

(7) If you are able to successfully follow the procedures of paragraphs (a)(3)—(a)(5) of this section, but the device does not activate, you must discard the device and conduct a new test, in the same manner as provided in paragraph (a)(6) of this section. In this case, you must place the device into the employee's mouth to collect saliva for the new test.

(8) You must read the result displayed on the device no sooner than the device's manufacturer instructs. In all cases the result displayed must be read within 15 minutes of the test. You must then show the device and its reading to the employee and enter the result on the ATF.

(9) You must never re-use devices, swabs, gloves or other materials used in saliva testing.

(10) You must note the fact that you used a saliva ASD in Step 3 of the ATF.

(b) As the STT or BAT, you must take the following steps when using the breath tube ASD:

(1) Check the expiration date on the detector device and the electronic analyzer or on the package containing the device and the analyzer and show it to the employee. You must not use the device or the analyzer after their expiration date. You must not use an analyzer which is not specifically pre-calibrated for the device being used in the collection.

(2) Remove the device from the package and secure an inflation bag onto the appropriate end of the device, as directed by the manufacturer on the device's instructions.

(3) Break the tube's ampoule in the presence of the employee.

(4) Offer the employee the opportunity to use the device. If the employee chooses to use (e.g. hold) the device, instruct the employee to blow forcefully and steadily into the blowing end of device until the inflation bag fills with air (approximately 12 seconds).

(5) If the employee chooses not to hold the device, you must hold it and provide the use instructions in paragraph (b)(4) of this section.

(6) When the employee completes the breath process, take the device from the employee (or if you were holding it, remove it from the employee's mouth), remove the inflation bag, and prepare the device to be read by the analyzer in accordance with the manufacturer's directions.

(7)(i) If you were unable to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section (e.g., the device breaks apart, the employee did not fill the inflation bag), you must discard the device and conduct a new test using a new one.

(ii) The new device you use must be one that has been under your control or that of the employer before the test.

(iii) You must note on the "Remarks" line of the ATF the reason for the new test. (Note: You may continue using the same ATF with which you began the test.)

(iv) You must offer the employee the choice of holding the device or having you hold it unless the employee, in the your opinion, was responsible (e.g., the employee failed to fill the inflation bag) for the new test needing to be conducted.

(v) If you are unable to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section on the new test, you must end the collection and put an explanation on the "Remarks" line of the ATF.

(vi) You must then direct the employee to take a new test immediately, using another type of ASD (e.g., saliva device) or an EBT.

(8) If you were able to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section and after having waited the required amount of time directed by the manufacturer for the detector device to incubate, you must place the device in the analyzer in accordance with the manufacturer's directions. The result must be read from the analyzer no earlier than the required incubation time of the device. In all cases, the result must be read within 15 minutes of the test.

(9) You must follow the manufacturer's instructions for determining the result of the test. You must show the analyzer result to the employee and record the result on Step 3 of the ATF.

(10) You must never re-use detector devices or any gloves used in breath tube testing. The inflation bag must be voided of air following removal from a device. Inflation bags and electronic analyzers may be re-used but only in accordance with the manufacturer's directions.

(11) You must note the fact that you used a breath tube device in Step 3 of the ATF.

[67 FR 61522, Oct. 1, 2002, as amended at 72 FR 1299, Jan. 11, 2007]

§ 40.247 What procedures does the BAT or STT follow after a screening test result?

(a) If the test result is an alcohol concentration of less than 0.02, as the BAT or STT, you must do the following:

- (1) Sign and date Step 3 of the ATF; and
- (2) Transmit the result to the DER in a confidential manner, as provided in §40.255 .

(b) If the test result is an alcohol concentration of 0.02 or higher, as the BAT or STT, you must direct the employee to take a confirmation test.

(1) If you are the BAT who will conduct the confirmation test, you must then conduct the test using the procedures beginning at §40.251 .

(2) If you are not the BAT who will conduct the confirmation test, direct the employee to take a confirmation test, sign and date Step 3 of the ATF, and give the employee Copy 2 of the ATF.

(3) If the confirmation test will be performed at a different site from the screening test, you must take the following additional steps:

(i) Advise the employee not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;

(ii) Tell the employee the reason for the waiting period required by §40.251(a) (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);

(iii) Explain that following your instructions concerning the waiting period is to the employee's benefit;

(iv) Explain that the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed;

(v) Note on the "Remarks" line of the ATF that the waiting period instructions were provided;

(vi) Instruct the person accompanying the employee to carry a copy of the ATF to the BAT who will perform the confirmation test; and

(vii) Ensure that you or another BAT, STT, or employer representative observe the employee as he or she is transported to the confirmation testing site. You must direct the employee not to attempt to drive a motor vehicle to the confirmation testing site.

(c) If the screening test is invalid, you must, as the BAT or STT, tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, repeat the testing process (see §40. 271).

Subpart M - Alcohol Confirmation Tests

§ 40.251 What are the first steps in an alcohol confirmation test?

As the BAT for an alcohol confirmation test, you must follow these steps to begin the confirmation test process:

(a) You must carry out a requirement for a waiting period before the confirmation test, by taking the following steps:

(1) You must ensure that the waiting period lasts at least 15 minutes, starting with the completion of the screening test. After the waiting period has elapsed, you should begin the confirmation test as soon as possible, but not more than 30 minutes after the completion of the screening test.

(i) If the confirmation test is taking place at a different location from the screening test (see §40.247(b)(3)) the time of transit between sites counts toward the waiting period if the STT or BAT who conducted the screening test provided the waiting period instructions.

(ii) If you cannot verify, through review of the ATF, that waiting period instructions were

provided, then you must carry out the waiting period requirement.

(iii) You or another BAT or STT, or an employer representative, must observe the employee during the waiting period.

(2) Concerning the waiting period, you must tell the employee:

(i) Not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;

(ii) The reason for the waiting period (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);

(iii) That following your instructions concerning the waiting period is to the employee's benefit; and

(iv) That the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed.

(3) If you become aware that the employee has not followed the instructions, you must note this on the "Remarks" line of the ATF.

(b) If you did not conduct the screening test for the employee, you must require positive identification of the employee, explain the confirmation procedures, and use a new ATF. You must note on the "Remarks" line of the ATF that a different BAT or STT conducted the screening test.

(c) Complete Step 1 of the ATF.

(d) Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.

(e) Even if more than 30 minutes have passed since the screening test result was obtained, you must begin the confirmation test procedures in §40.253, not another screening test.

(f) You must note on the "Remarks" line of the ATF the time that elapsed between the two events, and if the confirmation test could not begin within 30 minutes of the screening test, the reason why.

(g) Beginning the confirmation test procedures after the 30 minutes have elapsed does not invalidate the screening or confirmation tests, but it may constitute a regulatory violation subject to DOT agency sanction.

§ 40.253 What are the procedures for conducting an alcohol confirmation test?

As the BAT conducting an alcohol confirmation test, you must follow these steps in order to complete the confirmation test process:

(a) In the presence of the employee, you must conduct an air blank on the EBT you are using before beginning the confirmation test and show the reading to the employee.

(1) If the reading is 0.00, the test may proceed. If the reading is greater than 0.00, you must conduct another air blank.

(2) If the reading on the second air blank is 0.00, the test may proceed. If the reading is greater than 0.00, you must take the EBT out of service.

(3) If you take an EBT out of service for this reason, no one may use it for testing until the EBT is found to be within tolerance limits on an external check of calibration.

(4) You must proceed with the test of the employee using another EBT, if one is available.

(b) You must open a new individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.

(c) You must ensure that you and the employee read the unique test number displayed on the EBT.

(d) You must instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.

(e) You must show the employee the result displayed on the EBT.

(f) You must show the employee the result and unique test number that the EBT prints out either directly onto the ATF or onto a separate printout.

(g) If the EBT provides a separate printout of the result, you must attach the printout to the designated space on the ATF with tamper-evident tape, or use a self-adhesive label that is tamper-evident.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

§ 40.255 What happens next after the alcohol confirmation test result?

(a) After the EBT has printed the result of an alcohol confirmation test, you must, as the BAT, take the following additional steps:

(1) Sign and date Step 3 of the ATF.

(2) If the alcohol confirmation test result is lower than 0.02, nothing further is required of the employee. As the BAT, you must sign and date Step 3 of the ATF.

(3) If the alcohol confirmation test result is 0.02 or higher, direct the employee to sign and date Step 4 of the ATF. If the employee does not do so, you must note this on the "Remarks" line of the ATF. However, this is not considered a refusal to test.

(4) If the test is invalid, tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, conduct a re-test. (see §40.271).

(5) Immediately transmit the result directly to the DER in a confidential manner.

(i) You may transmit the results using Copy 1 of the ATF, in person, by telephone, or by electronic means. In any case, you must immediately notify the DER of any result of 0.02 or greater by any means (e.g., telephone or secure fax machine) that ensures the result is immediately received by the DER. You must not transmit these results through C/TPAs or other service agents.

(ii) If you do not make the initial transmission in writing, you must follow up the initial transmission with Copy 1 of the ATF.

(b) As an employer, you must take the following steps with respect to the receipt and storage of alcohol test result information:

(1) If you receive any test results that are not in writing (e.g., by telephone or electronic means), you must establish a mechanism to establish the identity of the BAT sending you the results.

(2) You must store all test result information in a way that protects confidentiality.

Subpart N - Problems in Alcohol Testing

§ 40.261 What is a refusal to take an alcohol test, and what are the consequences?

(a) As an employee, you are considered to have refused to take an alcohol test if you:

(1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see §40.241(a));

(2) Fail to remain at the testing site until the testing process is complete; Provided, That an employee who leaves the testing site before the testing process commences (see §40.243(a)) for a pre-employment test is not deemed to have refused to test;

(3) Fail to provide an adequate amount of saliva or breath for any alcohol test required by

this part or DOT agency regulations; Provided, That an employee who does not provide an adequate amount of breath or saliva because he or she has left the testing site before the testing process commences (see §40.243(a)) for a pre-employment test is not deemed to have refused to test;

(4) Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see §40.265(c));

(5) Fail to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined at §40.265(c);

(6) Fail to sign the certification at Step 2 of the ATF (see §§40.241(g) and 40.251(d)); or

(7) Fail to cooperate with any part of the testing process.

(b) As an employee, if you refuse to take an alcohol test, you incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations.

(c) As a BAT or an STT, or as the physician evaluating a “shy lung” situation, when an employee refuses to test as provided in paragraph (a) of this section, you must terminate the portion of the testing process in which you are involved, document the refusal on the ATF (or in a separate document which you cause to be attached to the form), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures the refusal notification is immediately received. You must make this notification directly to the DER (not using a C/TPA as an intermediary).

(d) As an employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for such a refusal.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

§ 40.263 What happens when an employee is unable to provide a sufficient amount of saliva for an alcohol screening test?

(a) As the STT, you must take the following steps if an employee is unable to provide sufficient saliva to complete a test on a saliva screening device (e.g., the employee does not provide sufficient saliva to activate the device).

(1) You must conduct a new screening test using a new screening device.

(2) If the employee refuses to make the attempt to complete the new test, you must discontinue testing, note the fact on the “Remarks” line of the ATF, and immediately notify the DER. This is a refusal to test.

(3) If the employee has not provided a sufficient amount of saliva to complete the new test, you must note the fact on the “Remarks” line of the ATF and immediately notify the DER.

(b) As the DER, when the STT informs you that the employee has not provided a sufficient amount of saliva (see paragraph (a)(3) of this section), you must immediately arrange to administer an alcohol test to the employee using an EBT or other breath testing device.

§ 40.265 What happens when an employee is unable to provide a sufficient amount of breath for an alcohol test?

(a) If an employee does not provide a sufficient amount of breath to permit a valid breath test, you must take the steps listed in this section.

(b) As the BAT or STT, you must instruct the employee to attempt again to provide a sufficient amount of breath and about the proper way to do so.

(1) If the employee refuses to make the attempt, you must discontinue the test, note the

fact on the “Remarks” line of the ATF, and immediately notify the DER. This is a refusal to test.

(2) If the employee again attempts and fails to provide a sufficient amount of breath, you may provide another opportunity to the employee to do so if you believe that there is a strong likelihood that it could result in providing a sufficient amount of breath.

(3) When the employee's attempts under paragraph (b)(2) of this section have failed to produce a sufficient amount of breath, you must note the fact on the “Remarks” line of the ATF and immediately notify the DER.

(4) If you are using an EBT that has the capability of operating manually, you may attempt to conduct the test in manual mode.

(5) If you are qualified to use a saliva ASD and you are in the screening test stage, you may change to a saliva ASD only to complete the screening test.

(c) As the employer, when the BAT or STT informs you that the employee has not provided a sufficient amount of breath, you must direct the employee to obtain, within five days, an evaluation from a licensed physician who is acceptable to you and who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.

(1) You are required to provide the physician who will conduct the evaluation with the following information and instructions:

(i) That the employee was required to take a DOT breath alcohol test, but was unable to provide a sufficient amount of breath to complete the test;

(ii) The consequences of the appropriate DOT agency regulation for refusing to take the required alcohol test;

(iii) That the physician must provide you with a signed statement of his or her conclusions; and

(iv) That the physician, in his or her reasonable medical judgment, must base those conclusions on one of the following determinations:

(A) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. The physician must not include in the signed statement detailed information on the employee's medical condition. In this case, the test is cancelled.

(B) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. This constitutes a refusal to test.

(C) For purposes of paragraphs (c)(1)(iv)(A) and (B) of this section, a medical condition includes an ascertainable physiological condition (e.g., a respiratory system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of “situational anxiety” or hyperventilation.

(2) As the physician making the evaluation, after making your determination, you must provide a written statement of your conclusions and the basis for them to the DER directly (and not through a C/TPA acting as an intermediary). You must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain your conclusion.

(3) Upon receipt of the report from the examining physician, as the DER you must immediately inform the employee and take appropriate action based upon your DOT agency regulations.

§ 40.267 What problems always cause an alcohol test to be cancelled?

As an employer, a BAT, or an STT, you must cancel an alcohol test if any of the following problems occur. These are “fatal flaws.” You must inform the DER that the test was

cancelled and must be treated as if the test never occurred. These problems are:

(a) In the case of a screening test conducted on a saliva ASD or a breath tube ASD:

(1) The STT or BAT reads the result either sooner than or later than the time allotted by the manufacturer and this Part (see §40.245(a)(8) for the saliva ASD and §40.245(b)(8) for the breath tube ASD).

(2) The saliva ASD does not activate (see §40.245(a)(7)); or

(3) The device is used for a test after the expiration date printed on the device or on its package (see §40.245(a)(1) for the saliva ASD and §40.245(b)(1) for the breath tube ASD).

(4) The breath tube ASD is tested with an analyzer which has not been pre-calibrated for that device's specific lot (see §40.245(b)(1)).

(b) In the case of a screening or confirmation test conducted on an EBT, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result (see §40.253(c), (e) and (f)).

(c) In the case of a confirmation test:

(1) The BAT conducts the confirmation test before the end of the minimum 15-minute waiting period (see §40.251(a)(1));

(2) The BAT does not conduct an air blank before the confirmation test (see §40.253(a));

(3) There is not a 0.00 result on the air blank conducted before the confirmation test (see §40.253(a)(1) and (2));

(4) The EBT does not print the result (see §40.253(f)); or

(5) The next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this case, every result of 0.02 or above obtained on the EBT since the last valid external calibration check is cancelled (see §40.233(a)(1) and (c)(3)).

[65 FR 79526, Dec. 19, 2000, as amended at 67 FR 61522, Oct. 1, 2002; 71 FR 49384, Aug. 23, 2006; 72 FR 1299, Jan. 11, 2007]

§ 40.269 What problems cause an alcohol test to be cancelled unless they are corrected?

As a BAT or STT, or employer, you must cancel an alcohol test if any of the following problems occur, unless they are corrected. These are "correctable flaws." These problems are:

(a) The BAT or STT does not sign the ATF (see §§40.247(a)(1) and 40.255(a)(1)).

(b) The BAT or STT fails to note on the "Remarks" line of the ATF that the employee has not signed the ATF after the result is obtained (see §40.255(a)(3)).

(c) The BAT or STT uses a non-DOT form for the test (see §40.225(a)).

[65 FR 79526, Dec. 19, 2000, amended at 71 FR 49384, Aug. 23, 2006]

§ 40.271 How are alcohol testing problems corrected?

(a) As a BAT or STT, you have the responsibility of trying to complete successfully an alcohol test for each employee.

(1) If, during or shortly after the testing process, you become aware of any event that will cause the test to be cancelled (see §40.267), you must try to correct the problem promptly, if practicable. You may repeat the testing process as part of this effort.

(2) If repeating the testing process is necessary, you must begin a new test as soon as possible. You must use a new ATF, a new sequential test number, and, if needed, a new ASD and/or a new EBT. It is permissible to use additional technical capabilities of the EBT (e.g., manual operation) if you have been trained to do so in accordance with §40.213(c).

(3) If repeating the testing process is necessary, you are not limited in the number of attempts to complete the test, provided that the employee is making a good faith effort to comply

with the testing process.

(4) If another testing device is not available for the new test at the testing site, you must immediately notify the DER and advise the DER that the test could not be completed. As the DER who receives this information, you must make all reasonable efforts to ensure that the test is conducted at another testing site as soon as possible.

(b) If, as an STT, BAT, employer or other service agent administering the testing process, you become aware of a “correctable flaw” (see §40.269) that has not already been corrected, you must take all practicable action to correct the problem so that the test is not cancelled.

(1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a signed statement that it is true and accurate. For example, suppose you are a BAT and you forgot to make a notation on the “Remarks” line of the ATF that the employee did not sign the certification. You would, when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification after the result was obtained, and that your signed statement is true and accurate.

(2) If the problem is the use of a non-DOT form, you must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT alcohol test. You must also provide a signed statement that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control, and the steps you have taken to prevent future use of non-DOT forms for DOT tests. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.

(c) If you cannot correct the problem, you must cancel the test.

§ 40.273 What is the effect of a cancelled alcohol test?

(a) A cancelled alcohol test is neither positive nor negative.

(1) As an employer, you must not attach to a cancelled test the consequences of a test result that is 0.02 or greater (e.g., removal from a safety-sensitive position).

(2) As an employer, you must not use a cancelled test in a situation where an employee needs a test result that is below 0.02 (e.g., in the case of a return-to-duty or follow-up test to authorize the employee to perform safety-sensitive functions).

(3) As an employer, you must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph (a)(2) of this section or other provisions of this part.

(b) A cancelled test does not count toward compliance with DOT requirements, such as a minimum random testing rate.

(c) When a test must be cancelled, if you are the BAT, STT, or other person who determines that the cancellation is necessary, you must inform the affected DER within 48 hours of the cancellation.

(d) A cancelled DOT test does not provide a valid basis for an employer to conduct a non-DOT test (i.e., a test under company authority).

§ 40.275 What is the effect of procedural problems that are not sufficient to cancel an alcohol test?

(a) As an STT, BAT, employer, or a service agent administering the testing process, you must document any errors in the testing process of which you become aware, even if they are not “fatal flaws” or “correctable flaws” listed in this subpart. Decisions about the ultimate impact of these errors will be determined by administrative or legal proceedings, subject to the limitation of paragraph (b) of this section.

(b) No person concerned with the testing process may declare a test cancelled based on a mistake in the process that does not have a significant adverse effect on the right of the employee to a fair and accurate test. For example, it is inconsistent with this part to cancel a test based on a minor administrative mistake (e.g., the omission of the employee's middle initial) or an error that does not affect employee protections under this part. Nor does the failure of an employee to sign in Step 4 of the ATF result in the cancellation of the test. Nor is a test to be cancelled on the basis of a claim by an employee that he or she was improperly selected for testing.

(c) As an employer, these errors, even though not sufficient to cancel an alcohol test result, may subject you to enforcement action under DOT agency regulations.

§ 40.277 Are alcohol tests other than saliva or breath permitted under these regulations?

No, other types of alcohol tests (e.g., blood and urine) are not authorized for testing done under this part. Only saliva or breath for screening tests and breath for confirmation tests using approved devices are permitted.

THIS PRINT COVERS CALENDAR ITEM NO. : 10.14

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

DIVISION: Chief of Staff/Administration

BRIEF DESCRIPTION:

Extending the date for wage-setting and final approval of an MOU between the SFMTA and Local 250A for 9163 transit operators by thirty days to September 24, 2008 pursuant to Articles VIIIA and XIA of the San Francisco Charter.

SUMMARY:

- Charter Sections A.8.104 and A8.404 call for the SFMTA Board of Directors to set transit operator wage rates by August 25, 2008.
- Charter Section 8.A.104 requires the SFMTA to “sunshine” the MOU for a period of 15 days prior to approval.
- In order to comply with the legal requirement to “sunshine” the MOU and take subsequent action to approve the MOU, a thirty day extension of the deadline for wage setting and MOU approval is necessary.

ENCLOSURES:

1. SFMTA Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION Rumi Ueno

BE RETURNED TO

ASSIGNED MTAB CALENDAR DATE: _____

EXPLANATION:

San Francisco Municipal Transportation Agency (SFMTA) staff and the Transport Workers Union (TWU) Local 250A have reached a tentative agreement to extend the terms of the current Memorandum of Understanding (MOU) between SFMTA and TWU Local 250A for 9163 Transit Operators (July 1, 2004 through June 30, 2008), for three years through June 30, 2011.

Charter Section A.8.104 calls for the SFMTA to set wages for transit operators before August 25, 2008.

Prior to adopting a Memorandum of Understanding (MOU) between the SFMTA and the Transportation Workers Union (TWU) Local 250A (9163) incorporating transit operator wages, Charter Section 8A.104 requires the SFMTA to prepare a detailed analysis of any proposed collective bargaining agreement including comparing the difference between the current and proposed agreement and analyzing the costs for each year of the agreement. The SFMTA is required to make this information available at a meeting of the SFMTA Board 15 days prior to approval (the “sunshine requirement”).

In order to comply with the above requirement to “sunshine” the proposed extension of the collective bargaining agreement and for the SFMTA Board to take action, it is necessary to extend the date for wage-setting and final approval of the MOU for thirty days to September 24, 2008.

The MOU will be “sunshined” at the August 19, 2008 meeting of the SFMTA Board of Directors. The Board will be asked to approve the MOU at their regular meeting of September 16, 2008.

At the September 16, 2008 meeting, staff will present a companion calendar item requesting the Board to set transit operator wage rates for Fiscal Year 2009.

STRATEGIC GOALS:

The extension supports the following goals in the SFMTA’s Strategic Plan:

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

Strategic 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.

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

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

The City Attorney has reviewed this calendar item.

RECOMMENDATION:

SFMTA staff recommends approval.

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

RESOLUTION No. _____

WHEREAS, Pursuant to Section 8A.104 of the San Francisco Charter, the SFMTA has been meeting and conferring with TWU Local 250A (Local 250A) with respect to negotiable terms and conditions of employment for 9163 transit operators to take effect retroactively July 1, 2008; and,

WHEREAS, Section 8A.104 and Section A8.404 of the San Francisco Charter call for the SFMTA Board of Directors to set transit operator wage rates by August 25, 2008; and,

WHEREAS, SFMTA staff and Local 250A leadership have reached a tentative agreement to extend the terms of the Memorandum of Understanding (MOU) Between San Francisco Municipal Transportation Agency and Local 250A for July 1, 2004-June 30, 2008, as amended September 1, 2006, for three years through June 30, 2011 and to incorporate into the proposed MOU wages at the minimum levels required by Section A8.404 of the Charter, and

WHEREAS, SFMTA staff is preparing the MOU for consideration and approval by the SFMTA Board of Directors and,

WHEREAS, Section 8A.104 of the San Francisco Charter requires the SFMTA to prepare a detailed analysis of any proposed collective bargaining agreement, comparing the differences between the agreement and the prior agreement and analyzing the costs for each year of the agreement, and make such analysis available at a meeting of the SFMTA Board 15 days before approving such agreement (the "sunshine requirement") and,

WHEREAS, It is not possible for the SFMTA to comply with the "sunshine requirement" at regularly scheduled meetings of the Board of Directors before August 25, 2008 and,

WHEREAS, Sections 8A.104 and 11.100 of the San Francisco Charter authorize the SFMTA Board of Directors to extend the time for setting operator wages and approving an MOU in compliance with the requirements set forth above; now therefore, be it,

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors does hereby extend the date for wage-setting and final approval of an MOU between the SFMTA and Local 250A for 9163 transit operators by thirty days to September 24, 2008 pursuant to Articles VIIIA and XIA of the San Francisco Charter.

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

THIS PRINT COVERS CALENDAR ITEM NO. : 10.15

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

DIVISION: ADMINISTRATION DIVISION

BRIEF DESCRIPTION:

Adopting the proposed federal fiscal year 2008-2009 Annual Overall Goal of 29 percent for participation by Disadvantaged Business Enterprises in contracts financed with assistance from the Federal Transit Administration.

SUMMARY:

- The U.S. Department of Transportation (DOT) issued a Disadvantaged Business Enterprise (DBE) Program Final Rule on March 4, 1999, which is contained in Part 26 of Title 49 of the Code of Federal Regulations (Part 26). On August 17, 1999, the Public Transportation Commission adopted a DBE Program for implementation in its DOT-assisted contracts. On May 30, 2003, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted a revised DBE Program, taking into consideration legislative and regulatory changes affecting the DBE Program.
- On May 9, 2005, the U.S. Court of Appeals for the Ninth Circuit issued a decision in **Western States Paving Co. v. Washington State Department of Transportation, et al.** (9th Cir. 2005). Although the federal circuit court upheld Part 26 of DOT's DBE regulations, the court struck down Washington's DBE program as unconstitutional.
- In response to **Western States Paving**, on March 23, 2006, the Federal Transit Administration (FTA) published DOT's guidance concerning the federal DBE program that applies to grant recipients in states within the Ninth Circuit, including California. This guidance instructed that if a recipient does not currently have sufficient evidence of discrimination or its effects, the recipient must use race-neutral means to attain its annual overall DBE goal, as opposed to race- and gender-conscious goals on contracts.
- In compliance with this guidance, the SFMTA proposes a federal fiscal year (FFY) 2008-2009 goal of 29 percent for participation by DBEs in FTA-assisted contracts, to be attained by race-neutral measures.
- After approval by the SFMTA Board, the SFMTA must submit its proposed annual overall goal to the FTA, along with a description of the methodology used to establish the goal. The report on the methodology used is enclosed with this calendar item.
- A disparity study is being prepared on behalf of SFMTA and the San Francisco Airport to determine the continuing existence of discrimination or its effects on SFMTA's procurement program. SFMTA has been implementing a race- and gender-neutral small business program while the disparity study is being prepared and will continue to implement an aggressive outreach program.
- Depending on the findings of the disparity study, the feasibility of assigning DBE race-conscious goals to SFMTA contracts will be evaluated. Additionally, SFMTA may submit an amended DBE goal to the FTA based on the results of the disparity study.

ENCLOSURES: 1. Resolution 2. Methodology

APPROVALS:

DATE

DEPUTY OF DIVISION

PREPARING CALENDAR ITEM:_____

FINANCE_____

EXECUTIVE DIRECTOR/CEO:_____

SECRETARY, SFMTA:_____

ADOPTED RESOLUTION TO BE RETURNED TO: Virginia Harmon

ASSIGNED SFMTA CALENDAR DATE _____

EXPLANATION:

Background of the DBE Program

The U.S. Department of Transportation (DOT) issued a new Disadvantaged Business Enterprise (DBE) Program Final Rule on March 4, 1999, codified in Part 26 of Title 49 of the Code of Federal Regulations. The DBE Regulations are intended to remedy past and current discrimination against DBEs, ensure a “level playing field,” and foster equal opportunity in DOT-assisted contracts.

On August 17, 1999, in compliance with Part 26, the Public Transportation Commission (PTC) adopted a DBE Program for implementation by SFMTA in FTA-assisted contracts. Under the DBE Program, SFMTA sets an annual overall goal based on demonstrable evidence of “ready, willing and able” DBEs that are available to work on FTA-assisted contracts. SFMTA’s DBE program employs one of the specific methodologies for goal-setting sanctioned by DOT in Part 26.

Under the current DBE regulations, eligible DBE owners must prove that their personal net worth is less than \$750,000 in order to be certified as DBEs.

Part 26 also requires that all recipients of DOT funds in each state agree on a Unified Certification Program (UCP) in order to have a uniform system for certifying DBEs within the state. California was the first state to have its UCP approved by DOT. SFMTA is one of the local agencies in California’s UCP that is eligible to certify firms as DBEs.

SFMTA’s DBE Program

On May 30, 2003, the SFMTA Board adopted a revised DBE Program. The revised DBE Program features both programmatic and administrative changes incorporating amendments to Part 26: (1) DBE certification requirements consistent with the California’s UCP; (2) prompt payment and liquidated damages provisions; (3) requirements for contractors to notify the agency when adding subcontractors and suppliers; and (4) program forms to improve the monitoring of DBE participation.

The SFMTA Board also adopts an Annual Anticipated DBE Participation Level (AADPL) and methodology for the Department of Parking and Traffic, which obtains funding for projects from the Federal Highway Administration through Caltrans. SFMTA submits this AADPL and methodology directly to Caltrans, and it is not included in the annual DBE goal submitted to FTA.

Annual Goal

Part 26 requires the SFMTA Board to approve an overall annual goal for DBE participation in FTA-assisted contracts. The annual goal tracks the federal fiscal year, which starts on October 1 and ends on September 30. The overall annual goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate in FTA-assisted contracts.

Part 26 requires that the goal reflect SFMTA's determination of the level of DBE participation expected absent the effects of discrimination.

After adoption by the SFMTA Board, the SFMTA must submit its overall annual goal to the FTA by August 1, 2008, for review, along with a description of the methodology used to establish the goal. The FTA has granted SFMTA an extension until August 8, 2008 to submit the Annual DBE Goal documents.

The Contract Compliance Office conferred with its consulting firm, Charles River Associates International, Inc (CRAI), to ascertain availability of DBE firms within the SFMTA's relevant marketplace. CRAI specializes in disparity studies, related statistical research, calculations and reports. At our request, CRAI calculated availability estimates for minority-owned and/or women-owned business enterprises (MWBs) using the US Census Bureau's 2002 Survey of Business Owners, the latest year for which there is complete data of this type. Together with SFMTA spending patterns by two-digit NAICS codes, we have produced weighted estimates of availability for Construction and Professional Services. The calculated estimates give greater weight to availability in those industries that receive a larger share of SFMTA's federal contract dollars.

Following the methodology prescribed in Part 26, the Contract Compliance Office arrived at a proposed overall annual goal of 29 percent of DBE participation in projected new FTA-assisted contracts for 2008-2009. A description of the methodology and the annual goal is enclosed. As discussed below, until a disparity study is completed and evaluated, SFMTA intends to use race-neutral means to achieve the goal.

As required under Part 26, SFMTA has published a notice announcing its proposed DBE Goal for FFY 2008-2009. The notice appears in the following local and minority focused-publications: The Asian Week, Bay Area Reporter, China Press, El Reportero, San Francisco Bay Times, San Francisco Bay View, Sing Tao, World Journal. The notice informs the public of the proposed goal, and that the rationale for the goal will be available for inspection and review at the CCO during normal business hours for 30 days from the first publication date. SFMTA accepts comments on the proposed DBE goal up to 45 days from the date of first publication of the notice.

The Western States Paving Decision

On May 9, 2005, the United States Court of Appeals for the Ninth Circuit issued a decision in **Western States Paving Co. vs. Washington State Department of Transportation, et al.** (9th Cir. 2005) 407 F.3d 983. The court upheld DOT's DBE regulations on their face; however, the court struck down the Washington Department of Transportation's (WSDOT) DBE program as unconstitutional. The court held that WSDOT's DBE program was not narrowly tailored because it was not based on evidence of discrimination in the Washington State marketplace. The court also

suggested that a remedial program, such as the DBE program, is only narrowly tailored if it is limited to those minority groups that have actually suffered discrimination.

Specifically, the court noted that WSDOT had not conducted adequate statistical studies to establish the existence of discrimination in the highway contracting industry. Further, the court found that WSDOT's calculation of the capacity of DBEs to do work was flawed because it failed to take into account the effects of past race-conscious programs on current DBE participation. According to the court, the disparity between DBE participation on contracts with and without race-conscious goals did not provide any evidence of on-going discrimination.¹ Finally, the court noted that WSDOT did not present any anecdotal evidence of discrimination. Since this decision was issued by the U.S. Court of Appeals for the Ninth Circuit, it applies to all states comprising the Ninth Circuit, including California.

DOT Guidance in Response to the **Western States Paving** Decision

In response to the **Western States Paving** decision, on March 23, 2006, FTA published DOT's guidance concerning the federal DBE program that applies to grant recipients in states within the Ninth Circuit. This guidance provides that if a recipient does not currently have sufficient evidence of discrimination or its effects, the recipient must meet its annual overall DBE goal solely through race-neutral measures. Since the SFMTA does not currently have sufficient evidence of discrimination or its effects to justify submission of race-conscious goals, the SFMTA has been using race neutral measures to achieve the annual goal.

SFMTA's Small Business Enterprise (SBE) Program

In 2006, the SFMTA Board approved a small business enterprise (SBE) program to be utilized for federally assisted contracts. An SBE is defined as 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 ("State Program"), the City and County of San Francisco's LBE Program ("City Program"), or the California Unified Certification Program (CUCP) ("the Federal DBE program"). The SFMTA will continue to use the SBE Program for FFY 2009 to achieve the DBE goal at least until its disparity study is completed and evaluated.

Disparity Study

DOT's guidance also requests that recipients submit, along with their annual goal, a description of any plans to conduct a study to determine the existence of discrimination or its effects in the marketplace. The San Francisco City Attorney's Office has retained CRAI, which is currently conducting a study for the SFMTA and the San Francisco International Airport (SFO) to determine whether race- and gender-based disparities exist in the sectors of the public contracting industry that typically receive federal transportation funds. CRAI is working closely with staff from the SFMTA, SFO, and the Human Rights Commission on this study. It is anticipated that the study will be completed within the next few months.

Benefit to the SFMTA 2008 – 2012 Strategic Plan

¹ As used in this discussion, the terms "race-conscious", "race-neutral", and "race-based" include both race and gender.

The SFMTA will further the following goal of the Strategic Plan through adoption of the Annual Overall DBE Goal for FTA funded contracts:

- Goal 3: External Affairs-Community Relations.
To improve the customer experience, community value and enhance the image of the SFMTA, as well as to ensure SFMTA is a leader in the industry.
 - Objective 3.1 – Improve economic vitality by growing relationships with businesses, community and stakeholder groups.

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

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

RESOLUTION No. _____

WHEREAS, On March 4, 1999, the United States Department of Transportation (DOT) issued its Disadvantaged Business Enterprise (DBE) Program Final Rule, which contained Part 26 of Title 49 of the Code of Federal Regulations (the Regulations); and

WHEREAS, In compliance with the Regulations, on August 17, 1999, the San Francisco Public Transportation Commission (1) approved and adopted a DBE Program for implementation by the San Francisco Municipal Transportation Agency (SFMTA) in DOT-assisted contracts, (2) adopted a policy statement expressing the Commission's commitment to the DBE Program, stating the objectives of the DBE Program, and outlining responsibilities for its implementation; and (3) ordered distribution of the signed and dated Policy Statement throughout the SFMTA and to the business community, including DBEs and non-DBEs that perform work on DOT-assisted contracts for the SFMTA; and

WHEREAS, On May 30, 2003, the SFMTA Board of Directors approved and adopted a revised DBE Program, including a policy statement which it ordered distributed throughout the SFMTA and to the business community, including DBEs and non-DBEs that perform work on DOT-assisted contracts for the SFMTA; and

WHEREAS, The Regulations also require the SFMTA to (1) set an annual overall goal for DBE participation in its DOT-assisted contracts; and (2) base the annual overall goal on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on DOT-assisted contracts; and

WHEREAS, DOT regulations set forth a choice of methodologies that the SFMTA must use to determine, achieve and count its annual overall DBE Participation goal for federal-fiscal year (FFY) 2008-2009; and

WHEREAS, SFMTA staff followed one of the methodologies set forth in Part 26 and arrived at an overall annual goal of 29 percent for DBE participation in DOT-assisted contracts for FFY 2008-2009; and

WHEREAS, As required under the Regulations, the proposed annual overall DBE goal was advertised on July 16, 2008 for a 30-day public review period, and a concurrent 45-day comment period; and

WHEREAS, On May 9, 2005, the U.S. Court of Appeals for the Ninth Circuit issued a decision in **Western States Paving Co. v. Washington State Department of Transportation, et al.** (9th Cir. 2005) 407 F.3d 983; and

WHEREAS, The Ninth Circuit upheld DOT's DBE regulations, but the court struck down the Washington State Department of Transportation 's DBE program as unconstitutional because Washington did not have sufficient evidence of discrimination to justify a race- and gender-conscious contracting program; and

WHEREAS, In response to the **Western States Paving** case, the Federal Transit Administration of the DOT published guidance concerning the federal DBE program that applies to recipients of DOT grants in states within the jurisdiction of the Ninth Circuit; and

WHEREAS, This guidance instructs that if a recipient does not currently have sufficient evidence of discrimination or its effects in the local market to justify race-conscious contracting, the recipient must meet its annual overall DBE goal solely through race-neutral measures; and

WHEREAS, The guidance also instructs that recipients who cannot demonstrate evidence of discrimination or its effects in the local marketplace should undertake a rigorous and valid study to determine whether there is evidence of discrimination or its effects; and

WHEREAS, The City has retained Charles River Associates International, Inc to conduct a disparity study for the SFMTA and the San Francisco International Airport (SFO) to determine the existence of discrimination or its effects in the sectors of the local public contracting industry that typically receive federal transportation funds through the SFMTA and SFO; and

WHEREAS, Charles River Associates International, Inc is working closely with SFMTA, SFO, and Human Rights Commission staff to complete the study; and

WHEREAS, Because the SFMTA does not currently have sufficient evidence of discrimination or its effects in the local market to justify race- and gender-conscious contracting, the SFMTA will seek to meet its goal exclusively by race- and gender-neutral measures; and

WHEREAS, In 2006, the SFMTA Board approved a Small Business Enterprise (SBE) program to encourage greater participation by small business firms, including DBEs, in SFMTA contracting, ; and

WHEREAS, The SFMTA has been taking affirmative steps to use race- and gender-neutral means to achieve DBE participation by putting SBE goals on federally assisted contracts and utilizing methods identified in 49 CFR Section 26.51(b); now, therefore, be it

RESOLVED, That the SFMTA Board of Directors has reviewed the methodology used to determine the proposed FFY 2008-2009 annual overall DBE goal for contracting by the SFMTA,

and adopts an overall annual goal of 29 percent for DBE participation in FTA-assisted contracts for FFY 2008-2009; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA to use exclusively race- and gender-neutral measures to achieve the DBE goal, including continuing to utilize SBE goals on federally assisted contracts to encourage greater participation by small business firms in SFMTA contracting, and utilizing methods identified in 49 CFR Section 26.51(b); and be it

FURTHER RESOLVED, That the SFMTA Board of Directors directs the Executive Director/CEO to transmit the FFY 2008-2009 overall DBE annual goal report to the Federal Transit Administration.

