

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

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Sustainable Streets – Transportation Engineering

**BRIEF DESCRIPTION:**

Approving various routine traffic and parking modifications.

**SUMMARY:**

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

**ENCLOSURES:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

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

SECRETARY \_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO Tom Folks

**ASSIGNED SFMTAB CALENDAR DATE:** August 3, 2010

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### PURPOSE

To approve various routine traffic and parking modifications.

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

### GOAL

- Goal 1 - Customer Focus: To provide safe, accessible, reliable, clean and environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy
- Objective 1.1 - Improve safety and security across all modes of transportation
- Goal 2 - System Performance: To get customers where they want to go, when they want to be there
- Objective 2.4 - Reduce congestion through major corridors
- Objective 2.5 - Manage parking supply to align with SFMTA and community goals

### ITEMS:

- A. ESTABLISH – BLUE ZONE – 3100 Mission Street, west side, at parking meter #3104 (22-foot zone). **PH 6/11/2010 Requested by SFMTA.**
- B. REVOKE – (NON-COMPLIANT) BLUE ZONE – 3120 Mission Street, west side, from 0 feet to 44 feet, north of meter stall #3118 (44-foot zone) (Note: one compliant blue zone to be relocated to parking meter #3104). **PH 6/11/2010 Requested by SFMTA.**
- C. REVOKE – SIX WHEEL METERED LOADING ZONE – “100” Steuart Street, west side, at parking meter #108 (21-foot zone) **PH 7/9/2010 Requested by SFMTA.**
- D. ESTABLISH – BLUE ZONE – “100” Steuart Street, at parking meter #108 (21-foot zone). **PH 7/9/2010 Requested by SFMTA.**
- E. REVOKE – (NON-COMPLIANT) BLUE ZONE – “198” Steuart Street, west side, from 8 feet to 33 feet north of Howard Street (25-foot zone). **PH 7/9/2010 Requested by SFMTA.**
- F. ESTABLISH – SIX WHEEL METERED LOADING ZONE, 7AM TO 11AM, 30-MINUTE TIME LIMIT, MONDAY THROUGH FRIDAY – “198” Steuart Street, from 8 feet to 33 feet north of Howard Street (25-foot zone). **PH 7/9/2010 Requested by SFMTA.**
- G. REVOKE – (NON-COMPLIANT) BLUE ZONE – “58” Spear Street, west side, from 0 feet to 18 feet north of parking meter #76 (18-foot zone). **PH 7/9/2010 Requested by SFMTA.**
- H. ESTABLISH – METERED LOADING ZONE, 7AM TO 6PM, 30-MINUTE LIMIT, MONDAY THROUGH SATURDAY – “58” Spear Street, from 0 feet to 18 feet north of parking meter #76 (18-foot zone). **PH 7/9/2010 Requested by SFMTA.**
- I. ESTABLISH – BLUE ZONE – “99” Mission Street, south side, at parking meter #47 (23-foot zone). **PH 7/9/2010 Requested by SFMTA.**
- J. ESTABLISH – NO PARKING, 10 PM TO 6 AM, DAILY – Tennessee Street, west side, between 23rd and 24th Streets. **PH 6/18/2010 Requested by Various Residents.**
- K. ESTABLISH – BUS ZONE – 24th Street, north side, from Potrero Street to 75 feet easterly (75-foot bus zone). **PH 7/16/2010 Requested by Resident.**

- L. RESCIND – NO PARKING, 9AM – 6PM, MONDAY to FRIDAY – Holloway Avenue, north side, from Monticello Street to Alviso Street; Holloway Avenue, north side, from De Soto Street to Victoria Street; and Holloway Avenue, north side, from Victoria Street to Head Street. **PH 7/16/2010 Requested by Residents.**
- M. ESTABLISH – NO PARKING FOR STREET CLEANING, 1PM – 3PM, FIRST AND THIRD WEDNESDAY OF MONTH – Holloway Avenue, north side, from Monticello Street to Alviso Street; Holloway Avenue, north side, from De Soto Street to Victoria Street, and Holloway Avenue, north side, from Victoria Street to Head Street. **PH 7/16/2010 Requested by Residents.**
- N. RESCIND – NO PARKING, 9AM – 6PM, MONDAY to FRIDAY – Holloway Avenue, north side, from 35 feet east of Monticello Street to 41 feet west of Alviso Street. **PH 7/16/2010 Requested by Residents.**
- O. ESTABLISH – 2 HR PARKING, 8AM – 6PM, MONDAY TO FRIDAY, EXCEPT AREA “H” PERMITS – Holloway Avenue, north side, from 35 feet east of Monticello Street to 41 feet west of Alviso Street. **PH 7/16/2010 Requested by Residents.**
- P. RESCIND – NO PARKING, 9AM – 6PM, MONDAY to FRIDAY – Holloway Avenue, north side, from Lunado Way to Monticello Street; Holloway Avenue, north side, from Monticello Street to 35 easterly; Holloway Avenue, north side, from Alviso Street to 42 feet westerly; Holloway Avenue, north side, from Alviso Street to Borica Street; Holloway Avenue, north side, from Borica Street to Corona Street; Holloway Avenue, north side, from Corona Street to De Soto Street; Holloway Avenue, north side, from De Soto Street to 26 feet easterly; Holloway Avenue, north side, from Head Street to 21 feet westerly; and Holloway Avenue, north side, from Head Street to Ashton Avenue. **PH 7/16/2010 Requested by Residents.**
- Q. ESTABLISH – TOW-AWAY NO STOPPING ANYTIME – Holloway Avenue, north side, from Lunado Way to Monticello Street; Holloway Avenue, north side, from Monticello Street to 35 easterly; Holloway Avenue, north side, from Alviso Street to 42 feet westerly; Holloway Avenue, north side, from Alviso Street to Borica Street; Holloway Avenue, north side, from Borica Street to Corona Street; Holloway Avenue, north side, from Corona Street to De Soto Street; Holloway Avenue, north side, from De Soto Street to 26 feet easterly; Holloway Avenue, north side, from Head Street to 21 feet westerly; and Holloway Avenue, north side, from Head Street to Ashton Avenue. **PH 7/16/2010 Requested by Residents.**
- R. RESCIND – NO PARKING FOR STREET CLEANING, 9AM – 11AM, FIRST AND THIRD WEDNESDAY OF MONTH – Holloway Avenue, south side, from Ramsell Street to 82 feet westerly; Holloway Avenue, south side, from Ramsell Street to Victoria Street; Holloway Avenue, south side, from Victoria Street to Head Street; and Holloway Avenue, south side, from Head Street to 8 feet easterly. **PH 7/16/2010 Requested by Residents.**
- S. ESTABLISH – TOW-AWAY NO STOPPING ANYTIME – Holloway Avenue, south side, from Ramsell Street to 82 feet westerly; Holloway Avenue, south side, from Ramsell Street to Victoria Street; Holloway Avenue, south side, from Victoria Street to Head Street; and Holloway Avenue, south side, from Head Street to 8 feet easterly. **PH 7/16/2010 Requested by Residents.**
- T. RESCIND – RED ZONE – Holloway Avenue, south side, from Monticello Street to 23 feet westerly. **PH 7/16/2010 Requested by Residents.**
- U. ESTABLISH – TOW-AWAY NO STOPPING ANYTIME – Holloway Avenue, south side, from Monticello Street to 23 feet westerly. **PH 7/16/2010 Requested by Residents.**

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- V. RESCIND – 2-HOUR PARKING, 8 AM TO 4 PM, MONDAY THROUGH FRIDAY, RESIDENTIAL PERMIT PARKING AREA H – Holloway Avenue, south side, from Monticello Street to Byxbee Street. **PH 7/16/2010 Requested by Residents.**
- W. RESCIND – NO PARKING FOR STREET CLEANING, 9AM – 11AM, FIRST AND THIRD WEDNESDAY OF MONTH – Holloway Avenue, south side, from Monticello Street to Byxbee Street. **PH 7/16/2010 Requested by Residents.**
- X. ESTABLISH – TOW-AWAY NO STOPPING ANYTIME – Holloway Avenue, south side, from Monticello Street to Byxbee Street. **PH 7/16/2010 Requested by Residents.**
- Y. RESCIND – NO PARKING FOR STREET CLEANING, 9AM – 11AM, FIRST AND THIRD WEDNESDAY OF MONTH – Holloway Avenue, south side, from Byxbee Street to 22 feet easterly. **PH 7/16/2010 Requested by Residents.**
- Z. RESCIND – 1-HOUR PARKING, 8 AM TO 4 PM, MONDAY THROUGH FRIDAY, RESIDENTIAL PERMIT PARKING AREA H – Holloway Avenue, south side, from Byxbee Street to 22 feet easterly. **PH 7/16/2010 Requested by Residents.**
- AA. ESTABLISH – TOW-AWAY NO STOPPING ANYTIME – Holloway Avenue, south side, from Byxbee Street to 22 feet easterly. **PH 7/16/2010 Requested by Residents.**

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

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

- A. ESTABLISH – BLUE ZONE – 3100 Mission Street, west side, at parking meter #3104 (22-foot zone).
- B. REVOKE – (NON-COMPLIANT) BLUE ZONE – 3120 Mission Street, west side, from 0 feet to 44 feet, north of meter stall #3118 (44-foot zone) (Note: one compliant blue zone to be relocated to parking meter #3104).
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- AA. ESTABLISH – TOW-AWAY NO STOPPING ANYTIME – Holloway Avenue, south side, from Byxbee Street to 22 feet easterly.

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 Transportation Engineering, does hereby approve the changes.

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

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.3**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Executive Director/CEO to execute a loan agreement with the Metropolitan Transportation Commission (MTC) for \$22.0M of Congestion Mitigation and Air Quality Improvement (CMAQ) funding to be repaid by the SFMTA over a five-year period; and authorizing the SFMTA to expend these loan funds to expand the scope of the *SFpark* pilot projects.

**SUMMARY:**

- The U.S. Department of Transportation awarded the SFMTA funding to implement *SFpark* pilot projects as a demonstration of smart parking management policies and technologies.
- MTC has offered to loan the SFMTA \$22.0M of CMAQ funding to expand the scope of the *SFpark* pilot projects.
- The SFMTA would pay back the loan over a five-year period using parking-related revenues contained in a separate account. No City general funds would be used to repay the loan.
- This funding would allow the SFMTA to make an investment that would improve parking management, reduce the structural deficit, and accelerate the delivery of customer benefits.
- This resolution would (1) authorize the Executive Director to execute the loan agreement with MTC and (2) authorize the SFMTA to expend the loan funds to expand the scope of the *SFpark* pilot projects.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Loan agreement between MTC and SFMTA

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION  
PREPARING ITEM \_\_\_\_\_

FINANCE \_\_\_\_\_

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

SECRETARY \_\_\_\_\_

ADOPTED RESOLUTION  
BE RETURNED TO JAY PRIMUS

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



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### **PURPOSE**

The funds from the proposed loan agreement will expand the scope of the *SFpark* pilot projects and thereby improve parking management in San Francisco, increase SFMTA parking-related revenues in short- and long-term, deliver customer benefits of better parking management sooner, and lower costs of an eventual citywide replacement of parking meters.

### **GOAL**

The SFMTA will further the following goals of the Strategic Plan through the *SFpark* program in the following areas:

Goal #2: Customer Focus: To get customers where they want to go, when they want to get there.

- 2.4 Reduce congestion through major corridors.
- 2.5 Manage parking supply to align with SFMTA and community goals.

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

- 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits.

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

- 4.1 Increase revenue by 20 percent by 2012 by improving collections and identifying new sources.
- 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 the evolving, technology-driven future.

- 5.1 Increase resources available to employees in performing their jobs.

Goal #6: Information Technology: To improve service and efficiency, the SFMTA must leverage technology.

- 6.1 Information Technology Leadership: Identify, develop and deliver new and enhanced systems and technologies to support SFMTA's 2012 goals.

### **DESCRIPTION**

Under the *SFpark* brand, the SFMTA is moving aggressively to be a world leader in parking management in order to help the SFMTA achieve its overall goals for transportation, specifically for improving customer service and transit reliability, as well as reducing congestion and

greenhouse gas emissions.

The *SFpark* pilot projects are a demonstration of a complete package of smart parking management policy and technology funded by the U.S. Department of Transportation (USDOT) Urban Partnership Program (UPP). The *SFpark* pilot projects are exciting as the first demonstration of a parking-based approach to congestion management using demand-responsive pricing and real-time information about where parking is available. To the extent this pilot project is successful, it can be easily replicated in other cities, and will be an example of San Francisco's global leadership.

Staff requests that the SFMTA Board of Directors approve the resolution that would expand the scope of the *SFpark* pilot projects to increase their value as a demonstration project, increase SFMTA parking-related revenues in the short- and long-term, accelerate the delivery of customer benefits from better parking management, lower costs of an eventual citywide replacement of parking meters, and better prepare the SFMTA for this eventual citywide parking meter replacement. In addition, SFMTA staff have discussed with USDOT the possibility of securing additional federal funding for the eventual expansion of *SFpark* to the rest of the city and several years of operation and evaluation, which would have the potential to save the City millions of dollars in upcoming capital expenditures. The loan agreement would be a demonstration of local commitment to this path, and bolster an eventual application for that additional funding.

This resolution would allow the SFMTA to enter into a loan agreement with the MTC whereby MTC would loan SFMTA \$22.0 million in CMAQ program funds for the *SFpark* project. The SFMTA would pay back the loan over a five-year period using parking-related revenues contained in a separate account. No City general funds would be used to repay the loan. The first payment of \$4.4M would be due by June 30, 2011. For the first two years, the loan would be interest-free, and for the remaining three years an annual interest rate of three percent would apply to the remaining principal. SFMTA may, if it chooses and without penalty, make payments in advance of the planned schedule.

After local approvals, the loan is contingent upon Federal Highway Administration (FHWA) obligating the funds to the SFMTA. The FHWA is aware of this agreement, and because this is an expansion of the existing *SFpark* pilot projects, no issues are expected with obligation of funds. Caltrans, the FHWA's regional fiscal agent, has started the process of obligating the funding, and, if the SFMTA Board of Directors and Board of Supervisors approve this action, is expected to obligate the funding to the SFMTA in Fall 2010.