I 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

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

FY 2008 – 2009 OVERALL DBE GOAL ANALYSIS REPORT FOR FEDERAL TRANSIT ADMINISTRATION

INTRODUCTION

In Part 26 of Title 49 of the Code of Federal Regulations ("Part 26"), the Department of Transportation (DOT) sets forth regulations regarding Disadvantaged Business Enterprise (DBE) participation in federally assisted programs. The regulations include provisions pertaining to how a recipient should establish an annual overall goal. These provisions are intended to provide the maximum flexibility for recipients while ensuring that the recipients' goals are based on the availability of ready, willing and able DBEs in each recipient's relevant market area. These measures are intended to meet the DOT's obligation to ensure that the DBE program is narrowly tailored to remedy the effects of past discrimination.

In accordance with subsections 26.45(f)(2) and (3) of Part 26, the San Francisco Municipal Transportation Agency (SFMTA) proposes to adopt an overall goal of 29 percent for DBE contracting for federal fiscal year (FFY) 2008-2009. SFMTA submits the following report describing its overall goal and the methodology used to establish the goal. The SFMTA will seek to attain the overall goal through race-neutral measures.

In compliance with Part 26, the SFMTA has chosen the following methodology:

STEP 1-CALCULATE BASE FIGURE: Determine a base percentage figure for relative availability of DBEs in specific areas of expertise using the national 2002 U.S. Census Bureau (Table Four Availability by Minority Group and Industry for San Francisco CMSA, All firms, Survey of Business Owners). This figure will generally represent the ready, willing and able DBEs available to work on SFMTA FFY 2008-2009 Federal Transit Administration (FTA) assisted contracts.

STEP 2-ADJUST BASE FIGURE: After the calculation of the base figure, examine other evidence available in our market area regarding DBE availability to determine if any adjustment is needed to the base figure in order to arrive at the overall goal. DOT has published "Tips for Goal-Setting in the Disadvantaged Business Enterprise Program." (reference: <http://www.osdbu.dot.gov/DBE/Program/tips.cfm>). Under the heading "Adjustments Based on Past Participation," DOT cites several examples. One of the examples relates to using the median past participation as a means of adjusting the Step 1 Base Figure. See below under **STEP 2 – ADJUSTMENT OF THE BASE FIGURE.**

Once applying any adjustments, the adjusted goal represents the anticipated DBE participation that will be achieved as a percentage of all SFMTA FFY 2008-2009 FTA assisted contracts.

I. METHODOLOGY TO ESTABLISH OVERALL GOAL

A. DETERMINE A BASE FIGURE

1. Choice of Methodology

In order to select the proper methodology to generate its overall goal, SFMTA sought a method that, given the available data and evidence, would most accurately calculate the

relative availability of Disadvantaged Business Enterprises (DBEs) to participate in SFMTA's DOT-assisted contracts. SFMTA evaluated various methods for arriving at a base figure, as proposed in Section 26.45 of Part 26.

SFMTA determined the base figure by comparing the ratio of the total DBEs in its market to the total number of businesses in the relevant market (see subsection 3 below for description of relevant market). SFMTA had access to all of the required data for this calculation, and was confident that the analysis would most accurately provide a base figure of the relative availability of DBEs to participate in its FTA-assisted contracts.

2. Evidence Used to Calculate Base Figure

SFMTA's required DBE goal analysis uses only data from those contracts projected to be awarded under the procurement requirements of the FTA.

SFMTA gathered data on the types of contracts, the dollar amount of each contract, the nature of work for each contract, and the appropriate North American Industry Classification System (NAICS) for that work. SFMTA assigned a two-digit NAICS Code for every contract for FFY 2008-2009 FTA-assisted contracts.

As mentioned above, the annual DBE goal includes only contracts that SFMTA, at the time it sets the goal, expects to award during FFY 2009. Thus, the DBE goal analysis may not include all of the federally assisted contracts or subcontracts the SFMTA will actually award during this fiscal period. Conversely, the SFMTA may not award all the contracts that it expected to award when it calculated the goals. For example, for the current fiscal year, the annual goal is 25 percent, but the current actual DBE goal commitment is 13 percent.

3. Application of Evidence to Methodology – 2 Steps

In previous years, the SFMTA has used the services of a consultant to assist in the development of the DBE goal. SFMTA's consultant, Charles River Associates International, Inc (CRAI), analyzed data related to the availability of minority- and women-owned businesses in the SFMTA's relevant marketplace, the San Francisco and the Bay Area counties that comprise the San Francisco Consolidated Metropolitan Statistical Area (CMSA).

SFMTA has established an overall DBE goal of 29 percent, applicable to construction and professional services projects assisted by FTA for federal fiscal year 2008-2009.

STEP 1 – BASE FIGURE

SFMTA expects to award seven construction contracts and four professional service contracts during Federal Fiscal Year 2008-2009.

These contracts are listed below by applicable NAICS Code. Note that one contract may include participation in more than one NAICS Code.

TABLE ONE
FFY 09 FTA Contracting Opportunities

	Project Description	NAICS	Description	Dollar Amount	Total Contract Funds
1.a	Station E & Richmond Substation Project	23622	Commerical & institutional building construction	\$1,600,000	\$8,000,000
1.b		23713	Power & communication line & related structures construction	\$1,600,000	
1.c		23799	Other heavy & civil engineering construction	\$1,600,000	
1.d		23811	Concrete foundation & structure contractors	\$1,600,000	
1.e		23821	Electrical contractors	\$1,600,000	
2.a	Miscellaneous Rail Replacement	23799	Other heavy & civil engineering construction	\$2,200,000	\$6,000,000
2.b		23811	Concrete foundation & structure contractors	\$2,000,000	
2.c		23821	Electrical contractors	\$1,800,000	
3.a	St. Francis Circle Rail Replacement Project	23799	Other heavy & civil engineering construction	\$2,240,000	\$8,000,000
3.b		23811	Concrete foundation & structure	\$2,960,000	

	Project Description	NAICS	Description	Dollar Amount	Total Contract Funds
			contractors		
3.c		23821	Electrical contractors	\$2,800,000	
4.a	Cable Car Propulsion System Control	23799	Other heavy & civil engineering construction	\$576,000	
4.b	Replacement	23821	Electrical contractors	\$6,624,000	\$7,200,000
5.a	John Woods Motor Coach Facility - Vehicle	23811	Concrete foundation & structure contractors	\$1,410,000	
5.b	Lift	23821	Electrical contractors	\$190,000	\$1,600,000
6.a	Islais Creek Facility	23622	Commerical & institutional building construction	\$29,050,000	
6.b		23799	Other heavy & civil engineering construction	\$29,050,000	
6.c		23811	Concrete foundation & structure contractors	\$3,500,000	
6.d		23821	Electrical contractors	\$8,400,000	\$70,000,000
7.a	Muni TRACTION Power Feeder Circuits Upgrade	23713	Power & communication line & related structures construction	\$195,000	
7.b		23811	Concrete foundation & structure contractors	\$285,000	
7.c		23821	Electrical contractors	\$3,520,000	\$4,000,000
8	TOTAL CONSTRUCTION	23			\$104,800,000
9	As needed Specialized Engineering Services for Muni Rail Vehicle	54133	Engineering Services	\$5,000,000	\$5,000,000
10	As needed Specialized Engineering Services for Muni Motor Coaches	54133	Engineering Services	\$4,000,000	\$4,000,000

	Project Description	NAICS	Description	Dollar Amount	Total Contract Funds
11	Project Control Services & System for Central Subway Project	54133	Engineering Services	\$10,000,000	\$10,000,000
12	A & E Services for Final Design of Central Subway Project	54133	Engineering Services	\$30,000,000	\$30,000,000
13	TOTAL PROFESSIONAL, SCIENTIFIC & TECHNICAL SERVICES	54			\$49,000,000
14	Total FTA Funds				\$153,800,000

SUMMARY OF PROJECTED FTA FUNDING AVAILABILITY PER NORTH AMERICAN INDUSTRIAL CLASSIFICATION (NAICS) CATEGORIES

Narrow-Tailoring Factors to Availability Data

The U.S. DOT regulation refers to the procedure of using "Weighting" wherever possible to increase the accuracy of the base figure. We made adjustments by weighting the relative availability of DBEs in various fields, giving more weight to the fields in which SFMTA spends more contract dollars. Please refer to Table 2 below.

TABLE TWO
FFY 09 FTA Dollars by NAICS Code

	NAICS Code	NAICS Description	Project Description	Dollar Amount	Total Contract Funds	% of Contract \$s
1.a	23622	Commercial & institutional building construction	Station E & Richmond Substation Project	\$ 1,600,000	\$ 30,650,000	19.93%
1.b			Islais Creek Facility	\$ 29,050,000		
2.a	23713	Power & communication line & related structures construction	Station E & Richmond Substation Project	\$ 1,600,000	\$ 1,795,000	1.17%
2.b			Muni Traction Power Feed	\$ 195,000		
3.a	23799	Other heavy & civil engineering construction	Station E & Richmond Substation Project	\$ 1,600,000	\$ 35,666,000	23.19%
3.b			Miscellaneous Rail Replacement	\$ 2,200,000		
3.c			St. Francis Circle Rail Replacement Project	\$ 2,240,000		
3.d			Islais Creek Facility	\$ 29,050,000		
3.e			Cable Car Propulsion System Control Replacement	\$ 576,000		
4.a	23811	Concrete foundation & structure contractors	Station E & Richmond Substation Project	\$ 1,600,000	\$ 11,755,000	7.64%
4.a			Miscellaneous Rail Replacement	\$ 2,000,000		
4.c			St. Francis Circle Rail Replacement Project	\$ 2,960,000		
4.d			John Woods Motor Coach	\$ 1,410,000		
4.e			Islais Creek Facility	\$ 3,500,000		
4.f			Muni Traction Power Feed	\$ 285,000		
5.a	23821	Electrical contractors	Station E & Richmond Substation Project	\$ 1,600,000	\$ 24,934,000	16.21%
5.b			Miscellaneous Rail Replacement	\$ 1,800,000		
5.c			St. Francis Circle Rail Replacement Project	\$ 2,800,000		
5.d			Cable Car Propulsion System Control Replacement	\$ 6,624,000		
5.e			John Woods Motor Coach	\$ 190,000		

5.f			Islais Creek Facility	\$ 8,400,000		
5.g			Muni Traction Power Feed	\$ 3,520,000		
6.a	54133	Engineer Services	Project Control Services & System for Central Subway Project	\$ 10,000,000		
6.b			A & E Services for Final Design of Central Subway Project	\$ 30,000,000		
6.c			As needed Specialized Engineering Services for Muni Rail Vehicle & Motor Coach	\$ 9,000,000	\$ 49,000,000	31.86%
7	Total Contract Funds				\$ 153,800,000	100.00%
8	23		Construction		\$ 104,800,000	68.14%
9	54		Professional, scientific & technical services		\$ 49,000,000	31.86%
10	TOTAL CONTRACT AMOUNT				\$ 153,800,000	100.00%

In establishing the Base Figure for the relative availability of DBEs in the San Francisco CMSA, SFMTA relied on the following information:

- 2002 US Census Bureau
- Charles River Associates International, Inc analysis from 2008, see Table Four – Availability by Minority Group and Industry for San Francisco CMSA, All Firms, Survey of Business Owners.

TABLE THREE
FFY09 Summary of DBE Availability
By NAICS Code and Weighted By FTA Dollars
CRAI = Charles River Associates International, Inc.

	NAICS Code	Scope of Work	TOTAL DBES	CRAI Census (all firms)	% of DBE Availability	% of Dollar	Weighted % of DBE Availability
1	23	Construction	13,238	50,130	26.4%	68.1%	18.0%
2	16	Professional, Scientific, & Technical Assistance	64,930	151,135	46.1%	31.9%	14.7%
3	TOTAL:		78,168	201,265		100	32.7%

The formula used to calculate the Base Figure is:

$$\frac{\text{Number of Ready, Willing, and able DBE's in the San Francisco CMSA}}{(\text{Number of All Ready, Willing, and Able firms})} = \text{Base Figure}$$

BASE FIGURE FORMULA

Base figure =

$$\frac{(.681) (13,238 \text{ const. DBEs})}{(50,130 \text{ const. all firms})} + \frac{(.319) (64,930 \text{ professional, scientific \& technical DBEs})}{(151,135 \text{ professional, scientific \& technical all firm})} \times 100$$

Base figure =

$$(.681) (.264) + (.319) (.461) \times 100 = \text{relative availability}$$

Base figure =

$$(0.18.0) + (0.14.7) \times 100 = \mathbf{32.7\% = 33\%}$$

Therefore, SFMTA's Base Figure is: 33 percent relative availability of DBE firms. This means that the relative availability of DBE firms in the San Francisco CMSA is 33 percent.

TABLE FOUR
Availability by Minority Group and Industry for San Francisco CMSA, All Firms

Availability by Minority Group and Industry for San Francisco CMSA, All Firms
Survey of Business Owners (2002)

Industry	NAICS	Black		Hispanic *		Asian		AI/AN		MBE		Female		MBE/WBE		Total
		Number	% of Total [A]	Number	% of Total [B]	Number	% of Total [C]	Number	% of Total [D]	Number	% of Total [E]	Number	% of Total [F]	Number	% of Total [G]	
Construction	23	1,061	2.1%	5,188	10.3%	3,870	7.7%	902	1.8%	11,021	22.0%	2,842	5.7%	13,238	26.4%	50,130
Transportation & warehousing	48-49	1,147	6.4%	3,163	17.6%	4,586	25.5%	144	0.8%	9,040	50.2%	1,985	11.0%	10,028	55.7%	18,005
Professional, scientific, & technical services	54	3,634	2.4%	6952*	4.6%	20,694	13.7%	1,058	0.7%	25,386	21.4%	47,527	31.4%	64,930	46.1%	151,135

Notes:

- 1) This table represents data from the San Jose-San Francisco-Oakland, CA Combined Statistical Area (CSA) which is composed of the following core-based statistical areas (CBSAs): Napa, CA Metropolitan Statistical Area (MSA), San Francisco-Oakland-Fremont MSA, San Jose-Sunnyvale-Santa Clara MSA, Santa Cruz-Watsonville MSA, Santa Rosa-Petaluma MSA, Vallejo-Fairfield MSA.
 - 2) Numbers for MBE/WBE include firms that are either minority-owned OR woman-owned firms.
 - 3) MBE availability was calculated for each industry using the following formula: $[E] = [A] + [B] + [C] + [D]$
 - 4) MBE/WBE availability was calculated for each industry using the following formula: $[G] = ([A] + [B] + [C] + [D]) * (1 - [F]) + [F]$
- * The percentage of Hispanic-owned professional services firms reflects the percentage of these firms in the SF CSA, Sacramento County, and San Joaquin County. Data for the SF CSA alone are suppressed by the Census Bureau to maintain confidentiality.

Sources:

- 1) Survey of Business Owners, 2002.
- 2) Data for Hispanic-owned professional services firms were created by the U.S. Census Bureau as a special request.

STEP 2 -- ADJUSTMENT OF THE BASE FIGURE

In adjusting the base figure, we examined the volume of work committed to DBEs on SFMTA's FTA-funded projects from 2002 – 2008 as follows:

FY 2007-08: Annual DBE goal was 25%, actual DBE commitments equaled **13%** (1st, 2nd Quarters)

FY 2006-07: Annual DBE goal was 26%, actual DBE commitments equaled **0%**

FY 2005-06: Annual DBE goal was 26%, actual DBE commitments equaled **11%**

FY 2004-05: Annual DBE goal was 26%, actual DBE commitments equaled **25%**

FY 2003-04: Annual DBE goal was 27%, actual DBE commitments equaled **34%**

FY 2002-03: Annual DBE goal was 27%, actual DBE commitments equaled **24%**

FY 2001-02: Annual DBE goal was 29%, actual DBE commitments equaled **37%**

DOT has published “Tips for Goal-Setting in the Disadvantaged Business Enterprise Program” (reference: <http://www.osdbu.dot.gov/DBE/Program/tips.cfm>). Under the heading “Adjustments Based on Past Participation,” DOT cites several examples. One of the examples relates to using the median past participation as a means of adjusting the Step 1 Base Figure. We determined the median past participation as 24 percent. In using this figure to determine the adjustment for past participation, the following formula was used:

Steps:

1. Base Figure = 33%
2. Median Past Participation = 24%
3. Adjustment factor = (base figure 33%) + (median past participation 24%) divided by 2 = 29%

An impact of past DBE participation has resulted in an adjustment to the base figure of 33% DBE participation for FTA-assisted contracts to be awarded in FFY 2008-2009. The adjusted DBE participation goal is 29% for FFY 2008-2009.

Means to Achieve Goal; Disparity Study

The City has retained CRAI to conduct a study for the SFMTA and the San Francisco International Airport (SFO) to determine whether gender- or race-based disparities exist in the sectors of the local public contracting industry that typically receive federal transportation funds. CRAI is working closely with SFMTA, SFO, and the City's Human Rights Commission to complete this study. The study will take into consideration the guidance FTA published on March 23, 2006.

Since the SFMTA does not currently have sufficient evidence of discrimination or its effects to justify use of race- and gender-conscious goals on individual contracts, the agency established an annual federal-fiscal year (FFY) 2008 DBE goal to be met exclusively

through race-neutral measures. For FFY 2009, SFMTA also is establishing an annual DBE goal to be met exclusively through race-neutral measures. After completion and evaluation of the disparity study, SFMTA may make adjustments to the FFY 2009 DBE goal to reflect the results of this study.

The SFMTA intends to employ the following race-neutral means to increase DBE participation:

- Arranging solicitations, times for presentation of bids, quantities, specifications and delivery schedules in ways that facilitate DBE and other small business participation. This includes evaluation of unbundling of contracts.
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids and providing services to help DBE's and other small businesses obtain bonding and financing.
- Ensuring distribution of the DBE directory to the widest group of potential prime contractors
- Providing technical assistance and other services.
- Providing information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; and provision of information in languages other than English, when appropriate).
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping and financial and accounting capability for DBEs and other small businesses;
- Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects and achieve eventual self sufficiency.
- Assisting in establishing a program to assist new, startup firms, particularly in fields in which DBE participation has historically been low.
- Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.
- Networking opportunities with local, state and federal agencies that provide contracting opportunities to the small business owner.
- Implementing Small Business Enterprise (SBE) goals to encourage greater participation by small business firms in public contracting.

Small Business Enterprise (SBE) Program

The SFMTA has implemented an SBE program to encourage greater participation by small business firms in public contracting. The SFMTA believes that such a program is race-neutral and complies with the legal requirements set forth in the federal DBE regulations, the Ninth Circuit's decision in **Western States Paving**, and DOT's guidance concerning the federal DBE program that applies to grant recipients in states within the Ninth Circuit. Under the SFMTA SBE program, small business firms may qualify for the program by being certified in either 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).

Initially, the SBE program applied to the following types of contracts: Architecture & Engineering Services (surveying and mapping); Drafting (design services); Computer Programming and Design Landscape Architecture; Building Inspection; Machinery and Equipment Rental (construction); Public Relations; and Telecommunications. These categories will be included in the SBE program to ensure that the program is race-neutral. In these categories, the federal average annual gross receipts cap for each business category does not exceed the gross receipts cap for similar businesses under the State Program. For example, a white male majority-owned business enrolled in the State Program or the City and County of San Francisco LBE Program, is able to participate in the SFMTA SBE program on the same basis as a minority business that is certified as a federal DBE. The SFMTA intends to set contract goals for SBE participation for these types of FTA-funded contracts.

The following types of contracts have been added to the SFMTA SBE program: Construction—Building (Heavy); Construction—Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection; Trucking; and other types of contracts in which existing federal DBE business caps are higher than either the State Program or the City Program.

II. Public Participation Process

To provide for public participation in this goal-setting process, the SFMTA, working in concert with the Alameda County Public Works Agency and the members of the Business Outreach Committee (BOC) conducted a public participation session on April 23, 2008 at the Metropolitan Transportation Commission (MTC) auditorium. The BOC membership is comprised of Central Contra Costa Transit Authority, California Department of Transportation (Caltrans), Golden Gate Bridge, Highway & Transportation District, MTC, San Francisco Bay Area Rapid Transit District (BART), San Francisco Bay Area Water Emergency Transportation Authority, San Mateo County Transit District (SamTrans), SFMTA, and the Santa Clara Valley Transportation Authority. The session was conducted to obtain pertinent input from businesses and organizations that are most impacted by the DBE goals established for DOT-assisted contracts.

The session provided DBEs and other small businesses the opportunity to provide information about the availability of certified and potential DBEs ready, willing and able to compete for DOT-assisted contracts, to discuss their concerns, and to provide their perspectives on how DOT recipients might more effectively administer their programs to improve DBE participation. The BOC and participating agencies emailed/mailed out over 2000 invitations to small and DBE businesses, and business support organizations.

During the public participation session, the SFMTA, as did the other agencies, presented its DOT-assisted contracting opportunities for FY2008-2009.

Business owners that addressed the BOC, and the other participating agencies, spoke repeatedly about the loss of contracting opportunities; the result of DOT recipients administering race-neutral DBE programs. They spoke of how DOT-contracts without DBE goals had negatively impacted their businesses. They expressed concern about the inability of DBEs to compete on large projects when there are no specific contract goals established. Some spoke of how they were

close to losing their businesses, because they were unsuccessful at getting work on DOT-assisted contracts since DOT recipients had converted to race-neutral DBE programs. Business owners also expressed their concern that some DOT-recipients are not breaking down their large contracts, thus reducing the number of opportunities for small and DBE businesses to participate. The BOC members were asked to encourage large prime contractors to consider utilizing new subcontractors, instead of repeatedly listing the same subcontractors.

Business owners were surveyed after the public participation session. They expressed their desire to attend **matchmaking** sessions where small and DBEs could meet with prime contractors. Training for how to work with transit agencies and bid/RFP preparation was also an item listed by responders to the surveys.

As a result of the request for input in the proposed annual overall DBE goal analysis and public notification efforts, SFMTA continues to review contracts to determine the benefits of unbundling large contracts to make them more accessible to small businesses; and encourages prime contractors to subcontract portions of the work that they might otherwise perform with their own forces.

SFMTA published a notice on July 16, 2008, announcing its DBE Goal for FFY 2009 in the following local and minority focused-publications: The Asian Week, Bay Area Reporter, China Press, El Reportero, San Francisco Bay Times, San Francisco Bay View, Sing Tao, World Journal. The notice informs the public of the proposed goal and the rationale supporting the proposed goals will be available for inspection and review at SFMTA's Contract Compliance Office during normal business hours for 30 days following the date of the beginning of publication of the notice. SFMTA will accept comments on the proposed DBE goal up to 45 days from the commencement of advertising.

Benefit to the SFMTA 2008 – 2012 Strategic Plan

The SFMTA will further the following goal of the Strategic Plan through adoption of the Annual Overall DBE Goal for FTA funded contracts:

- Goal 3: External Affairs-Community Relations.
 - To improve the customer experience, community value and enhance the image of the SFMTA, as well as to ensure SFMTA is a leader in the industry.
 - Objective 3.1 – Improve economic vitality by growing relationships with businesses, community and stakeholder groups.

Conclusion:

The San Francisco Municipal Transportation Agency has prepared this methodology report for submission to Region IX of the Federal Transit Administration, in compliance with the procedures outlined in 49 CFR Part 26. The annual overall goal has been narrowly tailored based on the 2002 minority and women census data available for SFMTA's geographical market and has been adjusted to reflect local spending patterns.

A 29 percent overall annual DBE goal has been established for all FTA-funded contracts anticipated to be awarded for FFY 2008-2009.

SFMTA will monitor its DBE annual goals by tracking each individual contract throughout the term of the contract for DBE participation and payments respective to the federal fiscal year of award.

Both the Contract Compliance Office and the City Attorney's office have reviewed the item.

THIS PRINT COVERS CALENDAR ITEM NO. : 11

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

DIVISION: Parking and Traffic

BRIEF DESCRIPTION:

Approve parking and traffic changes necessary to implement an exclusive left turn lane on westbound Fell Street at Masonic Avenue, including extending the existing Tow-Away No Stopping Anytime zone on the south side of Fell Street from 60 feet to 150 feet east of Masonic Avenue, and establishing a Left Lane Must Turn Left restriction on Fell Street traffic at Masonic Avenue.

SUMMARY:

- The Panhandle multi-use recreational path crosses Masonic Avenue at the south crosswalk of the Fell/Masonic intersection. Currently, left turns from westbound Fell Street to Southbound Masonic Avenue are made as gaps in the south crosswalk pedestrian and bicycle traffic allow.
- During the five-year period from March 1, 2003 through February 29, 2008 there were 15 reported collisions involving a left turning vehicle and a bicycle, and three involving a left turning vehicle and a pedestrian.
- SFMTA engineers have designed improvements to eliminate this conflict and improve pedestrian and bicycle safety at the intersection of Fell Street and Masonic Avenue. These include the creation of an exclusive left-turn lane on westbound Fell Street and installation of new vehicular and bicycle traffic signals.
- Under Proposition A, the SFMTA Board of Directors has final authority to adopt the proposed parking and traffic changes.
- It is recommended that the SFMTA Board approve extending the tow-away no stopping anytime zone on the south side of Fell Street from 60 feet to 150 feet east of Masonic Avenue and establishing a Left Lane Must Turn Left restriction for Fell Street traffic at Masonic Avenue to facilitate the creation of an exclusive left-turn lane on westbound Fell Street at Masonic Avenue.

ENCLOSURES:

1. SFMTAB Resolution
2. Existing and Proposed Traffic Striping Plans
3. Proposed Traffic Signal Design

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
RETURNED TO

Damon Curtis

ASSIGNED MTAB CALENDAR DATE: _____

EXPLANATION:

Background

Fell Street is a one-way street in the westbound direction with four traffic lanes approaching the Fell/Masonic intersection. Between Fell Street and Oak Street (in the Panhandle), Masonic Avenue is a two-way street with three traffic lanes in each direction.

Fell Street forms the northern boundary of the Panhandle. Within the Panhandle, there is a multi-use recreational path for bicyclists and pedestrians. The multi-use recreational path crosses Masonic Avenue at the south crosswalk of the Fell/Masonic intersection. Currently, left turns from westbound Fell Street to southbound Masonic Avenue are made as gaps in the south crosswalk pedestrian and bicycle traffic allow.

During the five-year period from March 1, 2003 through February 29, 2008 there were 15 reported collisions involving a vehicle making a left turn from westbound Fell Street to southbound Masonic Avenue and a bicycle crossing Masonic Avenue, and there were three reported collisions involving a vehicle turning left from westbound Fell Street and a pedestrian crossing Masonic Avenue.

In response to the number of reported collisions and in order to eliminate this conflict and improve pedestrian and bicycle safety at the intersection of Fell Street and Masonic Avenue, SFMTA engineers designed a modification to the existing traffic signal and lane configuration. The proposed Fell/Masonic intersection improvements include: creation of an exclusive left-turn lane on westbound Fell Street and installation of new vehicular and bicycle traffic signals. The proposed improvements are part of the proposed San Francisco Bicycle Plan (Bicycle Plan), which is currently undergoing comprehensive environmental review. However, because of the accident history at this intersection, these improvements are recommended at this time to protect the safety of the traveling public – not to implement a portion of the proposed Bicycle Plan. Adoption of the improvements to this intersection at this time would not result in a commitment to adopt any other actions under review as part of the Bicycle Plan, nor would adoption of these improvements preclude the future adoption of any actions under review.

Proposed Design & Legislation

In order to provide a separate westbound left-turn phase, an exclusive left-turn lane needs to be created on westbound Fell Street. To create space for a new full time left-turn lane, the SFMTA proposes to narrow the Fell Street travel lanes, extend the existing tow-away no stopping anytime zone on the south side of Fell Street from 60 feet to 150 feet east of Masonic Avenue

(an additional 90 feet, which will remove four parking spaces), and establish a Left Lane Must Turn Left restriction for Fell Street traffic at Masonic Avenue. Under the Transportation Code, the latter two parking and traffic items require approval by the SFMTA Board of Directors. The intersection traffic signal phasing will be changed to provide separate phases for westbound Fell Street left turns and for Panhandle multi-use path traffic. Left turns from westbound Fell Street will not be permitted during the Fell Street through traffic phase. Left turning traffic will see a red left turn arrow during this signal phase. Pedestrians and bicyclists crossing Masonic Avenue will receive the WALK signal during the Fell Street through traffic phase. Before the Fell Street through traffic phase, vehicles on Fell Street waiting to turn left will receive a green left turn arrow; pedestrians and bicyclists in the south crosswalk across Masonic Avenue will see a solid DON'T WALK signal.

In addition, new standard traffic signals will be installed, including left-turn arrow vehicular signals for the westbound Fell Street left-turn lane, and bicycle signals for bicycles on the Panhandle multi-use path.

Cost

The total cost to implement the proposed improvements is estimated at \$25,000 with all work to be performed using City forces.

Legal Authority and Environmental Review

On June 20, 2006, in connection with the ongoing litigation in **C.A.R. v. CCSF**, the San Francisco Superior Court issued a Preliminary Injunction that prohibits the City from implementing many parking and traffic modifications related to the previously approved Bicycle Plan. The injunction would otherwise prohibit the safety modifications proposed for the intersection of Fell Street and Masonic Avenue. However, in April, 2008, the City and County of San Francisco requested that the San Francisco Superior Court modify the Preliminary Injunction to allow for implementation of these changes. On May 22, 2008, the court granted the City's motion to modify the injunction so as to allow implementation of the recommended safety improvements at the intersection of Fell and Masonic.

The proposed new signal design has been analyzed with respect to its environmental impacts. The San Francisco Planning Department Major Environmental Analysis Division (MEA) determined that the new signal design would be categorically exempt from further CEQA review. The City Attorney has reviewed this report.

BENEFIT TO THE 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
 - 1.1 – Improve safety and security across all modes of transportation
 - 1.5 – Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare)

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

RESOLUTION No. _____

WHEREAS, Fell Street is a one-way street in the westbound direction with four traffic lanes approaching the Fell/Masonic intersection and between Fell and Oak Streets (in the Panhandle), Masonic Avenue is a two-way street with three traffic lanes in each direction; and,

WHEREAS, Fell Street forms the northern boundary of the Panhandle and within the Panhandle, there is a multi-use recreational path for bicyclists and pedestrians. The multi-use recreational path crosses Masonic Avenue at the south crosswalk of the Fell/Masonic intersection. Currently, left turns from westbound Fell Street to Southbound Masonic Avenue are made as gaps in the south crosswalk pedestrian and bicycle traffic allow; and,

WHEREAS, The Panhandle multi-use path is used by thousands of bicyclists and pedestrians daily; and,

WHEREAS, Currently, left turns from Fell Street are made in the westbound direction as gaps in the south crosswalk pedestrian and bicycle traffic allow; and,

WHEREAS, During the five-year period from March 1, 2003 through February 29, 2008 there were 15 reported collisions involving a vehicle making a left turn from westbound Fell Street to southbound Masonic Avenue and a bicycle crossing Masonic Avenue, and three reported collisions involving a vehicle turning left and a pedestrian; and,

WHEREAS, In response to the number of reported collisions and in order to eliminate this conflict and improve pedestrian and bicycle safety at the intersection of Fell Street and Masonic Avenue, SFMTA engineers designed a modification to the existing traffic signal and lane configuration, the key component of which is the addition of a separate signal phase for westbound Fell Street left turns; and,

WHEREAS, The San Francisco Superior Court issued a Preliminary Injunction on June 20, 2006 that would otherwise preclude implementation of the recommended safety improvements at the intersection of Fell Street and Masonic Avenue; and,

WHEREAS, In April, 2008, the City and County of San Francisco asked the San Francisco Superior Court to modify the Preliminary Injunction to allow for implementation of the recommended safety improvements at the intersection of Fell Street and Masonic Avenue; and,

WHEREAS, On May 22, 2008, the San Francisco Superior Court granted the City's request to modify the Preliminary Injunction to allow the City to implement the proposed safety improvements at the intersection of Fell Street and Masonic Avenue; and,

WHEREAS, The proposed improvements have been analyzed with respect to their environmental impacts and the San Francisco Planning Department Major Environmental Analysis Division (MEA) determined that the new signal design would be categorically exempt

from further CEQA review; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors, upon recommendation of the Executive Director/CEO and the City Traffic Engineer, does hereby approve extending the Tow-Away No Stopping Anytime zone on the south side of Fell Street from 60 feet to 150 feet east of Masonic Avenue and establishing a Left Lane Must Turn Left restriction for Fell Street traffic at Masonic Avenue, in conjunction with the creation of an exclusive left-turn lane on westbound Fell Street at Masonic Avenue.

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

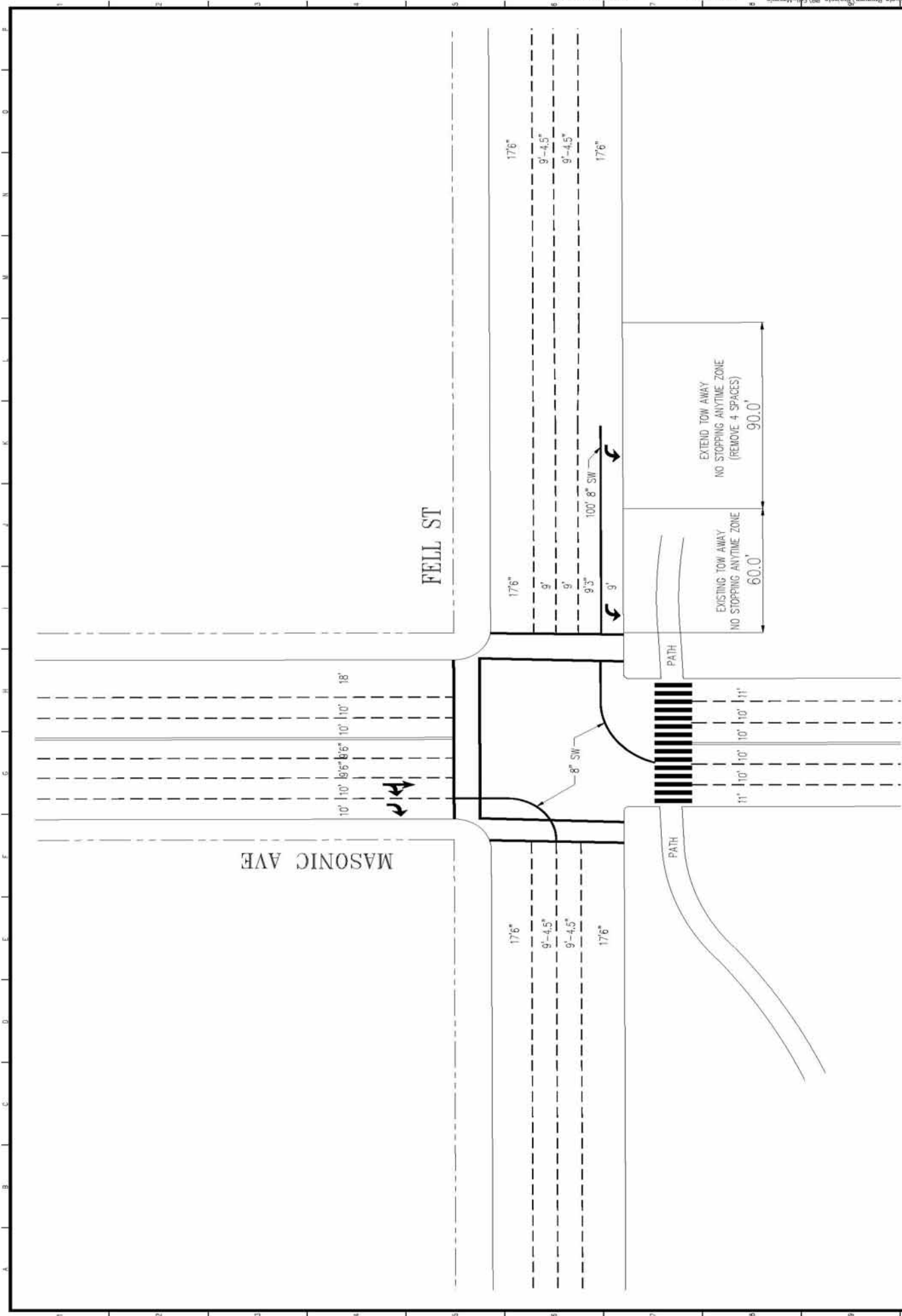


TABLE OF REVISIONS		CHECK WITH TRACING TO SEE IF YOU HAVE LATEST REVISION	
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DEPARTMENT OF PARKING AND TRAFFIC
DIVISION OF TRAFFIC ENGINEERING
CITY AND COUNTY OF SAN FRANCISCO

REVISION	DATE	APPROVED	SECTION	ENGINEER	DATE
DPC	XX	XX	XX	XX	XX
SPAWN	XX	XX	XX	XX	XX
DPC	XX	XX	XX	XX	XX
DESIGNER	XX	XX	XX	XX	XX

SCALE	1"=40'
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LEFT-TURN POCKET PROPOSAL
FELL STREET, MASONIC AVENUE,
PANHANDLE PATHWAY INTERSECTION

CONTRACT NO.	0
DRAWING NO.	
FILE NO.	
REV. NO.	

ROLE AND EQUIPMENT SCHEDULE

[illegible]

POLE ID	POLE	TYPE	LUMINAIRE (WATT)	VEHICULAR SIGNALS		PROBES/TRAFFIC SIGNALS				REMARKS
				NO	TYPE	MOUNTING HGT	NO	TYPE	MOUNTING HGT	
1	11-72 15 MASTARM		200W/150W	23	352	SV-1-T	18	15-N	SV-1 (P1/T)	BACPLATE PHT
2	11-72 15 MASTARM		200W/150W	24	3512	SV-1-T	18	15-N	SV-1 (2/T)	BACPLATE PHT
3	11-72 15 MASTARM		200W/150W	18	3512 LA	SV-1-T	18	15-N	SV-1	BACPLATE PHT
4	11-72 15 MASTARM		200W/150W	24	352	SV-1-T	18	15-N	SV-1	BACPLATE PHT
5	11-72 15 MASTARM		200W/150W	23	3512 LA	SV-1-T	18	15-N	SV-1	BACPLATE PHT
6	11-72 15 MASTARM		200W/150W	24	3512	SV-1-T	18	15-N	SV-1	BACPLATE PHT
7	11-72 15 MASTARM		200W/150W	23	3512	SV-1-T	18	15-N	SV-1	BACPLATE PHT
8	11-72 15 MASTARM		200W/150W	24	3512	SV-1-T	18	15-N	SV-1	BACPLATE PHT
9	11-72 15 MASTARM		200W/150W	23	3512	SV-1-T	18	15-N	SV-1	BACPLATE PHT
10	11-72 15 MASTARM		200W/150W	24	3512	SV-1-T	18	15-N	SV-1	BACPLATE PHT

DETAIL NOTES:

- [A2] EX CONDUIT AND WIRING. R/C EX IS WIRING. SL WIRING TO REMAIN.
F/N NEW WIRING AS NOTED.
- [B2] F/N WITH INTEGRAL BALLAST AND PHOTOELECTRIC CONTROL. #8 FUSE AND FUSE HOLDERS PER SUPPLIER #49-662.
- [E4] 4 PIPED SIGNAL ON NORTH SIDE OF THE POLE--

Q. 1] R/S EX TS NO. 21. EX TS WIRING TO REMAIN.

AS BUILT DRAWING

[illegible]

THIS PRINT COVERS CALENDAR ITEM NO. : 12

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

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Presentation on an Automatic Indexing Implementation Plan ("AIIP") to increase charges which are not otherwise governed by law beginning Fiscal Year 2011.

SUMMARY:

- On April 15, 2008, the SFMTA Board of Directors approved for Fiscal Year 2011 and going forward, a policy of indexing charges that are not otherwise governed by law and directed the SFMTA to prepare and present an Automatic Indexing Implementation Plan ("AIIP") for approval by the SFMTA Board of Directors.
- The purpose of this presentation is to provide the Board of Directors with models for automatic increases to fares used by other transit agencies
- The presentation will also provide a recommendation for a calculation methodology for the AIIP for the Board's consideration
- Based on input from the SFMTA Board of Directors, a formal AIIP will be prepared for approval at a future Board meeting

ENCLOSURES:

1. Automatic Fare Policies
2. Additional BART Information
3. Bay Area CPI Projections

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ASSIGNED MTAB CALENDAR DATE: _____

EXPLANATION:

Background

In a 2007 November study entitled "**Fare Policy Regarding Regular and/or Inflation related ("Programmed") Price Increases**" by the NYU Wagner Rudin Center for Transportation

Policy & Management² , the following is stated:

This approach, referred to in this report as “programmed fare increases,” appears to offer benefits to both transit agencies and their customers. Customers experience smaller fare increases which, though more frequent, are more predictable and therefore more acceptable. Agencies appear to experience less of an impact on ridership and the predictability of these regular increases facilitates capital programs, service improvements, and financial planning [...]

The SFMTA Board of Directors discussed the implementation of an indexing policy during the budget process and on April 15, 2008 approved in concept an Automatic Indexing Implementation Plan (“AIIP”) to increase fares, fees, fines and charges beginning Fiscal Year 2011 and requested discussion of possible provisions of a formal AIIP at a future Board meeting.

Other Operators

Several transit operators have an automatic increase policy in place including BART and Golden Gate Transit District (see Enclosure A). Therefore, the concept of automatic fare increases is accepted in the Bay Area and understood by regional transit users.

BART: In May 2003, the BART Board adopted a resolution authorizing BART’s General Manager to calculate and implement “productivity-adjusted CPI-based increases...for each even numbered fiscal year from 2006 through 2012.” The increases are applied across the board to all BART fares and are rounded to the nearest nickel. Although the Board-adopted resolution required no further public hearings for the fare increases programmed for 2006, 2008, 2010, and 2012, it did require that “Prior to the implementation date for the productivity-adjusted CPI-based increases to rates and charges for BART service, the Board will review and consider the fare structure. This review will include issues of distribution and equity.”

BART uses a formula using average change in CPI based on both national CPI-U (Urban) and Bay Area CPI-W, less a productivity factor or ½ percent. In 2006, fares increased 3.7% and in 2001, fares increased by 5.4% according to the formula.

Golden Gate Bridge Transit District: In 2006, the Golden Gate Bridge Transit District (“District”) approved annual fare increases based on actual cost escalation, projected to be 5 percent each year.

The District is required to perform a review of its cost escalation each year; if it has been less than 5 percent, the Board has the flexibility by Board action alone to modify the annual cost increases downward without public hearings. If cost escalation exceeds 5 percent and the Board determines that fare increases should be adjusted upward, a public hearing is conducted. Paratransit fare increases are addressed the same way.

Automatic Indexing Implementation Plan (“AIIP”)

² <http://wagner.nyu.edu/rudincenter/farepolicy.pdf>

The 2007 November study by the NYU Wagner Rudin Center for Transportation Policy & Management summarizes their findings as follows:

“Based on the experience and insights shared by the transit agencies interviewed for this study, an agency considering programmed fare increases needs to consider the following issues carefully:

- **Is there clear public understanding and political support for the share of overall funding to be contributed by customer fares? If not, is there discussion of the strategy to be pursued?**
- **What fare increases will be acceptable? In the words of Golden Gate Transit and Ferries’ representative, a successful fare increase policy depends on “knowing your customer base and tailoring the increases to be as acceptable as possible to your customers.”**
- **How often should fare increases occur? The frequency among agencies included in this study ranges from every one to three years, with annual increases the most common practice.**
- **What basis or methodology should be used for calculating the proposed magnitude of fare increases? There are trade-offs between using an objective measure such as CPI (which customers can relate easily to as tracking inflation) and linking fare increases to changes in the actual cost of service.**
- **Should the proposed fare increases apply uniformly to all fares and fare products? Applying increases across the board has the benefit of all customers being affected equally, creating in the words of BART’s Fare Policy no “winners and losers.” However, some agencies such as LTD have found an advantage of rotating fare increases among fare types.**
- **How might programmed fare increases relate to other fare policy goals? For example, if an agency is trying to promote off-peak travel, it might want to exclude off-peak fares from the process of programmed fare increases**

Methodology One: CPI adjusted

The Board may wish to use a CPI adjustment methodology either annually or every two years. This formula may include a productivity adjustment similar to BART. This methodology may be applicable in the case where an agency was not facing a structural deficit but this is not the case for the SFMTA. Additionally, as outlined in Enclosure B, this methodology has not presented an optimal scenario for BART.

Methodology Two: Operating Cost Growth

A second methodology is to use the growth in the operating budget to establish increases. Several operators use this methodology (see Enclosure A). This methodology while ensuring that increases are adequate to cover the growth in operating costs does not encourage operator efficiency.

Methodology Three: Fixed Increases

Alternatively, the Board may wish to consider a methodology similar to Golden Gate Bridge Transit District and establish a flat percentage increase. While this provides a level of certainty, the established percentage may differ significantly from the actual cost increases and Bay Area inflation rates.

Methodology Four: Blended Formula

The Revenue Panel is also supportive of an automatic indexing strategy and is discussing the following recommendation which is included in the Revenue Panel's draft report. The Revenue Panel discussed that BART methodology and decided that it is clear that the BART formula based on CPI exclusively has not addressed BART's financial issues (see Enclosure B) because often costs of running a system are not directly related to CPI.

Therefore, assuming that automatic inflationary increases are acceptable, the question is should these increases should be tied to inflation or to the actual costs of providing services. If the costs of providing services are greater than inflation due to policy decisions, in this case the index should be tied to the cost of providing services, particularly labor costs, defined as wages and benefits, as these costs comprise almost two-thirds of the SFMTA's operating budget. Alternatively, if it is not clear exactly what is driving the costs or whether these cost increases are controllable, the automatic increase should be based half on the Bay Area CPI and half on the labor cost increase of the SFMTA. Given the reality that cost drivers will most likely be based on CPI and local policy, then the Revenue Panel is suggesting that the methodology outlined below be used:

Assume Bay Area CPI = 3.0% and Assume Labor Cost Increase = 3.5% then
Annual Automatic Inflator = $3.0\% / 2 + 3.5\% / 2 = 1.50\% + 1.75\% = 3.25\%$

The Revenue Panel is also recommending that the AIIP apply every two years in concert with the two year budget requirement for the SFMTA under the City Charter. Thus, the labor increases will be those reflected in the budget and the Bay Area CPI-U forecast used will be from the California Department of Finance.³ Enclosure C includes the most recent forecast.

Applicability

The AIIP should be applied to all charges are not otherwise governed by law. For example, some parking fines are governed by the State Vehicle Code and some parking related fees must be calculated on a cost recovery basis. The AIIP will apply only to the extent that the resulting charges calculated by the AIIP methodology do not exceed legal limits. The AIIP methodology should be calculated every two years using the appropriate methodology and included in the two-

3

year budget presented to the Board of Directors.

No matter what methodology is ultimately approved and when the increases occur, it is recommended that the increase be rounded up to the nearest \$0.25, \$0.50 or \$1.00 depending on which is appropriate. The Revenue Panel will be making a similar recommendation.

Summary

The SFMTA Board of Directors is requested to provide guidance on these four questions which will form the basis for the AIIP:

- Which of the four methodologies summarized in this report is preferred?
- Is there an alternate preferred methodology?
- Should the AIIP apply annually or every two years concurrently with the two year budget?
- Should the increases be rounded up? If so, should the rounding be to the nearest \$0.25, \$0.50 or \$1.00 and/or subject to a maximum percentage depending on which is appropriate? For example, rounded to the nearest \$0.25 as long as the rounding impact is not greater than a 10% increase to the charge.

It is recommended that the Board of Directors authorize Methodology Four which also appears to be the preferred methodology for the Revenue Panel and apply the increase every two years concurrently with the SFMTA Budget. It is also recommended that the Board of Directors approve the increase be rounded up to the nearest \$0.25, \$0.50 or \$1.00 depending on which is appropriate.

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

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

Enclosure A
(Agencies with Indexing Strategies)
Table 4. Key Data on Programmed Fare Increases

	BART	Golden Gate Transit & Ferries	LTD	Metrolink (1. 1998-2002) (2. 2004-2014)	RTC	RTD (1. 2002-2004) (2. Since 2004)	TfL	TriMet (1. 1988-98) (2. 1998-)	WSF
How Described	“Productivity- Adjusted CPI-Based Fare Increases”	Two separate Five-Year Transit Fare Programs, FY 1999-2003 and FY2006-2011	Fare policy under which incremental fare increases are planned each year but rotated among fare types	1. Fare increases 2. Fare restructuring with annual increases as part of phasing in a distance-based fare structure over a 10-year period	Annual fare adjustments	1. 4-year series of fare increases (with 4 th year accelerated, so actually implemented over 3 years 2. Periodic fare increases to keep up with costs	Going forward modest real increases in fares	1. More of a practice than a formal policy 2. More of a practice than a formal policy	Annual fare increases to implement the fare policy component of the WSF Financial Plan
Objectives of/impetus for increase	Based on the agency’s newly articulated Financial Stability Policy in the context of “... times of economic change and uncertainty...to make sure (BART’s) ability to deliver service rests on a strong and stable financial foundation”	To meet financial needs and offset declining ridership	Guiding principles established by staff back in the mid- 1980’s following the doubling of fares (after oil crisis in early 1980s) which caused ridership declines	1. Attempt to “catch up” in ability to meet expenses in absence of any prior fare increase	Increase fares annually to keep pace with inflation and ensure fare revenues keep pace with increases to operating costs; customer survey indicated preference for smaller, more regular fare increases over larger, less frequent ones	1. To counteract Revenue loss from shrinking sales tax receipts receipts due to depressed economic	Regular increases on bus and Underground have been in place since the mid-1980s. Since TfL’s existence, part of Mayor’s Transport Strategy to generate revenues to support the Business Plan.	1. Trying to keep up with the cost of providing service	To compensate for the loss of dedicated state tax resources in 1999/2000 (with voter approval of Initiative 695) and associated legislative Joint Task Force on Ferries’ 2001recommendation to increase farebox recovery from 60% to 80%

since the agency
began operations
in 1992

conditions,
following the 10
year waiver of
TABOR
restrictions with
respect to RTD
s

	BART	Golden Gate Transit & Ferries	LTD	Metrolink (1. 1998-2002) (2. 2004-2014)	RTC	RTD (1. 2002-2004) (2. Since 2004)	TfL	TriMet (1. 1988-98) (2. 1998-)	WSF
				2. To keep member agency subsidies at their available funding levels and avoid reducing service to meet those subsidy levels		2. To comply with state legislative requirement that the District fund 30% of operating costs through non-sales tax revenues and meet internal 20% cost recovery goals		2. An increase of only 5 cents every two years was no longer sufficient to keep the agency “even with the increased cost of providing service”	
If/how formalized	Board Resolution No.4885 Adopted May 22, 2003	Board action and ordinance	Written Fare Policy document	1. Board Item 4 dated May 6, 1998 “Proposed Metrolink Fare Adjustment” 2. Internal document “Fare Policies and Procedures” memorializes fare policies and operational practices adopted by the SCRRA Board of Directors on September 26, 2003, including	Board Agenda Items for each fiscal year’s Public Transportation Fare Adjustments (beginning with FY 2006) and the internal RTC Management Policy P-12 “Public Transportation Fares”	1. Appears to be Board action 2. Stated fiscal policy in RTD’s 6-year Transit Development Plan and reflected in annual Adopted Budget document	Included in 5-year Business Plan and annual budget	1. No explicitly stated policy 2. No explicitly stated policies for annual increases but there is a formal Diesel Cost Response Policy and Corrective Action Plan (see Other Items of Interest with respect to Fares below)	Fares are adopted by the Washington State Transportation Commission in a public hearing process that amends the Washington Administrative Code.

	BART	Golden Gate Transit & Ferries	LTD	Metrolink (1. 1998-2002) (2. 2004-2014)	RTC	RTD (1. 2002-2004) (2. Since 2004)	TfL	TriMet (1. 1988-98) (2. 1998-)	WSF
				updates to reflect subsequent Board-approved fare changes					
Frequency of increases	Every 2 years through 2012; implemented on January 1	Every year, effective July 1	Planned to be each year , preferably on July 1 or September 1, but rotated among fare types	1. Approximately every 2 years (October 1, 1998; July 1, 2000; July 1, 2002)	1. Every year in August	1. Every year	On the first Sunday of every year	1. Every other year in September (to coincide with service/route changes)	Every year (has always been on May 1 which coincides with beginning of the peak season but recent legislative direction shifts this to a fall implementation for future increases)
				2. Every year on July 1, beginning in 2004		2. Increases are programmed every three years in January but if annual review identifies higher inflation than projected in increases or extraordinary events, RTD has flexibility to increase fares more often		2. Every September (to coincide with service/route changes)	
Basis for increases	Very explicit formula using average change in CPI based on BOTH National CPI-U and Bay Area CPI-W, less a productivity factor	In the first Five-Year Program, annual increases were pegged to the change in the Bay Area CPI during the previous year;	Three-year rolling average of LTD costs	1. Based on what was needed to “catch up” on expenses since operations began in 1992	1. Inflation index based on the Western Urban CPI rolling five-year averages (used as a guideline), which is the same index used to adjust the RTC	1. No particular formula but based on need to cover increased expenses after previous fare increases in 1989	Retail Price Index plus some percent (e.g. + 10% for buses and+ 1% for Underground)	1. A nickel increase across the board for all fares	Annual increases over the past six years have strived to increase farebox recovery for the system while balancing affordability concerns

	BART	Golden Gate Transit & Ferries	LTD	Metrolink (1. 1998-2002) (2. 2004-2014)	RTC	RTD (1. 2002-2004) (2. Since 2004)	TfL	TriMet (1. 1988-98) (2. 1998-)	WSF
	valued at 0.005 (1/2 percent)	in the current Five-Year Program, increases are programmed to cover increases in costs (projected at 5% per year)		2. No particular formula or index; based on growth in agency's expenses tempered by what customers can afford; ultimate objective – to replace zone- based fares on all routes with consistent equitable distance- based pricing	fuel tax rates	and 1997 2. CPI for Denver-Boulder metro area		2. No explicit formula, but pegged to the budget proposal's increase in total costs and CPI, taking targeted 25% farebox recovery ratio into account	
Magnitude of Increases	3.7% in 2006 (the first year of the policy); 5.4% increase to be implemented in 2008	In the first Five- Year Program, the magnitude ranged from 3 to 5 percent per year with paratransit fare increases capped at half the percent increase of other fares; in the second Five-Year program, the increase is 5% per year, unless the Board	Has varied significantly (see Table 2)	1. 4% 2. 3.5%-5.5% system-wide average	In 2006, recommended increase was 2.62% but cash fares increased by slightly more than inflation rate and pass/ticket fares increased by slightly less	1. Varied by year and service type (see Table 3) 2. Unavailable; next programmed increase is in January 2009, after unprogrammed increase in January 2006 related to diesel	Has varied (see Basis for Increases) but January 2007 increase was RPI plus 3.85% for buses and RPI + 1% for Underground; planned increases for balance of Business Plan reflect modest increases in real fares.	1. Nickel increases have represented about a 3% increase 2. Nickel increases have represented a 2- 3% increase	WSF has raised fares cumulatively about 75% over the last five years and implemented a 2.5% fare increase effective may 1, 2007. Recent legislative direction “freezes” fares until fall 2009 so further financial analysis can occur.

	BART	Golden Gate Transit & Ferries	LTD	Metrolink (1. 1998-2002) (2. 2004-2014)	RTC	RTD (1. 2002-2004) (2. Since 2004)	TfL	TriMet (1. 1988-98) (2. 1998-)	WSF
		determines actual costs increased by less OR that a greater increase is required to meet financial needs				fuel costs			
Public hearings held?	Nof for scheduled increases in 2008, 2010, and 2012; however, prior to the implementation date, the Board reviews and considers the fare structure to consider issues of distribution and equity. Review conducted in Sept. 2005, prior to first biennial increase in Jan. 2006 and for programmed Fy2008 fare increase.	Only for each Five-Year Program as a whole, not for each year's increases; however, for the FY2006-2011 program, such hearings are held IF the Board determines that greater than 5% fare increases are required to meet District's financial needs	Yes, as part of a legislatively-mandated process for approval of amended ordinance which requires fare increase decisions to be made over the course of three Board meetings	Yes	Yes, in addition to Open Houses to solicit input on proposed fare adjustments	1. Yes, on each year's proposed budget and separately for fare increases	No, though Mayor consults on this budget with London's General Assembly in December of each year AFTER announcing the fare changes	1. Board is required to have two readings of a fare ordinance, which also serve as public hearings	Yes, a series of public meetings and a public hearing are held throughout the ferry system's service area
				Yes		2. Yes, on each year's proposed budget and separately for fare increases		2. Board is required to have two readings of a fare ordinance, which also serve as public hearings	
Other Items of Interest with Respect to Fares	10-cent capital surcharge implemented in 2006 to contribute	After the first Five-Year Transit Fare Program, the	Annual increase in per capita rates for Group Passes not to exceed the 3-year	1. Not applicable	RTC's FY 2005-2009 Short Range Transit Program calls for simplifying	1. Restructured fares to simplify	Introduction of Oyster smart card which offers lowest travel cost	1. Not applicable	Phased implementation of distance-based Tariff Route Equity (TRE) begun 2001, almost fully

	BART	Golden Gate Transit & Ferries	LTD	Metrolink (1. 1998-2002) (2. 2004-2014)	RTC	RTD (1. 2002-2004) (2. Since 2004)	TfL	TriMet (1. 1988-98) (2. 1998-)	WSF
	to covering capital needs	District simplified the fare structure and implemented two interim fare increases (in 2004 and 2005) prior to the second Five-Year Transit Fare Program, begun in FY2006	rolling average of LTD cost increases	2. Individual annual fare restructuring is designed with ultimate objective of 10-year phase in of distance-based pricing	the fare structure, from three tiers to two broad categories (full fare and reduced fare)	2. January 2006 fare increase to account for the increase in diesel fuel, with 20% increase for local, express, and regional services and 10% on EcoPasses; currently reassessing pricing of EcoPass program	and daily price capping to encourage its use as prepaid fare medium	2. Mid-year increase of 15 cents effective on January 1, 2006 reflecting Diesel Cost Response Policy and Corrective Action Plan	phased in. Base fares increased cumulatively – 75% over entire system, but some routes increased as little as 35% and others over 100%. Deployment of Electronic Fare System underway, regional Smart Card program with 6 other regional agencies allows unlimited usage on monthly passes.

Enclosure B

<http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/02/29/BAFIVAUBU.DTL&hw=BART&sn=010&sc=435>

BART expecting rough ride in next fiscal year

Rachel Gordon, Chronicle Staff Writer

Friday, February 29, 2008



(02-28) 16:48 PST OAKLAND -- With the economy tumbling and ridership flattening, **BART** is facing a bleak financial picture next year, officials with the regional transit system warned Thursday.

"There is a grim outlook for the **BART** budget," Carter Mau, the agency's executive manager for planning and budgets, told the **BART** Board of Directors at its meeting in Oakland.

Officials have yet to pin an exact number on the expected deficit, and **BART** managers have made no recommendations on how to balance the budget for fiscal 2008-09, which starts July 1. The board isn't expected to adopt a spending package until June.

BART has managed to keep train service intact in the past when the economy turned downward, such as during the dot-com collapse and in the aftermath of the Sept. 11 terrorist attacks. But the system made other cuts during those times that frustrated riders, including cleaning-crew reductions that led to grimmer trains and stations.

BART's budget this fiscal year included money to hire additional train and station cleaners and to provide more frequent train service during evenings and Sundays. To help pay for those changes, fares went up 5.4 percent Jan. 1.

Mau said he expects that **BART** ridership will continue to grow next year, but not nearly at the pace seen over the past two years.

Ridership now averages about 355,000 weekday boardings, which represents about 4.8 percent growth over last year. Last year, ridership jumped 5.1 percent from the previous year.

For the next fiscal year, however, Mau said **BART** can expect just a 2.5 percent increase in ridership.

Passenger fares account for nearly half **BART**'s operating revenue. This year's operating budget is \$629 million.

A much bigger worry for **BART** than ridership numbers, however, is the slowing growth of revenue from sales tax.

BART is expecting \$202.4 million in sales tax revenue this year, only 1.8 percent above last year's total and below earlier projections. Number crunchers at **BART** are forecasting 2 percent growth in sales tax revenue for the system next year, but officials say even that may be optimistic, given the economic downturn.

"It's probably our biggest area of concern," said Robert Umbreit, manager of **BART**'s operating budgets department.

Meanwhile, **BART**'s labor costs are going up, and the recent ridership spurt and extra train service are causing more wear and tear on equipment. The money troubles facing the state government, which allocates funding for transit, could add to strain on the transit system.

BART director Joel Keller, who represents part of Contra Costa County, said he's pessimistic about the financial outlook. "I think we're embarking on dangerous economic times," he said.

Enclosure C

http://www.dof.ca.gov/HTML/FS_DATA/LatestEconData/documents/FRCPI0408.xls

	Percent Change from Prior Year														
UNITED STATES	2004	2005	2006	2007	2008	2009	2010		2004 %	2005 %	2006 %	2007 %	2008 %	2009 %	2010 %
SAN FRANCISCO															
CPI-U	198.8	202.7	209.2	216.1	223.0	229.5	235.7		1.2	2.0	3.2	3.3	3.2	2.9	2.7
-Food	199.7	203.0	206.5	215.0	224.9	235.3	245.4		4.8	1.6	1.8	4.1	4.6	4.6	4.3
--Food at Home	205.1	205.4	206.5	215.5	227.0	238.7	250.0		4.8	0.2	0.5	4.3	5.3	5.1	4.7
--Food Away from Home	193.2	199.6	206.3	213.6	222.4	231.2	240.0		4.5	3.3	3.4	3.5	4.1	3.9	3.8
-Alcoholic Beverages	203.1	208.7	214.9	224.2	233.9	243.9	254.4		3.9	2.8	3.0	4.3	4.3	4.3	4.3
-Shelter	252.6	254.2	260.0	268.1	276.2	285.3	292.8		-0.7	0.6	2.3	3.1	3.0	3.3	2.6
--Residential Rent	262.2	263.0	267.0	277.3	289.2	301.1	312.8		-0.3	0.3	1.5	3.9	4.3	4.1	3.9
--Homeowners' Equiv. - -Rent	271.9	272.3	277.9	285.8	294.2	302.6	310.8		-0.6	0.2	2.0	2.9	2.9	2.8	2.7
-Fuel and Utilities	191.9	211.6	239.0	248.2	259.2	268.5	277.8		-0.7	10.3	12.9	3.8	4.4	3.6	3.5
-House Furnishings & - Ops	123.0	120.7	122.9	127.7	131.9	136.9	142.2		-2.3	-1.9	1.8	3.8	3.4	3.8	3.9
-Apparel	108.4	107.4	109.1	107.2	108.2	109.3	110.6		-1.3	-0.9	1.6	-1.7	0.9	1.0	1.3
-Transportation	149.6	156.1	161.5	166.7	175.0	177.5	178.3		3.2	4.4	3.4	3.2	5.0	1.4	0.4
--Gasoline	162.5	188.9	211.1	237.0	276.6	291.9	296.0		12.0	16.3	11.8	12.3	16.7	5.5	1.4
-Medical Care	292.1	300.5	330.7	353.2	375.7	398.7	421.7		6.8	2.9	10.1	6.8	6.4	6.1	5.8
-Recreation*	97.6	99.6	102.1	103.7	105.4	107.3	109.3		2.9	2.1	2.5	1.6	1.7	1.7	1.9
-Education & Com*	115.1	119.4	123.6	126.9	131.1	135.2	139.7		1.6	3.8	3.5	2.6	3.3	3.1	3.3
-Other Goods & - -Services	327.8	336.2	344.7	353.4	364.0	376.1	391.5		1.8	2.6	2.5	2.5	3.0	3.3	4.1
CPI-W ALL ITEMS	195.1	199.1	204.9	211.4	218.3	224.7	230.8		1.4	2.1	2.9	3.1	3.3	2.9	2.7

THIS PRINT COVERS CALENDAR ITEM NO. : 13

MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Approving the following experimental advertising concepts: one “green roof” shelter to advertise the re-opening of the Academy of Sciences; and a program of digital advertising as approved by the Executive Director/CEO or his designee.

SUMMARY:

- Under the Transit Shelter Advertising Agreement with Clear Channel Outdoor, Inc., the contractor may implement experimental advertisements on transit shelters and kiosks with the prior written approval of the SFMTA after a public hearing before the SFMTA Board.
- The SFMTA Board of Directors is asked to approve the experimental advertisements. The proposed experimental advertisements include one “green roof” shelter to mark the re-opening of the Academy of Sciences and a program of digital advertisements that have been used successfully in other cities.

ENCLOSURES:

1. Resolution
2. Examples of Proposed Experimental Advertising

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION Gail Stein, SFMTA Real Estate

BE RETURNED TO

ASSIGNED MTAB CALENDAR DATE: _____

EXPLANATION:

The Transit Shelter Advertising Agreement with Clear Channel Outdoor, Inc. (“Clear Channel”) includes a provision that Clear Channel may propose experimental advertisements with the prior written approval of the SFMTA after a public hearing before the SFMTA Board of Directors. Staff has prepared a presentation for the SFMTA Board of Directors to describe the following two proposed experimental advertising concepts.

1. The first experimental advertising concept will include one “green roof” shelter at Market and Fifth Streets, which will be posted for a three-month duration, to advertise the re-opening of the Academy of Sciences. The Mayor’s office has requested that the SFMTA and Clear Channel participate in the celebration of the Academy of Sciences’ re-opening by placing this “green roof” on a transit shelter. A sketch of the proposed “green roof” advertisement is attached in Enclosure 2.

2. The second experimental advertising concept is for digital advertising on transit shelters and kiosks. Enclosure 2 provides images of digital advertisements that have been used in other cities. No more than 25% of the transit shelters and kiosks will display digital advertising at a time. The advertising industry has moved from paper advertisements to other media, including digital and Bluetooth/WiFi, and it is recommended that the Board approve these types of advertising.

The following conditions will apply to Clear Channel’s use of experimental advertising on the transit shelters and kiosks:

- Clear Channel will pay any and all costs involved in providing the experimental advertising, including any adaptations to any transit shelter or kiosk.
- Any liability or claims that may arise from the use of experimental advertising shall be the obligation of Clear Channel and shall be covered by Clear Channel’s insurance, as set forth in the Agreement; no experimental advertisement shall result in any liability or claim to the SFMTA.
- Clear Channel must place any experimental advertising on the transit shelters and kiosks in a safe and secure manner. The experimental advertising may not be hazardous in nature and must comply with the SFMTA Advertising Policy.

STRATEGIC PLAN GOALS:

This item will meet the following goals of the SFMTA Strategic Plan:

- Goal 3, External Affairs – Community Relations: To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry.
 - 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups.

- 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits.
- Goal 4, Financial Capacity: To ensure financial stability and effective resource utilization.
 - 4.1 Increase revenue by 20% or more by 2012 by improving collections and identifying new sources.
 - 4.2 Ensure efficient and effective use of resources.

RECOMMENDATION:

Staff recommends that the SFMTA Board adopt the resolution approving the experimental advertising on transit shelters and kiosks.

The City Attorney's Office has reviewed this Calendar Item.

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

RESOLUTION No. _____

WHEREAS, On September 4, 2007, the San Francisco Municipal Transportation Agency ("SFMTA") Board of Directors adopted Resolution No. 07-149, which authorized the SFMTA to enter into a Transit Shelter Advertising Agreement (the "Agreement") with Clear Channel Outdoor, Inc. ("Clear Channel"), commencing on December 10, 2007; and

WHEREAS, The Agreement includes a provision that Clear Channel may propose experimental advertisements with the prior written approval of the SFMTA after a public hearing before the SFMTA Board of Directors; and

WHEREAS, Clear Channel has offered to install one "green roof" shelter at Market and Fifth Streets for three months to advertise the re-opening of the Academy of Sciences; and

WHEREAS, Clear Channel has also proposed to place digital advertising on transit shelters and kiosks, similar to digital advertisements that are being implemented successfully in other major cities in Europe and the United States; and

WHEREAS, A presentation of the proposed experimental advertising concepts was made to the SFMTA Board of Directors at a public hearing on August 5, 2008; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors approves the installation of a "green roof" transit shelter at Market and Fifth Streets for three months to advertise the re-opening of the Academy of Sciences; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors approves a program of digital advertising on kiosks and transit shelters, in a manner to be approved by the Executive Director/CEO or his designee.

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

Secretary, Municipal Transportation Agency Board

Enclosure 2

Examples of Proposed Experimental Advertising



Living Bus Shelters for the California Academy of Sciences

- Inside side panels and roof with 1 of the 3 properties of the Academy: Planetarium, Aquarium or Rain Forest
- Lay a living roof on to the bus shelter roof
- Academy of Sciences to manage all posting, maintenance and take down of shelters



Outdoor Digital LCD AD Faces (Touch Screen Enabled) with Public Information & Wifi Access



Outdoor Digital LCD Information Panel (Touch Screen Enabled) with Public Information & Wifi Access

City Information Panel

Replace the paper Bus route map with an interactive touch screen that provides:

- a) interactive bus map/nextbus
- b) SFGOV.gov access
- c) local business search
- d) space for city, emergency, or PSA messaging (sfconnect.org)



Outdoor Digital LCD AD Faces/Touch Screen Enabled (Actual Prototypes)



THIS PRINT COVERS CALENDAR ITEM NO. : 14

MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute, upon approval by the Board of Supervisors, the Parking Citations Processing and Collections Agreement with PRWT Services, Inc., for a five-year term in an amount not to exceed \$53.5 million.

SUMMARY:

- An Agreement for Parking Citations Processing and Management services between SFMTA and PRWT Services, Inc was entered into in 1998.
- Since contract implementation, the revenue associated with the Agreement has been approximately \$769.1 million, and expenses have been approximately \$75.7 million.
- The current contract's term and not to exceed amounts have been modified by prior amendments, and will expire on September 23, 2008.
- A Request for Proposals was issued by the SFMTA on December 6, 2006. Only one proposer, PRWT Services, Inc., submitted a proposal for the new contract.
- In Fall 2007, the SFMTA entered into negotiations with PRWT Services, Inc. for the new contract.
- The new contract has a proposed five-year term, and an option to extend the term for up to five additional years. The not-to-exceed amount is \$53.5 million.
- Under the proposed contract, costs to be paid to the PRWT Services, Inc. include a per citation fee of \$2.89 and a 34% collection fee for monies collected under the Special Collections program.
- Additional services under the new contract include (1) the Contractor assuming all postage costs associated with the new contract; (2) funding of an IS Engineer for technical support for the contract, (3) parking management consultant services and additional electronic systems including an abandoned vehicle tracking system, (4) a fare evasion tracking system and (5) parking information website development.
- Funding for the contract is included in the SFMTA Operations budget.

ENCLOSURES:

1. SFMTAB Resolution
2. Proposed Agreement with PRWT Services, Inc.

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM_____

FINANCE _____

EXECUTIVE DIRECTOR/CEO_____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Lorraine Fuqua

ASSIGNED SFMTAB CALENDAR DATE: _____

EXPLANATION:

Background:

In 1998, the Parking and Traffic Commission and the Board of Supervisors approved a four-year Agreement with PRWT Services, Inc., for a parking citations processing and management system. This Agreement was extended for an additional six years by both the SFMTA Board of Directors and the Board of Supervisors, and will expire on September 23, 2008.

Since contract implementation, the revenue associated with the Agreement has been approximately \$769.1 million, and expenses have been approximately \$75.7 million. Under the current contract, the SFMTA converted from a manual citation writing system to an electronic citation processing system. With the introduction of handheld citation writing devices, citations can be uploaded into the system for processing within 72 hours. The improved processing system allows the SFMTA to send citation notices out on a nearly daily basis instead of sending notices in batches every two weeks. All SFMTA divisions have access to parking citation records in order to respond to questions from the public as needed.

The Contractor's system integrates the citation processing system with (1) an adjudication system; (2) a system for managing the program that allows the public to work off citation amounts or make payments over time; (3) the residential parking permit system; a tow tracking module and (4) a parking control officer management system. The Contractor's system also tracks scofflaw vehicle license plates that are eligible for booting.

Request for Proposal and Contract Award Process:

On December 5, 2006, the SFMTA Board of Directors approved the release of the RFP for Parking Citation Processing Services and Citations Management System (06-158). On December 6, 2006, the SFMTA issued the RFP. The RFP was advertised in the City's official newspaper from December 14-20, 2006 and additional announcements were sent to potential contractors who expressed interest in the project. Because of the highly specialized nature of the services to be provided and the large volume of citations to be processed, the pool of potential proposers was limited to only a few companies.

The deadline for submission of proposals was March 9, 2007. Prior to this deadline, SFMTA staff received calls from two prospective proposers stating that they were not able to submit a proposal. The reasons given were the inability to secure propriety software from another client, and because the company had just started a project of similar scope for another municipality and did not feel equipped to manage both clients.

As a result, PRWT was the only proposer to submit a proposal in response to the RFP. On March 22, 2007, SFMTA's Contract Compliance Office determined that PRWT submitted information documenting its commitment to achieve the six percent Local Business Enterprise (LBE) participation goal and to the First Source Hiring Program and Equal Benefits Requirements. The subcontracting firms identified by PRWT, Inc. are listed below:

<u>Subcontractors</u>	<u>LBE Status</u>
• 21Tech, LLC.	Yes
• Affiliated Computer Services, Inc.	No
• Bank of America	No
• Chaves and Associates	Yes

<u>Subcontractors</u>	<u>LBE Status</u>
• Direct Mail Center	Yes
• MRS Associates	No
• Special T. Delivery	Yes

Since there were no other proposals submitted, SFMTA staff conducted a thorough technical review to ensure the proposal addressed the agency's needs under the new contract. Following the review process, staff received permission in Fall 2007 to enter into contract negotiations with PRWT for contract award. Negotiations for contract award were subsequently delayed due to the RFP process and award of a new Security Services contract, and the award of an amendment to the current Meter contract in tandem with the award of the SFpark contract.

Proposed Contract Terms and Comparison to Current Contract:

The proposed contract is for a five-year term, with the option to extend for up to five years additional years. The contract's not to exceed amount is \$53.5 million. Costs to be paid to PRWT include a processing fee of \$2.89 per citation for up to two million citations issued within a contract year. The per-citation fee would be lowered for all citations issued in excess of \$2 million. The Contractor also receives 34% of all monies collected under the special collections program of the system in the current contract. The Contractor's special collections percentage fee will remain the same under the new contract. Both the per-citation fee and the special collections fee will remain constant for the first five years of the contract.