This additional funding would be used to expand the scope of *SFpark*-style parking management in San Francisco, increasing the number of metered parking spaces from 25,000 to 30,000 (as approved by the SFMTA Board in April 2010), and expanding the scope of the *SFpark* pilot project from 5,000 of 25,000 metered spaces to 16,200 of 30,000 metered spaces. More specifically, this funding would be used to:

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- Replace existing parking meters with new parking meters and add parking sensors in the remainder of the existing *SFpark* pilot areas, including meters at motorcycle spaces. The legal boundaries of the pilot areas contain 9,000 metered spaces, but current funding allows replacement of only 5,000 of those meters.
- Upgrade approximately 1,700 existing meters and add parking sensors in newly designated *SFpark* areas.
- Add approximately 5,000 new meters and sensors in newly metered parking spaces in newly designated *SFpark* pilot areas.
- Add new meters to the twenty remaining SFMTA parking lots (in addition to the one that is already part of the *SFpark* pilot projects) to support more responsive pricing.
- Operate these additional metered spaces and sensors for approximately 18 months to match the term of the original pilot, and, if applicable, help to pay for ongoing operational costs of the parking sensors and meters in the original *SFpark* pilot project areas.
- Expand bike parking in *SFpark* areas to help reduce parking demand.
- Get real-time data from the five remaining SFMTA parking garages (*SFpark* already includes 15 garages).
- Enhance the *SFpark* data warehouse/transactional system to accommodate additional metered spaces.
- Implement related marketing, communications, and outreach plans.
- Implement a pilot test of new residential parking management strategies, as required by original scope of work for the UPP-funded *SFpark* pilot projects
- Enhance SFMTA parking garage signage at all garages to reflect *SFpark* branding and improve customer experience.
- Fund a small-scale pilot project to determine how parking policy can encourage car sharing.
- SFMTA staff will return to the SFMTA Board of Directors to propose the boundaries of expanded or additional *SFpark* pilot areas where new meters, real-time information, and other aspects of *SFpark* pilot projects would become available.

The SFMTA Board of Directors would have to, subsequently, approve final implementation plans which could change somewhat depending on final pilot project geographies and unit costs of parking management equipment. The following table has planning-level cost estimates for each of these areas.

Element	One-time implementation costs	Estimated operating costs (18 months)	Estimated annual additional revenue
Replace remaining existing meters in SFpark pilot areas with new meters and sensors (including all motorcycle meters)	3,040,000	855,000	810,000
Add new meters and sensors in new SFpark pilot areas	6,550,000	3,135,000	8,820,000
Upgrade existing meters and add sensors in new SFpark pilot areas	1,340,000	435,000	340,000
Add new parking meters in 20 remaining SFMTA parking lots	480,000	150,000	120,000
Get real-time data from five remaining SFMTA garages	100,000	30,000	0
Expand bike parking in SFpark areas to help reduce parking demand	300,000	0	0
Enhance SFpark data warehouse	500,000	540,000	0
Enhance SFMTA parking garage signage	500,000	0	0
Implement related marketing, outreach, and communications	200,000	0	0
Implement pilot test of new residential parking management strategies	900,000	100,000	0
Pilot projects to encourage car sharing	45,000	0	0
Project management, implementation, administration, contingency, and evaluation	2,800,000	0	0
<b>Total</b>	<b>16,755,000</b>	<b>5,245,000</b>	<b>10,090,000</b>

If this is approved, the first step of the funding obligation process is expected to be complete in Fall 2010 (i.e., receipt of the approved E-76 form from Caltrans) and the final step of the process, the signing of the Program Supplemental Agreement (PSA) by SFMTA and Caltrans that allows SFMTA to use the funding, is expected to be complete in early Spring 2011. Upon receipt of the E-76, staff would begin to prepare for implementation of the above parking management improvements so that they could be made as soon after the finalization of the PSA as possible, beginning Spring/Summer 2011. The SFMTA is working with the Planning Department and Caltrans to confirm the original California Environmental Quality Act (CEQA) categorical exemption and National Environmental Policy Act (NEPA) categorical exclusion

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environmental findings for an expanded scope of the original *SFpark* pilot projects.

The City Attorney has reviewed this report.

**ALTERNATIVES CONSIDERED**

As an alternative to this course of action, the SFMTA could pursue private financing for these parking management improvements and/or to expand the scope of *SFpark*, but the terms of that agreement would likely be much less favorable to the SFMTA.

**FUNDING IMPACT**

This funding would allow the SFMTA to invest in parking management in a way that would help address its structural deficit. The funds would be used to purchase equipment that would require approximately \$3.5M a year to operate and maintain, but would generate approximately \$10.1M a year in revenue, for a net increase of approximately \$6.6M a year.

For the first five years while making loan payments to MTC of either \$4.4M or \$4.67M (later years have a 3% interest on the remaining principal), the SFMTA would net approximately \$2.0M a year in additional revenue. In total, the SFMTA is expected to pay \$800,000 in interest to MTC. After the loan is repaid, the SFMTA would net approximately \$6.6M a year. To the extent that SFMTA were to increase the operating hours of parking meters (e.g., into the evenings or on Sundays), expected net overall revenue would increase.

<b>SFMTA loan payments</b>	<b>Principal</b>	<b>Interest</b>	<b>Total payment</b>
Year 1 payment (made June 30, 2011)	4,400,000	0	4,400,000
Year 2 payment (made June 30, 2012)	4,400,000	0	4,400,000
Year 3 payment (made June 30, 2013)	4,270,601	396,000	4,666,601
Year 4 payment (made June 30, 2014)	4,398,719	267,882	4,666,601
Year 5 payment (made June 30, 2015)	4,530,680	135,920	4,666,601
<b>Total amount SFMTA pays to MTC</b>			<b>22,799,802</b>

Expected revenue generated by these new meters as well as funding for repayment of this loan

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has been set aside in the FY2011 and FY2012 operating budgets approved by the SFMTA Board of Directors. The SFMTA would not be required to provide local match for these CMAQ funds because CMAQ funds obligated (i.e., E-76 authorized) prior to December 31, 2010 do not require a local match. However, MTC expects to run out of CMAQ funds by September 1, 2010, so MTC has informed the SFMTA that obligation of the funds must occur prior to September 1, 2010.

## **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

On May 26, 2010, the Metropolitan Transportation Commission adopted a resolution approving this item.

SFpark has received several previous approvals including:

- On November 6, 2006, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors approved Resolution 07-169, which authorized the acceptance and expenditure of various funds associated with the Urban Partnership Program (UPP) in anticipation of establishing the SFpark program and approved variable pricing required for the acceptance of these funds.
- SFMTA Board approved Resolution 08-086 on April 15, 2008, approving two contracts required to implement SFpark and the associated pilot projects.
- SFpark Parking Pilot Project received environmental clearance under the California Environmental Quality Act as a Class 6 Categorical Exemption from the San Francisco Planning Department on May 19, 2008.
- On November 18, 2008 the SFMTA Board approved Resolution 08-192, which outlined the specific implementation plans and parameters for SFpark.

To accept this loan agreement, the SFMTA would require an additional approval by the Board of Supervisors. In addition, the SFMTA Board would subsequently need to approve more specific SFpark expansion plans.

## **RECOMMENDATION**

It is recommended that the SFMTA Board of Directors approve this loan agreement as well the expenditure of these funds to expand the scope of the SFpark pilot projects and thereby help to achieve SFMTA goals and increase SFMTA parking-related revenues.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The U.S. Department of Transportation (US DOT) designated the San Francisco Bay Area as an Urban Partner and awarded the SFMTA funding to implement *SFpark* pilot projects as a demonstration of smart parking management policies and technologies; and,

WHEREAS, Expanding the scope of the *SFpark* pilot projects would benefit the SFMTA's customers, is consistent with the SFMTA's overall parking management strategy, and would help to address the SFMTA's structural deficit; and,

WHEREAS, The Metropolitan Transportation Commission (MTC) has offered to loan the SFMTA \$22.0M of Congestion Mitigation and Air Quality Improvement (CMAQ) funding to expand the scope of the *SFpark* pilot projects; and,

WHEREAS, The SFMTA would pay back the loan over a five-year period using parking-related revenues contained in a separate account; no City general funds would be used to repay the loan; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute a loan agreement with the Metropolitan Transportation Commission (MTC) for \$22.0M of Congestion Mitigation and Air Quality Improvement (CMAQ) funding to be repaid by the SFMTA over a five-year period in a form as substantially presented to this Board; and, be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the expenditure of \$22.0M of CMAQ funding to expand the scope of *SFpark* pilot projects; and be it further

RESOLVED, That the SFMTA Board commends this matter to the Board of Supervisors for its approval.

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

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**Agreement between the Metropolitan Transportation Commission and the San Francisco Municipal Transportation Agency for the loan of Regional Congestion Mitigation and Air Quality Improvement Program Funds for the SFpark Parking Pricing Program**

This AGREEMENT is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, by and through its MUNICIPAL TRANSPORTATION AGENCY (“SFMTA” or “City” or “AGENCY”), and the METROPOLITAN TRANSPORTATION COMMISSION (“MTC”), an agency created under California Government Code Sections 66500 et seq.

Recitals

- (1) AGENCY is the sponsoring agency for the SFpark Parking Pricing Program in San Francisco (“PROJECT”).
- (2) The PROJECT will be implementing a two-year pilot program to test its package of smart parking management policies and technologies, including demand-responsive pricing, at 6,000 of San Francisco’s 25,000 metered spaces and 12,250 spaces in 15 of 20 City-owned parking garages.
- (3) AGENCY has requested the assistance of MTC to expedite the pilot program by providing \$22.0 million in Congestion Mitigation and Air Quality Improvement (CMAQ) program funds (“CMAQ LOAN FUNDS”) available now to be repaid by AGENCY in unrestricted Parking Revenue funds (e.g., revenue from parking meters, parking garages, parking citations and other parking revenue sources) (“PARKING FUNDS”) available in future years.
- (4) MTC, the transportation planning, coordinating and financing agency for the nine-county San Francisco Bay Area, is eligible to program and disburse CMAQ LOAN FUNDS.
- (5) AGENCY and MTC desire to proceed with the loan arrangement immediately, as nothing in this Agreement adversely affects MTC's responsibility to disburse CMAQ Program Funds to other programmed projects in the Bay Area in federal fiscal year 2009-10 prior to the April 30, 2010 obligation disbursement deadline.
- (6) AGENCY and MTC mutually desire to specify the terms and conditions under which MTC is to provide CMAQ LOAN FUNDS to AGENCY, in exchange for Agency’s assignment of PARKING FUNDS to be repaid to MTC.

Now, therefore, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:



## Section I

### MTC AGREES:

- (1) To perform such actions and to deliver such documents as are necessary to complete the delivery of CMAQ LOAN FUNDS to the SFMTA.
- (2) Upon execution of this Agreement, to provide up to a maximum total of \$22.0 million of MTC-apportioned CMAQ LOAN FUNDS including Obligation Authority to AGENCY for implementation of PROJECT, contingent upon the availability of federal apportionment and Obligation Authority.

## Section II

### AGENCY AGREES:

- (1) To indemnify and hold harmless MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of AGENCY, its officers, employees or agents, or subcontractors or any of them in connection with its performance of PROJECT under this Agreement.
- (2) To reimburse MTC for CMAQ LOAN FUNDS provided to AGENCY by paying PARKING FUNDS to MTC as outlined in the payment schedule of Attachment A. If Caltrans obligates the CMAQ LOAN FUNDS by December 31, 2010, no local match is required for these CMAQ LOAN FUNDS.
- (3) To pay interest at the simple annual rate of three (3) percent on the unpaid balance remaining after June 30, 2012 as listed in the payment schedule of Attachment A.
- (4) To pay interest at the simple annual rate of five (5) percent for any unpaid balance, including interest, greater than the amounts listed on the repayment schedule outlined in Attachment A, including any balance remaining, after June 30, 2015.
- (5) To include its obligations to reimburse principal and interest, as applicable, under this Agreement in the City budget each year of this Agreement until termination as defined in Section III, Article (1) below.
- (6) To meet all federal, state and regional project funding delivery requirements associated with the CMAQ LOAN FUNDS.
- (7) To provide a quarterly written schedule for key milestones: written confirmation of acceptance of 511 Parking System Requirements; network connection for data transfer; draft test data feed; final test data feed; and live production feed.

- (8) To provide test and production data feeds using Java Messaging Service (JMS) and adhere to the requirements stipulated in the final version of “System Requirements for UPP (Urban Partnership Program) Parking,” to be finalized in August 2010.
- (9) If developed, to provide space turnover data for all *SFpark* parking facilities. Turnover data would be an addition to the dataset defined in the final version of “System Requirements for UPP (Urban Partnership Program) Parking,” to be finalized in August 2010.

### Section III

#### IT IS MUTUALLY AGREED:

- (1) This Agreement shall terminate upon the satisfaction of AGENCY’s obligation to reimburse MTC with PARKING FUNDS including interest, as outlined in Section II of this Agreement. Notwithstanding the above, SFMTA may terminate this Agreement by written notice to MTC, if the CMAQ LOAN FUNDS are not obligated by December 31, 2010 and no arrangement for payment of non-federal matching funds after December 31, 2010 has been made by MTC.
- (2) Nothing in this Agreement shall preclude AGENCY from making principal and interest payments in advance of the schedule or in excess of the amounts outlined in Attachment B, thus reducing the balance remaining. There shall be no pre-payment penalty for any such advance or excess payments.
- (3) CMAQ LOAN FUNDS provided and programmed to PROJECT under this Agreement and subsequently de-obligated from PROJECT shall be made available to AGENCY for eligible activities within its jurisdiction in the year of de-obligation.
- (4) MTC reserves the right to withhold from AGENCY future discretionary funds otherwise going to AGENCY, after consultation with AGENCY, and AGENCY agrees to accept such withholding if AGENCY fails to meet its obligation to reimburse MTC with PARKING FUNDS including interest, as specified in Section II of this Agreement.
- (5) This Agreement shall bind and benefit the parties hereto and their heirs, successors, and permitted assigns.
- (6) No officer, agent or employee of the SFMTA shall be individually or personally liable for the payment of any principal or interest on the CMAQ FUNDS or any sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement; but nothing herein contained shall relieve any such officer, agent, or employee from the performance of any official duty provided by law or by this Agreement.
- (7) AGENCY is not obligated to pay the principal or interest on the CMAQ LOAN FUNDS

except from the PARKING FUNDS. AGENCY has no taxing power. The General Fund of the City is not liable for the payment of the principal or interest on CMAQ LOAN FUNDS, and neither the credit nor the taxing power of the City is pledged to the payment of the principal or interest on the CMAQ LOAN FUNDS. The CMAQ LOAN FUNDS are not secured by a legal or equitable pledge of, or charge, lien, or encumbrance upon, any of the property of AGENCY or any of its income or receipts, except the PARKING FUNDS.