The table below provides a comparison of services of the current contract to the proposed contract.

<u>Service</u>	<u>Current Contract</u>	<u>Proposed Contract</u>
Per Citation Processing Fee (first 2 million)	\$2.29	\$2.89
Special Collections Fee	34% of fees collected	34% of fees collected
Postage (approximately 1.5 million notices per year)	SFMTA pays	Included in per citation fee
Handheld Devices (265) not to exceed \$5,500 per unit	SFMTA pays	Included in per citation fee
Imaging (\$220,000 per year)	SFMTA pays	Included in per citation fee
Approximate Annual Cost	\$7.83 million	\$8.38 million

The per-citation processing fee of \$2.89 also includes the following new services:

1. A Fare Evasion System to process fare evasion citations that are now handled by the SFMTA
2. An Abandoned Vehicle Tracking System
3. Parking Information website maintenance and updates
4. An Automated Telephone Answering System with pay-by-phone capability
5. A parking management consultant for 1,040 hours per year
6. Reimbursement to the SFMTA for an IS Engineer for an amount not to exceed \$97,320 plus benefits, and an annual CPI adjustment of 3%.
7. Supplying customer informational handouts

8. The option to negotiate additional services, depending on need and available funding, including:
- Marketing and Revenue Generation Program
 - Electronic Residential Parking Permits
 - Electronic Boot Removal System
 - Paint Shop and Regulatory Sign Inventory System
 - Addition of at least 80 Handheld Units for Transit Violation Enforcement
 - Cameras and processing for Sweepers and Buses
 - Kiosks in City Offices
 - Additional Document Scanners

Funding:

Funding for this contract is included in the SFMTA's annual operations budget.

Recommendation:

Staff recommends that the Executive Director/CEO be authorized to execute the Agreement with PRWT Services, Inc. upon approval by the Board of Supervisors, for a five-year term and an amount not to exceed \$53.5 million.

Both the City Attorney's Office and the Office of Contract Compliance have reviewed the item. City Attorney signature is not required on the contract until the Board of Supervisors has approved the contract.

Benefit to the SFMTA 2008 – 2012 Strategic Plan

The SFMTA will further the following goals of the Strategic Plan through adoption of the Parking Citations Processing and Collection Contract:

Goal #4 – Financial Capacity: To ensure financial stability and effective resource allocation

- 4.1: Increase revenue by 20% or more by 2012 by improving collections and identifying new sources of revenue
- 4.2: Ensure efficient and effective use of resources

Goal #5 – SFMTA Workforce: to provide a flexible, supportive work environment and develop a workforce that takes pride and ownership of the agency's mission and vision and leads the agency into an evolving, technology-driven future

- 5.1: Increase resources available to employees in performing their jobs

Goal #6 – Information Technology: to provide services and efficiency, the SFMTA must leverage technology

- 6.1: Information and Technology Leadership: Identify, develop and deliver the enhanced systems and technologies required to support SFMTA's 2012 goals.

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

WHEREAS, The SFMTA issues approximately 1.9 million parking citations annually, with an average annual revenue of more than \$77 million; and

WHEREAS, A complex electronic system is needed to manage all aspects of these parking citations, including citation processing, cashiering, hearings, handheld citations writers, PCO officer management, and residential permit parking; and

WHEREAS, The current contract for Parking Citation Processing and Management services will expire on September 23, 2008; and

WHEREAS, A Request for Proposals for Parking Citation Processing and Management Services was issued on December 6, 2006; and

WHEREAS, PRWT Services was the only responsive and responsible proposer for these services; and

WHEREAS, A new proposed contract was successfully negotiated with PRWT Services; and,

WHEREAS, Costs to be paid to PRWT Services, Inc. include a per citation fee of \$2.89 and a 34% collection fee for monies collected under the Special Collections program in the contract; and,

WHEREAS, Additional services under the new contract include the Contractor assuming all postage costs associated with the new contract; funding for a full-time IS Engineer for technical support, parking management consultant services and additional electronic systems including an abandoned vehicle tracking system, fare evasion tracking system and parking information website development; and,

WHEREAS, The Contract Compliance Office has determined that PRWT submitted information documenting its commitment to achieve the six percent Local Business Enterprise (LBE) participation goal and to the First Source Hiring Program and Equal Benefits Requirements; 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 PRWT Services, Inc for Parking Citations Processing and Management Services, for a contract term not to exceed five years with the option to renew for an additional five years in an amount not to exceed of \$53.5 million upon approval of the Board of Supervisors; and be it further

RESOLVED, That the SFMTA Board recommends that the Board of Supervisors authorize the SFMTA to execute the Agreement.

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

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

**Agreement between the San Francisco Municipal Transportation Agency and
PRWT Services Inc.**

This Agreement is made this **September 24, 2008**, in the City and County of San Francisco, State of California, by and between: **PRWT Services Inc, 255 California Street, Suite 550, San Francisco, CA 9410**__, hereinafter Contractor,” and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its Director/CEO of the SFMTA or the Director’s designated agent, hereinafter referred to as “SFMTA.”

Recitals

WHEREAS, the **San Francisco Municipal Transportation Agency** (“SFMTA”) wishes to procure a Citations Processing Services and Citation Management System; and,

WHEREAS, a Request for Proposal (“RFP”) was issued on December 8, 2006, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

WHEREAS, the Controllers Office has certified that the services listed above can be performed at a lower cost than if the work were performed by City employees ("Prop J")

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 September 24, 2008 until September 2013, with the option to renew for up to five (5) additional years.

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 shall be made in monthly payments on or before the 20th day of each month for work, as set forth in Section 4 of this Agreement, that the Executive Director/CEO, in his or her sole discretion, concludes has been performed as provided for in Appendix A – Statement of Work of this Agreement as of the 15th day of the immediately preceding month. In no event shall the amount of this Agreement exceed **fifty three million, five hundred thousand dollars**. 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.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the department, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided.

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

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.

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 within thirty (30) days of written notice thereof from City to Contractor, except without delay in exceptional circumstances as determined by the City. Contractor is not liable for replacement of unsatisfactory work, equipment, or materials due to any of the following: (1) improper installation, maintenance, adjustment, repair or modification by City; or (2) misuse, neglect, or any other cause other than ordinary use by the City, including, without limitation, accidents or force majeure events.

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, except where such damage is attributable solely to 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 and Performance Bond

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) Blanket Fidelity Bond or Blanket Crime Policy (employee dishonesty) Coverage of all Contractor's officers and employees in an amount not less than five million dollars (\$5,000,000), with any deductible not to exceed \$50,000 and including City as additional obligee or loss payee as its interest may appear.

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:

Manager, SFMTA Parking Services and Fare Media

**One So. Van Ness Avenue, Seventh 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 under Contractor's control as 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 to the extent that such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City. 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. Contractor assumes no liability for the City's use of Contractor's products in any way other than intended or directed by Contractor.

17. Incidental and Consequential Damages

Neither party shall be responsible for incidental and consequential damages resulting in whole or in part from the performance of this Agreement. Nothing in this Agreement shall constitute a waiver or limitation of any rights to other damages that the parties 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. Liquidated Damages

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the amounts listed in Appendix A, Section IX are not a penalties, but are reasonable estimates of the losses that City will incur for delays, established in light of the circumstances existing at the time this contract was awarded, except to the extent delays are attributable to City act(s) or omission(s), or caused by a force majeure event as defined in Section 60 of this Agreement. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by SFMTA.

In no event shall the total amount of Liquidated Damages Credits payable by Contractor for Performance Requirement failures occurring during a calendar month exceed twenty-five percent (25%) of the average of its total monthly charges to the City. To the extent that a single event or failure results in multiple Performance Requirement failures, Contractor shall only be responsible for payment of the Liquidated Damages Credit that carries the highest monetary amount. All other Liquidated Damages Credits shall be excused.

In order to avoid the assessment of liquidated damages, upon Contractor's discovery of its inability to timely perform any part of this Agreement due to acts or omissions by the City or a force majeure event as defined in Section 60 of this Agreement, Contractor shall promptly notify City in writing of (a) the cause of the inability to perform, (b) the anticipated time that performance could be accomplished given the nature of the delay, if applicable, and (c) actions that the City must take to remove the cause of the inability to perform, if applicable. Such written notice must be received by City within fifteen calendar days of Contractor's discovery of its inability to perform.

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, 57, or 58; however, Contractor shall have thirty calendar days after written notice is sent from the City to Contractor to cure any failure or refusal to perform or observe any term, covenant or condition contained in Sections 10, 15, 37, or 53 of this Agreement.

(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 15% 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.

(5) Equipment costs less depreciation taken up to the date of termination for convenience under general accounting principles.

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, or by fax, and shall be addressed as follows:

To City: **Manager, Parking Services and Fare Media
SFMTA Finance Division
One South Van Ness Avenue, Seventh Floor
San Francisco, CA 94103
Fax: 415.701.4736**

To Contractor: **Senior Vice-President, Operations
PRWT Services, Inc
255 California Street, Suite 550
San Francisco, CA 94111
Fax: 415.445.0190**

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. This section is not applicable to any preexisting proprietary software and any upgrades or modifications thereof used by Contractor or Contractor's agents or Subcontractors to perform the services provided under this contract by Contractor or any of Contractor's Agents or Subcontractors.

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 attributable to invoices submitted under this Agreement, and to make audits of all invoices, materials, payrolls, records or personnel and other data directly related to all invoices submitted pursuant to this Agreement, whether funded in whole or in part under this Agreement, with the exception of data related to profit or overhead costs. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

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

31. Non-Waiver of Rights

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

32. Earned Income Credit (EIC) Forms

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

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

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

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

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

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

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

any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

(1) Enforcement

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

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

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

(2) Subcontracting Goals

The LBE subcontracting participation goal for this contract is **six percent (6%)**. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor.

Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

(3) Subcontract Language Requirements

Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors.

Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(4) Payment of Subcontractors

Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount.

Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from SFMTA) and shall require all subcontractors to comply with such provisions.

Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits

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

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

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

35. MacBride Principles—Northern Ireland

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

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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

38. Resource Conservation

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

39. Compliance with Americans with Disabilities Act

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

40. Sunshine Ordinance

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

41. Public Access to Meetings and Records

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such

material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions

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

43. Requiring Minimum Compensation for Covered Employees

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

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

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken

within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

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

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

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

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

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

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

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at

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

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

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

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

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's SFMTA when it enters into such a Subcontract and shall certify to the SFMTA 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 SFMTA 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 SFMTA who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue

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

51. Construction

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

52. Entire Agreement

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

53. Compliance with Laws

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

54. Services Provided by Attorneys

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

55. Left blank by Agreement of the Parties

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. Force Majeure

Neither party shall be liable for any failure or delay in performance under this Agreement to the extent said failures or delays are proximately caused by causes beyond that party's reasonable control and occurring without its fault or negligence, including, without limitation, Acts of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected, provided that, as a condition to the claim of nonliability, the party experiencing the difficulty shall give the other prompt written notice, with full details following the occurrence of the cause relied upon. In the event of a force majeure, the City shall have the right to suspend this Agreement, in whole or in part, until such time as the ability to perform is restored following the force majeure event.

61. Performance Bond

Prior to commencement of work under this Agreement, Contractor shall file with the City a corporate surety bond, in the amount of three million dollars (\$3,000,000) to guarantee the faithful performance of the Agreement. If the Contractor provides the City with a bond for a period less than the full term of this Agreement, the Contractor shall provide advance written notice to the City at

least ninety (90) days prior to the expiration of the bond if the corporate surety decides to cancel the bond, not to extend the term of the bond, or not to issue a Continuation Certificate.

Any corporate surety issuing these bonds shall be legally authorized to engage in the business of furnishing surety bonds in the State of California. All sureties shall have a current A.M. Best rating not less than "A-.VIII" and shall be satisfactory to the City.

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

CITY	CONTRACTOR
<p>Recommended by:</p> <p>_____ Nathaniel P. Ford, Sr., Executive Director/CEO San Francisco Municipal Transportation Agency</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ John I. Kennedy Deputy City Attorney</p> <p>San Francisco Municipal Transportation Agency Board of Directors Resolution No. _____</p> <p>Adopted: _____</p> <p>Attest:</p>	<p>PRWT Services, Inc</p> <p>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.</p> <p>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.</p> <p>_____ Harold Epps President, PRWT Services, Inc 255 California Street, Suite 550 San Francisco, CA 94111</p> <p>City vendor number: <u>43701-01</u></p>

Secretary, MTA Board	
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Appendices

- A: Scope of Work
- B: Calculation of Charges
- C: Performance Bond
- D: Existing Handheld Device Payments
- E: Existing Mobile License Recognition Payments
- F: SFMTA Records Retention Policy
- G: Disaster Plan

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DEFINITIONS

1.1 Abandoned Vehicle Tracking System

An automated system utilizing Handheld ticket writers that tracks abandoned vehicle complaints and reports on the status, history and follow-up actions required to resolve abandoned vehicle complaints, as further described in Section IV.L.1 herein.

1.2 Administrative Adjudication Program

The City's program for administrative consideration of a Protest, including Administrative Review and Administrative Hearings, as further described in Section IV.K herein.

1.3 Administrative Hearing

A hearing mandated by California Vehicle Code §§ 40215(b)-(c), 22852, 22651.7, or Division 10, Part 11, Chapter 8 of the Public Utilities Code (§§ 99580 **et seq.**), or any other applicable law or regulation which is conducted by the Hearing Division for the administrative adjudication of a Protest, as further described in Section IV.K.2 herein. Administrative Hearing is the second level of review for a Citation Protest, following Administrative Review.

1.4 Administrative Review

An initial review of a parking Citation or Notice of Delinquent Parking Violation by the Citation Division following receipt of a Protest as mandated by California Vehicle Code § 40215(a) and as further described in Section IV.K.1 herein.

1.5 Agreement

The Contract to be entered into by the SFMTA and the Contractor for Citation Processing Services and a Citation Management System pursuant to the Request for Proposals, issued on December 6, 2006.

1.6 Automated Telephone Answering System, ATAS

A telephone help line to make information on Citation processing procedures, parking permits and other parking related matters available to the public.

1.7 Business Day

Monday, Tuesday, Wednesday, Thursday and Friday, excluding holidays.

1.8 Boot Hearing

A hearing mandated by CVC § 22651.7.

1.9 California Vehicle Code, CVC

The compilation of laws enacted by the California state legislature pertaining to the use and operation of vehicles.

1.10 Citation

A notice of violation issued to a person or a vehicle by a Parking Control Officer employed by the SFMTA's Parking and Traffic division, an employee of the San Francisco Police Department, or an authorized employee of another agency for which SFMTA has entered into agreements to process Citations for infractions or misdemeanor violations of the laws and regulations governing parking and/or stopping a vehicle or for transit fare evasion or transit passenger misconduct, as codified in the California Vehicle Code, the California Public Utilities Code, the San Francisco Traffic Code or other applicable law or regulation. "Citation" shall not include a moving violation as defined in the California Vehicle Code.

1.11 Citation Processing Fee

The amount described in Appendix as written in Appendix B hereto, owed by City to Contractor for each Citation updated to by the CPSCMS.

1.12 Citation Processing Services And Citation Management System, CPSCMS

The combined equipment, software and hardware by which the City processes and manages the data and tasks generated by Citation issuance and processing.

1.13 City

The City and County of San Francisco, acting by and through the San Francisco Municipal Transportation Agency ("SFMTA").

1.14 Complainant

A person or entity contesting a Citation, the towing or immobilization of a vehicle for which they are not responsible.

1.15 Contract

The Contract to be entered into by the SFMTA and the Contractor for Citation Processing Services and a Citation Management System pursuant to the Request for Proposals, issued on December 6, 2006.

1.16 Contractor

PRWT Services, Inc., with whom the city has an existing Contract for CPSCMS products and services.

1.17 Customer

A member of the public who interacts with Contractor's CPSCMS system in person, via internet, mail or telephone because of a Citation, a Protest, a Complaint, a notice, a parking permit or an administrative or judicial Hearing Request.

1.18 Data Center

The ACS central computer facility that houses various hardware and software components (mainframe, UNIX servers, Windows servers, router, firewalls, T1 and communication lines) that are essential for the successful operation of the PCPS and PocketPEO and Handheld Reporting System. This central facility also houses all the technical staff responsible for developing and maintaining the various components of the PCPS along with the developers of PocketPEO and the Handheld Reporting System. This facility, located in Tarrytown, NY, is owned, operated and maintained by Contractor.

1.19 Data Warehouse

The ad-hoc tool that allows for customization of reports that are requested by SFMTA for special requests.

1.20 De Novo Hearing

A hearing conducted by the Superior Court, mandated by California Vehicle Code § 40230, after a timely appeal by a Protestor whose Protest has been denied by a Hearing Examiner pursuant to Vehicle Code § 40215(b) or California Public Utilities Code § 99852. De Novo Hearing is the third level of review for Citation Protests following Administrative Review and Administrative Hearing.

1.21 Department of Motor Vehicles, DMV

The agency established to regulate the use and operation of motor vehicles and personal identification.

1.22 Department of Parking and Traffic, DPT

The San Francisco Department of Parking and Traffic, a division of the SFMTA.

1.23 Disposition

The decision reached regarding a Protest following Administrative Review, Administrative Hearing or a DeNovo Hearing on a Protest.

1.24 Effective Date

The date on which the Controller has certified to the availability of funds and Contractor has been notified in writing.

1.25 Enforcement, Enforcement Division, Parking Enforcement Division

The division of SFMTA responsible for the issuance and enforcement of Citations, with its offices at 505 – 7th Street, 10th and Bryant Streets and 2323 Cesar Chavez Street as of the Effective Date of the Agreement.

1.26 Error Correction

An emergency action taken to fix hardware, including the processor(s), PCs or printers, or software anomalies having a negative impact on the operation or use of the CPSCMS.

1.27 Fee

SFMTA permit fees and any applicable monetary assessments for Citations and Citation processing that are added to Fine amounts, such as late payment fees, returned check fees, administrative fees, court filing fees and any Fine enhancements that are authorized by law.

1.28 Field Maintenance Requests

Maintenance requests for specific meters, signs and curb painting, further described in Section II.I herein, which are entered into Handheld Units by PCOs in the field and then uploaded to the PCPS for automatic transmission to an online printer as an e-mail message or to a specified facsimile machine.

1.29 Fine

The initial amount of money charged for violation of law.

1.30 Fleet and Government Vehicle System, FGVS

The system described in Section IV.E.8 herein that tracks vehicles assigned to a company or governmental agency and generates billings for Fines and Fees to the vehicle fleet owner.

1.31 Handheld-Ticket Writing and Reporting System

The component of the CPSCMS described in Section II herein that collects, stores, processes and retrieves information collected through Handheld Units for issuance of Citations.

1.32 Handheld(s), Handheld Unit:

As of the Effective Date of the Agreement, SFMTA's inventory of current inventory of Itronix Q-200 Handheld Ticket Writing Units, and Extech Model S3750THS printers and accessories.

1.33 Hearing Division

The division of SFMTA whose function it is to conduct Administrative Hearings for vehicle owners, drivers or their authorized agents on contested parking Citations and on towed or booted vehicles as mandated by California Vehicle Code §§ 40215, 22852 and 22651.7, and for individuals protesting transit fare evasion and other transit passenger conduct violations as set forth in Division 10, Part 11, Chapter 8 of the Public Utilities Code (§§ 99580 **et seq.**).

1.34 Hearing Examiner

An individual authorized to conduct Administrative Hearings pursuant to California Vehicle Code §§ 40215, 22852, 22651.7 and Division 10, Part 11, Chapter 8 of the Public Utilities Code (§§ 99580 **et seq.**).

1.35 Hearing Processing System

The rules and procedures for tracking Administrative Hearings pursuant to California Vehicle Code § 40215.

1.36 Hearing Request

A request for an Administrative Hearing for a contested Citation.

1.37 Image Management System, IMS

The module attached to the PCPS that captures, store and retrieves all images.

1.38 Installment or Volunteering In-Lieu of Payment Tracking System, IPCSP

The system that monitors Customers who have elected and been approved for the program that permits the payment of outstanding Citations through City-designated volunteer programs, or timed partial payments.

1.39 Interactive Voice Response, IVR

A voice activated interface with the ticket processing system.

1.40 Miscellaneous Collections

The system for monitoring and tracking collection efforts for certain enumerated categories of hard-to-collect Fines and Fees that may be assigned to Special Collections by the SFMTA, as further described in Section V.C herein. Contractor is entitled to a Special Collection Fee for any Citation that is assigned to Miscellaneous Collections.

1.41 Mobile License Plate Recognition, MLPR

The equipment and services that enable Enforcement staff to remotely scan vehicle license information from Enforcement Division vehicles in order to identify licenses with five (5) or more delinquent Citations (Scofflaws), who may be subject to booting and towing.

1.42 Network Operations Center, NOC

Central point of contact for all system users 24 hours a day, seven (7) days a week accessed by a toll-free number. NOC is staffed from 5: a.m. until 7 p.m. local San Francisco time..

1.43 Notice of Delinquent Parking Violation, NDPV

The notice sent out by the Citation issuing agency in accordance with procedures and requirements for notices of delinquent violations specified in California Vehicle Code §§ 40206 through 40211.

1.44 Officer Management System, OMS

The component of the CPSCMS that enables the Enforcement Division to review data collected by the HWRS for effective management of personnel and to review Citation issuance data, as further described in Section III herein.

1.45 Out-Of-State Collections

The elements of the CPSCMS utilized in processing of Citations issued to vehicles registered outside of the State of California, as described in Section V.B herein. Contractor is entitled to a Special Collections Fee for Citations subject to Out-of-State Collections.

1.46 Parking Control Officer

An employee of the Department of Parking and Traffic's Enforcement Division authorized to issue parking Citations and enforce traffic regulations in San Francisco.

1.47 Parking Citation and RPP Division

The division of SFMTA which collects money for parking Citations and which issues parking permits.

1.48 Parking Citation Processing System

The component of the CPSCMS that manages the data entry for, processing and adjudication of Citations, including the Residential Permit Processing System, as further described in Section IV herein.

1.49 Performance Bond

The financial instrument which Contractor is required to maintain to guarantee the performance of Contractor's obligations under the Agreement, as further described in Section 61 of the Agreement. The Performance Bond and all replacement Performance Bonds provided by Contractor during the term of the Agreement shall be attached hereto as Appendix C and are hereby incorporated by reference as though fully set forth herein.

1.50 Protest

The formal challenge of a Citation, a Notice of Delinquent Parking Violation, or the towing or immobilization of a vehicle by means of any applicable procedural requirements established by law, regulation, Contract or SFMTA policy.

1.51 Protestor

A person who files a Protest.

1.52 Public Information Website, PIW

The destination on the internet that provides Customers with information regarding parking and Citations in San Francisco.

1.53 Registered Owner

The person or business that has legal ownership and responsibility for a vehicle as established by the official records of the California Department of Motor Vehicles or other state vehicle registry.

1.54 Residential Permit Parking, RPP

The program established pursuant to Article 15 of the San Francisco Traffic Code which allows residents of certain areas to obtain permits exempting the residents' vehicles from parking time restrictions.

1.55 Residential Permit Processing System, RPPS

A system that allows the City to issue and track different types of parking permits issued to residents.

1.56 San Francisco Department of Public Health, SFPDH

The Department of Public Health of the City and County of San Francisco, acting by or through its Director.

1.57 San Francisco Municipal Transportation Agency, SFMTA

The entity by that name that was established by San Francisco Charter Article 8A.

1.58 San Francisco Police Department, SFPD

The police department of the City and County of San Francisco, acting by or through its Chief of Police.

1.59 San Francisco Traffic Code

The compilation of ordinances pertaining to traffic rules and regulations which is part of the San Francisco Municipal Code.

1.60 Scofflaw

A vehicle in violation of California Vehicle Code §§ 22651(i) or 22651(o) because it has five (5) or more delinquent Citations or has been out of registration for more than six (6) months.

1.61 Special Collection Fee

The amount described in Appendix B hereto, owed by City to Contractor for Citations assigned to the Special Collection System by SFMTA, expressed as a percentage of revenue collected by Contractor.

1.62 Special Collection System, SCS

The system that provides monitoring and tracking software, hardware, training and technical support for Out-of-State and Miscellaneous Collections..

1.63 Squad

A unit of Parking Control Officers, police officers, or transit fare inspectors.

1.64 Tow Hearing

A hearing mandated by California Vehicle Code § 22852.

1.65 Tow Noticing System, TNS

A system utilized to look up Registered Owner information and then to mail out notices of storage from a list provided by the City's Towing Contractor.

1.66 Transit Fare Evasion Processing System

A system for tracking and processing Citations issued to individuals who receive Citations for failing to show proof of payment while riding the City's public transit systems and for transit passenger misconduct in violation of Division 10, Part 11, Chapter 8 of the California Public Utilities Code (§§ 99580 et seq.).

1.67 Vehicle Identification Number, VIN

A universal letter and numbering protocol designed to uniquely identify a particular vehicle, as set forth in California Vehicle Code § 671.

1.68 Vehicle License Number, VLN

The series of letters and/or numbers found on a vehicle's license plate(s) issued by a state

governmental entity that uniquely identifies a particular vehicle.

1.69 Wide Area Network, WAN

A computer network that links offices through the City's Department of Telecommunications and Information Services.

II. HANDHELD-TICKET WRITING AND REPORTING SYSTEM (HWRS)

Contractor shall operate and maintain the SFMTA's HWRS with all current features as a fully integrated element of the existing Parking Citation Processing System (PCPS). Contractor shall provide at least the following hardware, software, equipment, supplies and services making up the HWRS at no expense to SFMTA beyond the Citation Processing Fees:

A. Payments for Existing Handheld Units.

Contractor shall assume all payments listed in **Appendix D** that post-date the Effective Date of this Agreement, through June, 2010.

B. HWRS Workstation Access Requirements

Contractor shall ensure that information stored and maintained in the HWRS will be accessible from workstations attached to the SFMTA WAN. Workstations shall meet all SFMTA specifications to the satisfaction of the SFMTA as referenced in Section VI.C of this Appendix A.

C. Handheld Equipment Functionality.

Contractor shall provide maintenance support for Handheld Units with the features, functionality, supplies and services listed below:

1. The ability to generate, review and print paper Citations with standardized fields such as time, date, PCO name and badge number, unique Citation number and issuing agency filled in automatically, and the ability for the PCO to manually enter other data from look-up lists and drop down menus to the greatest extent possible to enhance speed and accuracy of data entry.
2. The ability to capture PCO comments either by manual entry or selection from a list of standard comments.
3. Citation paper stock and envelopes for PCO use – electronic Citations only.
 - a. Tickets will be pre-printed, on polytherm stock, the weight and size of which is dependent on bank lockbox specifications for payment processing and printer requirements.
 - b. Envelopes supplied by Contractor will be as follows: white, plain, 3-5/8" X 8-5/8", 17 Lbs./M, printed on both sides, with colored boxes with payment information (subject to change based on size of ticket forms when Handhelds are upgraded or replaced in 2010).
 - c. The number of Citations and envelopes paid for by Contractor will be limited to 115% of the number of Citations issued at the end of each Fiscal year. Tickets and envelopes ordered in excess of 115% of the number of Citations processed to the PCPS will be reimbursed to Contractor at cost.
4. The ability to identify vehicles' RPP status, the VLN associated with an RPP number, arrest warrants issued for a registered owner associated with a VLN (when provided to

PRWT), and vehicles that are Scofflaws and/or reported as stolen by VLN and VIN look-up through a Handheld Unit.

5. The software capacity to store photographic images and associate each image with a Citation. Option available with purchase of new or replacement Handhelds upon request from SFMTA. 50MB of storage is the maximum that current Handhelds with a 64MB storage card can hold; capacity may be greater based on the type of Handheld Unit selected in 2010.
6. The PCO shall have the option to enter a personal identification number (PIN) and password for the operation of the Handheld Unit, and storage of the active PIN as part of the data records captured by the Handheld Unit.
7. Storage of and access to all data and images captured or entered into a Handheld Unit associated with a Citation.
8. The ability to review Citations issued during the active login session.
9. The capture of PCO tasks and time spent entered into Handheld Units by PCOs.
10. Automatic update of Handheld with administrator changes to lists and tables while Handheld is in its docking cradle, including Scofflaws, stolen vehicles, warrants, RPPs and other data as may be specified by SFMTA.
11. Pre-defined rules to control flow of data entry screens for context-sensitive menus and the integrity of data which shall be modified by Contractor upon SFMTA request.

D. Handheld Equipment Replacement Schedule

1. In Fall 2009, SFMTA will determine which Handheld models and printers it wishes to use to replace the current Handhelds. Contractor shall replace SFMTA's current inventory of 265 Handheld Units printers by July 2010 with new Handheld Units and printers, provided the schedule and outlined below is followed. Contractor shall provide at its own expense the 265 Handheld Units, printers and other necessary equipment as requested by SFMTA. The per-unit cost to Contractor shall not exceed \$5,500.00.
2. Contractor shall provide new employee and refresher training and reference manuals for PCOs and SFMTA trainers on any replacement Handheld Units.
3. No later than thirty (30) days after SFMTA chooses desired Handheld manufacturers, Contractor shall provide a testing plan for at least five (5) Handheld Units and printers per manufacturer chosen by SFMTA.
4. No later than sixty (60) days after SFMTA approves a testing plan for proposed replacement Handheld Units, Contractor shall provide Handheld equipment as requested and approved by SFMTA for testing, and shall install such test equipment at location(s) designated by the SFMTA.
5. Contractor shall cooperate in conducting the pilot test of proposed replacement Handheld Units, including training and support sufficient to enable Enforcement Division personnel to use and evaluate the proposed replacement Handhelds.
6. Within 15 days of SFMTA approval of the pilot test, Contractor shall place orders for the approved equipment and shall guarantee the delivery of at least sixty (60) Units within ninety (90) days of the order.

7. Following the pilot test, Contractor shall provide project management and procurement of new Handhelds and printers to replace current Handhelds and printers, including software, maintenance plan and wireless printing capacity, by no later than ninety (90) days from SFMTA's approval of proposed replacement Handheld Units and printers including all integration tasks necessary for full functionality of the replacement Handhelds and printers.

E. Processing System Requirements.

Contractor shall provide data processing capacity for the HWRS with the following features, functionality, supplies and services at each Enforcement Division location at no expense to SFMTA beyond Citation Processing Fees:

1. Support for all performance standards described in Section IX of this Appendix A.
2. SQL or ODBC compliant relational database with a graphical user interface.
3. Two-way electronic transfer of Citation data, images and PCO tasks between the HWRS and the PCPS via Ethernet docking cradles with a high-speed, universal communication protocol with the capacity to update all docked Handheld Units simultaneously in a manner that eliminates the need for physical counting, batching and delivery of data.
4. Management and maintenance of the HWRS. Contractor may upgrade the HWRS or its component parts with SFMTA's prior written approval of any proposed replacement systems or components.
5. Comprehensive reference materials for use of SFMTA personnel in the full use of the HWRS and any elements of the HWRS that are replaced during the term of this Agreement. Materials shall include instructions for maintenance, the use of hardware and software components of the HWRS, and ongoing HWRS support.
6. The generation of reports from data collected by Handheld Units.
7. Uninterrupted access to HWRS by authorized users designated by SFMTA to verify transaction status, generate reports, maintain master files and manage equipment status.
8. Software that will enable the Handhelds to automatically update the current Citation violation code, with corresponding description, to a new numbering system, upon request of the SFMTA, and receipt of the new violation codes from the SFMTA.

F. HWRS-PCPS Connectivity

Contractor must ensure that the HWRS is fully integrated with the PCPS. Transfer of data between the two systems must use a high-speed communications link that will protect the security of the data. The downloading process from the Handheld Units to the PCPS must be fully automated and shall not require manual intervention. Contractor must ensure integration between the HWRS and PCPS is operational 97% of the time within a given calendar month.

G. Data Transfer

Contractor must ensure the integrity of all data transmission, including but not limited to reconciliation of the number of Citations transmitted to the PCPS with the number received and processed from the Handheld Unit, and an audit procedure to monitor accurate transmission of transaction records accepted by the PCPS back to the HWRS.

Data transfer between the PCPS and HWRS must include VLNs or VINs of vehicles eligible

Contractor shall document procedures for data transmission and reconciliation.

H. Data Security

Contractor must ensure that data exchange between the HWRS and PCPS be securely transferred using an isolated internet connection to an internal private network that is secured by multiple firewalls and intrusion detection software. Contractor must restrict access to the network to authorized users at their level of authorization, and only authorized IP addresses shall be allowed to exchange data with the PCPS.

Multiple layers of security shall allow access to authorized users by function and responsibility, including multiple levels of security access to the central base station server database. Profiles shall be set up by user type (Trainee, User, Supervisor, and Administrator) and access shall be set automatically when a security level is assigned. Users shall be able to view reports and modify data only to the extent authorized by their assigned security level. A supervisor shall be able to view reports but shall have limited access to data tables and the ability to modify data only as authorized. An administrator shall be able to access all tables and view and modify tables. User security levels shall be established by SFMTA and implemented by Contractor. User access shall be capable of being modified or revoked immediately upon SFMTA request.

Access to Citation issuance authority on a Handheld Unit shall be controlled with a User ID, PIN or password login process, validated against a table on the database master file. Data shall be stored securely on the Handheld until transferred to the Data Center.

I. Field Maintenance Requests

The HWRS shall provide PCOs the ability to use the Handheld Units to submit Field Maintenance Requests for specific meters, signs and curb painting. Field Maintenance Requests shall be transmitted electronically directly to the PCPS and/or as otherwise directed by the SFMTA. HWRS Field Maintenance Requests system shall be capable of confirming that the Field Maintenance Request was received and shall be able to resend the message when required.

Within 90 days of receipt of specifications from SFMTA's Enforcement Division, Contractor shall provide a schedule for implementation of the Field Maintenance Request component, which shall be subject to SFMTA approval. Contractor shall provide the system within 180 days of SFMTA's acceptance of the implementation plan.

J. Support and Maintenance

Contractor shall at all times provide support services as follows:

1. Software Maintenance

Contractor shall provide software upgrades to HWRS components that it makes available to its other clients, and shall document all such upgrades. Software upgrades to Handheld Units shall be uploaded to Handhelds while docked.

2. Equipment Maintenance

Contractor shall assign any manufacturer warranties to SFMTA. Equipment maintenance

and repair that falls outside the warranties shall be paid for by the SFMTA.

3. Technical Support

Contractor shall provide on-site consulting support from Contractor's project team assigned to the SFMTA as described elsewhere in this Agreement, and shall also provide toll-free telephone support 24 hours per day, 7 days per week.

III. OFFICER MANAGEMENT SYSTEM (OMS)

Contractor shall provide a comprehensive OMS that provides the SFMTA with the ability to monitor PCO activity and to create next-day ad hoc management reports. Contractor must ensure that the OMS is integrated with the HWRS to receive data from cradled Handheld Units, and that the OMS is capable of incorporating data manually entered into the PCPS within one (1) Business Day of input.

Contractor shall provide the following functionality, features and services through the OMS:

A. Tracking of activities performed by PCOs

1. Work Detail and Type of Assignment (e.g. Parking Enforcement, Traffic Management, Dispatch, Other Non-Field Tasks, Administrative Tasks, Driveway Complaints, Residential Permit Parking, Commute Tow, General Enforcement, Abandoned Vehicle)
2. Work/Non-Work Status (e.g. Sick Leave, Vacation, Training, Light Duty, Breaks, Lunch, Fueling, Travel Time, Roll Call, Debriefing)
3. Supervisor/PCO designation; the system must allow for PCOs to report to more than one supervisor in a day.
4. Location of Citation issued

B. Requirements For OMS System

1. Online Maintenance

Within 90 days of SFMTA's written approval of specifications, Contractor shall provide online maintenance of a complete catalog of parking enforcement supervisory assignments of PCOs, which shall be available at the time entered. Contractor's system must allow the SFMTA to enter changes in personnel and assignments, including temporary assignments.

2. Tracking at Supervisor Level

Contractor shall ensure that OMS system enables SFMTA management to:

- a. Track activities performed by a PCO within an assigned shift;
- b. Review PCO activities throughout the course of his or her shift;
- c. To create ad hoc reports in order to obtain specific statistical information or trends.

3. Management Reporting of Activities

Contractor shall ensure that the OMS performs the following functions:

- a. Provide the ability to report by sorting on any data category that is captured by the Handheld or by manual entry;
- b. Accommodate and document real-time adjustments to assignments at the PCO badge number and supervisor level, and reflect assignments of one PCO to more than one supervisor and/or one supervisor to multiple assignments or work details.

- c. Group activities by type, to reflect percentage of workday spent on a particular Type of Assignment, location, Work Detail, or Work/Non-Work Status, by PCO badge number and at the supervisor level, so that all available hours worked during each 24 hour period if entered into the OMS can be accounted for and documented seven days per week, including weekends and holidays.
- d. Document overtime hours worked by badge number and at the supervisor level, and describe work detail, type of assignment, and non-work status.
- e. Assist management of the Enforcement Division to evaluate day-to-day activity assignments and patrol strategies.
- f. Allow for table updates and audits for quality of data at the time entered.
- g. Display all information for every parking Citation issued during any time range specified by the SFMTA.
- h. Allow user-friendly retrieval of the records of all employees who issue parking Citations. Record retrieval must be capable of being initiated by entering the issuer's I.D., his or her supervisor's name, or by entering a specific date or date range.
- i. Generate both regularly scheduled and on-demand reports that show the amount of time for each PCO badge number for the various assignments or activities within a supervisor's area of responsibility or assignment.

4. Statistical Reports on Productivity Online

Contractor shall ensure the OMS provides SFMTA with operational online, real-time reports of PCO activities by PCO, location, Unit assignment and enforcement area. Citywide statistics must be available for any specified time period. Contractor's system shall provide the following management and operational reports:

- a. PCO activity summary
- b. PCO activity detail and
- c. Summary productivity reports

The SFMTA reserves the rights to modify the report list, and will notify Contractor of any modifications

IV. PARKING CITATION PROCESSING SYSTEM (PCPS)

A. PCPS functionality

The primary functions of the PCPS is the integrated processing of Citations received either from Handheld Units or from manually written Citations, including DMV interface processing; collection of Fines and Fees (Cashiering System); tracking of Administrative Reviews and Hearings; processing of parking permits and Customer service support. In addition to these primary applications, SFMTA wishes to automate several other applications that are discussed below.

- 1. Ability to record new Citations issued, including identification of the issuing agency.
- 2. Ability for the SFMTA and the public to make online, real-time Citation inquiries.
- 3. Ability to interface online and in real time with California DMV.
- 4. Cashiering/Payment Processing/Noticing/Refund and Audit functions.

5. Administrative Review and Hearings Modules for contested Citations, including electronic imaging of Administrative Review and Hearing Requests.
6. General Citation data storage and management, with flexible reporting options.
7. Residential Permit Issuance and Management System.
8. Parking Meter Maintenance System.
9. Towed vehicle noticing system.
10. Tracking of installment payments and volunteering in-lieu of Citation payment.
11. Municipal Railway fare evasion Citations processing.
12. Fleet and government vehicle Citation processing.
13. Data entry services for handwritten Citation records.
14. Lockbox check payment processing.
15. Printing and distribution of notices (see Section VIII).
16. Training and user manuals for SFMTA staff on PCPS and system maintenance requirements.
17. Maintenance support services for equipment, hardware and software.
18. Additional options pertaining to the PCPS as outlined in the Section VII.

B. PCPS Software and Support

1. Application Software

Contractor shall provide the following features within the PCPS software:

- a. Descriptions and data element groupings that create multi-dimensional views to ease usability and intuitive functionality
- b. Fields lengths to allow display of meaningful verbiage instead of codes and abbreviations
- c. Point-and-click capability using the mouse
- d. Drop-down boxes to access multiple-value selections
- e. Tool bar fast paths to appropriate system functions
- f. Scroll bars for easy access to additional Citation records
- g. Tabs to select data alternative data groupings and update transactions
- h. Context sensitive online help function
- i. Online access to electronic images of handwritten Citations and incoming correspondence documents
- j. Browser-based, online access to view the SFMTA's standard, customized reports on local workstations, through Contractor's software Report Web
- k. Browser-based, online, real-time ad hoc reporting access offering a variety of output formats, through Contractor's software Report Write

2. PCPS Support

Contractor shall ensure that PCPS performs the following functions:

- a. Monitor ITS system for outages
- b. Monitor and evaluate performance
- c. Distribute daily problem status reports
- d. Track to resolution all reported incidents and
- e. Track and report on system availability
- f. Problem resolution procedures shall include a comprehensive review process. Management reports highlighting any special problem areas or trends shall be available to SFMTA. At a minimum, the reports shall include, but are not limited to:
 - i. Problem status by site
 - ii. Responses time statistics
 - iii. Monthly availability statistics and
 - iv. Statistics on the time required to make repairs

C. PCPS Requirements

The PCPS provided by Contractor shall be a complete Parking Citation and Management System (PCPS) that is fully integrated with the including all data processing hardware, software, equipment and support services, as referenced in this section and Section VI, sufficient to effectively and efficiently maintain and manage all SFMTA Citation Processing and collections operations as listed below, as of the Effective Date of the Agreement, unless otherwise stipulated by the SFMTA.

1. Data Searching

Users can access PCPS data records using

- a. VLN
- b. VIN
- c. Citation Number
- d. Driver's License Number (if and when provided by DMV)
- e. Registered Owner Name
- f. Name search with options to search by first or last name, or with zip code or the wild card feature, in which an asterisk is used to the right of a partial name, which causes all records matching the characters to the left of the asterisk be used on a first or last name.

2. Data Storage Management

Contractor shall provide storage management services for the PCPS that have the following:

- a. No single point of failure
- b. Fully redundant, fault tolerant, hot-swappable components
- c. Duplexed write cache with battery backup
- d. Global dynamic hot disk sparing

- e. Hi-Track call home maintenance system
- f. Host failover and alternate fiber path support
- g. Industry-only switched fabric infrastructure
- h. High-speed LAN-less data transfer between the PCPS production databases and the Report Write decision-support data warehouse.
- i. Integrated tape management system to support all data archival and retrieval requirements

3. Electronic Archiving

Contractor's PCPS shall provide the following processing capabilities:

- a. Any Citation issued that are more than five (5) years old shall be removed from the current Citation database and electronically archived. The only exception shall be Citations that are the subject of civil litigation commenced prior to the five-year date. These Citations shall not be electronically archived until Contractor received notification from the SFMTA that the litigation is resolved.
- b. All archived data shall be maintained so that it may be retrieved for management reporting and auditing purposes.
- c. The system shall indicate whether VLNs in the current database have additional Citations that have been archived. The information shall be readily available to inform users that other Citations associated with a VLN exist.
- d. The system shall be capable of restoring archived records to the database within seven (7) Business Days after receipt of a request from the SFMTA.

4. Document Storage and Retrieval

Contractor shall store all documents or images in its possession relating to SFMTA operations for a minimum of five (5) years. Paper Documents shall be stored in the San Francisco Bay Area; document images will be stored in Tarrytown, NY.

Contractor shall ensure that documents are retained in usable condition at all times and are not damaged, misfiled, destroyed, or misplaced. These documents include all documents required to be maintained by Contractor, including, but are not limited to Citations, affidavits of non-liability and supporting documents, notices, correspondence, survey and investigation results, and other paperwork related to Administrative Reviews, Administrative Hearings, and De Novo Hearings.

5. Copies of Parking Citations

Contractor shall create digital images of original copies of manually prepared Citations, and shall store the digital images for a period of five (5) years from the issuance date. The system shall have the ability to reproduce electronically generated Citations in a user-friendly form upon request. Digital or electronic copies of Citations shall be produced by Contractor and delivered to SFMTA or to the Customer upon request.

6. Records Destruction

Contractor shall develop a plan for the destruction of records that is consistent with Chapter 8 of the San Francisco Administrative Code and the SFMTA's Records Retention and Destruction Policy, attached hereto as Appendix F that is subject to approval by the SFMTA. The SFMTA reserves the right to unilaterally amend its Record Retention and

Destruction Policy, which is available in Appendix F at any time with written notice to Contractor.

7. Back-up for PCPS Software

Within ten (10) Business Days after the end of each quarter during the term of the Contract and within one month after default of the Contract, the Contractor shall create a duplicate file or back-up of PCPS software that includes any modifications to the software made within the previous quarter. In addition to providing the escrow agent with the back-up, Contractor shall provide the escrow agent with the complete program listings and software editions for the PCPS at the time of implementation. Contractor shall provide the escrow agent with electronic copies of software stored on digital media throughout, the term of the Contract, and shall bear all costs associated with the escrowing of files and software.

8. Production Control

Contractor shall ensure that the production schedules are processed completely, successfully and in the correct sequence and order, while allowing for changing requirements. Any changes in requirements shall be processed upon written approval of the SFMTA.

Contractor shall implement the following measures to full accountability for processed transactions by:

- a. Providing current and future monthly production reports detailing Citation processing and collection activities by the third Business Day after the end of the report month.
- b. Scheduling processing in the proper sequence
- c. Ensuring that batch processing is completed successfully and in the correct order
- d. Reconciling and system-displaying accurate transactions and penalty processes
- e. Preparing detailed monthly production schedules five days before the beginning of the month.
- f. Providing a paperless reporting environment by producing accurate online production management reports by category
- g. Providing SFMTA-approved reports
- h. Contractor shall meet with the City to review the production schedule within 30 days of the Effective Date of the Agreement. Review shall include:
 - i. Review of the Master Listing of each report type generated for the City. (The Master Listing includes recipient, number of copies, job name, program name, and report name. It also is a reference for the City and PRWT when planning the schedule and verifying the resulting output).
 - ii. Review of the Master Schedule for all jobs that are not part of the daily processing cycle. The Master Schedule provides descriptions of the process, time requirements, and the corresponding job name that is relevant to the Data Center. Contractor's local managers will then interface with data center staff to verify that the proposed schedule is accurate and easily understood by personnel responsible for SFMTA PCPS scheduled production.

- iii.* Review of the Monthly Production Schedule listing the reports and notices that will be produced for the month. It is delivered before the beginning of the month of scheduled production. The Monthly Production Schedule is prepared from the Master Schedule and made available to City and PRWT staff working in production processing.

The production schedule includes but is not limited to the following planned activities:

- a)* **File Processing:** updates the master violation database to ensure that all transactions accumulated in batch processing are accurately updated to the PCPS.
- b)* **Routine Report Generation,** as defined by the SFMTA.
- c)* **Transaction Cutoff Period:** All transactions must be in the data center in Tarrytown by 9:00 p.m. San Francisco time to be included in the nightly update.
- d)* **Special Requests:** Upon request from the SFMTA, Contractor shall generate a report detailing the actual production activities. Any deviation and reason for such deviation from the planned schedule will be thoroughly defined in writing.

i. Management Reports

Contractor shall, through the PCPS, provide the SFMTA the following daily, weekly and monthly reports as required by SFMTA:

i. **Financial Reports**

These reports shall include payments and totals, number of payments received, number of Citations processed, revenue received, form of payment, processor, batch number, breakdown of payment type, and adjustment for bad checks and total. Monthly financial reporting shall include number of payments received, dollar amount received, notice date, transaction date (record update), Citation number, partial payments, refunds deducted, aged revenue, and fine/penalty breakdown. The Revenue Distribution Report (RDR) shall be tailored to allocate all parking revenue to the SFMTA, other issuing agencies, and the state as specified by the SFMTA.

ii. **Update Reports**

These reports shall include the types of records updated, total records updated, and reconciliation of errors. In addition, transaction edit reports, production control reports, and workstation operator productivity reports shall be generated as requested by the SFMTA.

iii. **Booting/Towing Reports**

These reports shall include aged booting data, Scofflaw lists, and boot and tow authorization and confirmation.

iv. **Registry Reports**

These reports shall include counts, rejects, and detail on submitted and returned DMV requests for registered owner information.

v. **Citations Issued Reports**

These reports shall include Citations issued by the SFMTA, issuing officer, area, and detail regarding the monetary value of Citations issued and amounts paid.

vi. **Citation Dismissal Reports.**

These reports shall include Citations dismissed by the SFMTA, issuing officer, and violation type.

vii. **Administrative Dismissal Reports.**

These reports shall include Citations dismissed by category, and CSRs and Hearing Officers.

viii. **Administrative Hold Reports.**

These reports shall include Citations that have been suspended by category, issuing officer, Customer Service Representatives, and Hearing Officers, and Citations added and deleted by category.

ix. **Notices Mailed Reports.**

These reports shall include notices mailed by type and total mailed by type.

B. Interface with Handheld Writer Reporting System (HWRS)

Contractor shall provide an interface with the HWRS that automatically downloads to the PCPS all data entered into the Handheld Unit since the last time it was cradled. Data records that are captured in the field on Handheld Units are automatically transferred to the PCPS and appropriate information collected and maintained by the PCPS and communicated to the HWRS. Any replacement software proposed by Contractor for this interface shall be subject to the prior approval of the SFMTA.

The PCPS shall automatically upload the following records to the Handheld Unit when the unit is cradled:

1. A file containing an audit trail that defines all Citations and Field Maintenance Requests received and deposited into PCPS files.
2. A file consisting of VLNs/VINs of vehicles that are eligible for booting, towing or that have been reported as stolen.
3. RPP permit status validation.
4. Any code table files that have been modified since last transmission.

The system shall process electronic Citations issued to motorists who leave the scene of a violation ("driveaways") in a manner that will permit a facsimile Citation to be mailed to the California Registered Owner within ten (10) days of the issuance of a Citation, if registered owner information is available.

C. New Citation Processing

Contractor shall provide all equipment, hardware, software and technical support for all phases of Citation processing, from initial issuance of a Citation to final resolution by payment, dismissal, or other Disposition. Contractor will perform initial data entry of manually written Citations, and the SFMTA will perform all other PCPS data entry functions.

The system shall be capable of processing up to 2.5 million Citations annually, including both

handwritten and electronically-generated Citations. The system shall provide active online retention of Citation data for at least five (5) years, and on-demand access within seven (7) business days - to archived Citation records for a period of at least ten (10) years after a Citation has been paid, dismissed, or otherwise disposed of.

The PCPS shall perform the following functions:

1. Ensure that each electronically generated Citation has a unique number of algorithm check digits to avoid duplication;
2. Provide on-demand an electronic facsimile of all Citations generated by Handheld Units within two (2) Business Days of receipt by Contractor.
3. Provide “voided” computer generated Citations that can be identified by query;
4. Process electronic Citations that are subsequently corrected (CVC § 40202(e)) so that a facsimile can be mailed to the Registered Owner with a notice of correction; and,
5. Provide an audit trail that lists the status of all Citations by number, regardless of whether a Citation was paid, damaged, destroyed, or otherwise disposed of.

D. Handwritten Citation Processing

SFMTA will continue to issue Citations that are handwritten and anticipates that it will continue to receive approximately 250,000 handwritten Citations per year from various agencies. SFMTA will provide Contractor a copy of handwritten Citations within two (2) Business Days of issuance. Contractor shall enter them into the PCPS for tracking.

Procedures for handwritten Citation processing shall include the following activities:

1. Daily collection of handwritten Citations from SFMTA.
2. Data entry of handwritten Citations into the PCPS within two (2) Business Days of receipt by Contractor. Contractor shall review and resubmit Citation data that does not successfully update for processing within one (1) additional Business Day.
3. Maintenance of back-up hardware and software facilities to provide a redundancy sufficient to ensure that new handwritten Citations are updated to the PCPS within two (2) Business Days of receipt by Contractor.
4. Maintenance of clear, archive quality records of each handwritten Citation with a unique, sequential document locator number for each record.
5. Provision of readable reproductions of all records (excluding archived records) upon request from the public or SFMTA within three (3) Business Days of receipt by Contractor.
6. Reconciliation and accounting of handwritten Citations during the recording process to enable the SFMTA to audit the process and compile reports.
7. Recording the following database information from each handwritten Citation:
 - i. Citation Number
 - ii. Issue Date
 - iii. Issue Time
 - iv. Agency
 - v. Officer Name or Initials

- vi.* Officer Badge Number
 - vii.* Registration Expiration Date
 - viii.* Location of Violation
 - ix.* Vehicle Make
 - x.* Vehicle Model
 - xi.* Vehicle Body Type
 - xii.* Vehicle Color
 - xiii.* VIN
 - xiv.* Violation Code
 - xv.* Vehicle VLN, and
 - xvi.* Any comments/notes.
8. Data verification and quality control process to validate the data transcribed from handwritten Citations.
9. Strict input and out controls to ensure complete accountability for all Citations including checking for valid combinations of alpha or numeric data for particular fields, a check-digit algorithm to control errors in the Citation number field, and crosscheck edit of batch numbers and batch counts.
- The following requirements regarding timeframes are applicable to Citations issued to California registered vehicle when N&A information is available for the registered owner.
10. On-demand reporting of lists of Citations with data field errors.

E. DMV Data Integration

Contractor must provide a system with the ability to immediately retrieve vehicle-related information in a real-time, online environment from the California DMV and integrate it into the PCPS. Contractor's systems must also use available communication mechanisms to obtain the same information from all other state motor vehicle registries. This process must include continuous online, real-time placement and release of vehicle registration holds with the California DMV and other states' registries whenever possible. In addition to the name and address of the Registered Owner of a cited vehicle, the VIN shall be collected and displayed in a format that permits a direct comparison with the last four (4) digits of the VIN entered from the original Citation. The PCPS shall record this data for future use in authorized collection activities.

Contractor must ensure that the PCPS shall maintain the confidentiality of all data obtained from the DMV.

1. Name and Address Processing

PCPS shall perform the following name and address processing functions for in-state violations:

- a.** Obtain Registered Owner information on a daily basis from vehicles towed by SFMTA.

- b. Process all DMV name and address transactions required to support SFMTA parking operations.
- c. Interface directly online and in real-time with the vehicle registration database maintained by the California DMV.
- d. Process error messages resulting from returned DMV information and accurately update the information.
- e. Request California Registered Owner information within three (3) Business Days of a new Citation record being updated or entered into the database.
- f. Obtain VLN information where the initial request is returned because name and address information was not available (“no hits”).
- g. Ensure the accuracy of all data returned by the DMV prior to updating the Citation database.
- h. Query DMV for Registered Owner information using either VLN or VIN.
- i. Document when mail sent to a Registered Owner is returned as undeliverable, to maintain and display such undelivered notices in the Citation history and to retain and display the incorrect address information until updated information is received.
- j. Schedule the processing of additional inquiries to DMV to obtain Registered Owner information when SFMTA determines that the Registered Owner on file is no longer the vehicle owner and should not be held responsible for the Citation, or when mail is returned from an incorrect address. Contractor shall continuously evaluate this schedule based upon the number of positive responses received in repeat cycles.
- k. During collection cycles, Contractor shall obtain updated vehicle ownership information for selected populations of Citations.

2. Registration Hold Interface

Contractor shall, through the PCPS, perform the following registration hold functions:

- a. Assist the SFMTA with DMV registration hold processing. Each step of the registration hold and hold release process shall be documented by the PCPS.
- b. Evaluate Citation records to determine if vehicles are eligible for placement of registration holds on the DMV database.
- c. Provide an online, real-time interface with the DMV to place timely registration holds, automatically forward release information to the DMV within one (1) Business Day of Citation payment or dismissal, and document acknowledgment of receipt of required information by DMV.
- d. Forward eligible Citations to the DMV and track the status of each Citation online from the initial hold request until the final hold clears including DMV confirmation or error codes. Suspend DMV processing when payment or suspend transactions are applied to the Citation record.
- e. Update the Citation history for each Citation associated with a registration hold to indicate the most recent processing step in the hold cycle. Maintain a detailed history of each Citation associated with a registration hold that document each step in the registration hold processing cycle.

- f. Monitor and produce reports of registration hold and release transactions with the DMV, and correct any hold processing errors.
- g. In the event that other state DMVs begin to reciprocate registration hold processing with California, expand the use of registration hold processing as directed by the SFMTA.
- h. Provide the SFMTA access to detailed DMV database information

3. DMV Payment Transfer Update

Contractor shall enable the PCPS database to be updated with all Citation payment transaction details. Information received from the DMV about payments made to the DMV shall be reconciled with PCPS. Because the DMV payment and the records for the payments made come separately, Contractor will not post DMV payment information until after SFMTA approval.

4. Registered Owner Reconciliation

Contractor shall, through the PCPS, provide the following Registered Owner reconciliation functions:

- a. Automatically compare the issue date of each Citation with the vehicle registration information on file with the DMV to ensure that the correct vehicle owner is identified. Assign responsibility for each Citation posted to the database to the Registered Owner at the time a Citation was issued. Citations issued before a change of vehicle ownership is registered with the DMV shall be assigned to the previous owner.
- b. Accommodate the online manual entry of Registered Owner name and address information to facilitate SFMTA Customer service requirements. The updated information shall be immediately posted to the system so that future notices and correspondence are sent to the updated name and address.
- c. Provide online, real-time displays of multiple Citation records for a single VLN or VIN by date of vehicle ownership. Ability to search database using the data warehouse based on the issuance date for a Citation.

5. Status of Protested Citations

Contractor shall, through the PCPS, provide accurate information for every Citation transaction including the user ID of the person performing the transaction, the type of transaction, and the date and time the transaction is updated. Permanent database records shall maintain the Citation issuance date, payment date, DMV file request and update date, date correspondence is received from claimants, date notices and letters are generated, and all dates relevant to a protested Citation.

6. Temporary Citation Record

Contractor shall, through the PCPS, provide immediate processing for online payments and other transactions to a temporary Citation until the new Citation data is uploaded. Transaction data shall be captured, recorded and held on an incomplete Citation record until it can be merged with the new Citation data. Once this information has been merged, all processing dates, times and codes shall be permanently updated to the new Citation history. PCPS shall have the ability to generate Pre-paid Citation and Incomplete Citation reports that identify all temporary Citations that were added to PCPS but have not been

resolved.

7. Data Correction

Contractor shall, through the PCPS, provide a complete audit trail identifying the user, date, and previous field values for data entered incorrectly. Online Citation changes are to be entered by authorized personnel and the data captured and applied to overnight batch transaction processing. Non-critical field corrections are to be updated with a time and date stamp documenting the change and recording the user ID that applied the correction.

Contractor shall, through the PCPS, automatically perform all necessary processing updates when critical data fields such as Citation issuance date, violation code, or VLN are corrected.. This shall include actions to ensure the accuracy of notices, fines, and penalties, sending a DMV request with the correct name and address information to apply to the Citation, and updating the Citation noticing cycle.

Contractor shall, through the PCPS, update the Citation record with the new data, and retain a history record of the prior data. The history transaction shall record the date, time, and log-on ID of the person making the correction. The system shall have different security levels for different categories of record changes as specified by SFMTA.

8. Fleet and Government Vehicle Citations

SFMTA has established working relationships with companies that operate fleets of vehicles (such as Federal Express and UPS), rental car companies (such as Enterprise and Avis), and certain City departments (collectively "FGVS Participants"). These organizations receive notice of all Citations issued to its vehicles. Rental companies shall provide information to SFMTA and Contractor regarding the individual who rented or was driving a vehicle registered to the rental company at the time of issuance of a Citation before the NDPV will be re-issued to the identified driver in compliance with all California Vehicle Code requirements.

- a.** Rental companies shall provide information to SFMTA and Contractor regarding the individual who rented the vehicle at the time of issuance of a Citation. The system will then forward a notice of delinquent parking violation to the renter.
- b.** This requirement includes the submission of an affidavit of non-liability fully executed by the company identifying the individual assigned or driving the vehicle on the date and time of the violation and legally sufficient supporting documents. Contractor shall update all information provided by rental and fleet vehicle companies to comply with any policy approved by the California Vehicle Code requirements including the issuance or reissuance of a Citation, submission of affidavits of non-liability and supporting documents, payment deadlines, protest deadlines, fix-it ticket requirements, and liability for stolen vehicles.
- c.** To support the processing of Citations issued to City vehicles, SFMTA shall provide to Contractor a listing of City Department VLN.
- d.** A Fleet and Government Vehicle System (FGVS) must be fully integrated with the PCPS database. Each Citation record for a VLN that is part of FGVS program shall have an indicator that shows that the vehicle belongs to a FGVS Participant. The FGVS must also be able to identify VLN records that have been terminated from the program. The FGVS shall also allow online additions, modifications or termination of FGVS Participants and the addition or deletion of individual vehicles by SFMTA; which are updated on the next Business Day after changes are received.

- e. The FGVS shall have the ability to produce either a hard-copy report or an electronic transmittal of all unpaid Citations for invoicing and separate reports for categories of FGVS Participants (such as the delivery companies and rental car companies). The FGVS shall also be able to update names and addresses on Citation records using both written and electronic information provided by FGVS Participants.
- f. Contractor shall use skip-tracing to obtain correct address information for returned mail sent to individuals identified by rental car companies.

Contractor shall, through the PCPS, provide the following functions:

- g. Support for the program that includes at a minimum:
 - i. Maintenance of existing FGVS participants;
 - ii. Bringing new FGVS Participants into the program; and
 - iii. Noticing FGVS Participants of Citations and processing Citation payments.
- h. Track compliance by FGVS Participant, including the following features:
 - i. A unique number assigned to each participant entry;
 - ii. Name and address of the FGVS Participant;
 - iii. Contact person for FGVS Participant with telephone number;
 - iv. Effective date that FGVS Participant was accepted in the program;
 - v. Date of termination as a FGVS Participant;
 - vi. Date that FGVS Participant information was last updated;
 - vii. VLNs of vehicles registered in the program; and
 - viii. VIN for the vehicles belonging to the FGVS Participant.
- i. Provide the following operational reports:
 - i. Daily reports of changes, additions and terminations by FGVS participant posted on the prior Business Day;
 - ii. Daily control report of vehicle registration plate additions and deletions;
 - iii. FGVS Management Report listing all active and terminated vehicle registration plates;
 - iv. FGVS Participants with outstanding Citations that include all new violations posted by the prior Business Day; and
 - v. FGVS Monthly Report listing all unresolved violations for each FGVS Participant.

F. Citation Inquiry

Contractor shall, through the PCPS, provide online, real-time access to all Citation data, Registered Owner data, and complete records of Citation processing status and public contacts by telephone or mail. PCPS shall provide the data by detail categories and summary format as directed by the SFMTA. PCPS shall be able to accommodate the requirements of SFMTA's Administrative Adjudication Program and the San Francisco Traffic Code reorganization. PCPS shall also provide graphical user interface capabilities for all system functions including, but not limited to, screens, menus, data retrieval and reports.

Contractor shall, through the PCPS, display cross-referenced information for the VLN,

including Registered Owner name and address, name and address of any subsequent owners that have received Citations, detailed information on each Citation, total amount due, effective date of ownership, payment history data, and status indicators showing certain conditions, such as a bad check or unpaid administrative Fees. The information to be displayed shall be determined by SFMTA for each Citation. PCPS shall have the ability to alert the user if other related data is available that is not displayed on the data screen.

Contractor must ensure that the system will protect the confidentiality of all data obtained from the DMV.

Contractor shall, through the PCPS, provide inquiry capabilities that will allow users to retrieve vehicle, ownership, and Citation history for data entered in one of the following Citation data fields:

- VLN
- VIN
- Citation number
- Full or partial name of the Registered Owner. If there is more than one Registered Owner, user can choose from a list of VLNs.

1. Citation Display

Contractor shall, through the PCPS, provide online, real-time display of Citations that share a common characteristic. Entering a VLN shall generate the following information:

- A.** All Citations assigned to the VLN, and if the VLN is associated with more than one Registered Owner, the system shall display the date of the change in Registered Owner;
- B.** The option of displaying only those Citations that are “open” with an unpaid balance owed;
- C.** Display of Citations that meet SFMTA’s eligibility criteria for vehicle booting or towing;
- D.** Display of all Citations currently identified by DMV for a hold on registration renewal; and
- E.** A visible indicator, if provided by DMV, that further research is required when additional VLN records exist for an individual vehicle owner or operator.
- F.** The system shall have the ability to display all VLNs related to an individual on a summary screen to improve SFMTA’s ability to collect Fines from owners of multiple vehicles, provided that the DMV provides drivers license number, date of birth or social security number.

2. Citation Detail

For each Citation record, Contractor shall, through the PCPS, enable the SFMTA to access in an online, real-time mode at a minimum the following information:

- a. Summary Citation Data:** Citation number, VLN and state of issuance, VIN, parking meter number or street address, violation code with description, Citation issue date and time, location, amount due, and current processing status.

- b. Enforcement Data:** Badge or ID number of the person issuing the Citation and issuing agency code.
- c. Vehicle Data:** VIN, vehicle make, vehicle color, vehicle type, Registered Owner information and effective date of vehicle ownership.
- d. Financial Data:** The original Fine amount plus the dates and amounts of any Penalties or Fees that have accrued.
- e. Mail Data:** The mail date and description of all notices or correspondence letters mailed, including any return or forwarding mail information.
- f. Processing Data:** The processing batch date and number, date on which the Citation was updated, the date Registered Owner information was requested and received from the DMV, and the date that a registration hold was placed, confirmed and released by the DMV.
- g. Registry Data:** The vehicle make as recorded by the DMV, the date on which ownership data was recorded, and dates that indicate returned mail or registration non-renewal.
- h. Administrative Review Data:** The date and time of any Administrative Review and Disposition of Citations following Administrative Review.
- i. Adjudication Data:** The date, time and location of an Administrative Hearing and Disposition following the hearing.
- j. De Novo Data:** Filing date of request for De Novo Hearing, status and Disposition if known.
- k. Phone-in, Walk-in Data:** For all phone inquiries or in-person contact with Customers.
- l. Suspend Data:** The date and time a temporary suspension is applied to a Citation that stops normal Citation processing, the identification of the person implementing the suspension, type of suspension, and the date that suspension is to be removed.
- m. Correspondence Data:** The date, time, code, and description of all correspondence mailed relating to a Citation.
- n. Payment Data:** Payment date, payment source (lockbox, walk-in, DMV, mail), payment amount, method of payment (cash, check, etc.), payment batch number and payment processing electronic tracking number.

3. Additional Citation Remarks

Contractor shall enable the PCPS to be capable of inputting and capturing additional remarks and related information regarding a Citation. Access to the remarks screen shall be available for every Citation record. Data entry on the screen shall be controlled by security access authorization as directed by the SFMTA. Once a remark is added and saved to a Citation record, that remark and related information may not be edited, deleted, or otherwise altered.

The remarks screen shall be a free-form screen that allows both alphabetic and numeric characters. Data entry shall be allowed until the entire screen is filled. Additional remarks may be entered by accessing additional remarks screens, with no limit on the number of remarks screens that can be associated with a particular Citation record. Multiple screens shall be displayed in chronological order with the screen containing the most current data displayed first.

Contractor shall, through the PCPS, provide the user with the ability to add remarks once a Citation record has been retrieved. System users can add remarks records by either a drop down menu or a clickable icon. Upon opening the "add remarks" screen, the system shall automatically populate the remarks record with the following required remarks fields:

- a. The date the remark is entered;
- b. The time remark is entered; and
- c. User ID fields identifying the person opening the "add remarks" screen.

Remarks cannot be altered once the information has been entered and saved. All remarks entered shall be retrievable and viewable by Citation number, VLN, or Registered Owner name. The system must allow the user to view a list of already-entered remarks upon opening a Citation record either by means of a drop down menu or a clickable icon. The list of remarks associated with a Citation record shall display the date remark was entered, the time entered, the user ID of person who entered the remark, and the first fifty-six (56) characters of each remark associated with that Citation. Each remark shall be listed in reverse chronological order with the most current remark record listed first. The system shall allow the user to select a remark by clicking on a listed remark to open the detail of the remark record selected.

4. Citation Recovery

Contractor shall, through the PCPS, provide online, real-time access to a history of all Citation activity that displays all processing transactions associated with a particular Citation.

Contractor shall ensure that the PCPS provides a display that includes every transaction related to an individual Citation and which forms a permanent audit trail for future inquiry and research. All transactions shall be listed in reverse chronological order (newest to oldest), with the transaction type (payment, hearing, etc.), transaction date, user ID of the person who processed the transaction, and all other codes and information applicable to the transaction. The history shall also detail all collection activity, collection and correspondence by type, date and mail date, cashing activity, and complete historical data, such as name and/or address changes or other manual or automated corrections and revisions.

5. VLN/VIN Detail

Contractor shall ensure that detailed PCPS information related to a particular VLN or VIN shall be immediately accessible in an online, real-time environment. VLN/VIN detail shall include information related to a single VLN/VIN for each known Registered Owner, separated into various categories, including:

- a. **General Information:** The VLN, VIN, effective date of vehicle registration.
- b. **Registry Information:** The date on which DMV data were requested, date that information was returned from DMV and either confirmed or errors noted, the date that data was processed by Contractor by updating the database with the Registered Owner's full name, address, and VIN.
- c. **DMV Hold Data:** The number of Citations charged to the VLN that is currently confirmed and on hold at the DMV, and data on the holds that have been released.

- d. Immobilization/Impound Data:** The number of Citations that are eligible toward immobilizing (booting) or impounding a vehicle (towing), in compliance with California law, and the total amount of outstanding Fines.
- e. Returned Mail Data:** The date that any notice of correspondence was returned by the Post Office as undeliverable.
- f. Correspondence Mail Data:** Reverse chronological listing of correspondence mailed to the responsible party for a Citation, including the date and time mailed and the type of correspondence.
- g. Summary of Fees:** All Citations penalties charged to the responsible party for a VLN with any payments or penalty waivers recorded and displayed.
- h. Financial Summary Data:** The total amount of Fines and Fees due from a responsible party for a VLN and any unpaid balance.
- i. Comments Field:** A field for SFMTA staff to make comments about a particular VLN that is separate from the remarks field associated with a particular Citation. The comments entered shall be retrievable and viewable by Citation number, VLN, or Registered Owner name.

G. Customized Information

Contractor shall, through the PCPS, serve the information needs of many separate organizational units within the SFMTA. The system shall be capable of responding to user-defined queries and shall present information in formats specified by the SFMTA to accommodate the unique requirements of each organizational unit. The entire system shall be dynamic and capable of being readily and efficiently adapted when there are changes in SFMTA policy, user preferences, legal requirements or future changes in Citation processing procedures.

The specific customized formats required include but are not limited to:

- 1. Citation Information:** issuing agency, badge or ID number, location of the violation, meter number or street address, and comments written on the Citation.
- 2. Payment Data:** payment amount, payment source, method of payment, and payment processing date.
- 3. Fine Status:** original Fine amount, applicable Fees and dates Fees were applied, amount paid, amount by which fine was reduced, total due, and amount overpaid.
- 4. Citation Processing Plan:** date Citation updated to system, batch number and date, and date of next processing step.
- 5. Vehicle Information:** VIN, make of vehicle, year of vehicle, month and year of registration expiration, vehicle body type, and color.
- 6. Noticing Information:** complete listing of each notice mailed with the actual mail date displayed.
- 7. Administrative Review Information:** the date, time, and Disposition of Citations subject to Administrative Review.
- 8. Administrative Hearing Information:** date Hearing requested, time hearing scheduled, actual date and time of hearing, rescheduling date (if applicable), and Disposition.

9. **De Novo Hearing information:** filing date of hearing, location, status, Disposition, and any refund of Fines and/or Fees, including court filing fees.
10. **Case notes:** to record notes to file regarding handling of a case, conversations with the Customer, and any special instructions.
11. **Case Status:** total amount due, amount paid, current suspension code and description, date temporary suspension is removed, and “Protest Status” that shows the status of a Citation in Administrative Review.
12. **Administrative Review Summary:** Citation issuance date, time, and reason for Administrative Review, investigation type and date processed, last date to contest the Citation, Disposition resulting from Administrative Review, the date the Disposition was entered and the date that the Disposition was mailed to Registered Owner, Protestor, or Complainant.
13. **Correspondence Information:** types of correspondence letters mailed with the date and time of processing.
14. **General Citation Information:** issue date, time, location, violation information, and amount of Fines due.
15. The customized formats listed above in Section G 1-14 shall be available through an integrated database that allows:
 - a. SFMTA personnel to determine what data is on the Citation, what enforcement and adjudication actions have occurred, and what notices have been sent. Such data is used primarily to expedite responses to public inquiries.
 - b. SFMTA Hearing Examiners to have access to all information required for an Administrative Hearing.
 - c. All Citation data to be accessible by SFMTA personnel, including what enforcement actions have occurred, all Citation collection notices sent, the date and time of an Administrative Review,
 - d. Administrative Hearing, or De Novo Hearing, the Disposition for each stage of the appeal process, complete information on the vehicle’s Registered Owner, and the name of any Protestor or Complainant.
 - e. SFMTA staff to have access to all Citation data to conduct SFMTA related investigations and research, and respond to public complaints.
 - f. SFMTA staff to have access in order to pre-audit, review, and process refunds and bounced checks, audit and reconcile revenue distribution, and balance all deposits with Contractor and SFMTA records, and
 - g. SFMTA staff to have access to detailed PCO information that is in accordance with SFMTA instructions.

H. Cashiering Support

SFMTA staff currently provides cashiering services for the payment of Citation Fines. Contractor shall provide integrated payment processing capability with SFMTA’s towing, Pay-by-Phone, and Pay-by-Web vendors. Contractor shall also provide cashiering workstation equipment, hardware, and software at all locations where Citation payments are accepted at the Customer Service Center located at 11 South Van Ness Avenue; the Towing

Customer Services Center located at 450 7th Street, and other locations as specified by the SFMTA.

Contractor shall ensure that the equipment and hardware shall operate in a real-time mode, and shall provide the capability of accepting Citation payments during periods when data communication lines are temporarily inactive. The system shall be capable of transferring transactions to the processing database within fifteen (15) minutes after data communication lines are restored.

Contractor shall provide check endorsement and receipt printers to facilitate daily balancing and auditing of all payment transactions received and processed. All transactions are subject to audit by SFMTA at any time without prior notice.

Contractor shall ensure that the PCPS performs the following functions:

1. Retrieval of information from the PCPS database such as Citation status, vehicle history, RPP status, and DMV inquiries.
2. Print a Citation payment receipts in a form acceptable to the SFMTA, that provide the Customer with an easily understandable record to be used as proof of payment. The receipt shall display all Citations Fines paid, the total amount paid, the form of payment, the amount tendered and any change given, the VLN or VIN of the cited vehicle, the user ID of the person processing the payment, and the time and date the payment was made. The receipt shall also show any Fees paid by date and type of Fee.
3. Creating a clear, auditable record of payments received. The audit trail shall include Citation number, payment date and time, payment amount, payment method, and the user ID of the person who accepted payment and entered the payment into the system.
4. Processing payments for Citations that have not yet been entered into the database including single Citations, multiple Citations, and Citations on one or more VLN or VINs in an online, real-time environment. PCPS shall be able to perform all necessary actions to release DMV holds or change vehicle booting and impound eligibility based on Citations that have been paid. PCPS shall be able to produce a DMV abstract that satisfies the DMV that the Citation has been cleared. In addition, PCPS shall be able to process City-imposed Fees.
5. Accommodation of the special handling requirements for payments related to release of an impounded vehicle. PCPS shall be capable of reviewing vehicle history records and locate any additional vehicles registered to the owner, and accurately inform an individual of the amount of the Fines and Fees that shall be paid to release the impounded vehicle, including any amounts owed on other vehicles.
6. Processing of Interactive Voice Response (IVR) and Pay-By-Web payments made by credit or debit card through the specified SFMTA Contractor for internet payments. Contractor is not responsible for credit card fees.
7. Incorporation of security and financial control measures including, at a minimum:
 - a. Password security to gain access to the system
 - b. Segregated cash out by operator
 - c. Automatic check endorsement
 - d. Separate totals for cash, check, money order and credit/debit card transactions, and

- e. Operator name or user ID, date and time as a record for each payment or adjustment transaction.
- 8. Reconcile payment transactions, including:
 - a. Balancing of monies received in a report that automatically generates a listing of the totals by method of payment
 - b. The ability to balance out each person or workstation register to the receipts generated at the register as needed, and
 - c. Separate deposit preparation for each cashier prior to pickup.