- (8) This Agreement is subject to the budget and fiscal provisions of the City's Charter. The 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. Notwithstanding the above if the City fails to appropriate PARKING FUNDS in any fiscal year to meet its reimbursement obligations under this Agreement, MTC may pursue its available legal remedies to recover from AGENCY's PARKING FUNDS, but not the City's General Fund, as set forth in paragraph (7) above.

IN WITNESS WHEREOF, MTC and CITY have executed, in triplicate, this Agreement as of the date first written above.

SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY

METROPOLITAN TRANSPORTATION  
COMMISSION

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

By: \_\_\_\_\_  
Steve Heminger, Executive Director

SFMTA Board of Directors  
Resolution No. \_\_\_\_\_  
Dated: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Secretary  
Approved as to form:

Approved as to form and procedure:

Dennis J. Herrera, City Attorney

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

\_\_\_\_\_  
Attorney

Board of Supervisors  
Resolution No. \_\_\_\_\_  
Dated: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Clerk of the Board

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APPENDIX A

Loan Agreement for Federal STP/CMAQ Funds  
for the SF PARK Parking Pricing Program Project

SFMTA Funding Exchange Payment Schedule

Exchange Fund Source           Duration:     5  
                                          Rate:         3%  
                                          INT Payback: 3

Exchange Funding Years and Payment Dates

	Initial Loan	Year 1	Year 2	Year 3	Year 4	Year 5	TOTAL
Year	2010	2011	2012	2013	2014	2015	
Date	30-Jun-2010	30-Jun-2011	30-Jun-2012	30-Jun-2013	30-Jun-2014	30-Jun-2015	
<b>Loan Funds Provided by MTC</b>							
STP/CMAQ	22,000,000						22,000,000
Cumulative Total:	<b>22,000,000</b>						<b>22,000,000</b>
<b>Loan Funds Provided by SFMTA</b>							
SFMTA Operating/Parking Revenues - Principal	0	4,400,000	4,400,000	4,270,601	4,398,719	4,530,680	22,000,000
SFMTA Operating/Parking Revenues - Interest	0	No Payment	No Payment	396,000	267,882	135,920	799,802
<b>Total Payment:</b>	<b>0</b>	<b>4,400,000</b>	<b>4,400,000</b>	<b>4,666,601</b>	<b>4,666,601</b>	<b>4,666,601</b>	<b>22,799,802</b>
<b>Cumulative Total:</b>	<b>0</b>	<b>4,400,000</b>	<b>8,800,000</b>	<b>13,466,601</b>	<b>18,133,202</b>	<b>22,799,802</b>	<b>22,799,802</b>
Payment #		0	0	1	2	3	
Total Month Payment		-4,400,000	-4,400,000	-4,666,601	-4,666,601	-4,666,601	-22,799,802
Interest Payment				-396,000	-267,882	-135,920	-799,802
Principal Payment		-4,400,000	-4,400,000	-4,270,601	-4,398,719	-4,530,680	-22,000,000



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

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology Division

**BRIEF DESCRIPTION:**

Requesting SFMTA Board approval to seek a blanket resolution from the Board of Supervisors authorizing the SFMTA to enter into grant agreements with the Bay Area Air Quality Management District for bicycle projects where the term of such agreements would be in excess of ten years.

**SUMMARY:**

- On a regular basis, the SFMTA applies for funding for bicycle implementation projects from the Bay Area Air Quality Management District (BAAQMD); typically, the grant agreements for such projects are for the useful life of the project, which may be ten years or more, and include an additional three-year inspection period.
- Under City Charter Section 9.118(b), contracts with a term over ten years must be approved by the Board of Supervisors (BOS).
- In order to expedite the implementation of bicycle projects that are funded by BAAQMD, SFMTA staff requests approval from the SFMTA Board to seek a blanket resolution from the BOS authorizing the SFMTA to enter into grant agreements for bicycle projects where the term of such agreements would be in excess of ten years.

**ENCLOSURES:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

FINANCE \_\_\_\_\_

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

SECRETARY \_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO Suzanne Wang (415) 701-4541

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

## **PURPOSE**

The purpose of this item is to obtain approval from the SFMTA Board to seek a blanket resolution from the BOS authorizing the SFMTA to enter into BAAQMD grant agreements for bicycle projects where the term of such agreements would be in excess of ten years. This would greatly expedite the implementation of such projects.

## **GOAL**

The goal of this request supports the following SFMTA Strategic Plan Goal:

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

4.2 Ensure efficient and effective use of resources

## **DESCRIPTION**

The SFMTA applies for funding for bicycle implementation projects (facilities and equipment) on a regular basis from the Bay Area Air Quality Management District (BAAQMD). Typically, the grant agreements for such projects are for the useful life of the project, which may be ten years or more, and include an additional three-year inspection period.

Although the SFMTA has Charter authority to accept and expend grants, Charter Section 9.118(b) requires that contracts with a term over ten years be approved by the BOS. In order to expedite the implementation of bicycle projects, SFMTA staff requests approval from the SFMTA Board to seek a blanket resolution from the BOS authorizing the SFMTA to enter into BAAQMD grant agreements for bicycle projects where the term of such agreements would be in excess of ten years.

## **ALTERNATIVES CONSIDERED**

The SFMTA staff requested that BAAQMD make changes in its standard grant agreement language limiting the agreement term to 10 years. BAAQMD did not agree to this request.

## **FUNDING IMPACT**

The SFMTA was recently awarded grants from BAAQMD for the following three bicycle implementation projects totaling \$166,200, all of which have terms in excess of 10 years and thus would require BOS approval.

1. Bicycle Parking (\$84,000)



2. John Muir Bikeway (\$66,900)
3. Great Highway/Point Lobos Bikeway (\$15,300)

The BOS blanket resolution would allow the SFMTA to execute these three agreements immediately and would apply equally to all subsequent BAAQMD agreements with terms over 10 years, thereby simplifying the administrative process.

### **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The SFMTA resolution and recommendation will be forwarded to the BOS for its action in approving a blanket resolution for the SFMTA to enter into grant agreements with BAAQMD for a term in excess of ten years.

The City Attorney has reviewed this report.

### **RECOMMENDATION**

The SFMTA staff requests the SFMTA Board approval to seek a blanket resolution from the BOS authorizing the SFMTA to enter into grant agreements with the Bay Area Air Quality Management District for bicycle projects where the term of such agreements would be in excess of ten years.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, Under Charter Section 9.118(b), contracts with a term of over ten years must be approved by the Board of Supervisors; and,

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) often applies to the Bay Area Air Quality Management District (BAAQMD) for grants for implementation of bicycle projects; and,

WHEREAS, BAAQMD has instituted a policy requiring that the term of grant agreements for BAAQMD-funded projects run for the useful life of the facilities or equipment funded by the grant, which may exceed ten years; and

WHEREAS, In order to expedite implementation of its bicycle projects, SFMTA staff recommends seeking a blanket resolution from the Board of Supervisors authorizing the SFMTA to enter into grant agreements for bicycle projects where the term of such agreements would be in excess of ten years; now, therefore, be it

RESOLVED, The Board of Directors authorizes the Executive Director/CEO to seek blanket approval from the Board of Supervisors to enter into grant agreements with BAAQMD for bicycle projects where the term of such agreements would be in excess of ten years.

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

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

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

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Executive Director/CEO to transfer \$215,200 from the San Francisco Municipal Transportation Agency (SFMTA) Operating Fund to the SFMTA Revolving Fund.

**SUMMARY:**

- In 2007, following the passage of Proposition A, responsibility for the SFMTA Revolving Fund transferred from the Board of Supervisors to the SFMTA Board.
- Currently, the SFMTA Revolving Fund is \$102,000 and is fully allocated to provide change for existing operations.
- The Agency is installing 40 ticket vending machines (TVM) in the Metro Stations as part of the Automated Fare Collection project. These TVMs require \$215,200 in change for operation.
- As the SFMTA Revolving Fund is fully allocated, funding the TVMs requires a transfer of \$215,200 from the SFMTA Operating fund to the SFMTA Revolving Fund.

**ENCLOSURES:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

\_\_\_\_\_

FINANCE \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO Diana Hammons

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

## **PURPOSE**

The purpose of the calendar item is to authorize the Executive Director/CEO to transfer \$215,200 from the SFMTA Operating Fund to the SFMTA Revolving Fund for the operation of 40 new ticket vending machines to be installed in the Muni Metro stations.

## **GOALS**

Transferring \$215,200 from the SFMTA Operating Fund to the SFMTA Revolving Fund would assist the SFMTA in meeting the following strategic goals:

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

Objective 1.4 – Improve accessibility across transit services.

**Goal 2:** External Affairs/Community Relations: To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry.

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

**Goal 3:** Financial Capacity: To ensure financial stability and effective resource utilization.

Objective 4.2 – Ensure the effective use of resources.

## **DESCRIPTION**

### **Background:**

Revolving funds are legislatively established funds. The monies in a revolving fund are replenished by the activity of the fund and are used anew for the same purpose. For example, a revolving fund established for making small business loans would be replenished by loan payments made by borrowers. Once received, these repayments would be loaned out to additional borrowers.

In San Francisco, revolving funds are legislated by the Board of Supervisors and recorded in Section X.V of the San Francisco Administrative Code. Following the passage of Proposition A in 2007, this responsibility for legislative action related to the SFMTA revolving fund was transferred to the SFMTA Board.

The SFMTA revolving fund is \$102,000. The monies in the revolving fund are allocated as follows:

### **Revolving Fund Summary**

<b>Fund</b>	<b>Amount</b>
M-Line TVMs	\$ 1,900
Embarcadero/T-Third TVMs	\$ 12,155
Change Machines	\$ 69,884
Sales (Cable Car, Customer Service, Special Events, Revenue)	\$ 15,591
AFC Equipment Training Fund	\$ 470
Customer Service Center Change Fund	\$ 2,000
<b>Total</b>	<b>\$ 102,000</b>

The SFMTA is installing 40 new TVMs in the Metro stations as part of the Automated Fare Collection equipment project, which includes the replacement of all existing faregates. These TVMs will sell limited use and extended use (Clipper) cards to patrons and provide dollar coins and quarters as change. Installation of the TVMs will begin in August of 2010 and will be completed by October of 2010. \$215,200 is required to provide these machines with sufficient change to dispense to the public: \$112,000 to fill the change hoppers in each TVM and \$103,200 to fill the exchange hoppers used to replace empty change hoppers until they can be refilled and replaced in the TVMs. The required funds are described in the chart below.

#### **TVM Change Required**

Container	Value	Qty Hoppers	Pieces per Hopper	Value
<b>Change Hoppers</b>				
Quarter Hopper	\$ 0.25	40	1600	\$16,000
Dollar Hopper 1	\$ 1.00	40	1200	\$48,000
Dollar Hopper 2	\$ 1.00	40	1200	\$48,000
<b>Total Change Hoppers</b>				<b>\$112,000</b>
<b>Exchange Hoppers</b>				
Quarter	\$ 0.25	60	1600	\$24,000
Dollar	\$ 1.00	66	1200	\$79,200
<b>Total Exchange Hoppers</b>				<b>\$103,200</b>
<b>Total Change required</b>				<b>\$215,200</b>

As shown in the Revolving Fund Summary, the existing monies in the Revolving Fund are fully allocated. Therefore, funding the TVMs requires a transfer of \$215,200 from the SFMTA Operating Fund to the SFMTA Revolving Fund.

#### **ALTERNATIVES CONSIDERED**

Staff analyzed the existing revolving fund allocation and evaluated the ability of the Agency to reallocate existing funds. As per staff analysis, the existing revolving fund allocation is fully optimized.

#### **FUNDING IMPACT**

Transferring \$215,200 from the SFMTA Operating Fund to the SFMTA Revolving Fund would reduce the funding available for other operating expenses by \$215,200.

**OTHER APPROVALS OBTAINED OR STILL REQUIRED**

None.

**RECOMMENDATION**

Staff recommends that the San Francisco Municipal Transportation Agency Board of Directors authorize the Executive Director/CEO (or his designee) to transfer \$215,200 from the SFMTA Operating Fund to the SFMTA Revolving Fund.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, Responsibility for the San Francisco Municipal Transportation Agency (SFMTA) Revolving Fund transferred from the Board of Supervisors to the SFMTA Board in 2007, following the passage of Proposition A ; and,

WHEREAS, SFMTA is installing 40 Ticket Vending Machines (TVMs) as part of the Automated Fare Collection equipment project, which includes the replacement of all existing faregates; and,

WHEREAS, These TVMs require \$215,200 in change; and

WHEREAS, The existing SFMTA Revolving Fund is \$102,000 and is fully allocated to provide change for existing operations; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO transfer \$215,200 from the SFMTA Operating fund to the SFMTA Revolving Fund.

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

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.6 and 10.7**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Executive Director/CEO to proceed with a program of advertising in parking garages under the jurisdiction of the San Francisco Municipal Transportation Agency and the Parking Authority Commission.

**SUMMARY:**

- The Agreement for Advertising on San Francisco Municipal Transportation Agency Property (the "Agreement") between the City and Titan Outdoor LLC ("Titan") began on July 1, 2009 for a term of five years.
- The Agreement allows Titan to advertise in parking garages under the jurisdiction of the SFMTA Board, the Parking Authority Commission and the Recreation and Park Commission after obtaining their approval for the locations of the proposed advertising.
- In order to enhance the amount of revenue obtained from the Agreement, SFMTA staff now seeks that approval from the SFMTA Board and the Parking Authority Commission, starting with a test program in five garages which, if successful, would be expanded to other parking garages.
- Advertisements would be placed mainly in locations on the walls and columns of the lower, entry level floors of parking garages; some advertisements might also be placed on the floors of certain garages.
- SFMTA staff and Titan representatives have met with the garage operators of the five initial garages to introduce the program, respond to questions and address any concerns. SFMTA staff is actively working with the garage operators to obtain their consent for this advertising program.

**ENCLOSURES:**

1. Resolutions

**APPROVALS:**

	<b>DATE</b>
DIRECTOR OF DIVISION PREPARING ITEM _____	_____
FINANCE _____	_____
EXECUTIVE DIRECTOR/CEO _____	_____
SECRETARY _____	_____
ADOPTED RESOLUTION <u>Gail Stein</u> BE RETURNED TO	

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

## **PAGE 2**

### **PURPOSE**

This calendar item authorizes the Executive Director/CEO to proceed with a program of advertising in parking garages under the jurisdiction of the San Francisco Municipal Transportation Agency and the Parking Authority Commission.

### **GOAL**

This item will meet the following goal and objectives of the SFMTA Strategic Plan:

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

### **DESCRIPTION**

The Agreement for Advertising on San Francisco Municipal Transportation Agency Property (the "Agreement") between the City and Titan Outdoor LLC ("Titan") began on July 1, 2009 for a term of five years.

The Agreement allows Titan to advertise in parking garages under the jurisdiction of the SFMTA Board, the Parking Authority Commission and the Recreation and Park Commission after obtaining their approval for the locations of the proposed advertising. Garage advertising is a new product and has the potential for increasing advertising revenue to the SFMTA. As a test program, Titan proposes to place advertisements in the Ellis O'Farrell, 5<sup>th</sup> and Mission, Sutter/Stockton, Moscone Center and Union Square Garages. Titan would place the advertisements mainly in locations on the walls and columns of the lower, entry level floors of those garages. Some advertisements might also be placed on the floors of certain garages. If this test program is successful, Titan would use this model to expand advertising to other parking garages that Titan believes would also be profitable.

SFMTA staff and Titan representatives have met with the garage operators of these five initial garages to introduce the program, respond to questions and address any concerns. SFMTA staff is actively working with the garage operators to obtain their consent for this advertising program.

As part of a proposed contract amendment to the Agreement, the SFMTA Board had approved language in May 2010 to delegate the approval for advertising locations from the SFMTA Board, Parking Authority Commission and Recreation and Park Commission to their respective staff; however, the Board of Supervisors has not approved that contract amendment. Therefore, SFMTA staff is now asking for approval for these advertising locations under the current provisions of the Agreement.

### **ALTERNATIVES CONSIDERED**

The SFMTA would forgo an opportunity to increase revenue if it declines to proceed with this advertising program.



**PAGE 3**

**FUNDING IMPACT**

If successful, advertising in garages might generate up to \$175,000 in revenue for the SFMTA for FY 2011; however, revenues from advertisements in garages with outstanding bond indentures are subject to the terms of those indentures.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

Recreation and Park Department staff will seek the approval of the Recreation and Park Commission for advertising in the Union Square Garage, which is under the jurisdiction of that Commission.

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

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to proceed with a program of advertising in parking garages under the jurisdiction of the San Francisco Municipal Transportation Agency and the Parking Authority Commission.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The Agreement for Advertising on San Francisco Municipal Transportation Agency Property (the "Agreement") between the City and Titan Outdoor LLC ("Titan") began on July 1, 2009 for a term of five years; and

WHEREAS, The Agreement allows Titan to advertise in parking garages under the jurisdiction of the SFMTA Board, the Parking Authority Commission and the Recreation and Park Commission after obtaining their approval for the locations of the proposed advertising; and

WHEREAS, In order to enhance the amount of revenue obtained from the Agreement, SFMTA staff now seeks that approval from the SFMTA Board and the Parking Authority Commission, starting with a test program in five garages (Ellis O'Farrell, 5<sup>th</sup> and Mission, Sutter/Stockton, Moscone Center and Union Square Garages) which, if successful, would be expanded to other parking garages; and

WHEREAS, Advertisements would be placed mainly in locations on the walls and columns of the lower, entry level floors of parking garages, and some advertisements might also be placed on the floors of certain garages; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to proceed with a program of advertising in parking garages under the jurisdiction of the San Francisco Municipal Transportation Agency and the Parking Authority Commission, commencing with a test program in five garages, which, if successful, would be expanded to other garages at the discretion of the Executive Director.

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

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

PARKING AUTHORITY COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO

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

WHEREAS, The Agreement for Advertising on San Francisco Municipal Transportation Agency Property (the "Agreement") between the City and Titan Outdoor LLC ("Titan") began on July 1, 2009 for a term of five years; and

WHEREAS, The Agreement allows Titan to advertise in parking garages under the jurisdiction of the SFMTA Board, the Parking Authority Commission and the Recreation and Park Commission after obtaining their approval for the locations of the proposed advertising; and

WHEREAS, In order to enhance the amount of revenue obtained from the Agreement, SFMTA staff now seeks that approval from the SFMTA Board and the Parking Authority Commission, starting with a test program in five garages (Ellis O'Farrell, 5<sup>th</sup> and Mission, Sutter/Stockton, Moscone Center and Union Square Garages) which, if successful, would be expanded to other parking garages; and

WHEREAS, Advertisements would be placed mainly in locations on the walls and columns of the lower, entry level floors of parking garages, and some advertisements might also be placed on the floors of certain garages; now, therefore, be it

RESOLVED, That the Parking Authority Commission authorizes the Executive Director/CEO, as the authorized representative of the Parking Authority, or his designee, to proceed with a program of advertising in parking garages under the jurisdiction of the San Francisco Municipal Transportation Agency and the Parking Authority Commission, commencing with a test program in five garages, which, if successful, would be expanded to other garages at the discretion of the Executive Director.

I certify that the foregoing resolution was adopted by the Parking Authority Commission at its meeting of \_\_\_\_\_.

\_\_\_\_\_  
Secretary, Parking Authority Commission

**THIS PRINT COVERS CALENDAR ITEM NO. 10.8**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorize the Executive Director/CEO of the SFMTA to execute an Industrial Gross Lease (Lease) with Zocalo Properties, LLC, to relocate the four Shops: Paint, Sign, Meter and Signal from their three current leased facilities to one higher quality industrial warehouse located at 1508 Bancroft Avenue (the Property).

**SUMMARY:**

- The current facilities housing the Paint, Sign, Meter and Signal shops are inadequate for current and future needs and the SFMTA has been searching for an appropriate replacement facility for several years. The property located at 1508 Bancroft Avenue has been identified as an optimal real estate acquisition for the purposes of relocating and consolidating the four Sustainable Streets' Shops into one centralized location to maximize the effectiveness and efficiency of their operations.
- The SFMTA requests approval to lease from Zocalo Properties, LLC, the Property commonly known as San Francisco Assessor's Parcel No. Block 4849-017 for a term of nine years and six months commencing on August 15, 2010 and at an initial rental rate of \$0.80/square foot (s.f.) for 55,000 square feet of ground floor space and \$0.425/s.f. for 35,000 square feet of second floor industrial and office space.
- The initial total annual rent expenditure for the Property is \$706,500 or \$58,875 monthly, adjusted annually by 3%, subject to partial abatement for the 13<sup>th</sup>, 25<sup>th</sup>, 37<sup>th</sup> and 49<sup>th</sup> full calendar months of the Term. The rent has been included in the FY 2011-2012 Operating Budget.
- The SFMTA will expend an additional estimated \$1,000,000 for necessary tenant improvements to upgrade the facility for effective use, which is also included in the FY 2011-2012 Operating Budget.
- The Lease includes an option to purchase the Property.

**ENCLOSURES:**

1. Resolution
2. 1508 Bancroft Property Depictions
3. 1508 Bancroft Property Estimated Expenditures
4. Industrial Lease and Exhibits

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

\_\_\_\_\_  
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ADOPTED RESOLUTION BE RETURNED TO Jason Gallegos

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

## PAGE 2

### PURPOSE

Authorize the Executive Director/CEO of the SFMTA to execute an Industrial Lease (Lease), substantially in the form attached as Enclosure 4, which includes special provisions granting to the City the right to purchase the Property on the terms and conditions set forth in the Lease, including Exhibit G, Form of Agreement of the Purchase and Sale of Real Estate (Purchase Agreement) with Zocalo Properties, LLC, a California Limited Liability Company, to relocate the four Sustainable Streets' Shops: Paint, Sign, Meter and Signal from their current facilities at 1975-79 Bryant Street, 80 Charter Oak, and 901 Rankin to 1508 Bancroft Avenue, an 11 year old, 90,000 square foot industrial warehouse located in the Bayview neighborhood.

### GOAL

This item will meet the following goals and objectives of the SFMTA Strategic Plan:

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

Objective 4.2 Ensure efficient and effective use of resources.

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

Objective 5.1 Increase resources available to employees in performing their jobs (tools, staff hours, etc).

Objective 5.2 Improve facilities in which people are working.

### Background

#### **Beneficial Impact on Sustainable Streets' Four Shops: Paint, Sign, Meter and Signal**

The SFMTA Sustainable Streets Division has four Shops – Paint, Sign, Meter and Signal – to serve the public on the San Francisco busy streets by maintaining, repairing and/or replacing the 200,000 street signs, 24,000 parking meters, 1,150 traffic signals, and 900 miles of striping, plus painting 10 miles of colored curbs and responding to 2,000 requests for curb painting per year. These vital functions are critical to keep transit and traffic moving efficiently and safely, protect and encourage pedestrians and bicyclists, collect parking revenues, and enhance the quality of life in San Francisco.

The current facilities housing the Paint, Sign, Meter and Signal shops are inadequate for current and future needs, and the SFMTA has been searching for an appropriate replacement facility for several years. The property located at 1508 Bancroft Avenue has been identified as an optimal location and facility for co-locating these four shops.

*Paint Shop existing facility*

**80 Charter Oak** has been the location for SFMTA's Sustainable Streets' Paint Shop since 1994. The Paint Shop was under the Department of Public Works (DPW) until the Department of Parking and Traffic (DPT) was formed in 1990. The Paint Shop was operated out of a trailer located at 901 Rankin Street and their vehicles were stored in the DPW yard at 2323 Cesar Chavez, since there was no room at 901 Rankin for the vehicles. The Paint Shop moved to 80 Charter Oak Street in 1994. The leased property at 80 Charter Oak is approximately 11,000 s.f. of a 2-story building and 10,000 s.f. of outdoor parking. The rent started at \$4,350 per month – \$52,200 per year – in 1994, with lease options for extensions, which were exercised. The 2009 lease amendment extended the term for five years, through July 13, 2014, with an option to extend for five additional years. The rent is \$8,800 per month, \$105,600 per year, August 1, 2009 to July 31, 2011, with 3% annual increases starting August 1, 2011. SFMTA can terminate the lease early by giving the Landlord 180 days' advance notice on or after February 1, 2011. The facility has been broken into several times, and the facility and vehicles were vandalized. The facility is over crowded and inadequate space for the Paint Shop to function effectively in the long term.

*Sign Shop existing facility*

**1975-1979 Bryant Street** has been the location for Sustainable Streets' Sign Shop since at least 1980. The Sign Shop was under DPW until DPT was formed in 1990. The leased property at 1975-1979 Bryant Street includes approximately 16,112 s.f. of building and 5,050 s.f. of yard/parking area. The rent started at \$13,770 per month – \$165,240 per year - in 1999. The 2009 lease amendment extended the term for five years, through June 30, 2014. The rent is \$17,987.70 per month, \$215,852.40 per year, in 2010, with 3% annual increases starting July 1, 2011. SFMTA can terminate the lease early by giving the Landlord 180 days' advance notice on or after January 1, 2011. The facility is over crowded and inadequate space for the Sign Shop to function effectively in the long term.

*Meter and Signal Shops*

**901 Rankin St.** is a City-owned building. Prior to various City Departmental reorganizations, the Signal and Parking Meter Shops were part of the Department of Electricity, which eventually became the Department of Technology (DT). The Meter and Signal Shops have been at 901 Rankin Street, which has been under DT, for over 30 years. When the two shops were put under DPW as part of a departmental reorganization, it was agreed that they would maintain their current shop location and space. This agreement continued when the shops became part of DPT in 1990 and then became part of SFMTA. The Signal Shop has approximately 13,675 s.f. and the Meter Shop 13,600 s.f. of work space. SFMTA has not been paying rent for these shops, but has been paying building expenses to DT - in FY 2009-10 expenses were \$99,707. The Meter and Signal Shops must move out of 901 Rankin Street, as must DT, due to the City's plans to redevelop the Rankin Street area into a world-class Produce Center.

**1508 Bancroft Avenue for the Four Sustainable Streets' Shops**

1508 Bancroft Avenue is an 11 year old, higher quality, 90,000 square foot, two story industrial warehouse with office space on 45,000 square feet of land located in the Bayview neighborhood, and in close proximity to the T-Line and to Highways 280 and 101, in an area zoned M-1 (Light Industrial). The warehouse was constructed in 1999. The building is currently vacant, and was most recently occupied by the owner, Zocalo Properties, a furniture distribution company. The site provides inside parking for City vehicles with ventilation. The high drive-in loading docks allow for efficient equipping and loading of City fleet vehicles for the Paint, Sign, Meter and Signal Shops, including with off-street parking inside in the secure, ventilated building. Please see Enclosure 2 for depictions of 1508 Bancroft Avenue.

The SFMTA proposes to enter into an Industrial Lease (the Lease) with an option to purchase provision structured into the Lease and attached as the Purchase Agreement with Zocalo Properties, LLC, a California Limited Liability Company (the Owner), for purposes of relocating and consolidating the four Sustainable Streets' Shops into one lease and in one location, from which the SFMTA and the general public will benefit significantly because of the improved operational efficiencies resulting from the upgraded and centralized facility, where the effective delivery of service on the City's busy streets could be improved beyond the current implemented operational practices, which are limited by their current leased facilities.