I. Payment Processing

1. Processing Control Requirements

Contractor shall, through the PCPS, capture and permanently retain full audit trail information for every processing transaction for each Citation. All payment processing procedures shall be approved by the SFMTA and are subject to detailed audit by SFMTA. Services provided shall be continually monitored and reported, and SFMTA shall be able to conduct in-depth audits of all aspects of the operation.

2. Processing of Funds

Contractor shall be responsible for ensuring the integrity of data and security of SFMTA revenue throughout the entire payment processing procedure. Contractor shall reimburse the SFMTA for any shortages or losses within two (2) Business Days of receipt of notice from the SFMTA. Overages shall be researched and resolved for every instance to the SFMTA's satisfaction. All overages shall be the property of SFMTA. Funds must be electronically transferred by the lockbox service.

Contractor's system shall prepare and retain SFMTA-required records for every deposit at the lockbox site for five (5) years.

Contractor's system shall update payment data and deposit the payments to the financial institution within one (1) Business Day after retrieval from the post office box designated for Citation payments.

a. Lockbox Payment Processing

Contractor shall provide a lockbox service from an accredited financial institution with offices within City and County of San Francisco, which shall be capable of processing at least two million transactions annually. The accurate and timely processing of mail-in payments is critical, and directly affects subsequent collections, such as the application of late penalties, delinquent noticing and applying DMV registration holds. The lockbox service to be used by Contractor shall be a banking service that is subject to approval by the City Treasurer.

Contractor shall provide a bonded courier to pick up mail at the post office designated by the SFMTA twice each day in accordance with a schedule approved by SFMTA. All mail pickups will be logged by Contractor and are subject to verification by SFMTA personnel.

Contractor shall ensure that all payment documents received via mail and processed are copied and archived for a minimum of five (5) years, and shall store such

documents in a manner that permits retrieval within one (1) Business Day of request.

Mail-in payment processing that shall consist of a broad range of control and balancing procedures, including but not limited to:

- i. Receipt and control of high volumes of mail (approximately 5,000 pieces per day).
- ii. Batching and preparing documents for processing.
- iii. Forwarding appropriate problem or questionable mail-in payments to SFMTA on a daily basis (approximately 50 pieces per day).
- iv. Processing payments associated with Citations and notices, and processing those items that cannot be routed through high-speed automated processors on an exception basis.
- v. Balancing, reconciliation and preparation of deposits.
- vi. Online, real-time updates of payment information to Contractor's database.
- vii. Daily deposits to a designated SFMTA account. Deposited funds are to be collateralized (i.e. funds must be secured or insured against theft for the protection of SFMTA) pursuant to California Government Code §53630, et seq.

b. Payment Posting

Contractor shall post all lockbox payments to the system within 24 hours of receipt or no later than the end of the next Business Day. This requirement is subject to on-site verification by SFMTA personnel.

c. Data Accuracy

Contractor is required to maintain a 97% level of accuracy for all data entry of lockbox payments inputted by Contractor.

3. Mail Pick-up

Contractor shall provide mail pick-up from the Post Office and delivery to Contractor's secured place of business by a bonded courier or bonded employee twice each Business Day. Said Post Office box will be in the name and control of the City and County of San Francisco. The current City and County post office box for Citation payments is P.O. Box 7718, San Francisco, CA 94103.

4. Audit Trail

Contractor shall create an electronic image of all processed mail payments, showing the front and back of the check or money order along with the source Citation or Notice of Delinquent Parking Violation.

Contractor shall establish a reliable audit trail for all processing procedures, including endorsing and encoding the payment document with the unique control number of each Citation paid, date of processing and batch numbers, and daily reconciliation with the payments updated to the system.

Contractor's system shall ensure that electronic images shall be instantly retrievable on request by the unique control number or Citation number.

5. Accountability

Contractor shall provide an adequate copy of a Citation or any legally required supporting documentation to a Customer or the SFMTA upon request and within the required time limits, for an Administrative Review, Administrative Hearing, or De Novo Hearing.

6. System Availability

System availability is defined as the time during the principal hours of operation when the Parking Citation Processing System, including all subsystems, is available to SFMTA for the intended use. System availability shall be maintained at 96%, Monday through Friday, from 8 a.m. to 5 p.m. Contractor shall submit objective methods of measurement to enable SFMTA to monitor the availability level. It is Contractor's responsibility to measure and report the availability level to SFMTA on a monthly basis.

The system availability requirement shall not be in effect during the period of time that Contractor is experiencing a catastrophic failure. A catastrophic failure includes Acts of God, natural (such as earthquake, fire or flood) disasters, and unnatural catastrophes that are not caused by any actions taken, or failure to act, by Contractor.

J. Financial Adjustments

Contractor shall, through the PCPS, process financial adjustments and update the database to accurately reflect Citation status.

Contractor's system shall perform the following functions:

1. Provide the ability to input financial adjustment transactions such as returned checks or refunds. These adjustments may include reversing a payment, modifying a payment amount, altering the amount due, or reopening a Citation. The system shall automatically generate and send appropriate notification letters to the appropriate party advising of any such adjustments.
2. The ability to generate letters to Customers notifying them that they are entitled to a refund when appropriate. Contractor shall create an audit trail to record these transactions.
3. Display of financial adjustments on a report of revenue distribution.
4. Processing of returned check transactions and generation of correspondence to the Customer advising of the consequences and penalties applied because of a returned check transaction, updating Citation information on the Citation database, and resumption of normal noticing and processing of the Citation.

5. Reconciliation of Monies

Contractor shall be responsible for reconciling all monies collected and for any and all cash shortages at the end of each Business Day. Payments and funds shall be reconciled daily before preparation and transport to SFMTA's designated depository. Cash overages and shortages of any amount shall be investigated, reported to SFMTA, and resolved within one (1) Business Day of the deposit date. Contractor shall reimburse SFMTA daily for any shortages.

6. Refund of Overpayments

Contractor shall assist the SFMTA to process refunds for overpayment of Citations through use of PCPS. The PCPS shall automatically indicate when a refund is due to a Customer and assist at various stages of the refund process. Contractor's system shall:

- a. Determine if any overpayments are at least twenty (20) days old by VLN, except that fix-it Citations shall have a separate report generated.
- b. Apply any overpayment to an open Citation and adjust any late Fees applied in error by VLN.
- c. Designate where the overpayment was moved from and to for the Citation being paid. There shall be a physical record for the entire transfer (origin and destination).
- d. Mail refund letter to Registered Owner and indicate that letter was sent by VLN.
- e. Designate the response to the mailed refund letter so that if a refund is requested it will be issued through the PCPS refund system by VLN.

If there is no response to the mailed refund letter after a time period determined by SFMTA, or if the letter is returned as undeliverable, Contractor shall ensure the PCPS has the ability to mark the record with the reason for return so that a report can be generated based on the date of payment and date of determination of inability to refund overpayment. The City may escheat the unrefunded monies on an annual schedule. The report generated shall be in a format approved by SFMTA and can be used by a Customer to determine if he or she is entitled to any of the unrefunded monies to be escheated.

K. Administrative Review and Adjudication Procedures

1. Administrative Review

Contractor shall provide electronic tracking and associated services for Administrative Review processing which shall include the following functions:

- a. Ability to capture data associated with a request for Administrative Review.
- b. A determination that a request for Administrative Review was submitted within the required deadline.
- c. Generation and mailing of a letter to the Protestor describing the Administrative Review procedure. Different letter templates shall be used depending on the type or number of Citations involved. The form and content of these letters will be subject to the approval of the SFMTA.
- d. Imaging capability: hardware, software, technical and staff support necessary to implement and administer a procedure by which all incoming mail is scanned, sorted and indexed into batches of electronic records for distribution and review by the Citation and Hearing Divisions as directed by the SFMTA.
- e. Online, real-time access to Citation information for all Citations issued.
- f. Ability to review other Citations issued at the same location (through Data Warehouse) or to the same vehicle as the protested Citation.
- g. Ability to query for DMV Registered Owner and vehicle information on a real-time basis.
- h. Ability to place a "hold" or "suspend" on the Citation payment deadlines pending Administrative Review.
- i. Ability to capture information describing the Disposition following Administrative Review or Administrative Hearing, including denial or approval of the Protest, date and time of the Administrative Review, the person conducting the Administrative Review, and the reason for denial or approval of the Protest.

- j. At the conclusion of the Administrative Review, the system shall promptly generate and mail a notice explaining the Disposition in sufficient detail so that the Protestor is able to understand why the Protest was denied or upheld. The notice shall also explain the appeal procedures if the Protestor wishes to request an Administrative Hearing. The form and content of the notice shall be subject to the approval of the SFMTA.
- k. A “comments” field for each VLN that will allow both the Citation and the Hearing Division to enter notes about a particular VLN. There shall also be a separate “comments” field for each Citation.
- l. Daily, weekly, and monthly reports provided to SFMTA including:
 - i) Disposition sorted by person conducting Administrative Reviews
 - ii) Disposition sorted by violation type
 - iii) Number of Administrative Reviews conducted in any given time period
 - iv) Number of Administrative Reviews conducted by each reviewer
 - v) Activity reports, including Administrative Reviews in process, beyond selected number of days for custom date ranges.

2. Administrative Hearings

Contractor shall, through the PCPS, capture and process information related to Administrative Hearings. The system shall enable the SFMTA to create a data record when a request for Administrative Hearing is received. The system shall verify Citation status, including the Disposition following Administrative Review, whether the Fine has been paid, and shall confirm that the Hearing Request is made within twenty-one (21) days following the mailing of the Administrative Review decision. If SFMTA-defined requirements are met, the system shall schedule the matter for a hearing within ninety (90) days of receipt of the request and in accordance with all policies and procedures set forth by the SFMTA.

Contractor shall, through the PCPS, provide the following functions:

- a. Computer system services directly related to the processing needs of the SFMTA's Administrative Adjudication Program. These include but are not limited to assistance with software applications, hardware, and communications.
- b. Online, real-time Administrative Hearing scheduler. This shall include a hearing date availability calendar to ensure consistent workload volumes in accordance with SFMTA specifications. All hearing scheduling shall comply with hearing deadlines as required by SFMTA.
- c. A scheduling system that allows SFMTA staff to enter a walk-in Protestor's request to have an on-demand hearing so that the Hearing officer can a) determine who needs assistance, and b) delete the individual's name from the system after assistance has been provided. The system shall be able to generate reports reflecting the number of walk-in Protestors and wait times.
- d. The hearing scheduling calendar shall have the capability of being modified in an online real-time environment to accommodate workload fluctuations, administrative changes, holidays, vacations, changes in SFMTA policies and procedures and state law. At the direction of the SFMTA, the system shall be able to modify available hearing dates and times and adjust the number of available hearing slots.

- e. Direct access for Hearing Examiners to DMV vehicle registration information, the PCPS database, and the hearing scheduling calendar. The system shall have the ability to paste text of state law provisions, including but not limited to the California Vehicle Code, into Disposition documents at the discretion of the Hearing Examiner. It shall also include a user-friendly data entry system that automatically transfers PCPS data into Disposition letters in a real-time online environment. The system shall have spell-check capabilities and all other basic word processing functions.
- f. Data entry of variable information about an Administrative Hearing, including, but not limited to:
 - i) Protestor's name and address
 - ii) Decision
 - iii) Citation number
 - iv) Description of violation
 - v) Date of the decision
 - vi) Written justification for decision, and
 - vii) De Novo Hearing information and description of the process to obtain such a hearing.
- g. Ability of the Hearing Examiner to generate a Notice of Decision to the Protestor or Complainant by Contractor within one (1) Business Day of a Hearing Examiner's decision. In addition, PCPS shall provide for the entry and editing of Administrative Hearing information, transfer the information to the appropriate database, and be capable of generating management information reports as requested by the SFMTA. Disposition letters shall be available in electronic form for review, editing, or reproduction.
- h. Online real-time updating of Disposition at the time of a Hearing Examiner's decision, the hearing type (in person, by mail or by telephone), the hearing date and any Fines or Fees due. The system shall also provide a complete audit trail of all information relating to each Protest and resulting Disposition.
- i. On-demand reporting capability with user-defined parameters, including but not limited to, the number of Dispositions, violation type, rates of dismissals, and number of hearings held by any combination of data specified by SFMTA.
- j. Weekly, monthly and on-demand reports to the SFMTA. Examples of the types of reports that shall be required include, but are not limited to:
 - i) Disposition by Hearing Examiner
 - ii) Disposition by violation type
 - iii) Number of hearings conducted in any specified date range
 - iv) Reports detailing the average duration of hearings
 - v) Reports detailing pending Protests sorted by Hearing Examiner
- k. Reports shall be available in weekly and monthly summary reports or any other summary reports by date range specified by the SFMTA.

3. De Novo Hearings

Contractor shall, through the PCPS, track and issue refunds to Protestors who prevail in De Novo Hearings.

4. SFMTA Tow Hearings

Contractor shall, through the PCPS, support the following functions:

- a. Entry of tow records (including the VIN, VLN, date, time, tow location, Hearing Examiner, date and time of hearing and Disposition of the hearing). The system shall provide querying capacity including VIN, VLN and state of registration, tow location, and date/time range
- b. Scheduling of Tow Hearings
- c. VLN queries within the PCPS and DMV systems
- d. Tracking tows by authorizing agency (e.g. SFDPH, DPT, and SFPD)
- e. Tracking tows by type of violation

5. Impound and Boot Hearings

Contractor shall, through the PCPS, provide for the entry of information regarding a Tow Hearing, such as the requestor's name and address, the Disposition, and written justification. The system shall have the capability to allow the Hearing Examiner to generate a Notice of Decision to be mailed to the Registered Owner or Complainant by Contractor within one (1) Business Day after a Hearing Examiner's decision. A copy of this letter shall be attached to the permanent record of the tow.

In addition, Contractor shall ensure that the PCPS provides the capability to enter and edit hearing information, transfer such information to the appropriate database, and generate management information reports as requested by the SFMTA.

Contractor shall, through the PCPS, provide an online, real-time scheduling function that integrates state law requirements with an availability calendar for Administrative Hearings. In addition, the system shall provide entry and noticing options for Hearing Examiners.

L. Additional Support Systems

1. Abandoned Vehicle Tracking System (AVTS)

Contractor shall maintain an accurate AVTS database to track abandoned vehicle complaints, and provide this information through online, real-time data entry, tracking, and control to the SFMTA and the Towing Contractor. After an initial abandoned vehicle complaint is entered, AVTS shall generate notification to SFMTA's Enforcement Division's Abandoned Vehicle Unit by the next Business Day that an investigation is required. AVTS shall allow PCOs to use Handheld devices for manual data entry to investigate and track the status of an abandoned vehicle complaint. The Handheld device can be docked to transmit investigation, new Citation, and officer activity data to PCPS. Once an abandoned vehicle is impounded, AVTS shall acquire the name and address of the Registered Owner from the DMV. After the Registered Owner is identified, AVTS shall generate, print, insert (with return envelope), and mail a notice to the Registered Owner and legal lien holder within forty-eight (48) hours, excluding weekends and holidays, as required by California law.

a. General Functioning:

Contractor shall ensure that the AVTS has the ability to:

- i.* Process records regarding abandoned vehicle complaints on City streets. The system shall provide for online, real-time entry, control, and tracking of abandoned vehicle complaints from receipt of the complaint to its resolution.
- ii.* Record new abandoned vehicle information directly on the Handheld device while in the field.
- iii.* Automatically generate a unique sequential control number for each abandoned vehicle complaint.
- iv.* Track the following:
 - a)* The enforcement area that is associated with the location where the vehicle is reported abandoned;
 - b)* The district, as defined by SFMTA;
 - c)* The street address of the reported abandoned vehicle location;
 - d)* The VLN, VIN, color, make, and type of vehicle;
 - e)* The date and time that the abandoned vehicle information is entered with the log-on ID of the person entering the data;
 - f)* Status of the vehicle after initial investigation, investigating officer, time and date of the investigation, mileage displayed on the vehicle, and any comments;
 - g)* Impound status of the vehicle, the impounding officer, and the date and time of vehicle impoundment;
 - h)* Registered Owner's name and address;
 - i)* Mail date of required notification to the Registered Owner;
 - j)* A Gone on Arrival ("GOA") field for vehicles that have been moved between the time of the complaint and when the PCO arrives to investigate;
 - k)* Ability to enter additional comments by a PCO as determined by the SFMTA;
 - l)* Multiple complaints received from a single individual; and
 - m)* Ability to flag certain combinations of complaints as directed by the SFMTA. Complaints can be identified as duplicative or possibly duplicative resulting from multiple complaints from the same Complainant.

Contractor shall ensure that the AVTS shall be available for use by SFMTA's Enforcement Division within ninety (90) days of SFMTA approval of AVTS system specifications.

i. Abandoned Vehicle Complaint

Contractor shall, through the AVTS, allow for initial entry of abandoned vehicle complaints. PCOs must also be able to query the database to determine if a complaint already exists. The system shall then issue a report by the following Business Day detailing abandoned vehicle complaint information by district as specified by the SFMTA's Enforcement Division, and upload the information to the Handheld for the appropriate PCO to investigate.

- ii.* After an abandoned vehicle complaint is received, AVTS shall assign the complaint a unique sequential control number. AVTS shall track each complaint by the following categories:
 - a)* PCO Badge Number;
 - b)* Beat Assignment;
 - c)* Police District;
 - d)* Date Complaint Received;
 - e)* Source of Complaint (e.g. Citizen Complaint, Routine Patrol, etc);
 - f)* Block Number;
 - g)* Street Address; and
 - h)* Name and contact information of complainant.

iii. There are three (3) distinct phases to the abandoned vehicle complaint process:

- a)* **Initial Field Visit:** AVTS shall allow a PCO to update field information on an abandoned vehicle complaint during the initial visit to the complaint site. The system shall allow the PCO to note whether a vehicle is GOA, close out the complaint, enter information to schedule a follow-up site visit, enter the reason why another visit is required, or enter any additional comments as needed including, but limited to, the mileage of a vehicle, confirmation of complaint location, and Registered Owner information. If a complaint is resolved after the initial field visit, AVTS shall record the reason why a complaint is closed, the date, the PCO closing out the complaint, and other information as determined by the SFMTA.
- b)* **Follow-up Tracking.** AVTS shall issue a written notice for the PCO to conduct a follow-up field visit and update the Handheld device if necessary. The system will inform the PCO of the purpose of the follow-up visit and give him or her all relevant information and comments entered on the first visit. If the PCO decides to tow or issue a notice of intent to tow, AVTS shall allow a PCO to update this information into the Handheld and input a future follow-up date.
- c)* **Final Closure Status:** AVTS shall allow for the PCO to close an abandoned vehicle complaint after all outstanding issues have been resolved and input information regarding the resolution of the complaint, including whether the vehicle was towed.

b. AVTS Reporting Requirements

Contractor shall ensure that the AVTS shall be able to generate the following reports: Contractor shall also provide a report describing AVTS reporting capabilities to the SFMTA within ninety (90) days after the Effective Date of the Agreement.

- i.* Work assigned to a PCO for a particular shift;
- ii.* Duties accomplished by a PCO for his or her last shift worked;
- iii.* A weekly projection of activities that shall need to be accomplished;
- iv.* Weekly and monthly summary of activities accomplished;

- v. Number of abandoned vehicle complaints;
- vi. Summary of abandoned vehicle investigation status by categories such as duplicate, GOA or moved after marked;
- vii. Number of abandoned vehicle impounds by parking enforcement area;
- viii. Reports of multiple complaints received from a single individual or address; and
- ix. User-friendly management reports issued daily, weekly, monthly, or on-demand as specified by the SFMTA.

2. Residential Parking Permit System (RPPS)

Contractor's RPPS shall connect with PCPS to ensure that renewal notices include information regarding outstanding Citations, and SFMTA staff assisting Customers with RPP issues are notified that Citations are outstanding on the vehicle for which a RPP permit is being sought.

Contractor's RPPS shall provide a separate online function for input and maintenance of information on the issuance and cancellation of RPP permits, including permit holder profile and application history, residential permit parking area street name and address inventory, permit history, and Citations payments.

Contractor shall provide integrated cashiering system software to enable SFMTA staff to access the residential permit parking database, Citations database, and the DMV database.

Contractor shall assist the SFMTA in implementing an electronic version of a RPP permit that a Customer can attach to his or her vehicle windshield.

RPPS shall perform the following functions:

- a. Integrate with the PCPS in real time.
- b. Print adhesive backed permits in two sizes for four-wheeled and two-wheeled vehicles using several different colors either on an on-demand basis for first-time permit holders or as a batch report function for annual mailing of renewal notices.
- c. Identify unpaid Citations for permit holders prior to issuance of permits.
- d. Ability to inquire and retrieve individual RPP account information including the:
 - i. Individual residential parking permit account number;
 - ii. Type of RPP permit (e.g., residential, commercial, health care, or educational) and current permit status;
 - iii. Location that qualifies the applicant for a permit;
 - iv. Mailing address;
 - v. Control numbers of issued permits;
 - vi. Expiration dates of issued permits;
 - vii. Permit fee(s) paid;
 - viii. Number of permits issued compared to the number of residents on RPP designated streets; and

- ix.** Listing of all RPP designated streets by block, RPP area.
- x.** Information regarding individual eligibility for a permit and corresponding permit renewal date by:
 - a)** Account number;
 - b)** VLN;
 - c)** Unique permit control number; and
 - d)** Name or address.
- e.** Provide a complete RPP history file for each permit applicant.
- f.** Generate renewal notices to RPP holders within a time period to be specified by SFMTA prior to permit expiration.
- g.** Institute controls that can be overridden by a SFMTA supervisor that designates the number of permits that can be issued per address.
- h.** Ability to add or delete RPP areas and permit accounts within a RPP area.
- i.** Provide financial controls and reconciliation of all RPP Fees collected.
- j.** User terminals that can query DMV for vehicle and VLN information.
- k.** User terminals that can query a commercial vehicle's VLN file through SFMTA's Wide Area Network.
- l.** Lockbox system for mail-in RPP permit renewals.
- m.** Provide internet-accessible RPP renewal and permit applications with the ability to make payments online.
- n.** Ability to download permit files to Handheld Units to allow issuing PCO to match a vehicle to a RPP permit to determine permit status.
- o.** Ability to generate reports regarding the following:
 - i.** Daily Area Code Activity Report that provides an analysis of RPP permits issue by RPP area and RPP permit type;
 - ii.** Daily Citation Log detailing all RPP related transactions and associated Citation payments for a specific date by Customer name, VLN, payment method, transaction number, Citation number, Citation amount, payment type, and payment amount;
 - iii.** Monthly Area Report that documents active permits and accounts by street, RPP area;
 - iv.** Daily Cash Report detailing all money received during the previous day, sorted and subtotaled by user ID;
 - v.** Citation Issuance and Collection Report detailing all active permit holders who have outstanding Citations and the amount due;
 - vi.** Monthly Activity Report that summarizes all activity occurring the prior month by RPP area;
 - vii.** Permits by Block Report that details active accounts and permits for each RPP area by block number;

- viii.* Permit Issuance Report that details all permits issued the previous day sorted and subtotaled by user ID;
- ix.* Permit Cancellation Report that details all permits canceled or placed on hold status the previous day, sorted and subtotaled by user ID;
- x.* Permit Adjustment Report that details all permit adjustments processed the previous day, sorted and subtotaled by user ID;
- xi.* Temporary Permit Issuance Report that details the number of temporary RPP permits issued and the number of households receiving RPP permits by RPP area on a monthly basis;
- xii.* Permit Denial Report that details Customer's outstanding Citations;
- xiii.* Renewal Notice Register produced prior to mailing renewal notices to enable the SFMTA to inspect permit renewal notices before mailed;
- xiv.* Ad Hoc Report that provides a functional ad hoc query tool.

3. Image Management System (IMS)

Within ninety (90) days of the Effective Date of the Agreement Contractor shall provide an IMS to be used with the PCPS that will capture, store, and retrieve all images. Such images are retrievable at remote sites by the workstation users utilizing the same workstation hardware as is used for PCPS entry, update and query functions.

Contractor shall ensure that the IMS retains up to five (5) years of manually entered records online.

Contractor shall ensure a ten (10) second average response time from the time the image retrieval request is made to Contractor's network until the time it reaches the SFMTA's network.

Contractor shall provide scanning devices and printers, including cashier printers, for printing copies of images collected that are suitable for use in the Administrative Review, Administrative Hearing, and De Novo Hearing process.

4. Automated Telephone Answering System (ATAS)

Contractor shall, upon SFMTA written request, provide all ATAS hardware, software, equipment, and technical support to disseminate accurate, consistent, and user-friendly information twenty-four (24) hours per day, seven (7) days per week. SFMTA will provide system requirements to Contractor. Contractor shall provide an implementation plan within 30 days of receipt of system requirements. Contractor shall provide the system within 180 days of SFMTA's acceptance of the implementation plan. ATAS shall answer telephone calls in addition to providing the option to speak with live SFMTA Customer service representatives.

ATAS shall be fully integrated with PCPS and provide online, real time status of Citations and other records. Contractor is responsible for maintaining the connection between ATAS and PCPS. ATAS shall be tailored to the specifics of SFMTA's parking policies and procedures and updated and enhanced as required by SFMTA. Special events message capability to inform the public of current and upcoming parking and traffic-related information is required.

ATAS messages shall be recorded in English, Spanish, and Cantonese. Additional languages shall be required as directed by the SFMTA. A TTY line or equivalent shall be

available to respond to inquiries from the hearing impaired.

ATAS shall be capable of receiving telephone calls from the 415, 510, 650 and 925 area codes and the telephone number provided to the hearing impaired. Contractor shall receive and answer all calls within the time periods specified by SFMTA.

ATAS shall input information into the PCPS database to indicate that a telephone call was received and the general nature of the telephone call, including requests for information, and the action taken.

ATAS shall provide the option to speak with a live SFMTA Customer service representative between the hours 8 a.m. and 5 p.m. Monday through Friday, except for City holidays.

Monthly operational and management reports regarding ATAS shall be generated as directed by the SFMTA. These reports shall include verification that all telephone calls are answered and not disconnected.

5. Pay-By-Web System (PWS)

Contractor shall, upon SFMTA written request, provide a Pay-By-Web Service (PWS) that allows Customers to pay one or more parking Citations via the internet using a credit card at the direction of the SFMTA. SFMTA will provide system requirements to Contractor. Contractor shall provide an implementation plan within 30 days of receipt of requirements. Contractor shall provide the system within 180 days of SFMTA's acceptance of the implementation plan.

The PWS must be fully integrated with PCPS, and enable SFMTA to audit all transactions made via the internet. PWS shall accept credit card payments, update the PCPS database, and deposit monies collected into the appropriate SFMTA account. Contractor shall ensure that all transactions are secure using public key infrastructure and data encryption technology. Contractor shall ensure that personal data is protected from outside access using fire walls. Contractor shall provide all hardware and software required to interface with Contractor's system and a credit card clearinghouse in order obtain real time authorization and eliminate chargebacks.

Detailed information regarding each transaction, including last four digits of the credit card number, registration, date and time of transaction, authorization status, and amount of payment shall be captured and retained. The system shall provide operational and management reports and appropriate audit trails to monitor the performance of the system.

All PWS transactions and the transfer of funds shall be confirmed within twenty-four (24) hours.

Contractor shall reconcile all PWS transactions and transferred amounts, and resolve any discrepancies. Funds from all PWS transactions must be distributed through the formulas required by the SFMTA and state law.

PWS must comply with all City requirements regarding-commerce applications.

Any transactional, processing, or other fees charged to the Customer for utilizing PWS services shall be clearly identified to the Customer.

Contractor shall not be responsible for any credit card processing fees.

6. Pay-By-Phone System

Contractor shall, upon SFMTA written request, provide a Pay-By-Phone Service with the

capability to accept Citation payments by telephone using a credit card. SFMTA will provide system requirements to Contractor, and Contractor shall provide an implementation plan within 30 days of receipt of requirements. Contractor shall provide the system within 180 days of SFMTA's acceptance of the implementation plan.

The Pay-By-Phone service must be fully integrated with the ATAS and PCPS. The SFMTA shall be able to audit all transactions performed through the pay-by-phone service.

Contractor shall provide all hardware and software required to interface with the pay-by-phone system and a credit card clearinghouse in order to obtain real time authorization and eliminate chargebacks.

Detailed information regarding each transaction including last four digits of the credit card number, registration, date and time of transaction, authorization, and amount of payment shall be captured and retained. The system shall provide operational and management reports and appropriate audit trails to monitor the performance of the system.

All pay-by-phone transactions and transfer of funds shall be confirmed within twenty-four (24) hours.

Contractor shall reconcile all pay-by-phone transactions and transferred amounts, and resolve any discrepancies. Funds from all pay-by-phone transactions must be distributed through the formulas required by SFMTA and state law.

Any transactional, processing, or other fees charged to the Customer for utilizing pay-by-phone services shall be clearly identified to the Customer.

Contractor shall not be responsible for any credit card processing fees.

7. Parking Information Website (PIW) Maintenance

Contractor shall maintain and enhance SFMTA's existing Parking Information Website (PIW) within 30 days of receiving written request of SFMTA, and receipt of standard operating procedures. No modifications to the PIW shall be made without written approval by the SFMTA. Contractor shall maintain PIW in compliance with any established City standards regarding internet sites. Upon SFMTA request and receipt of requirements, the Contractor shall create an implementation plan for developing an interface between the PIW and PWS, which will provide information on outstanding Fines and Fees for a particular Citation or Fines and Fees owed by a particular Customer. Contractor shall implement interface within 30 days of receiving of SFMTA approval of implementation plan. Contractor shall update PIW within five (5) Business Days of written receipt of a change request from the SFMTA. Contractor shall work with SFMTA to make changes designated by the SFMTA as critical within one (1) Business Day of written receipt of the request. Should Contractor determine that a critical change cannot be made within one Business Day; Contractor shall notify the SFMTA in writing of the reason for the delay.

8. Tow Noticing System (TNS)

Contractor's system shall interface with the Towing Contractor to obtain towed vehicle information on a daily basis. Once a vehicle is towed, PCPS shall acquire the Registered Owner name and address from the DMV. PCPS shall automatically generate three (3) required tow notices to the Registered Owner of the vehicle, legal owner of the vehicle, and lien holder of the vehicle with the time period required by state law.

Contractor shall, through the TNS, shall provide the following:

- a. An automatically generated sequential control number that is applied to each towed vehicle.
- b. The enforcement area that is associated with the location where the vehicle is towed.
- c. The district, as defined by the SFMTA.
- d. The street address of the towed vehicle location.
- e. The VLN, VIN, color, make of vehicle and type of vehicle.
- f. The date and time that the towed vehicle information is entered in the PCPS database with the log-on ID of the person entering the data.
- g. The status of the vehicle after initial investigation, investigating officer, time of the investigation, mileage showing on the vehicles, and any comments.
- h. The impound status of the vehicle, the impounding officer, and the date and time.
- i. The Registered Owner's name and address.
- j. The mail date of the required notification to the Registered Owner, legal owner of the vehicle, and lien holder of the vehicle.

9. Installment Payment and Community Service In Lieu of Payment Program (IPCSP)

- a. IPCSP shall accommodate SFMTA agreements to permit Customers to perform community service in lieu of paying Fines, make installment payments, or a combination of both.
- b. IPCSP shall be able to:
 - i. Permit authorized users to create community service and installment payment plans by VLN(s) and select individual or multiple Citations to be included in a plan with minimal user effort;
 - ii. Generate an agreement plan number that can be referenced to enter and retrieve all IPCSP information;
 - iii. Retrieve all information for any SFMTA community service or installment plan agreement by plan number, Customer name, VLN or VIN;
 - iv. Issue a document to the Customer that details the terms of any community service or installment plan including Citation numbers, VLN, VIN, dollar amount, and completion date;
 - v. Enter information and track a Customer's partial payment, full payment, community service completed, combination of community service and payment completed, or failure to complete community service or installment payments.
 - vi. Add more than one VLN and or VIN number to a community service or installment payment agreement and assist SFMTA in monitoring the progress of community service and installment payment agreements as directed by the SFMTA.
 - vii. Generate installment payment reminder and default notices to Customers if a Customer fails to pay payment amounts as agreed.

- viii.* Generate reports detailing active, completed, cancelled agreement plans by different ranges, Customer names, and plan activity as directed by the SFMTA.

10. Parking Meter Tracking System (PMTS)

Upon written request of the SFMTA, Contractor shall assist SFMTA in developing a parking meter system with terms and conditions to be determined at the time of implementation. Contractor shall provide interface capabilities between the SFMTA's parking meter system and PCPS including the following functions:

- a.** Automated transfer of maintenance requests from Handheld units to the SFMTA's Meter Shop system.
- b.** Online inquiry into the Meter Shop maintenance tracking system to determine "Date Last Tested" and other maintenance history information.
- c.** Online inquiry for authorized users to access parking meter inventory and maintenance records.

11. Transit Fare Evasion Processing System (TFEPS)

Contractor shall, through the PCPS, accommodate the processing of Transit and Fare evasion Citations. The system must include the following functionality:

- a.** Imaging, data entry, and update of new Citations.
- b.** Processing of mail in, pay-by-web and pay-by-phone payments.
- c.** Online processing of payments, including payments made at the walk-in cashiering payment center.
- d.** Online viewing of Citations via eTIMS.
- e.** Mailing of scheduled notices based on next action logic.
- f.** Project 20 plan creation and reporting mirroring the current parking Citation Project 20 logic.
- g.** Administrative Review and correspondence processing through the current workflow system.
- h.** Hearing decision processing through the current Administrative Adjudication Program.
- i.** Special Collections processing through the current workflow system as directed by SFMTA.

12. Mobile License Plate Recognition (MLPR)

Within 90 days of Contract Effective Date of the Agreement and the approval of SFMTA, Contractor shall provide two additional MLPR units to the City at no cost, and shall support SFMTA's existing MLPR units and any additional MLPRs acquired during the term of the Contract with the ability to scan VLN and identify a vehicle's precise location via GPS software. Contractor shall ensure that the VLN scan records the time of the scan, the location of the vehicle, and shall cross reference the VLN with Scofflaw, stolen vehicle, or other tables loaded in the Handheld Unit.

Contractor shall also provide the option for SFMTA to purchase additional MLPR units through Contractor by either a lump sum payment or financed at a rate not to exceed Prime Rate plus 3%.

Contractor shall assume all payments listed in Appendix E that post-date the Effective Date of this Agreement.

V. SPECIAL COLLECTIONS SYSTEM (SCS)

A. General Requirements

Contractor shall provide software, hardware, training, and technical support for SCS that provides the following functionality, features, and services at no additional expense to the SFMTA other than a Special Collection Fee:

1. Interface with the State of California DMV, out-of-state DMVs, and the District of Columbia consistent with state-specific data formats, plate types, and registration-update schedules.
2. Ability to assign Citations to different collection statuses according to SFMTA criteria and generate reports and collection invoices as directed by the SFMTA.
3. Track delinquent Citations and any event or transaction related to a Citation, including issuance of Notice of Delinquent Parking Violation, assignment to Special Collections, issuance of notices or other correspondence, registration holds on vehicles registered in California, reporting to a credit bureau or the California Franchise Tax Board, designation of a Citation as uncollectible, and other actions as directed by the SFMTA.
4. Daily PCPS update to record Citation events relevant to collections (for example, fully paid, partially paid, reduced, or dismissed Citations) within one (1) Business Day after the event.
5. Ability to generate notices and correspondence based on the category of a Citation (for example, in-state, out-of-state, fleet, rental, or fare evasion), age (for example, the number of days since issuance, the previous notice or a Disposition), or a specific event (for example, a bounced check).
6. Compliance with all Noticing, Processing Correspondence, and Mailing functions for Special Collections as required by this Agreement.
7. Compliance with all laws and regulations related to debt collection, including but not limited to the Fair Debt Collection Practices Act.

B. Collection Procedures

Within ninety (90) days of the Effective Date of the Agreement, Contractor shall submit a Collection Plan for SFMTA approval. Contractor shall implement new components to the Collection Plan within 90 days of request and approval by the SFMTA.

The Collection Plan shall include the following:

1. Credit Bureau Reporting: Utilize credit bureau reporting for delinquent or unpaid Citations after informing the debtor of the deadline for payment to avoid credit bureau reporting.
2. Franchise Tax Board: Report delinquent or unpaid Citations issued to California residents to the State of California Franchise Tax Board.
3. Telephone Calling by Third Party Collections Firm: Subcontract for debt collection services that involve telephoning debtors using both automated calling and live operators. All calling scripts and messages shall be approved in advance by the SFMTA.

4. Billing Debtors for Collection Costs: As allowed by law Implement a program for assessment of collection costs for delinquent or unpaid Citations to debtors for payment.
5. Ability to generate collection invoices and reports that meet State of California and SFMTA requirements.

C. Out-Of-State Collections

For Citations issued to vehicles registered outside of the State of California, Contractor shall request Registered Owner information from the appropriate state DMV, update PCPS with the Registered Owner information, send out all required notices, and pursue payment from the Registered Owner in accordance with the terms of this Agreement.

Contractor's Out-of-State Collections procedure shall include the following requirements:

1. Maintain current and complete interface specifications requirements, plate types, registration renewal update schedules, and other critical processing information for out-of-state DMVs.
2. Acquire out-of-state DMV files, including updates, for states that makes such files available for purchase.
3. Recognize and accurately separate out-of-state registration records based on changes in ownership.
4. Obtain the Registered Owner's name and address from the appropriate state vehicle registry.
5. Ensure that all data fields required by an out-of state DMV are completely and accurately submitted.
6. If an out-of-state DMV return provides a valid match, ensure complete processing, tracking, and collection efforts for the Citation.
7. Issue Notices of Delinquent Parking Violation to Registered Owners and follow-up notices as recommended by Contractor and approved by SFMTA.
8. Check record counts, edit rejects, match rates, and match failures with each request and return cycle for each state.
9. Update PCPS with Registered Owner information.
10. Monitor changes to legal restrictions on the use of DMV data, such as the federal Driver's Privacy Protection Act, ensure compliance with any such requirements, and track how individual states implement federal requirements.
11. Issue reports to SFMTA to assist with documenting, monitoring, and processing oversight of Citations issued to out-of-state vehicles.

D. Miscellaneous Collections

Contractor shall review PCPS data on a weekly basis and assign all Citations that meet the SFMTA's designated criteria to Miscellaneous Collections. SFMTA has designated the criteria listed below for Citations to be assigned to Miscellaneous Collections. The categories of Citations assigned to Miscellaneous Collections shall be subject to amendment pursuant to written agreement by the parties. Any Citation Processing Fee or Special Collection Fee increase for additional categories of Miscellaneous Collections will require modification of this Agreement. SFMTA may opt to add additional categories at a collection rate not to exceed 34%. All notices and forms utilized by Contractor as part of its Miscellaneous

Collections program are subject to prior approval by the SFMTA.

1. **DMV Hold Rejects/Returned Transfers:** Any unpaid Citation in which the request for DMV hold was rejected or the DMV hold was released after transfer of vehicle ownership information had been obtained from DMV.
2. **Aged DMV Hold-By Expiration Date:** Any Citation that has a DMV hold and remains unpaid if the interval between issuance date and registration expiration date is less than ninety (90) days, then the criterion is expiration date plus three hundred and sixty-five (365) days; if the interval between the issuance date and registration expiration date is more than ninety (90) days, then the criterion is the registration expiration date plus sixty (60) days; or if there is no registration expiration date, then the criterion is fourteen (14) months after issuance date.
3. **Unpaid Citations Issued to Out-of-State Vehicles:** Any Citation issued to a vehicle registered out-of-state that remains unpaid twenty-eight (28) days after issuance date
4. **Returned Mail:** Any unpaid Citation for which a notice has been returned by the U.S. Postal Service as undeliverable.
5. **Registered Owner Information:** Any unpaid Citation associated with a license plate in which Registered Owner information has not been returned from the DMV after at least four (4) requests within a two-month interval.
6. **Declaration of Non-Ownership:** Any unpaid Citation issued to a vehicle for which a declaration of non-ownership has been received and forty-five (45) days or more has elapsed since a notice requesting payment from the person identified as the new owner was sent.
7. **Leased and Rented Vehicles:** Any unpaid Citation issued to a leased or rented vehicle twenty-two (22) days after the issuance date. For a Citation not immediately identified as having been issued to a leased or rental vehicle, the Citation shall be assigned to Miscellaneous Collections after the lessee or renter name and address information has been entered into PCPS.
8. **Make or Match Failure:** Any Citation for which the vehicle make on the Citation does not match the vehicle make information on file with DMV.

E. Support Services

Contractor shall provide the following services to support Miscellaneous Collections:

1. Automatically review the PCPS database on a weekly basis and assign all Citations that meet the designated criteria to Miscellaneous Collections.
2. Determine and track noticing for each designated Miscellaneous Collections category.
3. Print and mail all notices required for Citations assigned to Miscellaneous Collections.

F. Customer Services Inquiries

1. Contractor shall provide a local telephone number and a toll-free number staffed by sufficient Customer service representatives to ensure that Customer calls will be answered within six rings, between the hours of 8 a.m. to 5 p.m. on Business Days unless otherwise directed by SFMTA. Contractor shall document Customer telephone calls including the date, time, nature of the call, and the information that was provided to the Customer.

2. Contractor shall respond to written inquiries submitted by Customers within ten (10) Business Days of receipt. All written correspondence shall be imaged.
3. Contractor shall have a documented escalation process to manage complaint processing.

G. Special Collections Administrative Reviews and Hearings

Contractor shall enter into PCPS and forward to the SFMTA any requests for Administrative Review or Hearing for Citations issued to out-of-state vehicles within two (2) Business Days. SFMTA can provide an Administrative Review or Hearing through written correspondence. The SFMTA will notify the Registered Owner and Contractor of the Disposition. If a refund is due, SFMTA will issue the refund to the Payor and will deduct the refund proportionately from the monthly payments owed by SFMTA to Contractor.

H. Purge of Records

Contractor shall submit to SFMTA an electronic and paper report of purged accounts in accordance with a purge schedule mutually agreed upon by the parties.

Contractor shall archive Citation records and related transaction records based on SFMTA-approved criteria including age, status, or Disposition. Contractor shall ensure that archived records can be retrieved and restored to the active PCPS database within seven (7) Business Days of request.

Contractor shall create specific Disposition codes and Suspension codes for Citations deemed uncollectible by Contractor after all required steps have been taken. Disposition and Suspension codes shall be applied either to an individual Citation by authorized Contractor staff or in batch mode based on SFMTA-approved criteria. Contractor shall produce reports to document Citations and Fines and Fees due as directed by the SFMTA.

I. Special Collection Fee (SCF)

SFMTA will pay Contractor a Special Collection Fee (SCF) on a monthly basis. Contractor shall provide a monthly invoice that includes all payments and adjustments for Citations assigned to Special Collections, including Citations assigned to Special Collections that are excluded from the Special Collections Fee and all adjustments for bounced checks, dismissals, refunds, and Special Collection Fee payment adjustments for prior months. The SCF payment amount due to Contractor shall be reduced by any SCF amount that was assessed in any prior month based on payments that are refunded and/or Citations that are dismissed. All adjustments shall be documented. Contractor shall deposit payments made by check or money order into the SFMTA's account within twenty-four (24) hours of receipt and no later than the next Business Day.

1. In order to determine the SCF amount, Contractor shall accurately access the eligibility of each Citation payment based on the following:
 - a. SCF shall not be determined based on payments in excess of Fee and Fine amounts that are due to SFMTA (for example, Citation overpayments);
 - b. SCF shall not be determined based on payments falling within the Exclusions listed below;
 - c. SCF shall not be based on outstanding unpaid Citation amounts when the Fines and Fees that have accrued for a Citation are partially paid. The PCPS shall be capable of tracking partial payments of Citations and the outstanding balance due as part of the Citation history;

2. SFMTA shall not pay a SCF to Contractor for the following situations:
 - a. When Citations are collected as a result of collection efforts of the DMV
 - b. When Citations are dismissed by SFMTA, the City, or a court; or
 - c. When no collection activity has occurred within twelve (12) months prior to Citation payment after notices or correspondence have been returned by the U.S. Post Office as undeliverable.

J. Notices and Reports

Contractor shall, at a minimum, provide the following reports:

<u>Notice Name</u>	<u>Frequency</u>
Audit of Billable Payments	Monthly
Audit of Billable Payments (Detail)	Daily
Audit of Billable Payments (Detail)	Monthly
Audit of Billable Payments (Detail)	Daily, Monthly
Boot and Tow Eligible	Monthly
Collection Assignments by Category	Weekly, Monthly and FYTD
Collection Assignments by Category	Monthly, YTD
Collection Notice Effectiveness	Daily, with rolling totals
First Out of State Collection Notice	Monthly
Fourth Instate Collection Notice	Upon Request
Fourth Out of State Collection Notice	Upon Request
Franchise Tax Board—Warning	Annually
Franchise Tax Board—Warning	Annually
Make Match Failure	Quarterly
Notice Register	Daily
Provided on TASKE System performance reports from the ACD	Daily, Weekly, Monthly
Second Instate Collection Notice	Monthly
Second Out of State Collection Notice	Monthly
Second Rental Collection Notice	Bi-Weekly
Third Instate Collection Notice	Monthly
Third Out of State Collection Notice	Monthly
Third Rental Collection Notice	On Request

The SFMTA reserves the right to request additional reports from Contractor as needed. Upon SFMTA request, Contractor shall provide the SFMTA a proposed report format and shall make the report available to the SFMTA within fifteen (15) business days after SFMTA

approval of the report format unless the parties agree to a different time schedule.

VI. GENERAL CMSCPS SYSTEM REQUIREMENTS

Except as otherwise expressly specified herein, Contractor, at its sole expense, shall provide all equipment, hardware, peripherals, (including but not limited to disk drives, memory, and network cards) necessary to administer the proposed OMS, PCPS and HWRS systems, known collectively as the CMSCPS. Software requirements pertinent to each system are detailed in other sections of the Scope of Work, as follows:

- HWRS – Section II.
- OMS – Section III.
- PCPS – Section IV.

Contractor shall also provide all support functions relating to the CPCMS as listed below.

A. Network Requirements

Contractor shall be responsible, at its sole expense, for developing and installing network connections and/or facilities that shall link the SFMTA Network to the CPSCMS. Contractor shall, at its sole expense, provide SFMTA any equipment, hardware, software or peripheral upgrades, which are necessary for effective use of Contractor's system. SFMTA must approve any hardware, software or peripheral upgrades before implementation. Contractor shall transition CPSCMS and associated applications to web-based versions within one (1) year of the Effective Date of the Agreement.

1. Workstation locations shall include the following:
 - a. SFMTA Administration
 - b. DPT Traffic Engineering
 - c. Hearing and Citations Divisions (including Residential Parking Permits)
 - d. Enforcement (3 Locations)
2. In addition, Contractor shall provide for additional connections including but not limited to:
 - a. SFPD
 - b. Towing Contractor
 - c. Two additional workstations as requested by the SFMTA at any time during the term of the agreement
3. Contractor shall also provide the following:
 - a. An alternative power supply for onsite servers provided to the SFMTA so that in the event of failure of the primary system disruption shall be minimized.
 - b. Servers that have building UPS (uninterrupted power supply) and are stand alone units.
 - c. Sufficient maintenance personnel so that in the event of hardware failure, diagnostic and corrective measures can begin immediately.

- d. Sufficient system, application and operations personnel so that in the event of system software failure, diagnostic and corrective measures can begin immediately and can be completed in a timely manner.
- e. File backup and recovery procedures that can be used to restore or recover data; and
- f. Backup units including PC workstations and communications system architecture so that the failure of any system component shall cause only a minimal disruption of services.

B. Wide Area Network (WAN) and Local Area Network (LAN) Requirements

1. Contractor shall incorporate the following into the proper functioning of the WAN:
 - a. MPLS or current technology with high-speed T1 access lines
 - b. Alternate MPLS Relay lines with carrier diversity and load balancing/auto failover based on PCPS applications
 - c. Secured internet access for SFMTA employee review and Customer service.
 - d. Cisco routers, Cisco PIX firewalls and VPN overlay for extranet connections.
2. Contractor shall incorporate the following into the proper functioning of the LAN:
 - a. Maintenance and repair for all hardware components supplied under the Contract
 - b. Installation and maintenance of all Contractor-provided project networks
 - c. Daily checks of all critical LAN components to ensure maximum availability
 - d. Complete network inventory control and documentation
 - e. Scalable, redundant interconnectivity to the WAN for all users of the PCPS
 - f. Telephone and online support and training for end users

C. Hardware Requirements

Contractor, with approval of the SFMTA's IT Division, may substitute more current hardware that is available at the time of installation.

1. Workstation Response Time

Response time shall be from the start of transmission from a workstation to the completion of a response display. The system shall measure and report workstation response time to SFMTA on a monthly basis. Contractor shall provide a workstation response time of three seconds from Contractor network to SFMTA network on average for all data entry, updates, deletions and indexed queries, between 8 a.m. and 5 p.m., Monday through Friday

2. Backup Connection

Contractor may suggest alternative backup options, but such options cannot be implemented without written approval by the SFMTA.

3. Error Corrections

Error corrections are defined as emergency actions taken to correct or repair hardware, including the processor(s), PCs or printers, or software anomalies having a negative impact on the operation or use of the system. Contractor shall correct, at no cost to SFMTA, all system malfunctions and errors. Contractor shall repair or correct any such

malfunctions and errors that affect the collection of revenues by SFMTA within two (2) days of receipt of notice from the SFMTA.

4. Workstation Components and Locations

Workstation components and locations are detailed in the following tables:

Table 1: HARDWARE REQUIREMENTS

Hardware Type	Manufacturer	Quantity
Parking Enforcement Workstation	IBM-Compatible	44
Parking Enforcement Laptop	IBM-Compatible	6
Parking Citation/RPP Workstation	IBM-Compatible	80
Hearings Workstation	IBM-Compatible	16
Parking Enforcement Printer	HP	16
Parking Citation/RPP Printer	HP	15
Receipt Printer	Epson	22
Hearings Printer	HP	3
Hearings Receipt Printer	Epson	3
3600 Series Router	Cisco	10
1700 Series Router	Cisco	10
Pix 515e Firewall	Cisco	10
3500 Series Switch	Cisco	2
2900 Series Switch	Cisco	8
Local Cache Fileserver	HP	2
R3000 UPS	HP	3
SureStore Tape Backup Unit/Library	HP	2

Table 2:

DISTRIBUTION OF HARDWARE

SERVICE: Functional Group	Workstation	Printer
Parking Enforcement		
Director/Assistant Directors	5	5 laser
Supervisors	24	6 laser
Dispatch/Tow Desk	6	2 laser
Boot/Scofflaw	4	1 laser
IS Operations	4	1 laser
Reception	1	1 laser
TBD	6 (laptops)	
Parking Citation/RPP		
Walk-in Payment Window	17	14 receipt
Parking Citation Accounting	6	2 laser
Parking Citation Clerical Support	21	4 laser
Administrative Review	14	3 laser
PCPS Contract Administration	4	1 laser
Parking Permit Review & Clerical	10	4 laser
Parking Permit Accounting	4	1 laser
Parking Permit Payment Windows	4	4 receipt
Hearings	16	3 laser
Parking Meter Collection, Repair and	0 (5)	0 (2)
SFMTA Management	0 (20)	0 (20)
Additional City Agencies	0 (10)	0 (10)

SERVICE:	Functional Group	Workstation	Printer
TOTAL		146	laser (34)

5. Contractor shall ensure that each workstation contains the following components.
 - a. All PC equipment must be IBM PC-compatible, running Microsoft Windows XP professional with at least 2GB of memory.
 - b. PC workstations with Intel Core Duo processors
 - c. Windows XP Professional Operating System
 - d. Monitor: 19" Flat Panel LCD
 - e. Memory: 2 GB RAM
 - f. Storage: 80 GB Hard Drive (7200 RPM ATA)
 - g. Optical Device: 48 x 32 combo (DVD/CDROM) optical drive
 - h. Video Card: Intel 3D Graphics, 64Mb, AGP-2x, DVI Output
 - i. Network Card: 10/100/1000 Network Interface Card
 - j. Mouse: MS Intellimouse, USB
 - k. Keyboard: Windows keyboard, USB, 104 Key Standard
 - l. External Ports: 1 serial, 4 USB 2.0 high-speed, 1 Parallel
 - m. Hewlett-Packard laser printers capable of printing 35 pages per minute or faster, with workstation function key capabilities
6. Contractor shall ensure that each laptop contains the following components:
 - a. All PC equipment must be IBM PC-compatible, running Microsoft Windows XP professional with at least 2GB of memory
 - b. PC portable workstations with Intel Core 2 Duo Processors
 - c. Windows XP Professional Operating System
 - d. Monitor: 15.4 WSXGA LCD
 - e. Memory: 2 GB RAM
 - f. Storage: 160 GB Hard Drive (7200 RPM ATA)
 - g. Optical Device: DVD/CDRW combo drive
 - h. Video Card: ATI Mobility Radeon w/256 MB memory
 - i. Network Card: Intel 10/100/1000 Gigabit Network Construction
 - j. Keyboard: 104 Key Standard keyboard
 - k. External Ports: 4 USB 2.0 high-speed, 1 – 13941, 1 – RJ45, 1 – HDMI, 1-VGA

D. CPSCMS System Support Functions

The following requirements apply to all components of the CPSCMS system:

1. **Technical Support**
 - a. **General Requirements**

Contractor shall be solely responsible for providing regular, ongoing maintenance of all network link server hardware and software supplied as part of its system the satisfaction of the SFMTA at no cost to City beyond the per-Citation price set forth in the Cost Proposal. Contractor shall provide access to technical staff who are available to come on-site to address issues during regular Customer Services Hours (Monday-Friday, 8 a.m. to 5 p.m.) and as needed for emergencies upon request by the SFMTA.

b. Backup Support

Contractor shall also provide a central point of contact for all system users 24 hours a day, seven (7) days a week through a toll-free Network Operations Center (NOC). The NOC shall be staffed from 5 a.m. until 7 p.m. local San Francisco time. During hours that the NOC is not manned, our 24 hours-a-day, seven-days-a week computer operation's staff serves as backup support. NOC staff is on call if any problems arise that require their attention during off hours.

Contractor shall log any user issue. If the issue cannot be resolved immediately or through on-site technical personnel, Contractor shall, through the NOC issue a trouble ticket and assign the issue to the responsible support team. Contractor shall track issue until it is resolved and note the solution for future reference.

Contractor shall track and report on network uptime, response time, outage tracking and availability. Contractor shall track incidents by project, site and device, enabling technical personnel and SFMTA project management to diagnose outage or performance trends as well as the personnel performance of those tasked with remedying incidents.

Contractor shall manage the CMSCPS system through the following functions:

- a. Monitoring the system for outages
- b. Monitoring and evaluating system performance
- c. Logging each problem and assigning it a system generated problem tracking number
- d. Identifying and categorizing problems
- e. Isolating a problem to a specific network hardware or software component
- f. Determining the problem reference or severity (whether other users have the same problem and if a documented solution exists)
- g. Forwarding the problem to an in-company support group or to an equipment or facilities vendor
- h. Tracking problem resolution, escalating where necessary, and keeping users informed of the status of repair efforts
- i. Closing open trouble calls
- j. Generating a daily and/or monthly status report on repair efforts
- k. Tracking and reporting on overall system availability. Report tracking shall include:
 - i. Problem status, by site
 - ii. System response time
 - iii. Systems availability
 - iv. System repair time

Contractor shall promptly resolve at least 90 percent of all incoming calls through the NOC and diagnose an additional five percent of the calls that Contractor refers to equipment or facilities vendors. The remaining five percent of calls that require outside assistance shall be referred to Contractor's in-house support staff (operations, host systems technical, database, and network) for further action, at Contractor's expense.

2. Maintenance

Contractor shall provide all maintenance service for all distributed technical hardware used for this Contract through its local systems specialist and service vendors. Contractor shall carry full service agreements 24 hours-a-day, seven days-a-week for network and server equipment, and normal business hours (Monday-Friday 8 a.m. to 5 p.m., excluding holidays) to cover all key equipment specified in the Contract. In addition to vendor maintenance support, Contractor shall have on-site systems support staff trained in equipment support, troubleshooting, and repair to perform on-site troubleshooting, repair, and restoration as necessary.

3. Training and Manuals

a. Training

Contractor shall provide SFMTA staff with all necessary training to efficiently and effectively use all functions of the CPSCMS systems and all Contractor-supplied equipment, hardware, software and peripherals. Training shall include the following:

- i.* Options for ongoing and "refresher" training of SFMTA staff currently in place in the Enforcement, Citations, Hearings and Contract Administration divisions.
- ii.* Options for incoming employees that will be provided within 30 days of their start date.
- iii.* A combination of classroom, small group, and hands-on training in the use of computer hardware and software.
- iv.* Training in the use and interpretation of the reports produced by the PCPS to City staff as designated, within 30 days of written request from SFMTA.
- v.* Quarterly notice of Training Plan reviews to SFMTA within 30 days after each quarter.

b. Manuals and Documentation

Contractor shall provide 25 copies of all documentation of the system hardware and software. SFMTA will agree as necessary to safeguard the property of Contractor, and documentation that is the property of Contractor will be returned on request.

Contractor shall provide up-to-date, detailed documentation relating to all operational aspects of using the system. This shall include, but is not limited to:

- i.* Detailed user manuals explaining each component of Contractor's system (within 90 days)
- ii.* Functional manuals, tailored to each processing unit, to explain the Contract's system as it relates to the job responsibilities of the particular user (within 180 days) and
- iii.* Contractor shall conduct a quarterly review of all manuals, with written notification of review sent to SFMTA Contract Administrator within 30 days after each quarter.

- iv.* Contractor shall update manuals within 30 days of notification by SFMTA of policy modifications or within 30 days after any new program implementation.

c. Forms

- i.* Forms and the various documents that shall be completed by the public to conduct routine matters involving the processing and adjudication of Citations. These forms are presently kept at the Citation and Hearing Divisions and include, but are not limited to:
- ii.* Flyers with instructions on how to contest Citations
- iii.* Untimely Requests for an Administrative Review Hearing Form and
- iv.* Declarations of Non-Ownership

4. Management Reporting

Contractor shall provide flexible management reports for data analysis and oversight of Contractor's system to the satisfaction of the SFMTA. Contractor shall provide reports that include but are not limited to the following areas:

- a.** Program management
- b.** Performance standards
- c.** Operational statistics
- d.** Revenue and financial reporting
- e.** Management summary
- f.** Transactional reports
- g.** Reconciliation reports
- h.** Contract compliance

5. Data Maintenance and Retrieval

Contractor shall maintain data for all programs and systems within an integrated database, with relationships established to allow retrieval and update of related information across program areas in a flexible, efficient and error free manner to the satisfaction of the SFMTA. Contractor shall ensure that the system has maximum functional efficiencies and integrates systems and system elements.

6. Testing

Contractor shall test the CPCMS system to verify its capabilities according to the requirements of the Agreement to the satisfaction of the SFMTA. SFMTA shall actively participate in the testing and shall verify the functionality, accuracy and reliability of the CPSCMS system on the basis of test results, prior to system acceptance by the SFMTA.

7. Flexibility of New Applications

Contractor shall provide a CPSCMS system that accommodates the current Citation volume. In addition, Contractor shall ensure that the system shall has the flexibility to accommodate minor and major system modifications and enhancements; including but not limited to new data elements, new online query and processing screens, new online query capabilities, and new online and batch processing capabilities.

Contractor's CPSCMA system, subsystems, and system elements shall be able to

accommodate changes, modifications or additions in a highly efficient and effective manner to the satisfaction of the SFMTA. Contractor's database design and software shall be sufficiently flexible and modular to accommodate easy, efficient, and effective modification or expansion of existing and new applications to the satisfaction of the SFMTA. Contractor shall take all precautions to eliminate or minimize any risk to the performance or operation of existing applications and functions.

Contractor's shall be compensated for providing the CPSCMS in the per-Citation fee in the Cost Proposal, unless otherwise specified.

8. Staffing Plan

Contractor, and subcontractors who are responsible for more than 30% or more of the Scope of Work, shall provide at one (1) locally-based, dedicated person for ongoing full-time, on-site maintenance and support for the system. Contractor must include personnel with the ability to provide improvements and enhancement to the system.

Contractor shall maintain staffing levels approved as of the Effective Date of the Agreement through the Contract period, and augment staffing during periods with each Contract year and for special events, when requested by the SFMTA. Any substitutions in management staffing as noted by asterisk (*) below must be approved in writing by SFMTA in advance of the proposed substitution. The staffing plan is listed in the table below:

Position	Current incumbent	Role	Dedicated to SF project
PRWT, VP	Alton Shaw	Corporate Oversight	No
ACS, VP	Rona Schmidt	Corporate Oversight	No
*ACS Program Manager	Doris Carlick	Overall Project Management	Yes
*PRWT Operations Manager	Annette Jones	Overall operations management	Yes
*PRWT Production Control Manager	Frances Forbus	Production control and Customer service	Yes
PRWT Business Analyst	Keren Li	Requirements, reports, new projects	Yes
ACS Business Analyst	Louie Ngo	Requirements, reports, new projects	Yes
Systems Specialist	Mark Santos	Local system support	Yes
Consultant(s)	TBD	As determined by SFMTA	1040 hours per year
Customer Service Representatives	Current staff of 5/volume driven	Special collections phones and correspondence	Yes (5)
Production control staff	Current staff of 5/volume driven	Quality control, imaging	Yes (5)
Administrative Support	Carmel Naraval	Office Management	Yes

9. Programming and Consulting

Contractor shall provide 1040 hours per year of management consulting services, the cost

of which is included in the Citation Processing Fee. All consultants assigned by Contractor shall be subject to SFMTA approval. Contractor shall provide monthly reports on consulting hours used to include authorized expenses. Such consulting services, which shall be pre-approved by the SFMTA, may include but are not limited to:

- a. Support for Enforcement Productivity Management (EPM) with emphasis on effective enforcement, including developing appropriate productivity benchmarks. This should include regular meetings with SFMTA's Contract Administrator, Director of Enforcement and key managers within the SFMTA.
- b. Analytical support for developing enforcement strategies based on the best practices employed worldwide, meter planning and inventory control, and meter maintenance and repair operations. The consulting staff will conduct, or provide the technical support needed for the SFMTA to conduct field surveys, and provide reports on parking space occupancy, vehicle turnover and violation capture rates.
- c. Extracting information from the parking Citation database to support parking management initiatives.
- d. Assistance in preparing management reports and statistical analysis, including the development of new management reports and revisions to existing reports.
- e. Providing training for EPM staff in parking management related topics.
- f. An analysis of new technology and its applications to parking operations. Such analysis should include, but not be limited to: cost benefits of new technology, example organizations that have already implemented the new technology and appropriateness of new technology to SFMTA's processes and operations.

10. Reimbursable Staff Position

The Contractor shall reimburse SFMTA salary and benefits for a Help-Desk Representative for an IS Engineer for an amount not to exceed \$97,320 in the first year of the Contract, as per SFMTA's Civil Service Commission classifications. Contractor shall also pay any applied annual CPI increases in an amount not to exceed 3 %. The position will be used to support all hardware and software support functions related to the Contract. SFMTA will be responsible for selecting and managing the staff person.

E. Audits; Inspection of Records

1. Annual Audits:

Contractor shall ensure that the system shall be self-auditing and shall have the capability of providing instantaneous data for facilitating audits conducted by SFMTA and County of San Francisco and/or its agents. Contractor shall provide audited financial information of the system in accordance with General Accepted Accounting Principles applied on a consistent basis from year to year or as required by SFMTA. Such audited financial information shall be certified by a CPA who shall be authorized by prior approval of City Controller. Contractor shall keep proper books of records and accounts of the system. Such books and records of accounts shall at all times be maintained by Contractor, and shall be subject to inspection of SFMTA and/or its agents at reasonable hours and under reasonable conditions.

2. Records

Contractor shall maintain all Records in accordance with generally accepted accounting

principles. All Records shall be maintained throughout the term of this Agreement at Contractor's San Francisco office and shall be maintained for five years following termination or expiration of this Agreement in a safe and secure location within the San Francisco Bay Area.

3. Financial Reconciliation:

Contract shall ensure that all moneys deposited to SFMTA are balanced to revenue reports based on the Citations paid and Fees collected as reflected on Contractor's system. Contractor shall immediately research and resolve any discrepancies between processing logs/worksheets and database tools. Contractor shall note any such problems on the reconciliation worksheet. Contractor shall provide reconciliation and balancing report that is approved by the SFMTA and City Controller.

Contractor must prepare a report on revenue distribution that is balanced to the manual totals each day from all cashiering activities and mail-in payments. All categories of payment are to be balanced, such as the bad check Fees, boot Fees, preferential parking revenues and Citation payment revenues. In addition, all payment types shall be balanced, i.e. checks, money orders, etc.

Contractor must also reconcile all Citation payments collected by DMV, including balancing the amount collection with the transactions applied to the PCPS.

A selected staff member of Contractor, approved by the SFMTA, shall be required to perform and monitor all financial corrections and adjustment transactions applied to the system. These corrections include bad check processing that the application of funds from one Citation to another. Full documentation shall be created and filed to provide complete financial control over all exception processing.

4. SFMTA's Right to Inspect and Copy.

Any duly authorized agent of SFMTA will have the right to examine and/or copy all Records at any time during normal business hours, provided that Contractor shall be allowed at least 48 hours after SFMTA identifies Records it wishes to copy to mark any such Records as confidential or proprietary. Records created or maintained in an electronic format shall be available to the SFMTA and its agents for examination and/or copying in an electronic format.

5. Operations and Performance Audits.

Contractor must cooperate fully with the performance by SFMTA or its agents of Contract Performance and Operations Audits. A Contract Performance Audit may examine any and all aspects of Contractor's obligations under this Agreement. An Operations Audit may examine the quality and effectiveness of Contractor's organizational Structure, internal controls, financial reporting and business practices. SFMTA may require each type of audit no more than once per calendar year. SFMTA shall provide Contractor with 15 Days' notice of any audit to be performed under this Section. The State of California or any federal agency having an interest in the subject matter of this Agreement will have the same rights conferred upon SFMTA by this Section.

6. Findings of Nonperformance.

In the event that any audit conducted results in a determination that Contractor has failed to perform any material term of this Agreement, SFMTA will issue a written Finding of Nonperformance to Contractor. Such Finding of Nonperformance will include a

calculation of liquidated damages for Contractor's failure to perform, using the measure of Liquidated Damages. The Finding of Nonperformance shall also include a reasonable period of time for Contractor to cure any listed performance failures that are subject to liquidated damages Contractor's failure to cure may result in a notice of default pursuant to Section 20. Liquidated damages may not be assessed in a Finding of Nonperformance for any incident for which liquidated damages have already been assessed pursuant to Section 19. Any failure of City to list any violation of the terms of this Agreement in the Finding of Nonperformance shall not constitute a waiver of the City's right to impose any other right or remedy that it has under this Agreement or applicable law with respect to that violation.

F. Security

Contractor shall provide complete security for the protection of both physical items and data. Security includes the protection of physical items such as files, communication networks, cash, checks, and Citations. Security shall also include guarding non-physical items, such as the confidentiality of data.

1. CMSCPS Security

Contractor shall provide for the following measures for SFMTA staff using CMSCPS related hardware, software and support services:

- a.** Restricted access to the system by time of day
- b.** Restricted access based upon proper authorization
- c.** Unique user access identification that shall be changed at periodic intervals
- d.** Backup records of virtually every update transaction
- e.** Transaction histories with date, time and identification of every transaction
- f.** Strict control and reconciliation procedures for every system update
- g.** Control of dial-up access to the system and
- h.** Virus detection and control

Security for CMSCPS system access and printed materials maintained on Contractor's premises include but are not limited to the following:

- i.** MS-Windows and Contractor software system logon IDs that follow all corporate and data center access rules and approvals
- j.** Password lock on all PCs following inactivity
- k.** Anti-virus controls and automatic virus definition updates on all PCs
- l.** USB ports on all non-management PCs are disabled to prevent saving Personally Identifiable Information (PII) data to local hard drives from Contractor software system or the CA DMV
- m.** All staff are required to sign CA DMV privacy agreements upon hire and on an annual basis
- n.** Backup tapes for the server are stored in a locked safe in the locked server room until monthly pickup by Contractor's offsite storage vendor

- o.** 'End of day' procedures to ensure that no sensitive printed or system information is accessible
- p.** Printed material is disposed for shredding by an outside security vendor
- q.** Files are locked outside normal business hours
- r.** Couriers sign a log in production control to track deliveries each time they enter the premises

2. Physical Security

Contractor shall maintain a local facility to support SFMTA's CPSCMS functioning, including: project management, operations management, WAN equipment, data requests, local systems support, production control, workflow imaging, tow noticing, and special collections Customer service and correspondence.

Contractor's facility shall have a full-time onsite building manager and security staff to provide a first line of security – all visitors must sign-in and sign-out with identification verification. A building management-issued pass is required to gain entrance during non-business hours and days.

Contractor shall ensure that building security features are in operation, including but not limited to:

- a.** Meeting all City of San Francisco building and fire code requirements
- b.** 24-hours-a-day, seven-days-a-week security
- c.** Visitors entering or leaving the building during business hours must sign-in and sign-out with identification verification
- d.** Equipment removal passes required
- e.** A sprinkler system for fire protection
- f.** Regularly scheduled evacuation drills

Security features within Contractor's office space shall include but are not limited to:

- g.** Entry doors that are controlled through keypad access outside business hours, Monday through Friday, 8:00 a.m. through 5:00 p.m.
- h.** Office access controlled through a single entrance during regular business hours, Monday through Friday, 8:00 a.m. through 5:00 p.m.
- i.** Visitors sign in at reception
- j.** Heat/smoke sensors
- k.** Handheld fire extinguishers placed throughout the floor, including one in the server room
- l.** Locked server room
- m.** An office security manager and safety director to maintain office security and safety manuals.
- n.** A Safety and Security Guide that is issued to each new Contractor employee.
- o.** New employee training sessions to inform all staff of security and safety processes and procedures.

- p. Annual refresher meetings remind staff of security issues and present new information.

G. Disaster Recovery

Contractor shall have a detailed disaster recovery backup plan that addresses four areas of concern: Backup and off-site storage of all media, Maintenance, repair and restore processes to minimize disruption of service, alternate processing arrangements in the event of a catastrophe and periodic testing of emergency procedures. Contractor shall document disaster procedures in a Disaster Plan that shall be available for review by the SFMTA within sixty (60) days of the Effective Date of the Agreement.

1. Data Backup, Off-site Storage and Recovery

Contractor shall ensure that the following tasks are completed:

- a) Backup copies of all media are made weekly and daily, as designated by the SFMTA.
- b) Backup copies of all media are delivered and stored at a designated off-site facility within 24 hours of completion of save process
- c) Daily incremental backups are taken of every non-database dataset which has been revised since the last backup (including but not limited to: operating software, source code, procedures, copy, and transaction libraries).
- d) Manage and maintain an Automated Protection Log Control System that records all information pertaining to the PCPS database protection copy operations that would be needed for an on-site or off-site recovery operation.

2. Maintenance, Repair and Restore Processes

To minimize disruption of service, Contractor shall:

- a. Ensure that hardware vendor maintenance support Contracts provide on-going preventive maintenance and response to hardware problems within four hours for any component failure 24 hours per day, 7 days per week.
- b. For any hardware component for which vendor Contracts are not available, Contractor shall have third party maintenance personnel access to guarantee uninterrupted service to SFMTA.
- c. The data center provides permanent office space for field engineering and support personnel for its primary hardware vendors including IBM, EMC, and Amdahl. These vendors maintain a complete spare parts inventory on-site at the data center.
- d. Contractor shall monitor software that performs regular diagnostics, reports any irregularities, notifies field support personnel and schedules preemptive maintenance in advance of the onset of a hardware failure.

3. Alternate Processing Arrangements

Contractor shall have a Disaster Recovery Plan available within sixty (60) days of the Effective Date of the Agreement. The plan shall include the following components:

- a. An action plan
- b. Notification procedures to execute the plan
- c. Assigned and trained disaster recovery team

- d. All necessary resources (backup site, vault, transportation, etc.)
- e. Logistics needed to implement plan
- f. Directions to the backup facility
- g. Reporting and communication structure
- h. Identification and retrieval of backup files and supplies
- i. List of all team members and their assignments

A copy of the disaster plan shall, upon receipt, be included as Appendix G to the Contract.

4. Periodic Testing of Emergency Procedures

Contractor shall conduct an annual review of the Disaster Recovery Plan that ensures that the plan remains current and responsive to changes in technology, environment, personnel, and business considerations. Contractor shall notify the SFMTA's Contract Administrator in writing of the results of the annual review, and note any modifications to the plan.

5. Contractor's Remote Facility

Contractor shall, through its remote facility located at Tarrytown, NY, provide a complete and comprehensive back-up of all system and files and alternative processing arrangements. The Disaster Recovery Plan shall address the following actions and resources necessary to restore systems and data as soon as possible:

- a. Established procedures for the back-up of all software, computer programs, files, and computerized procedures
- b. Off-site duplication of all software, computer programs, files, and computerized procedures
- c. Service agreements and procedures for all hardware, communications, and other equipment in order to minimize the time required to restore service
- d. Alternate processing arrangements in the event of severe damage to facilities
- e. Periodic and comprehensive testing of emergency procedures
- f. Full weekly back-ups and incremental daily back-ups of all computer programs, software, and files
- g. Back-up copies are delivered and stored at a designated off-site facility within 24 hours of the completion of the save process

H. Exit Clause

Contractor agrees that SFMTA will own all data collected and maintained by the system upon termination or expiration of the Contract. Following termination or expiration of the Contract, Contractor shall provide to SFMTA all data in a readable electronic form determined by agreement of both parties. Contractor also shall agree to make available to escrow all application source code necessary to operate the system during the Contract term at no cost to SFMTA.

VII. SERVICE ENHANCEMENTS

The following services are optional. Should the SFMTA opt to implement any service, the SFMTA will notify Contractor to prepare a plan for implementation, along with specific costs. Costs shall not exceed the amounts referenced below. Contractor shall submit the implementation plan within a specified number of days after written authorization from the SFMTA to proceed, as noted below for each item.

A. Marketing And Revenue Generation Program (MRGP)

Following Contract award, SFMTA staff will meet with Contractor to determine the framework of what is allowable under SFMTA policies and guidelines relative to third-party marketing and advertising.

Within 180 days of written notification to proceed from the SFMTA, Contractor shall submit a Marketing Plan. Upon SFMTA approval of the Marketing Plan, Contractor shall implement the plan. Any advertising conducted by Contractor pursuant to this agreement shall be consistent with the SFMTA's advertising policy. Net revenue derived from the implementation of the Marketing Plan shall be allocated 70% to SFMTA and 30% to Contractor.