SFMTA Real Estate has performed due diligence during the lease and purchase option negotiation process and only a few remaining issues remain, primarily in the areas of environmental testing. The Owner's previous Phase 1 and Phase 2 environmental reports for the Property are from 1998-2001. The City's Department of Public Works recommends new Phase 1 and Phase 2 investigations and reports. This generally requires soil boring, sampling and analysis. Excavation is most likely not required. Completion of all environmental testing will be required prior to a purchase of the Property at a later date, after the SFMTA Board approves the Lease with the option to purchase the Property.

Per the City's Planning Department, the proposed lease and option to purchase requires a General Plan referral. Pursuant to that condition and following SFMTA submission of a CEQA application, the Major Environmental Analysis team of the San Francisco Planning Department (Planning Department) concluded on June 21, 2010, that the proposed City Lease with an Option to Purchase 1508 Bancroft Avenue for the use by the SFMTA was a project that is Categorically Exempt from Environmental Review under CEQA Guidelines Section 15060 (c) (2) – as it was deemed a Nonphysical project. Subsequently on June 24, 2010, the Planning Department concluded and recommended that the project is, on balance, and in conformity with the General Plan (General Plan Referral) via case number 2010.0410R.

Industrial Lease Terms

The proposed Industrial Lease is for a term of nine years and six months commencing on August 15, 2010, at a rental rate that includes the following breakdown per floor: \$0.80/sf for 55,000 square feet of ground floor space and \$0.425/sf for 35,000 square feet of second floor industrial space. The total initial annual SFMTA expenditure for the subject property is \$706,500 per year or \$58,875 per month, with 3% upward price adjustments on an annual basis. The SFMTA will

## PAGE 5

further expend an estimated \$1,000,000 for necessary tenant improvements to upgrade the facility for effective use. These capital expenditures have been previously allocated and budgeted for future SFMTA property acquisitions and corresponding improvements. An appraisal was completed on October 30, 2009, valuing the monthly market rate rent for an industrial gross lease of the subject property at \$58,875. The appraisal also concluded that the property's value as of October 30, 2009 was \$7,875,000.

In addition to the monthly rent, SFMTA will reimburse the Landlord for increases in Real Estate Taxes over the 2009-2010 Base Tax Year and increases in Insurance Costs over the calendar year 2009 Insurance Base Year. Under the proposed modified industrial gross lease, the SFMTA is responsible for services and utilities to the premises (estimated at \$46,644 per year), performs certain repairs, reimburses Landlord for a portion of the cost of certain building system replacements, and once again reimburses Landlord for increases in real estate taxes over the base tax year (base estimated at \$93,684) and increases in insurance costs over the insurance base year (base estimated at \$11,447). Total costs to SFMTA in Years 1-9.5 under the Lease for rent, tenant improvements, utilities, and increases in property taxes and insurance are shown in Enclosure 3. SFMTA would pay for maintenance of and repairs to the elevators and heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems of the Building. The Landlord is responsible for structural items and the roof. Systems will be delivered to SFMTA in good working order. SFMTA will be required to enter into periodic maintenance contracts for the elevators and HVAC systems. Although SFMTA is responsible for normal repairs, if a system fails and needs to be replaced, the Landlord will replace the system and SFMTA will pay an amortized portion of the cost of the replacement during the remaining term of the Lease (using a 12 year amortization schedule). Repair and replacement costs are not expected to be significant due to the current condition and age of the facility.

Two of the three existing leased facilities, 1975-99 Bryant Street and 80 Charter Oak have provisions in their leases which give the SFMTA early termination rights, if exercised on 180 days advance written notice. These early termination rights can be exercised January 1, 2011, for 1975-99 Bryant Street and on February 1, 2011, for 80 Charter Oak. It is anticipated that this new Lease will commence on August 15, 2010, but given the existing lease early termination provisions, full occupancy of the new facility will not occur until July 2011. However, the upside realized because of the one year overlap between the new Lease and the existing leases is that upon full occupancy the building will be delivered to the end users in nearly its final form, with all of the required tenant improvements complete and without the operational constraints which would be experienced if the improvements were to be made while in full operation. 901 Rankin Street, the facility which houses the Signal and Parking Meter shops, can be vacated at any time without notice (See Beneficial Impact on Sustainable Streets' Four Shops for greater details and background information on the existing leased facilities below.) Once the SFMTA Board authorization is given to enter into the Lease with Zocalo Properties, LLC, the SFMTA will deliver termination notices to the existing leased facilities landlords, at the earliest date permissible under the current lease agreements, to stay on schedule and budget to fully occupy the new facility by July 2011.



**Option to Purchase – Pertinent Terms of the Purchase Agreement**

The option to purchase incorporated into the Lease is subject to the following final purchase prices if the option is exercised and purchase completed within the timeframes indicated below:

<b><u>Date of Completion of Purchase</u></b>	<b><u>Purchase Price</u></b>
Initial 18 months of Term	Agreed Purchase Price of \$7,875,000.00
Months 19-24 of Term	Agreed Purchase Price of \$8,111,250.00
Months 25-36 of Term	Agreed Purchase Price of \$8,347,500.00
Year 4 - 7 Expiration Date	Fair Market Purchase Price based on new appraisal with no floor price

If the option to purchase is exercised, subject to identifying adequate funding, and the purchase is completed within the initial 18 months of the Lease term, the purchase price would be the price established by the fair market value appraisal which concluded an opinion of value of \$7,875,000 as of October 30, 2009. The option price for months 19-24 and months 25-36 each reflect an approximate 3% increase from the preceding year. The option purchase price in years 4 -7 will be based on a new fair market value appraisal of the property, with no floor price. After year 7, the option to purchase expires, except as otherwise extended in writing by the Landlord.

**Estimated Cost of Tenant Improvements (TIs)**

SFMTA is planning to do appropriate and desired interior Tenant Improvements (TIs) for the four consolidated shops over the initial 2 year period from the Lease commencement date. The estimated cost for Tenant Improvements (TIs) is \$1,000,000 and those costs have been budgeted. The scope of the TIs may include office and work stations build out, installation of seismically braced storage racks for supplies and equipment, voice and data wirings, and other improvements required by current city codes and regulations. Many of the improvements for the two Shops at 901 Rankin are modular and can be moved, including two mezzanines, work stations, electrician’s benches, and furniture. Since the improvements will be to the building interior space, there will be no significant environmental impacts to the building’s exterior or surrounding areas. Assuming the Lease is approved, SFMTA plans to move the four Shops into 1508 Bancroft as previously indicated by 2010-2011.

**ALTERNATIVES CONSIDERED**

SFMTA Real Estate performed the requisite due diligence and analyzed several industrial warehouses on the market in San Francisco for the past 2½ years, which could potentially fulfill the Agency’s real estate needs. Several properties were sold to private buyers (e.g. for all cash) prior to SFMTA being able to purchase them. In addition, the City is going to redevelop 901 Rankin Street, for the San Francisco Produce Market, and the Meter and Signal shops must relocate. For the purposes of efficient and effective consolidation, Real Estate has determined that the property at 1508 Bancroft Avenue best fits the Agency’s future needs, particularly for the functions identified in this calendar item. The authorization to execute the Lease with the option to purchase will provide and benefit the SFMTA’s Paint, Sign, Signal and Meter Shops with a centralized location to

**PAGE 7**

maximize their throughput capacity and enhance operational efficiencies in an updated facility. Furthermore, the lease and potential acquisition of 1508 Bancroft is recommended pursuant to and in compliance with the aforementioned goals and objectives of the SFMTA Strategic Plan.

**FUNDING IMPACT**

The proposed Lease payments have been budgeted in the FY 2011-2012 Operating Budget as has the funds for tenant improvements. Once additional funding has been secured to purchase the Property, SFMTA staff expects to recommend to the Board that the Agency exercise the option to purchase the Property for the agreed upon purchase price.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The City Attorney's Office has reviewed this Calendar Item. The purchase of the Property pursuant to the option to purchase in the Lease will require additional approval of the SFMTA Board and, depending on the purchase price and total occupancy costs as of the date of exercise of the purchase option, approval of the Board of Supervisors and Mayor.

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize and direct the Executive Director/CEO of the SFMTA to execute the Lease Agreement with the option to purchase the Property on behalf of the SFMTA.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The San Francisco Municipal Transportation Agency ("SFMTA") Sustainable Streets' Division has four Shops – Paint, Sign, Meter and Signal – to serve the public on the San Francisco busy streets by maintaining, repairing and/or replacing the 200,000 street signs, 24,000 parking meters, 1,150 traffic signals, and 900 miles of striping, plus painting 10 miles of colored curbs and responding to 2,000 requests for curb painting per year. These vital functions are critical to keep transit and traffic moving efficiently and safely, protect and encourage pedestrians and bicyclists, collect parking revenues, and enhance the quality of life in San Francisco; and

WHEREAS, SFMTA's four Sustainable Streets Shops – Paint, Sign, Meter and Signal Shops, occupy leased space in 80 Charter Oak and 1975-99 Bryant Street, plus space in 901 Rankin Street; and,

WHEREAS, SFMTA seeks to relocate and consolidate the four Sustainable Streets Shops to one industrial warehouse located at 1508 Bancroft Avenue (the Property), San Francisco Assessor's Parcel No. Block 4849-017, to maximize the effectiveness and efficiency of their operations.

WHEREAS, SFMTA is prepared to enter into an Industrial Gross Lease (Lease), with the Property Owner, Zocalo Properties, LLC, a California Limited Liability Company; and,

WHEREAS, The Lease is for a term of nine years and six months commencing on August 15, 2010 and at an initial rental rate of \$0.80/s.f. for 55,000 square feet of ground floor space and \$0.425/s.f. for 35,000 square feet of second floor industrial and office space, equating to an initial total annual rent expenditure for the Property as \$706,500 or \$58,875 monthly, adjusted annually by 3%, subject to partial abatement for the 13th, 25th, 37th and 49th full calendar months of the Term; and

WHEREAS, The Lease includes special provisions granting to the City the right to purchase the Property on the terms and conditions set forth in the Lease via an Agreement of the Purchase and Sale of Real Estate (Purchase Agreement); and,

WHEREAS, An appraisal was completed on October 30, 2009 valuing the monthly market rent for an industrial gross lease of the Property at \$58,875 and the appraisal also concluded that the Property's fair market value as of October 30, 2009 was \$7,875,000; and

WHEREAS, If the option to purchase is exercised and the purchase is completed within the initial 18 months of the Lease term, the purchase price would be the price established by the fair market value appraisal which concluded an opinion of value of \$7,875,000 as of October 30, 2009. The option price for months 19-24 and months 25-36 each reflect an approximate 3% increase from the preceding year. The option purchase price in years 4 -7 will be based on a new

fair market value appraisal of the property, with no floor price. After year 7, the option to purchase expires, except as otherwise extended in writing by the Landlord; and

WHEREAS, The SFMTA will further expend an estimated \$1,000,000 for necessary tenant improvements to upgrade the facility for effective use; and

WHEREAS, These capital expenditures have been previously allocated and budgeted for future SFMTA property acquisitions and corresponding improvements; and

WHEREAS, The San Francisco Planning Department concluded on June 21, 2010, that the proposed Lease with an option to purchase the 1508 Bancroft Avenue property was a project that is Categorically Exempt from Environmental Review under CEQA Guidelines Section 15060 (c) (2) and subsequently on June 24, 2010, the Planning Department concluded and recommended via a General Plan Referral, case number 2010.0410R, that the project is, on balance, and in conformity with the General Plan; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO of the SFMTA to execute an Industrial Gross Lease (the Lease), which includes special provisions granting to the City the right to purchase the Property on the terms and conditions set forth in the Lease and the Agreement of the Purchase and Sale of Real Estate with Zocalo Properties, LLC, a California Limited Liability Company, to relocate the four Sustainable Streets' Shops: Paint, Sign, Meter and Signal from their current facilities at 1975-79 Bryant Street, 80 Charter Oak, and 901 Rankin to 1508 Bancroft, San Francisco Assessor's Parcel No. Block 4849-017, to gain increased operational efficiencies, and maximize throughput capacity delivered by the Sustainable Street Shops with a highly upgraded, consolidated and centralized facility.

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

## 1508 Property Depictions



HC&M

## State of the Art San Francisco Warehouse Facility



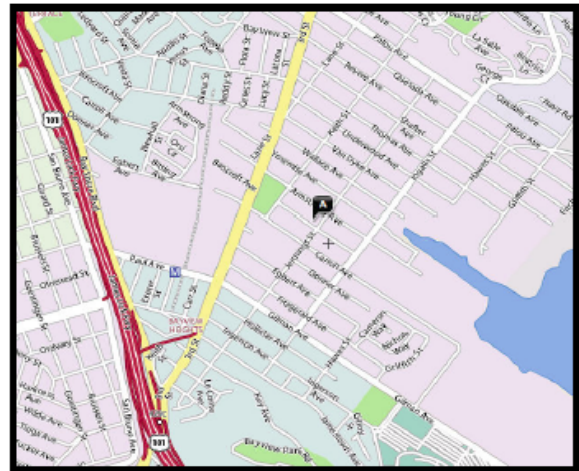
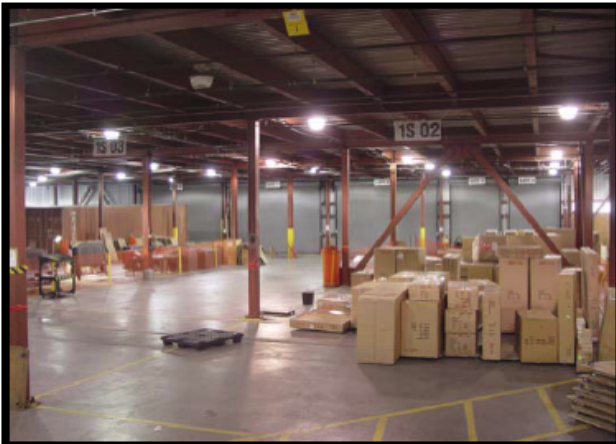
### 1508 Bancroft Ave. (@ Jennings)

#### Property Features:

- ◆ 90,000 +/- square feet Total
- ◆ 10,000 +/- square feet Improved Office Area
- ◆ Dock High Drive-In Loading
- ◆ ADA Accessible
- ◆ Divisible to Accommodate Multiple Tenants

Asking LEASE Price: \$0.75 psf IG

Asking SALE Price: \$8.55 Million



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Lic# 01108232

HC&M

COMMERCIAL PROPERTIES, INC.

1234 Mariposa Street • San Francisco • CA 94107

1508 Bancroft Property Estimated Expenditures

## 1508 Bancroft Lease Option Expenditures

(\*Base rent credit for 1/2 month reflected in years 2,3,4,5) - Page 1 of 3

Expenditures	Effective Base Year	Year #	1	2	3	4	5
Annual Base Rent			\$706,500	\$727,695	\$749,526	\$772,012	\$795,172
Base Rent Credit				-\$30,321	-\$31,230	-\$32,167	-\$33,132
Total Annual Base Rent			\$706,500	\$697,374	\$718,296	\$739,845	\$762,040
<b>Operating Expenses</b>							
Water			\$2,918	\$2,976	\$3,036	\$3,097	\$3,159
Garbage			\$10,590	\$10,802	\$11,018	\$11,238	\$11,463
Electricity/Gas			\$30,636	\$31,249	\$31,874	\$32,511	\$33,161
Maintenance (elevator)			\$2,500	\$2,550	\$2,601	\$2,653	\$2,706
<b>Sub-total Operating Expenses</b>			\$46,644	\$47,577	\$48,528	\$49,499	\$50,489
<b>Taxes and Insurance</b>							
Base Real Estate Taxes**	\$93,681			\$1,874	\$1,911	\$1,949	\$1,988
Base Insurance***	\$11,447			\$229	\$234	\$238	\$243
<b>Sub-total Taxes and Insurance</b>	\$105,128			\$2,103	\$2,145	\$2,188	\$2,231
TI Expense @\$1MM (75% yr 1, 25% yr 2)			\$750,000	\$250,000	\$0		
<b>Total Annual Lease/Operating Exp Payment w/TI</b>						<b>\$843,218</b>	<b>\$867,480</b>

# 1508 Bancroft Lease Option Expenditures

(\*Base rent credit for 1/2 month reflected in years 2,3,4,5) - Page 2 of 3

Expenditures	Year #	6	7	8	9	9.5	9.5 Year Lease & TIs
Annual Base Rent		\$819,027	\$843,598	\$868,906	\$894,973	\$460,911	\$7,638,320
Base Rent Credit							-\$126,850
Total Annual Base Rent		\$819,027	\$843,598	\$868,906	\$894,973	\$460,911	\$7,511,470
Operating Expenses							
Water		\$3,222	\$3,286	\$3,352	\$3,419	\$1,744	\$30,208
Garbage		\$11,692	\$11,926	\$12,165	\$12,408	\$6,328	\$109,630
Electricity/Gas		\$33,825	\$34,501	\$35,191	\$35,895	\$18,306	\$317,149
Maintenance (elevator)		\$2,760	\$2,815	\$2,872	\$2,929	\$2,988	\$27,374
Sub-total Operating Expenses		\$51,499	\$52,529	\$53,579	\$54,651	\$29,366	\$484,361
Taxes and Insurance							
Base Real Estate Taxes**		\$2,028	\$2,069	\$2,110	\$2,152	\$1,098	\$17,179
Base Insurance***		\$248	\$253	\$258	\$263	\$134	\$2,099
Sub-total Taxes and Insurance		\$2,276	\$2,321	\$2,368	\$2,415	\$1,232	\$19,278
TI Expense @\$1MM (75% yr 1, 25% yr 2)							
Property Purchase		\$872,802	\$898,448	\$924,853	\$952,039	\$491,509	\$9,015,109
Total Annual Expenditures with Purchase after yr. 1, 2, 3			\$1,503,144	\$997,053	\$766,824		

# 1508 Bancroft Lease Option Expenditures

(\*Base rent credit for 1/2 month reflected in years 2,3,4,5) - Page 3 of 3

<b>Property Purchase Price</b>	<b>Exercise Period</b>		<b>Rent + TIs</b>	<b>PP + Rent + TIs</b>
<b>\$7,875,000</b>	<b>Initial 18 months of Lease term</b>		<b>\$1,503,144</b>	<b>\$9,876,670.75</b>
<b>\$8,111,250 (3% increase)</b>	<b>Months 19-24</b>		<b>\$498,526.75</b>	<b>\$10,112,920.75</b>
<b>\$8,347,500 (3% increase over prior)</b>	<b>Months 25-36</b>		<b>\$2,770,639.69</b>	<b>\$11,118,139.69</b>
<b>Cumulative Rent/Operating/TI Payments</b>		<b>\$9,015,109</b>		
<b>Cumulative NPV Rent/Operating/TI payments</b>		<b>\$7,617,941</b>		
<b>Cumulative Total Annual Base Rent Payments</b>		<b>\$7,511,470</b>		
<b>Cumulative NPV of Total Annual Base Rent Payments</b>		<b>\$6,240,440</b>		
Annual Rent Adjustment (3%)	103%			
Annual Operating Exp. Adjustment (2%)	102%			
Discount rate	3.50%			

\*\*The estimated property tax is 1.159% of assessed value + 2% increase/year. SFMTA is to pay the Landlord, as additional charges, if any, by which real estate taxes for any tax year exceed real estate taxes for the base tax year.

\*\*The estimated property insurance is \$11,447 + estimated 2% increase/year. SFMTA is to pay the Landlord, as additional charges, if any, by which insurance for any insurance year exceed insurance for the base insurance year.



**Industrial Lease and Exhibits**

INDUSTRIAL LEASE

between

ZOCALO PROPERTIES LLC,  
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,  
as Tenant

For the lease of  
1508 Bancroft Avenue,  
San Francisco, California

\_\_\_\_\_, 2010

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- EXHIBIT D – Appraisal Procedure
- EXHIBIT E – Form of Memorandum of Lease
- EXHIBIT F – Form of Subordination, Nondisturbance and Attornment Agreement
- EXHIBIT G –Form of Purchase Agreement

## INDUSTRIAL LEASE

THIS INDUSTRIAL LEASE (this "Lease"), dated for reference purposes only as of \_\_\_\_\_, 2010, is by and between ZOCALO PROPERTIES LLC, a California limited liability company ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City" or "Tenant"), acting by and through the San Francisco Municipal Transportation Agency ("SFMTA").

Landlord and City hereby agree as follows:

### 1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date: \_\_\_\_\_, 2010

Landlord: ZOCALO PROPERTIES LLC

Tenant: CITY AND COUNTY OF SAN FRANCISCO

Building (Section 2.1): 1508 Bancroft Avenue

Premises (Section 2.1): The Building and the real property which comprises Lot 17, Block 4849 and is more particularly described on Exhibit A

Rentable Area of Building (Section 2.1): Approximately 90,000 rentable square feet

Term (Section 3): Estimated Commencement Date:  
August 15, 2010

Expiration Date: The date which is nine (9) years and six (6) months following the Commencement Date.

Base Rent (Section 4.1): Annual Base Rent: \$706,500.00, as adjusted annually by 3% pursuant to Section 4.2., and subject to the partial abatement for the 13<sup>th</sup>, 25<sup>th</sup>, 37<sup>th</sup> and 49<sup>th</sup> full calendar months of the Term pursuant to Section 4.1.

Monthly payments: \$58,875.00 (comprised of \$0.80/sf for 55,000 square feet of ground floor space and second floor office space and \$0.425/sf for 35,000 square feet of second floor industrial space), as adjusted annually by 3% pursuant to Section 4.2.

Adjustment Dates (Section 4.2): The first day of the thirteenth (13<sup>th</sup>) full calendar month of the Term and each annual anniversary of such date.

Additional Charges (Section 4.3): "Industrial gross lease" under which City is responsible for services and utilities to the Premises, performs certain repairs, reimburses Landlord for a portion of the cost of certain Building System replacements described in Section 8.3, and reimburses Landlord for increases in Real Estate Taxes over the Base Tax Year and increases in Insurance Costs over the Insurance Base Year, as provided in Section 4.

Base Tax Year (Section 4.3): The fiscal tax year commencing July 1, 2009 and ending June 30, 2010.

Insurance Base Year (Section 4.3): The calendar year commencing January 1, 2009 and ending December 31, 2009. Landlord represents that the Insurance Costs for the Insurance Base Year are \$11,447.00.

Use (Section 5.1): General office and warehouse uses, parking, and light industrial uses such as a sign shop, paint shop, meter shop and similar uses.

Delivery Condition (Section 6): Landlord shall deliver the Premises broom clean, with all carpeting in the office areas freshly shampooed.

Utilities and Services (Section 9): Provided by City at City's expense

Notice Address of Landlord (Section 23.1): Zocalo Properties, LLC  
c/o Jeremy Sommers  
2046 Golden Gate Ave.  
San Francisco, Ca. 94115

Key Contact for Landlord: Jeremy Sommers

Landlord Contact Telephone No.: (415) 929-9241

Notice Address for Tenant (Section 23.1): San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Real Estate Section  
Re: 1508 Bancroft

Fax No.: (415) 701-4341

with a copy to: Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: Real Estate/Finance Team  
Re: 1508 Bancroft  
Fax No.: (415) 554-4755

Key Contact for Tenant: Senior Manager  
SFMTA Real Estate Section  
Finance and Information Technology Division  
1 South Van Ness, 8th Floor  
San Francisco, CA 94103

Tenant Contact Telephone No.: (415) 701-4323

Alternate Contact for Tenant: Manager  
SFMTA Real Estate Section  
Finance and Information Technology Division  
1 South Van Ness, 8<sup>th</sup> Floor  
San Francisco, CA 94013

Alternate Contact Telephone No.: (415) 701-4794

Brokers (Section 23.8): Landlord: HC&M Commercial Properties,  
pursuant to the Exclusive Authorization to Lease  
and Commission Agreement, dated May 6, 2009.

Tenant: None

City Purchase Option (Section 22.1): City shall have the option to purchase the  
Premises on the terms and conditions set forth in  
Section 22.

## **2. PREMISES**

### **2.1 Lease Premises**

Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, premises identified in the Basic Lease Information, including the Building (the "Building"), more particularly described on Exhibit A (the "Premises"). The Building, land upon which the Building is located and all other improvements on or appurtenances to such land are referred to collectively as the "Property."

### **2.2 Delivery**

Landlord shall deliver the Premises to City vacant and broom clean, free of any tenancies, and free of the personal property of Landlord or any previous tenant.

## **3. TERM**

### **3.1 Term of Lease**

The Premises are leased for a term (the "Term") commencing on the date specified in the Basic Lease Information as the estimated commencement date or such later date as Landlord shall have delivered the entire Premises to City vacant and free of other tenancies and occupants (the "Commencement Date") and ending on the Expiration Date specified in the Basic Lease Information, or such earlier date on which this Lease terminates pursuant to the provisions of this Lease. Notwithstanding the foregoing, in no event shall the Term commence prior to the Effective Date, as defined in Section 23.30 below.



### **3.2 Commencement Date and Expiration Date; Pre-Term Entry**

The dates on which the Term commences and terminates pursuant hereto are referred to respectively as the "Commencement Date" and the "Expiration Date." Promptly after the Commencement Date Landlord shall deliver to City a notice substantially in the form of Exhibit B attached hereto, confirming the Commencement Date, but Landlord's failure to do so shall not affect the commencement of the Term. Landlord and City acknowledge that the parties anticipate that Landlord and City will enter into a license or other right of entry agreement (the "Entry Agreement") under which City will have the right to enter onto the Premises prior to the commencement of the Term hereof to perform certain environmental testing at the Premises. City's entry onto and use of the Premises prior to the Commencement Date pursuant to the terms of the Entry Agreement shall be governed by the terms of the Entry Agreement and shall not affect the commencement of the Term of this Lease.

### **3.3 Delay in Delivery of Possession**

Landlord shall use its best efforts to deliver possession of the Premises in the condition required by this Lease on or before the Estimated Commencement Date. However, if Landlord is unable to deliver possession of the Premises as provided above, then, subject to the provisions of this Section below, the validity of this Lease shall not be affected by such inability to deliver possession except that City's obligations to pay Base Rent or any other charges shall not commence until such time as Landlord has delivered the entire Premises as required under this Lease, and City shall receive a rent credit equal to one (1) day of Base Rent for each day during the period which commences on the later of the Effective Date or the Estimated Commencement Date and ends on the date immediately preceding the Commencement Date. Further, if Landlord is unable to deliver possession of the Premises to City as required hereunder within one hundred twenty (120) days after the Estimated Commencement Date, then City may, at its option, terminate this Lease, without any further liability under this Lease, upon written notice to Landlord. In the event of such termination, Landlord shall promptly reimburse City any and all costs paid or incurred by SFMTA or City in connection with the negotiation of this Lease, inspection or testing of the Premises, the construction of Alterations or the performance of repairs or other improvements to the Building, including, without limitation, General Plan referral fees, costs incurred during the course of negotiating any exclusive negotiation agreement between City and Landlord, any negotiating fee, services of real estate and economic consultants (including, without limitation, experts within the City that are paid by SFMTA) and legal services (including, without limitation, costs for the City Attorney's office and outside counsel).

## **4. RENT**

### **4.1 Base Rent; Scheduled Rent Abatement**

Beginning on the Commencement Date, City shall pay to Landlord during the Term the annual Base Rent specified in the Basic Lease Information (the "Base Rent"). The Base Rent shall be payable in equal consecutive monthly payments on or before the first day of each month, in advance, at the address specified for Landlord in the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than thirty (30) days' advance notice. City shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise provided in this Lease. If the Commencement Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for such fractional month shall be prorated based on a thirty (30)-day month. Notwithstanding the foregoing, fifty percent (50%) of the Base Rent and fifty percent (50%) of all Additional Charges (as defined below) shall be abated for thirteenth (13<sup>th</sup>), twenty-fifth (25<sup>th</sup>), thirty-seventh (37<sup>th</sup>) and forty-ninth (49<sup>th</sup>) full calendar months of the Term.

## **4.2 Adjustments in Base Rent**

On each date specified in the Basic Lease Information for the adjustment of Base Rent (an "Adjustment Date"), the Base Rent payable under Section 4.1 shall be adjusted to equal one hundred three percent (103%) of the Base Rent for the lease year immediately preceding such Adjustment Date.