SFMTA will jointly determine specific advertising techniques with Contractor. Examples of the types of advertising offered include but are not limited to:

1. In-statement advertising, such as flyers, included with notices, correspondence or permit renewal letters
2. Tear-off type ads on remittance envelopes
3. Ads printed on meter and Muni Pass cards and/or sleeves
4. Banner ads on payment or parking information website
5. Ads on cashiering receipts or pay by web receipts printed by citizens

B. Electronic Residential Parking Permits

Within 120 days of written notification to proceed from the SFMTA, following approval of SFMTA specifications, Contractor shall integrate RFID permits with the PCPS RPP subsystem. Contractor's RFID card shall be capable of being programmed with a permit type, and of being programmed with another permit type and the user's permit status changes without replacing the user's card.

Contractor's permit reading application shall be capable of being installed on the new (2010) Handheld Units. Contractor shall ensure that through the system, Customers will be able to keep a single permit and renew, change, or update permits in person, by mail or online.

Cost Estimate:

The project shall not exceed \$50,000 in total costs. Contractor estimates that the ongoing transaction cost for the program shall be \$10 per new permit issued and \$5.00 per permit renewal. The implementation price for the project, including development of the RFID permit, modification of the website, integration with the PCPS RPP subsystem, and enabling of the Handheld application will be \$150 per hour, with the total not to exceed \$50,000, as stated above.

C. Electronic Boot Removal System

Within 90 days of written notification to proceed from the SFMTA, following approval of

SFMTA specifications, Contractor shall provide a pilot program for vehicle boots that are capable of being released by the Customer by calling a toll-free number that must be available 24 hours per day, 7 days a week. Contractor shall ensure that the Customer will be able to pay Fines and Fees with a credit or debit card, or check-by- phone.

Upon payment, Contractor shall provide the Customer a numerical code to unlock the boot, which can then be delivered by the driver to a location specified by the SFMTA.

Cost Estimate:

Pricing for the program shall not exceed \$100 per vehicle booted, including all equipment and replacement equipment. A 30 boot pilot program is offered for four months. There will be an \$80,000 termination fee to cover vendor expenses, only if the program is not subsequently implemented.

D. Paint Shop and Regulatory Sign Inventory System

Within 90 days of written notification to proceed from the SFMTA, following approval of SFMTA specifications, Contractor shall modify the current work-order system to capture inventory and display the information on a series of pages. Contractor shall ensure that the primary display screen shall include search capabilities based on sign/paint type against the inventory table for the user to find the proper location to create a work order. SFMTA will define what reports are required under the system.

Prior to implementation of the system, SFMTA will do the following:

1. Conduct a full inventory of the signs, paint, and poles with location information, sign type or paint color, sign text, and GPS coordinates and provide that inventory in a loadable electronic format
2. Maintain the inventory on a daily basis and upload changes to the system electronically as needed
3. Provide Contractor with an electronic list of all possible sign types with associated text, all possible pole types, and all possible paint type configurations to be added to the appropriate system tables
4. Estimate number of signs, poles, and painted surfaces to be tracked
5. Estimate number of inventory changes per year
6. Estimate number of work orders per year
7. Estimate number of sign, pole, and paint types

Cost Estimate:

Contract shall charge the programming price of \$150 an hour, not to exceed \$60,000 for project development.

E. Additional Equipment Options

1. Addition of at least 80 Handheld Units for Transit Violation Enforcement

Within 90 days of written notification to proceed from the SFMTA, Contractor shall provide Handheld Units as specified below, Contractor shall provide two base units, both of which can be used with Extech Printers and Pocket PEO Software. Contractor shall provide programming of Pocket PEO software to accommodate the new Transit ticket format.

Cost Estimate:

Prices are based on 80 Units and are inclusive of printer, warranty, and programming costs. Contractor shall charge the following rates, dependent on which Handheld Unit the SFMTA chooses:

- a. Symbol MC9090 = \$6,100 per Handheld. Includes base Unit with camera, spare lithium battery, holster, 4 slot Ethernet cradle, DC and AC line cords, cameo 3 w/ Bluetooth, shoulder strap, quad battery charger, boot, cameo 3 spare battery, pen cleaning kit printer, and three year warranty upgrade.
- b. Intermec 751B = \$6,430 per Handheld. Includes base Unit with camera, multi-dock switch, spare battery, universal power supply, AC power cord, holster, cameo 3 w/ Bluetooth, shoulder strap, quad battery charger, boot, cameo 3 spare battery, pen cleaning kit printer, and three year warranty upgrade.

2. Cameras and processing for Sweepers and Buses

Within 90 days of written notification to proceed from the SFMTA, following approval of SFMTA specifications, Contractor shall implement a plan for providing LPR (license plate recognition) cameras for sweepers and buses. Contractor's system shall integrate with a photo enforcement backend system. Contractor shall provide the following system functions:

- a. Automated detection of an illegally parked vehicle
- b. Automated camera initiation,
- c. LPR interpretation of license plate number and capture of location, date, and time.
- d. Ability to upload violation images and data to the photo enforcement backend system where images can be manually reviewed, additional data can be entered, and the Citation can be either approved or disapproved.
- e. Mail approved violation notices to registered owners.

Cost Estimate:

The price for a purchase of 100 cameras including installation shall be not more than \$32,000 per camera. Integration and development work is charged at \$150 per programming hour, not to exceed \$25,000.

For cameras on buses: If SFMTA opts to have Contractor process the Citations using the photo enforcement backend system, Contractor and SFMTA will negotiate a monthly processing fee depending on SFMTA requirements.

For cameras on sweepers: Contractors and SFMTA will negotiate a per Citation fee increase or a monthly processing fee depending on SFMTA processing requirements.

3. Kiosks in City Offices

Within 60 days of written notification to proceed from the SFMTA, following SFMTA approval of specifications, Contractor shall provide payment kiosks which are capable of accepting payments for parking violations or parking permits, printing receipts, providing balance information, and dispensing permits. Contractor shall ensure that kiosks can perform the following functions:

- a. Process other municipal or third party payments.

- b. Accept cash, check (using an in-line check reader or check scanner), credit card, and debit card payments.

Cost Estimate:

Kiosk costs include integration with PCPS, software customization to San Francisco's parking program, and installation.

The price per kiosk shall not exceed \$13,000, with a monthly monitoring fee of \$60 per month per kiosk, and a \$2 per transaction fee.

SFMTA and Contractor shall negotiate any additional communication costs required to support the kiosks and recurring per transaction credit card clearing fees.

Contractor shall not be responsible for any credit card processing fees.

4. Additional Scanners

Based on volumes (TBD), Contractor will install a scanner(s) and implement the "scan additional" feature in workflow after Contract signing within 30 days of signed off specifications. The cost is approximately \$13,000 for the first scanner (including 50 hours in programming @ \$150 per hour). The price for additional scanners is approximately \$5,500 per scanner.

F. Point of Sale

Within 60 days of written notification to proceed from the SFMTA, following approval of SFMTA specifications, Contractor shall provide equipment and systems development for utilizing PCPS cashiering for various SFMTA "media" sales at various locations.

Cost Estimate:

Price will be at \$150 per programming hour not to exceed \$10,000. Contractor and cost of equipment, if purchased by Contractor.

G. OMS Data Entry

Within 15 days of SFMTA's written request, and with written instructions provided by SFMTA enforcement, Contractor shall provide data entry services for handwritten daily field activity logs for Enforcement, at a cost of \$3.00 per log. Contractor shall enter daily logs into the system within three (3) business days of receipt.

H. Taxi Permits

Contractor shall develop a subsystem to process taxi permits based on SFMTA specifications.

Within 90 days of SFMTA's written request, Contractor will develop a plan for a taxi permitting system that will: track all permit types, new and renewal; provide noticing as required; provide financial data; track payments collected and due; and generate reports as specified by the SFMTA.

Price will be at \$150 per programming hour not to exceed \$50,000.

VIII. NOTICES AND CORRESPONDENCE

Contractor shall develop and manage the controls exercised by PCPS to provide a notice and correspondence program that is accurate and timely to the satisfaction of the SFMTA. SFMTA must approve in writing all letters, forms, notices, other documents, and procedures used by Contractor. Contractor may recommend generating additional notices or correspondence to Customers. However, prior to adopting any changes, Contractor shall explain in writing the

benefits and costs of such changes and obtain prior written approval from the SFMTA before implementation.

The program shall provide the following Citation notice and correspondence functions:

- A.** Print and mail all notices and correspondence required to support PCPS.
- B.** Provide an image management system that tracks and processes incoming correspondence and permits viewing of scanned correspondence to support SFMTA and Customer service operations to the satisfaction of the SFMTA.
- C.** Provide an automated correspondence function that allows SFMTA staff to automatically generate form letters to the satisfaction of the SFMTA.
- D.** Implement system controls to provide accurate and timely notices and correspondence that incorporate industry-specific design and mailing techniques to the satisfaction of the SFMTA.
- E.** Provide a complete audit trail for all notices and correspondence to the satisfaction of the SFMTA.

F. Notice Selection

Contractor shall ensure that the PCPS provides the flexibility to accommodate time-based as well as criteria-based selection variables to generate specific types of notices such as notices based on VLN and Citation number. Contractor shall make variable text modifications as directed by the SFMTA. Such modifications shall be completed within ten (10) Business Days after final written approval by the SFMTA Contract Administrator.

Contractor shall maintain a three (3) month supply of pre-printed forms. Prior to re-order Contractor shall notify SFMTA and request that any modifications to forms be submitted by the SFMTA within ten (10) Business Days of notification.. Contractor shall complete modifications to pre-printed forms within thirty (30) calendar days after final written approval by the SFMTA.

Contractor shall provide the notices and correspondence listed below and accommodate further modifications to the list that are required by state law or enhance revenue collections efforts as directed by the SFMTA.

SFMTA Notices to be Generated by Contractor	
Notice Name	Frequency
First Instate Notice (NDPV)	Daily
Second (DMV Hold) Instate Notice	Daily
First Rental Notice	Weekly
Fare Evasion Notice No. 1, 2, 3, 4	Weekly
First Out of State Notice	Weekly

G. Notice Printing and Mailing

Contractor shall be responsible for the cost of generating and printing the first two notices mailed as required by this Agreement, for Parking Citations Processing, RPP Processing and Fare Evasion Processing and the quality of each notice generated. At a minimum, Contractor shall check for alignment, print quality, correct form, and correct run date and ensure that all required information is included.

Contractor shall comply with all U.S. Postal Service requirements applicable to pre-sorting, bar coding, and first class mail including the U.S. Postal Service's "Domestic Mail Manual."

H. Postage Costs

Contractor shall be responsible for all postage costs, including postage costs associated with placing holds on vehicle registration renewals with the California DMV and out-of-state DMVs, mailing of the first two notices of delinquency, Administrative Adjudication Program notices, tow notices, Special Collection notices, and correspondence associated with the PCPS and RPPS systems.

I. Notice Research and Reporting

Contractor shall ensure that the PCPS is able to research specific notice runs, individual notice record information, and response rate or payment return rate to the satisfaction of the SFMTA. In addition, Contractor shall ensure that the PCPS has the ability to support an online, real-time review of all notice activity by type of notice.

Contractor shall provide daily and weekly management reports that track all notices and responses to the satisfaction of the SFMTA.

Contractor shall provide summary data for each notice run and detailed information for each notice for the preceding twelve (12) months within one (1) Business Day of SFMTA's request.

J. Notice of Delinquent Parking Violation

Contractor shall generate Notices of Delinquent Parking Violation that include but is not limited to the following information:

1. The procedure for challenging a Citation by mail;
2. The address to which Payment should be mailed;
3. Instructions for credit card payments via the telephone or internet;
4. The date on which a late penalty will be added to the Citation amount and the amount that will be added;
5. Statement that the Registered Owner assumes responsibility for ensuring that Payment is received before the due date;
6. All appropriate and required warnings regarding actions that will effect a Customer's credit rating or vehicle registration fees;
7. The toll free telephone number and hours of operation for Customer service inquiries; and
8. Any other information required by the SFMTA or state law.

K. Correspondence

Contractor shall forward to SFMTA all correspondence that requires SFMTA response on a weekly basis.

IX. PERFORMANCE REQUIREMENTS AND CONTRACT LIQUIDATED DAMAGES

Certain levels of operation shall be met by Contractor to ensure satisfactory service to SFMTA and the public. It is the responsibility of Contractor to provide SFMTA with appropriate management information reports that will enable SFMTA to monitor all of the service levels.

Contractor shall maintain records sufficient for SFMTA to audit and substantiate compliance with all monitoring requirements.

Each service level has a corresponding credit to SFMTA for non-compliance. All credits will be deducted from any amount payable pursuant to Contractor's monthly statement for the month in which the service level was not fulfilled.

Additional credits for non-compliance detailed in this section are intended to encourage Contractor to perform all services at the required levels. The assessment of additional credits, however, does not affect SFMTA's option to terminate this Contract for failure to comply with service levels.

A. Handheld Ticket Writing and Reporting System (HWRS)

1. Failure of the system to maintain security data will result in a credit to SFMTA of \$500 per incident. (§ II.H)
2. Failure of Contractor to ensure the integrity of the transmission and reconciliation of the number of Citations transmitted with the number received and processed will result in a credit to SFMTA of \$500 per incident (§ II.G).
3. Failure of Contractor to provide a schedule for implementation of the Field Maintenance Request component within 90 days of receipt of specifications from SFMTA's Enforcement Division will result in a credit to the SFMTA of \$500 per Business Day delay. (§ II.I)
4. Failure of Contractor's HWRS system to transmit Field Maintenance Requests through the Handheld Units will result in a credit to SFMTA of \$500 per incident. (§ II.I)
5. Failure of Contractor to have the HWRS and PCPS systems operate in an integrated fashion 97% of the time within a given calendar month will result in a credit to SFMTA of 10% of the Contractor's invoice amount for any incident that exceeds the 3% allowance for failure of HWRS-PCPS integration within a given billing month. (§ II.F)
6. Failure of Contractor to provide end-user manuals for the HWRS within 90 days of the Effective Date of the Agreement to the satisfaction of the SFMTA will result in a credit to the City of \$500 per Business Day delay (§ II.K).
7. Failure of Contractor to follow the Handheld Equipment Replacement Schedule (§ II.D) as outlined in the Contract will result in a credit to the SFMTA of \$500 per Business Day delay.

B. Officer Management System

Failure of Contractor to provide the Officer Management System in accordance with Contract specifications within 90 days of SFMTA's written approval will result in a credit to SFMTA of \$10,000 for each Business Day delayed unless a written extension of the deadline for providing OMS is granted by SFMTA. (§ III.B1)

C. Parking Citation Processing System (PCPS)

1. Failure of Contractor to enter Handwritten Citation data into the system within two (2) Business Days of receipt will result in a credit to SFMTA of \$1,000 per Business Day delay. (§ IV.D.2)

2. Failure of Contractor to review and resubmit those Citations that do not successfully update for update processing within one (2) Business Days will result in a credit to SFMTA of \$1,000 per Business Day delay. (§ IV.D.2)
3. Failure to update new handwritten Citations to the computer database within two (2) Business Days of receipt will result in a credit to SFMTA of \$1,000 per Business Day delay. (§ IV.D.3)
4. Failure to mail a Citation to the Registered Owner within ten (10) days of Citation issuance, upon receipt of said Citation from SFMTA within two (2) Business Days of issuance to a vehicle that leaves the scene of a violation, will result in a credit to SFMTA of \$1,000 Business Day of delay. This credit will not apply if the CA DMV fails to provide Registered Owner information for the Citation's license plate. (§IV.B)
5. Failure of Contractor to provide a readable reproduction of a Citation or any legally required supporting documentation to a Customer or the SFMTA, including for an Administrative Review, Administrative Hearing, or De Novo Hearing within three (3) Business Days of request (excluding archived records) will result in a credit to the SFMTA of \$1,000 per Business Day of delay. (§IV.E.1.e)
6. Failure of Contractor to achieve an availability level of 96% for any individual calendar month, except in case of a Disaster Recovery Event, will result in a credit to SFMTA based on the percentage of difference between the criteria and the actual percentage of availability, multiplied by Contractor's Per Ticket Fee basis for the month (§ IV.I.6).
7. Failure of Contractor system to restore archived records to the database within seven (7) Business Days after receipt of a request from the SFMTA will result in a credit to the SFMTA of \$100 per occurrence. (§IV.A.2.c.iv)
8. Failure of Contractor to provide on-demand an electronic facsimile of all Citations generated by Handheld Units within two (2) Business Days of receipt will result in a credit to the SFMTA of \$100 per occurrence. (§IV.C.2)
9. Failure of Contractor to request California Registered Owner information within two (2) Business Days of a new Citation record being updated or entered into the database will result in a credit to the SFMTA of \$100 per occurrence. (§IV.E.1.e)
10. Contractor shall ensure that the equipment and hardware shall operate in a real-time mode, and provide the capability of accepting Citation payments during periods when data communication lines are temporarily inactive. Failure of Contractor's system to transfer transactions to the processing database within fifteen (15) minutes after data communication lines are restored will result in a credit to the SFMTA of \$100 per 15-minute period of delay. (§IV.H)

D. Maintenance of Records

1. Audit Trail

Failure to produce any documentation of Citation payment history instantly upon SFMTA request will result in a credit to SFMTA of \$25 per occurrence and an additional \$50 credit for each additional Business Day. (§ IV.I.4)

2. Back-up Software

Failure of Contractor to provide a duplicate file or back-up of PCPS software Within ten (10) Business Days after the end of each quarter during the term of the Contract and within one month after default of the Contract will result in a credit to the SFMTA of

\$1,000 per Business Day delay. (§IV.C.7)

E. Payment Processing

1. Processing of Funds

Failure to make deposits within one Business Day will result in a credit to SFMTA of \$500 plus the calculated loss in actual interest rate for the time period of delay. (§ IV.I.2)

2. Lockbox Payment Processing

- a. Failure to make the two (2) required mail pickups per Business Day on any given workday will result in a \$500 credit to SFMTA per occurrence. (§ IV.I.2.a)
- b. Failure to enter each batch of payments into the system within twenty-four (24) hours of receipt or no later than the end of the next Business Day, whichever is greater, will result in a credit to the SFMTA of \$1,000 per occurrence.(§IV.I.2.b)
- c. Failure of Contractor to maintain a 97% level of accuracy per month for all data entry of lockbox payments inputted by Contractor will result in a credit to the SFMTA of \$5,000 per one (1) percent drop, per Business Day. (§IV.I.2.c)
- d. Failure of Contractor to ensure that all payment documents received via mail and processed are copied and archived for a minimum of five (5) years, and that documents are stored in a manner that permits retrieval within one (1) Business Day of request will result in a credit to the SFMTA of \$250 per Business Day delay (§IV.I.2.a)

F. Reconciliation of Monies

Failure to reimburse any shortage daily will result in an additional credit to SFMTA in the amount of 25% of the shortage amount. (§ IV.J.4)

G. Data Collection

1. Status of Protested Citations

Failure of Contractor's system to accurately display all information associated with the status of a Citation subject to Protest will result in a credit to SFMTA of \$1,000 per incident. (§ IV.E.5)

2. Data Accuracy

Failure to maintain a 97% level of accuracy for each day's data entry for new Citations will result in a credit of \$500 per day for each Business Day that will be deducted from the Contract's charges. (§ IV.G.3)

3. Error Correction

Failure to repair or correct any malfunctions and errors that impact the collection of revenues by SFMTA within two (2) Business Days of receipt of notice from the SFMTA will render Contractor liable for any loss of revenue that has been caused by the default. (§ VI.C.3)

H. Additional Systems within the PCPS

1. Abandoned Vehicle Tracking System (AVTS)

- a. Failure of Contractor to mail a notice to the Registered Owner and legal lien holder of an abandoned vehicle within 48 hours of identification (excluding weekends and

holidays) will result in a credit to the SFMTA of \$ 100 per occurrence per business day delay.

- b. Failure of Contractor to have the AVTS in place as defined in the Agreement within 90 days of SFMTA approval of specifications will result in a credit to the SFMTA of \$1,000 per Business Day of delay, unless arrangements for an extension are made and documented with SFMTA prior to the deadline. (§ IV.L.1.a)
- c. Failure of Contractor to provide a report describing AVTS reporting capabilities to the SFMTA within 90 days after the Effective Date of the Agreement will result in a credit to the SFMTA of \$1,000 per Business Day delay. (§ IV.L.1.c)

2. Image Management System (IMS)

- a. Failure to provide an Image Management System within 90 days of the Effective Date of the Agreement will result in a credit to SFMTA of \$100 per Business Day of delay unless written approval from SFMTA for the delay is secured before the provision has passed its deadline date. (§IV.L.3)
- b. Failure of the Image Management System to retain up to five (5) years of manually entered records online will result in a credit to SFMTA of \$1,000 per calendar day not available. (§IV.L.3)
- c. Failure of the Image Management System to provide retrieval of images from Contractor's network to the SFMTA network within ten (10) seconds using SFMTA's WAN, will result in a credit to SFMTA of \$100 per incident. (§IV.L.3)

3. Automated Telephone Answering System (ATAS)

Failure of Contractor to provide an implementation plan within 30 days of receipt of requirements, or to provide the system within 180 days of SFMTA's acceptance of the implementation plan. ATAS will result in a credit to the SFMTA of \$1,000 per Business Day delay. (§ IV.L.4)

4. Pay-by-Web System (PWS)

Failure of Contractor to provide an implementation plan within 30 days of receipt of requirements, or to provide the system within 180 days of SFMTA's acceptance of the implementation plan will result in a credit to the SFMTA of \$1,000 per day delay. (§IV.L.5)

5. Pay-by-Phone System (PPS)

Failure of Contractor to confirm all pay-by-phone transactions and transfer of funds within twenty-four (24) hours will result in a credit to the SFMTA of \$500 plus the actual interest rate accrued for the time period of delay.

6. Parking Information Website (PIW)

Failure of Contractor to provide modifications to the PIW will result in a credit to the SFMTA of \$500 per Business Day delay. (§IV.L.7)

I. Hardware and CMSCPS Requirements

1. Workstation Operational Performance

If Contractor fails to meet the defined workstations response time requirement between Contractor's network and the SFMTA network of an average of three (3) seconds for more than 2 hours in any one-week calendar period, SFMTA shall be entitled to a credit against Contractor's monthly system charges as follows: (§ VI.C.1)

- b. Greater than (>) three minutes but less than (<) 20 minutes = \$1,000 per hour
- c. 20 minutes or greater, but < 60 minutes = \$5,000 per hour

2. Transition to Web-based Applications

Failure of Contractor to transition CPSCMS and associated applications to web-based versions within one (1) year of the Effective Date of the Agreement shall result in a credit to the SFMTA of \$1,000 per Business Day of delay.

3. Backup Connection

Failure of Contractor to establish an ISDN backup connection within five (5) minutes of receipt of notification from the SFMTA that any data circuit is inoperable will result in a credit to SFMTA of \$1,000 per working day of delay. (§VI.C.2)

3. Technical Support through Contractor's Network Operations Center

Failure of Contractor to promptly resolve at least 90 percent of all incoming calls through the NOC and diagnose an additional five percent of the calls that Contractor refers to equipment or facilities vendors will result in a credit to SFMTA of \$500 per incident. (§VI.D.1)

J. Training

1. Failure of Contractor to provide end-user manuals to the satisfaction of the SFMTA within 90 days of the Effective Date of the Agreement will result in a credit to the SFMTA of \$500 per Business Day of delay. (§VI.D.3.b.i)
2. Failure of Contractor to provide functional manuals to the satisfaction of the SFMTA within 180 days of the Effective Date of the Agreement will result in a credit to the SFMTA of \$500 per Business Day of delay (§VI.D.3.b.ii)
3. Failure to provide quarterly notice of Training Plan reviews to SFMTA within 30 days after each quarter will result in a credit to SFMTA of \$500 per occurrence. (§VI.D.3.a.v)

K. Special Collections

1. Failure to produce a Collection Plan within 90 days of the Effective Date of the Agreement will result in a credit to the SFMTA of \$250 per Business Day not received, unless prior written approval for delay is granted by SFMTA. (§ V.A)
2. Failure of Contractor to implement new components to the Collection Plan within 90 days of request and approval by the SFMTA will result in a credit to the SFMTA of \$500 per Business Day not implemented. (§ V.A)
3. Failure of Contractor to provide a local telephone number and a toll-free number staffed by sufficient Customer service representatives to answer at least 96% of all calls per day within six (6) rings, between the hours of 8 a.m. and 5 p.m. on Business Days, unless otherwise directed by the SFMTA will result in a credit to the SFMTA of \$100 per Business Day. . (§ V.D.1)
4. Failure of Contractor respond to written inquiries submitted by Customers within ten (10) Business Days of receipt will result in a credit to the SFMTA of \$100 per occurrence. (§ V.D.2)

5. Failure of Contractor to enter into PCPS and forward any requests for Administrative Review or Hearing for Citations issued to out-of-state vehicles to the SFMTA within two (2) Business Days will result in a credit to the SFMTA of \$100 per occurrence.
6. Failure of Contractor to ensure that archived records can be retrieved and restored to the active PCPS database within seven (7) Business Days of request will result in a credit to the SFMTA of \$100 per Business Day delay.
7. Failure of Contractor to produce special collections reports will result in a credit to SFMTA of \$500 per occurrence per Business Day not received, unless prior written approval for delay is granted by SFMTA. (§ V.H)

L. Noticing

1. Failure of Contractor to complete modifications to pre-printed forms within 30 calendar days after final written approval by the SFMTA will result in a credit to the SFMTA of \$250 per Business Day delay. (§ VIII.A)
2. Failure to provide summary data for standard notice runs and detailed information for each notice within the preceding twelve (12) months within one (1) Business Day of SFMTA's request will result in a credit to SFMTA of \$250 per calendar day of delay. (§ VIII.D)
3. Failure to provide any standard noticing management report within the deadlines established by the Contract will result in a credit to the SFMTA of \$100 per calendar day of delay. (§ VIII.D)

APPENDIX B

Calculation of Charges

I. Per Citation Fee

SFMTA will pay the Contractor a per citation fee for as noted in the table below for services stipulated in Appendix A, Sections II, III, IV, VI and VIII :

Citations processed per year	Year 1	Year 2	Year 3	Year 4	Year 5
First 1.5 million	\$2.890	\$2.890	\$2.890	\$2.890	\$2.890
Next 250,000 (1.75 million)	\$2.890	\$2.890	\$2.890	\$2.890	\$2.890
Next 250,000 (2 million)	\$2.890	\$2.890	\$2.890	\$2.890	\$2.890
Next 250,000 (2.25 million)	\$2.601	\$2.601	\$2.601	\$2.601	\$2.601
Next 250,000 (2.5 million)	\$2.340	\$2.340	\$2.340	\$2.340	\$2.340
Next 250,000 (2.75 million)	\$1.872	\$1.872	\$1.872	\$1.872	\$1.872
Above 2.75 million	\$1.497	\$1.497	\$1.497	\$1.497	\$1.497

II. Special Collections Fee

SFMTA will pay the Contractor a 34% Special Collections contingency fee for services as stipulated in Appendix A, **Section V–Special Collections System**.

	Special Collections Fee
Year 1	34%
Year 2	34%
Year 3	34%
Year 4	34%
Year 5	34%

APPENDIX C

Performance Bond
(To be inserted at time of Contract Award)

APPENDIX D

Remaining Payments for Existing Handheld Device Payments
as of October 2008

Hardware Buyout	Amount Paid	Cumulative Paid	End of Mo. Bal.	Software Payment The following Payment Schedule applies only if City wishes to continue software licenses
Oct-08	\$16,833	\$941,320	\$68,680	\$5,500
Nov-08	\$16,833	\$958,153	\$51,847	\$5,500

Hardware Buyout	Amount Paid	Cumulative Paid	End of Mo. Bal.	Software Payment The following Payment Schedule applies only if City wishes to continue software licenses
Dec-08	\$16,833	\$974,986	\$35,014	\$5,500
Jan-09	\$16,833	\$991,819	\$18,181	\$5,500
Feb-09	\$16,833	\$1,008,652	\$1,348	\$5,500
Mar-09	\$1,348	\$1,010,000	\$0	\$5,500
Apr-09	\$1			\$5,500
	\$85,514			\$38,5000

Appendix E

Remaining Payments for Mobile License Recognition Devices as of October 2008

The following are descriptions of the original agreements, with the remaining payment schedule tables.

Contractor shall provide one AutoVu unit to the MTA's Enforcement Division for use in a three-month pilot program, equipped for Scofflaw specific use (i.e., boot and tow activity) to include: hardware, software, delivery, onsite installation, one-year warranty, two days of manufacturer provided onsite training, and annual maintenance in years two through three. This unit will be provided for a three-year period, at no cost to the MTA. Should the agreement be terminated before the three-year period is complete, a prorated lump sum amount will be due in full as detailed in this Appendix B (Chart A below). At the end of the three-year period or the termination of the current agreement and resultant payoff of the balance owed to the Contractor by the City, ownership of the AutoVu unit(s) will transfer to the City.

CHART A – One AutoVu Complete Unit, provided by PRWT for DPT use, Monthly Balance Schedule -- First Unit provided for Scofflaw

Remaining Payments Beginning October 2008	Date	One Complete Unit + Sales Tax + Maintenance (Y2, Y3) Monthly Offset	Maintenance Fee	Cumulative Offset (Balance Adjusted to Include Maintenance Fee)	End of Month Balance (Unit Price = \$86,900+ 8.5% Sales Tax + Maintenance)
Oct-08	TBD	\$3,214.92	\$2,619	\$73,222.92	\$35,364.08
Nov-08	TBD	\$3,214.92	\$2,619	\$76,437.83	\$32,149.17
Dec-08	TBD	\$3,214.92	\$2,619	\$79,652.75	\$28,934.25
Jan-09	TBD	\$3,214.92	\$2,619	\$82,867.67	\$25,719.33
Feb-09	TBD	\$3,214.92	\$2,619	\$86,082.58	\$22,504.42
Mar-09	TBD	\$3,214.92	\$2,619	\$89,297.50	\$19,289.50
Apr-09	TBD	\$3,214.92	\$2,619	\$92,512.42	\$16,074.58
May-09	TBD	\$3,214.92	\$2,619	\$95,727.33	\$12,859.67
Jun-09	TBD	\$3,214.92	\$2,619	\$98,942.25	\$9,644.75
Jul-09	TBD	\$3,214.92	\$2,619	\$102,157.17	\$6,429.83
Aug-09	TBD	\$3,214.92	\$2,619	\$105,372.08	\$3,214.92
Sep-09	TBD	\$3,214.92	\$2,619	\$108,587.00	\$0.00

Should the Enforcement division's use of the first AutoVu unit result in an 8% increase in Scofflaw activity (boot and tow) during the three-month pilot, as measured against DPT logs for the previous 12 months, the Contractor will provide a second AutoVu unit equipped for use as specified by the City. At the end of the three-year period or the termination of the current agreement and resultant payoff of the balance owed to the Contract by the City, ownership of the AutoVu unit(s) will transfer to the City. Should the agreement be terminated before the three-year period is complete, a prorated lump sum amount will be due in full detailed in this Appendix E (Chart B below).

CHART B – One AutoVu Complete Unit, provided by PRWT for DPT use, Monthly Balance Schedule – Second Unit provided for timed parking violations

Remaining Payments beginning October 2008	One Complete Unit + Sales Tax + Maintenance (Y2, Y3) Monthly Offset	Maintenance Fee	Cumulative Offset (Balance Adjusted to Include Maintenance Fee)	End of Month Balance (Unit Price = \$86,900+ 8.5% Sales Tax + Maintenance)
Oct-08	\$3,214.92	\$2,619	\$73,222.92	\$35,364.08
Nov-08	\$3,214.92	\$2,619	\$76,437.83	\$32,149.17
Dec-08	\$3,214.92	\$2,619	\$79,652.75	\$28,934.25
Jan-09	\$3,214.92	\$2,619	\$82,867.67	\$25,719.33
Feb-09	\$3,214.92	\$2,619	\$86,082.58	\$22,504.42
Mar-09	\$3,214.92	\$2,619	\$89,297.50	\$19,289.50
Apr-09	\$3,214.92	\$2,619	\$92,512.42	\$16,074.58
May-09	\$3,214.92	\$2,619	\$95,727.33	\$12,859.67
Jun-09	\$3,214.92	\$2,619	\$98,942.25	\$9,644.75
Jul-09	\$3,214.92	\$2,619	\$102,157.17	\$6,429.83
Aug-09	\$3,214.92	\$2,619	\$105,372.08	\$3,214.92
Sep-09	\$3,214.92	\$2,619	\$108,587.00	\$0.00

APPENDIX F

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

Record Retention and Destruction Policy

The San Francisco Municipal Transportation Agency Record Retention and Destruction Policy is adopted pursuant to Chapter 8 of the San Francisco Administrative Code, which requires each department head to maintain records and create a records retention and destruction schedule. This policy supersedes all previous record retention and destruction policies issued by the San Francisco Municipal Transportation Agency.

This policy covers all records and documents, regardless of physical form or characteristics, which have been made or received by the San Francisco Municipal Transportation Agency in connection with the transaction of public business.

Note: as of the date of the Effective Date of the contract, the Record Retention Schedule is undergoing review by the agency. The document will be attached to this appendix upon completion.

PART I: POLICY AND PROCEDURES

a. RETENTION POLICY

The San Francisco Municipal Transportation Agency shall retain records for the period of their immediate or current use, unless longer retention is necessary for historical reference, or to comply

with contractual or legal requirements, or for other purposes as set forth below. For record retention and destruction purposes, the term “record” is defined as set forth in Section 8.1 of the San Francisco Administrative Code. Documents and other materials that do not constitute “records” under that section, including those described below in Category 4, may be destroyed when no longer needed, unless otherwise specified in Part II. The records of the San Francisco Municipal Transportation Agency shall be classified for purposes of retention and destruction as follows:

Category 1: Permanent Retention. Records that are permanent or essential shall be retained and preserved indefinitely.

- Permanent records. Permanent records are records required by law to be permanently retained and which are ineligible for destruction unless they are microfilmed or placed on an optical imaging system, and special measures are followed. Admin. Code Section 8.4. Once these measures are followed, the original paper records may be destroyed. Duplicate copies of permanent records may be destroyed whenever they are no longer necessary for the efficient operation of the San Francisco Municipal Transportation Agency. Examples of permanent records include project files, Board files, internal and external audits and personnel hiring and disciplinary records. Not every department will have permanent records.
- Essential records. Essential records are records necessary for the continuity of government and the protection of the rights and interests of individuals. Admin. Code Section 8.9. Examples of essential records are: Fleet Engineering Records, Accident Records and Grant Awards and Modifications.

Category 2: Current Records. Current records are records that for convenience, ready reference or other reasons are retained in the office space and equipment of the Department. Current records shall be retained as follows:

- Where retention period specified by law. Where federal, state, or local law prescribes a definite period of time for retaining certain records, the San Francisco Municipal Transportation Agency will retain the records for the period specified by law. Examples of records required to be maintained for a specific period are Worker’s Compensation Records, grievances and payroll records; e.g., Conflict of Interest Form 700 must be retained 7 years pursuant to Gov. Code §81009(e); Accident-Injury reports must be retained 5 years pursuant to 29 CFR 1404.6.
- Where no retention period specified by law. Where no specific retention period is specified by law, the retention period for records that the department is required to retain shall be specified in the attached Record Retention and Destruction Schedule. Records shall be retained for a minimum of two years, although such records may be treated as “storage records” and placed in storage at any time during the applicable retention period. Examples of current records include: correspondence, schedules and administrative records.

Category 3: Storage Records. Storage records are records that are retained offsite. Storage records are subject to the same retention requirements as current records. Example of storage records include citizen complaints, invoices and payroll correction reports.

Category 4: No Retention Required. Documents and other materials that are not “records” as defined by Admin. Code section 8.1 need not be retained unless retention is otherwise required by local law or by the attached Record Retention and Destruction Schedule. Documents and other materials (including originals and duplicates) that are not otherwise required to be retained, are not necessary to the functioning or continuity of the Department and which have no legal significance may be destroyed when no longer needed. Examples include materials and documents generated for

the convenience of the person generating them, draft documents (other than some contracts) that have been superseded by subsequent versions, or rendered moot by departmental action, and duplicate copies of records that are no longer needed. Specific examples include telephone message slips, miscellaneous correspondence not requiring follow-up or departmental action, notepads, e-mails that do not contain information required to be retained under this policy, and chronological files.

With limited exceptions, no specific retention requirements are assigned to documents in this category. Instead, it is up to the originator or recipient to determine when the document's business utility has ended.

b. RECORDS NOT ADDRESSED IN THE RECORD RETENTION SCHEDULE

Records and other documents or materials that are not expressly addressed by the attached schedule may be destroyed at any time provided that they have been retained for the periods prescribed for substantially similar records.

C. STORAGE OF RECORDS

Records may be stored in the San Francisco Municipal Transportation Agency's office space or equipment if the records are in active use or are maintained in the office for convenience or ready reference. Examples of active files appropriately maintained in the San Francisco Municipal Transportation Agency's office space or equipment include active chronological files, research and reference files, legislative drafting files, pending complaint files, administrative files, and personnel files. Inactive records, for which use or reference has diminished sufficiently to permit removal from the San Francisco Municipal Transportation Agency's office space or equipment, may be sent to the City's off-site storage facility or maintained in the SFMTA's storage facility.

D. HISTORICAL RECORDS

Historical records are records that are no longer of use to the SFMTA but which because of their age or research value may be of historical interest or significance. Historical records may not be destroyed except in accordance with the procedures set forth in Administrative Code section 8.7.

c. PENDING CLAIMS AND LITIGATION

The retention periods set forth in the attached record retention schedule shall not apply to materials that are otherwise eligible for destruction, but which may be relevant to a pending claim or litigation against the city. Once the San Francisco Municipal Transportation Agency becomes aware of the existence of a claim against the SFMTA, the SFMTA will retain all documents and other materials related to the claim until such time as the claim or subsequent litigation has been resolved. When the SFMTA has reason to believe that one or more other city departments have records relating to the claim or litigation, those departments will also be notified by the SFMTA of the need to retain such records.

APPENDIX G

Contractor Disaster Plan

To be provided within 60 days of Effective Date of the Agreement.