## **4.3 Industrial Gross Lease; Additional Charges**

This Lease is a so-called "industrial gross lease" under which City shall be responsible for services and utilities to the Premises, shall reimburse Landlord for a portion of the cost of certain Building System replacements described in Section 8.3 below, and shall reimburse Landlord for increases in Real Estate Taxes over the Base Tax Year and increases in Insurance Costs over the Insurance Base Year, as provided below. All charges or other amounts required to be paid or reimbursed by City under this Lease ("Additional Charges"), shall be additional rent hereunder and, to the extent payable to Landlord, shall be payable to Landlord at the place where the Base Rent is payable. Landlord shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. The Base Rent and Additional Charges are sometimes collectively referred to below as "Rent."

## **4.4 Definitions**

For purposes hereof, the following terms shall have the meanings hereinafter set forth:

(a) "Base Tax Year" means the fiscal tax year specified in the Basic Lease Information.

(b) "Expense Year" means each fiscal year commencing July 1<sup>st</sup> of each year during the Term, and any partial fiscal year in which this Lease commences.

(c) "Insurance Base Year" means the calendar year specified in the Basic Lease Information.

(d) "Insurance Costs" means all insurance costs, including, but not limited to, the cost of property and liability coverage and rental income and earthquake insurance applicable to the Property which Landlord is obligated to provide pursuant to the terms of this Lease, provided that with respect to types of insurance which Landlord does not carry during the Insurance Base Year but obtains in an Expense Year subsequent to the Insurance Base Year (e.g., earthquake insurance), for purposes of calculating City's payments pursuant to Section 4.5 for such subsequent Expense Year, Insurance Costs for the Insurance Base Year shall be deemed increased by the premiums attributable to such insurance in such Expense Year, as such premiums shall be decreased to reflect any percentage increase in the CPI (as defined below) from the CPI in effect on the Commencement Date to the CPI in effect for July 1st of such later Expense Year. The term "CPI" as used herein means the Consumer Price Index for All Urban Consumers (1982-84 = 100) San Francisco-Oakland-San Jose, California, All Items, published by the Bureau of Labor Statistics of the U.S. Department of Labor.

(e) "Real Estate Taxes" means all taxes, assessments and charges levied upon or with respect to the portion of the Building owned by Landlord, or Landlord's interest in the Building. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services thereof, service payments in lieu of taxes that are now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision thereof, public corporation, district, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be

levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes.

Notwithstanding the foregoing, Real Estate Taxes shall exclude (1) franchise, transfer, inheritance, or capital stock taxes or income taxes measured by the net income of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax, (2) any penalties, fines, interest or charges attributable to the late payment of any taxes, except to the extent attributable to City's failure to pay its portion of Real Estate Taxes hereunder, (3) any personal property taxes payable by City hereunder or by any other tenant or occupant of the Building, or (4) any increase in Real Estate Taxes due to any reassessment upon a transfer of any of Landlord's interest in the Building or the real property on which the Building is located, except as provided in Section 4.6 below.

(f) "Tax Year" means each fiscal tax year during the Term, including any partial year during which this Lease may commence; provided that Landlord, upon notice to City, may change the Tax Year from time to time to any other twelve (12) consecutive month period and, in the event of any such change, City's Percentage Share of Real Estate Taxes shall be equitably adjusted for the Tax Year involved in any such change. Tax Year shall not include the Base Tax Year.

#### **4.5 Payment of Increases in Insurance Costs**

During the Term, City shall pay to Landlord each month, as Additional Charges, one twelfth (1/12) of the amount, if any, by which Insurance Costs paid by Landlord for the then-current Expense Year exceed Insurance Costs paid by Landlord for the Insurance Base Year. City shall make such payments, in advance, in an amount estimated by Landlord as provided in this Section 4.5. On or before February 1 of each calendar year during the Term of this Lease, Landlord shall provide City with written notice of Landlord's good faith estimate of the Insurance Costs for the following Expense Year, which estimate shall be explained in reasonable detail. Landlord may revise such estimates of Insurance Costs from time to time, but shall use good faith efforts to provide such estimates as early as possible. Commencing on the later of July 1 of each Expense Year or the date which is ninety (90) days after City's receipt of Landlord's estimate (or revised estimate) of Insurance Costs, City shall make payments to Landlord on the basis of such estimates. With reasonable promptness, and in all events within thirty (30) days after Landlord has received the invoice(s) for Insurance Costs for any Expense Year, Landlord shall furnish City with a statement ("Landlord's Insurance Statement") setting forth the amount of Insurance Costs for such Expense Year. If the actual increase in Insurance Costs for such Expense Year over the Insurance Costs for the Insurance Base Year exceeds the estimated increase in Insurance Costs paid by City for such Expense Year, City shall pay to Landlord (whether or not this Lease has terminated) the shortfall within sixty (60) days after the receipt of Landlord's Insurance Statement. If the total amount of estimated increase in Insurance Costs paid by City for such Expense Year exceeds the actual increase in Insurance Costs for such Expense Year, such excess shall be credited against the next installments of Rent due from City hereunder, or at City's option, such excess shall be refunded to City.

#### **4.6 Payment of Increases in Real Estate Taxes**

During the Term, City shall pay to Landlord, as Additional Charges, the amount, if any, by which Real Estate Taxes for any Tax Year exceed Real Estate Taxes for the Base Tax Year. With reasonable promptness, and in all events within thirty (30) days after Landlord has received the real estate tax bill for any Tax Year, Landlord shall furnish City with a copy of the tax bill and a statement ("Landlord's Tax Statement") setting forth the amount of Real Estate Taxes payable by City for such Tax Year. City shall reimburse Landlord for the increase in the Real

Estate Taxes semiannually not later than ten (10) days before the taxing authority's delinquency date or thirty (30) days after receipt of Landlord's Tax Statement, whichever is later. If the actual increase in Real Estate Taxes for such Tax Year over the Real Estate Taxes for the Base Tax Year exceeds the estimated increase in Real Estate Taxes previously paid by City for such Tax Year, City shall pay to Landlord (whether or not this Lease has terminated) the shortfall within sixty (60) days after the receipt of a written statement from Landlord evidencing such shortfall, and if the increase in Real Estate Taxes paid by City for any Tax Year exceeds the actual increase in Real Estate Taxes for such Tax Year, such excess shall be credited against the next installments of Rent due from City hereunder, or at City's option, such excess shall be refunded to City.

Notwithstanding anything to the contrary in this Lease, if a sale or transfer of the Property occurs during the term of this Lease which causes a reassessment of the Property for the purposes of Real Estate Taxes, then, following such sale or transfer and through the expiration of the Term of this Lease, City's share of increases in Real Estate Taxes shall be limited to the sum of (a) the increases in Real Estate Taxes for such period that would have resulted absent such sale or transfer assuming the taxing rate which would have been applicable absent such sale or transfer (including the effect of any authority to impose cumulative unused tax increases in the absence of a sale or transfer) had been imposed by the taxing authority and (b) the following percent of that portion of the increase in Real Estate Taxes that is solely due to such sale or transfer of the Property:

<u>Applicable Period of Lease Term</u>	<u>Percentage</u>
Tax Year of sale or transfer	0%
First Tax Year after Tax Year of sale or transfer	25%
Second Tax Year after Tax Year of sale or transfer	50%
Third Tax Year after Tax Year of sale or transfer	75%
Fourth Tax Year after Tax Year of sale or transfer and thereafter	100%

#### **4.7 Proration**

If the Commencement Date or Expiration Date shall occur on a date other than the first or last day of a Tax Year or Expense Year, City's share of increases in of Real Estate Taxes or Insurance Costs for the Tax Year or Expense Year in which the Commencement Date or Expiration Date occurs shall be prorated based on a three hundred sixty-five (365)-day year.

#### **4.8 Audits**

City shall have the right, upon not less than five (5) business days' notice to Landlord, to audit the books and records of the Building related to insurance premiums and Real Estate Taxes. If such audit discloses any discrepancies which would result in a reduction of City's share of increases in Real Estate Taxes or Insurance Costs, Landlord shall immediately refund to City the amount of any overpayment by City. City shall pay the cost of such audit, provided that if such audit discloses any discrepancies which result in a reduction of City's share of increases in Real Estate Taxes or Insurance Costs of three percent (3%) or more for any Tax Year or Expense Year, as applicable, then Landlord shall pay the costs of such audit.

#### **4.9 Records**

Landlord shall maintain at Landlord's Northern California headquarters, in a safe, complete and organized manner all of its records pertaining to this Lease and Real Estate Taxes, Insurance Costs and any other charges paid by City pursuant hereto, for a period of not less than three (3) years following expiration of the Term. Landlord shall maintain such records on a

current basis and in sufficient detail to facilitate adequate audit and review thereof. All such books and records shall be available for inspection, copying and audit by City and its representatives, at City's expense, subject to the provisions of Section 4.8. At City's written request, Landlord shall provide copies of such records to City at the Premises or at the address for notices to City specified in Section 1.

## **5. USE**

### **5.1 Permitted Use**

City may use the Premises for general office and warehouse uses, parking, and light industrial uses such as a sign shop, paint shop, meter shop and similar uses, and for no other use without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed.

### **5.2 Interference with Access or Use**

Landlord shall not restrict access to the Premises; provided, however, that Landlord may, after consultation with the Senior Manager of SFMTA's Real Estate Section, interrupt City's access to the Premises in the event of an immediate threat of the Premises or any portion of the Building being rendered unsafe for human occupancy. If City's use of any of the Premises or access thereto is interrupted as a result of the Premises being rendered unsafe for human occupancy due to Landlord's failure to comply with its obligations under this Lease or for any other reason other than City's default hereunder, then Landlord shall immediately undertake all necessary steps to correct such condition. In the event such condition continues for two (2) business days and impairs City's ability to carry on its business in the Premises, the Rent payable hereunder shall be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises. If any such default by Landlord shall continue for thirty (30) days or more after City's use is interrupted and impairs City's ability to carry on its business in the Premises, then City shall have the right, without limiting any of its other rights under this Lease to terminate this Lease, unless Landlord supplies City with evidence reasonably satisfactory to City that City's normal and safe use will be restored within sixty (60) days of the date City's use was interrupted, and such use is actually restored within such 60-day period. Nothing in this Section shall limit City's rights with respect to any disruption due to casualty pursuant to Section 12 (Damage and Destruction) hereof.

## **6. PREPARATION OF PREMISES**

Prior to delivery of the Premises to Tenant Landlord shall shampoo the carpets throughout the office areas of the Premises.

## **7. ALTERATIONS**

### **7.1 Alterations by City**

City shall not make or permit any alterations, installations, additions or improvements (collectively, "Alterations") to the Premises without first obtaining Landlord's written consent, which Landlord shall not unreasonably withhold or delay. However, the installation of furnishings, fixtures, equipment or decorative improvements, none of which affect the Building Systems (as defined in Section 8.2) or structural integrity of the Building, and the repainting and recarpeting of the Premises shall not constitute Alterations requiring Landlord's consent. Any Alterations permitted hereunder shall be made at City's cost in compliance with applicable Laws (as defined below). Landlord shall, without cost to itself, cooperate with City in securing building and other permits and authorizations needed in connection with any permitted Alterations. Landlord shall not be entitled to any construction or other administrative fee in

connection with any Alteration. City shall not be required to remove any Alterations upon the expiration or sooner termination of this Lease.

## **7.2 Title to Improvements**

Except for City's Personal Property (as defined in the next Section), all appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in the Premises as of the Commencement Date shall be and remain Landlord's property, and all appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in the Premises during the Term shall be City's property until the end of the Lease Term or such earlier date designated by Landlord in written notice to Tenant. City may not remove such property unless Landlord consents thereto.

## **7.3 City's Personal Property**

All furniture, furnishings, equipment, trade fixtures and articles of movable personal property installed in the Premises by or for the account of City and that can be removed without structural damage to the Premises (collectively, "City's Personal Property") shall be and remain City's property. At any time during the Term or at the expiration thereof, City may remove any of City's Personal Property, provided City shall repair any damage to the Premises resulting therefrom. Upon the expiration or earlier termination of this Lease, City shall remove City's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises), below. Landlord acknowledges that some of City's Personal Property may be financed by an equipment lease financing otherwise subjected to a security interest, or owned by an equipment company and leased to City. Landlord, upon City's reasonable request, shall execute and deliver any document required by any supplier, lessor, or lender in connection with the installation in the Premises of any items of City's Personal Property, pursuant to which Landlord waives any rights it may have or acquire with respect to City's Personal Property, so long as the supplier, equipment lessor or lender agrees that it (i) will remove the Property from the Premises within thirty (30) days after the Expiration Date (but if it does not remove City's Personal Property within such time it shall have waived any rights it may have had to City's Personal Property), and (ii) will repair any damage caused by the removal of City's Personal Property. Landlord shall recognize the rights of any supplier, lessor or lender who has an interest in any items of City's Personal Property to enter the Premises and remove such property at any time during the Term or within thirty (30) days after the Expiration Date.

## **7.4 Alteration by Landlord**

Landlord shall use its best efforts to minimize interference with or disruption to City's use and occupancy of the Premises during any alterations, installations, additions or improvements to the Building. Landlord shall promptly remedy any such interference or disruption upon receiving City's notice thereof.

# **8. REPAIRS AND MAINTENANCE**

## **8.1 Landlord's Repairs**

Landlord, at its sole cost and expense, shall repair and maintain, in first-class condition, the exterior and structural portions of the Building, including, without limitation, the roof, foundation, bearing and exterior walls, and subflooring.

## **8.2 City's Repairs**

Subject to Landlord's obligation to deliver the Building Systems (as defined below) in good working order and Landlord's repair, maintenance and replacement obligations hereunder,

City shall (a) repair and maintain at its cost the heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems of the Building (collectively, the "Building Systems"), (b) repair and maintain the interior portions of the Building and shall keep the Premises in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by casualty, and (c) remove graffiti from the exterior of the Building. City shall perform any such required repairs, maintenance and replacements that are City's responsibility hereunder (i) at City's cost, (ii) by contractors or mechanics selected by City and reasonably approved by Landlord, (iii) so that same shall be at least substantially equal in quality, value and utility to the original work or installation prior to damage thereof, (iv) in a manner and using equipment and materials that will not materially interfere with or impair the operations, use or occupation of the Building or the Building Systems, and (v) in compliance with all applicable Laws, including, without limitation, any applicable contracting requirements under City's Charter and Administrative Code. Notwithstanding the foregoing to the contrary, City shall have no obligation to make or pay for any structural improvement or modification to the Premises or the not triggered by City's Alterations or City's specific use of the Premises. Landlord shall assign to City any construction warranty or other warranties or guaranties held by Landlord with respect to the Premises or any part or component thereof, other than warranties with respect to building components which Landlord is obligated to repair and maintain pursuant to the provisions of Section 8.1 above.

### **8.3 Landlord's Replacement of Building Systems; Reimbursement by City**

Without relieving City of liability resulting from City's failure to exercise and perform good maintenance practices, if an item described in clause (a) of the first sentence of Section 8.2 cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Landlord, and the cost thereof shall be prorated between the Landlord and City as follows. City shall be obligated to pay, each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (i.e. 1/144th of the cost per month), provided that, as a condition to City's payment obligation, Landlord shall provide to City a detailed accounting of the replacement cost and supporting documents, such as receipts and construction invoices. City shall pay interest on the unamortized balance at an annual interest rate of ten percent (10%), but may prepay its obligation at any time.

### **8.4 Standards for Landlord's Performance; City's Remedies**

In performing its obligations hereunder, Landlord shall undertake commercially reasonable measures in accordance with good construction practices to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work. Dust, noise, fumes, odors and other effects of such work shall be controlled using commercially reasonable methods customarily used to control deleterious effects associated with similar projects in occupied buildings (i.e., after-hours core drilling). On written or telephonic notice from City that any repair or replacement is required which is Landlord's obligation hereunder, or otherwise becoming aware of the necessity of such repair, Landlord shall proceed with reasonable diligence to perform such repair or replacement as promptly as possible and shall keep City apprised of its efforts. Without limiting the foregoing, Landlord shall in all events provide City with a written acknowledgement to a written repair or replacement request within five (5) business days of receipt thereof. During any period when City's use of the Premises is impaired by the necessity for or performance of repairs or replacements which are Landlord's obligation hereunder, Rent shall abate in proportion to the extent to which the unrepaired condition or work disrupts City's conduct of its business at the Premises. The prior sentence is inapplicable to repairs to the Premises that are necessitated due to damage caused by fire or other casualty where such damage is governed by Section 12.

## **8.5 Liens**

City shall keep the Premises free from liens arising out of any work performed, material furnished or obligations incurred by City during the Term. Landlord shall have the right to post on the Premises any notices permitted or required by law or that are needed for the protection of Landlord, the Premises, or the Building, from mechanics' and material suppliers' liens. City shall give Landlord at least ten (10) days' prior written notice of commencement of any repair or construction by City on the Premises.

## **9. UTILITIES AND SERVICES**

City shall be responsible for all utilities and services to the Premises. Landlord shall not be liable for any failure or interruption of any utility service furnished to the Premises, and no such failure or interruption shall entitle City to any abatement in Rent or to terminate this Lease, unless such interruption is due to the negligence or willful misconduct of Landlord, and except in connection with Landlord's replacement obligations under Section 8.3 above. Landlord shall use reasonable diligence to make such replacements to Building Systems within the Premises as may be required to restore utility services. Notwithstanding the foregoing, if any interruption in services or utilities is (i) within Landlord's reasonable control and continues for three (3) or more consecutive business days, or (ii) outside Landlord's reasonable control and continues for sixty (60) or more consecutive days, and Tenant is unable to and does not use a material portion of the Premises for Tenant's business purposes as a result thereof, then Tenant shall be entitled to an abatement of rent hereunder, which abatement shall be based on the extent of Tenant's inability to use the Premises.

## **10. COMPLIANCE WITH LAWS; PREMISES CONDITION**

### **10.1 Premises Condition and Landlord's Compliance with Laws; Indemnity**

Landlord has provided City with the following roof and building systems inspection reports: roof report prepared by Crown Sheet Metal & Skylights, Inc., dated May 20, 2010; undated letter from Schmitt Heating Co., Inc., summarizing an inspection of the heating system units performed on May 3, 2010; letter from SF Rents.com, dated May 6, 2010, regarding the roof, mechanical systems, passenger elevator, and vertical material lifts; Conveyance Permit issued December 12, 2008 by the State of California Department of Industrial Relations Division of Occupational Safety and Health Elevator, Ride and Tramway Unit for Conveyance Number 120775, expiring November 10, 2009; and letter dated May 11, 2010 from the State of California Department of Industrial Relations Division of Occupational Safety and Health Elevator, Ride and Tramway Unit indicating that the application for a renewal permit for Conveyance Number 120775 is complete and being processed .

As used in this Lease, the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities are referred to collectively as "Disabilities Laws", all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to seismic safety are referred to collectively as "Seismic Safety Laws", and all applicable federal, state, local and administrative laws, rules, regulations, orders and requirements relating to fire and life safety (including, if applicable, the San Francisco High-Rise Sprinkler Ordinance) are referred to collectively as "Life Safety Laws."

Without limiting the provisions of Section 8 above, Landlord shall at all times during the Term maintain, at its cost, the Property, Building, and the Building Systems serving the Premises in compliance with applicable present or future federal, state, local and administrative laws, rules, regulations, orders and requirements (collectively, "Laws"), including, without limitation,



Disabilities Laws, Seismic Safety Laws, and Life Safety Laws. Without limiting Section 16.2 (Landlord's Indemnity), Landlord shall Indemnify City against any and all Claims arising out of any failure of the Property, Building, Building Systems, or any portion thereof, to comply with applicable Laws as provided in this Section.

### **10.2 City's Compliance with Laws; Indemnity**

City shall use the Premises during the Term in compliance with applicable Laws, except that City shall not be required to make any structural alterations, additions or other modifications in order to comply therewith unless such modifications are necessary solely because of any Alterations to the Premises made by City pursuant to Section 7 hereof and such modifications are not otherwise Landlord's responsibility under this Lease. City shall be responsible for complying with any requirement of the Disabilities Laws relating to the placement of City's furniture or other City Personal Property, City's Alterations, and the operation of any programs in the Premises, other than any requirement relating to the existing physical structure, fixtures and permanent improvements of the Premises, which are Landlord's obligation as provided in Section 10.1 above. Without limiting Section 16.1 (City's Indemnity), City shall Indemnify Landlord against any and all Claims arising out of City's failure to comply with all applicable Laws as provided in this Section.

### **10.3 City's Compliance with Insurance Requirements**

City shall not conduct any use in or about the Premises that would: **(a)** invalidate or be in conflict with any fire or other casualty insurance policies covering the Building or any property located therein, **(b)** result in a refusal by fire insurance companies of good standing to insure the Building or any such property in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering the Building, **(c)** cause an increase in the fire insurance premium for the Building unless City agrees to pay such increase, or **(d)** subject Landlord to any liability or responsibility for injury to any person or property by reason solely of any business operation being conducted by City in the Premises; provided, however, Landlord shall provide City with reasonable prior written notice of any applicable insurance requirements and no such insurance requirements shall materially and adversely interfere with City's normal business in the Premises.

## **11. SUBORDINATION**

**(a)** Without the necessity of any additional document being executed by City for the purpose of effecting a subordination, and subject in all events to subsection (b) below, this Lease shall be subject and subordinate at all times to the following (each an "Encumbrance"): **(a)** any reciprocal easement agreements, ground leases or other underlying leases that may hereafter be executed affecting Landlord's interest in the Property, or any portion thereof, and **(b)** the lien of any mortgages or deeds of trust and renewals, modifications, consolidations, replacements and extensions of any of the foregoing that may hereafter be executed by Landlord in any amount for which any part of the Property, any ground lease or underlying lease, or Landlord's interest or estate therein is subject. Notwithstanding the foregoing, if the ground lessor, mortgagee, trustee, or holder of any such mortgage or deed of trust elects to have City's interest in this Lease be superior to any such instrument, then upon notice thereof to City, this Lease shall be deemed superior, whether this Lease was executed before or after the date of said instrument or the recording thereof. At City's request, the holder of the Encumbrance shall enter into a subordination and nondisturbance agreement with City in a form reasonably acceptable to City evidencing such subordination or superiority of this Lease. Landlord warrants that as of the date of this Lease the only existing Encumbrance is held by Wells Fargo Bank National Association, as successor to San Jose National Bank ("Lender"). Concurrently with the execution of this Lease, Landlord shall provide City with a written "non disturbance agreement" in the form attached hereto as Exhibit E, executed and acknowledged by Landlord and Lender.

(b) In the event any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or in the event any ground lease or underlying lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, cut off, or foreclosed nor shall the rights and possession of City hereunder be disturbed if City shall not then be in default in the payment of rental or other sums due hereunder or otherwise be in default under the terms of this Lease beyond any applicable notice and cure period. City shall attorn to and become the tenant of the successor-in-interest to Landlord, provided that City has received proper written notice of such succession and the name and address of the successor landlord. City's covenant under subsection (a) above to subordinate this Lease to any Encumbrance or other hypothecation hereafter executed is conditioned upon each such senior instrument containing the commitments specified in this subsection (b). The provisions of this Section shall be self-operative and no further instrument shall be required other than as provided in this Section. City agrees, however, to execute upon request by Landlord and in a form reasonably acceptable to City, any additional documents evidencing the priority or subordination of this Lease with respect to any such Encumbrance as provided herein.

## **12. DAMAGE AND DESTRUCTION**

If the Premises, the Building or any Building Systems are damaged by fire or other casualty, Landlord shall repair the same without delay, provided that such repairs can be made under applicable laws within sixty (60) days after Landlord obtains all necessary permits for such repairs but not later than two hundred ten (210) days after the date of such damage (the "Repair Period"). In such event, this Lease shall remain in full force and effect, except that City shall be entitled to an abatement of Rent while such repairs are being made. Such abatement in Rent shall be based upon the extent to which such damage and the making of such repairs interfere with City's business in the Premises. Landlord's repairs shall not include, and the Rent shall not be abated as a result of, any damage by fire or other cause to City's property or any damage caused by the negligence or willful misconduct of City or its Agents.

Within twenty (20) days after the date of such damage, Landlord shall notify City whether or not, in Landlord's reasonable judgment made in good faith, such repairs can be made within the Repair Period. If such repairs cannot be made within the Repair Period, then either party hereto may, by written notice to the other given within thirty (30) days after the date of such damage, terminate this Lease as of the date specified in such notice, which date shall be not less than thirty (30) nor more than sixty (60) days after notice is given by Landlord. In case of termination, the Rent shall be reduced by a proportionate amount based upon the extent to which such damage interferes with the conduct of City's business in the Premises, and City shall pay such reduced Rent up to the date of termination. Landlord shall refund to City any Rent previously paid for any period of time subsequent to such date of termination.

Notwithstanding the foregoing, in the event the Premises are damaged or destroyed by reason of flood or earthquake, and the cost of repairing the damage or destruction which is not covered by insurance proceeds payable under the insurance policies Landlord is required to carry hereunder (excluding any deductible, for which Landlord shall be responsible), as reasonably estimated by Landlord's contractor, exceeds the insurance proceeds available for the repair by ten percent (10%) of the cost of replacing the Building in its entirety, Landlord may terminate this Lease by written notice to City within thirty (30) days of the date Landlord receives written notice that such damage is not fully covered by insurance. Such notice from Landlord shall include adequate written evidence of the denial of insurance coverage. If Landlord does not elect to terminate this Lease as provided above, this Lease shall remain in full force and effect, and Landlord shall repair and restore the Premises as provided above.

If at any time during the last six (6) months of the Term of this Lease there is substantial damage that Landlord would be required to repair hereunder, Landlord or City may, at the

respective option of each, terminate this Lease as of the date such damage occurred by giving written notice to the other party of its election to do so within thirty (30) days after the date of such damage; provided, however, Landlord may terminate this Lease only if it would take more than thirty (30) days to repair such damage.

The parties intend that the provisions of this Section govern fully their rights and obligations in the event of damage or destruction, and Landlord and City each hereby waives and releases any right to terminate this Lease in whole or in part under Section 1932, subdivision 2, Section 1933, subdivision 4, and Sections 1941 and 1942 of the Civil Code of California or under any similar law, statute or ordinance now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

### **13. EMINENT DOMAIN**

#### **13.1 Definitions**

(a) "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

(b) "Date of Taking" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which Tenant is dispossessed.

(c) "Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

#### **13.2 General**

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and Landlord intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

#### **13.3 Total Taking; Automatic Termination**

If there is a total Taking of the Premises, then this Lease shall terminate as of the Date of Taking.

#### **13.4 Partial Taking; Election to Terminate**

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety if all of the following exist: (i) the partial Taking, in City's reasonable judgment, renders the remaining portion of the Premises untenable or unsuitable for continued use by City for its intended purposes or otherwise materially adversely affects City's normal operations in the Premises, (ii) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but Landlord is unwilling or unable to cure such condition, and (iii) City elects to terminate.

(b) In the case of a partial taking of a substantial portion of the Building, and if subsection (a) above does not apply, City and Landlord shall each have the right to terminate this

Lease by written notice to the other within thirty (30) days after the Date of Taking, provided that, as a condition to City's right to terminate, the portion of the Building taken shall, in City's reasonable judgment, render the Premises unsuitable for continued use by City for its intended purposes or otherwise materially adversely affect City's normal operations in the Premises.

(c) Either party electing to terminate under the provisions of this Section 13.4 shall do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30<sup>th</sup>) day after such written notice is given or the Date of Taking.

### **13.5 Rent; Award**

Upon termination of this Lease pursuant to an election under Section 13.4 above, then: (a) City's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 13.6 below for any period during which this Lease continues in effect after the Date of Taking, and (b) Landlord shall be entitled to the entire Award in connection therewith, except that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

### **13.6 Partial Taking; Continuation of Lease**

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 13.4 above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Rent shall be reduced by an amount that is in the same ratio to the Rent as the area of the Premises taken bears to the area of the Premises prior to the Date of Taking, and (b) Landlord shall be entitled to the entire Award in connection therewith, provided that City shall receive any Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

### **13.7 Temporary Taking**

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to the Premises for a limited period of time not in excess of sixty (60) consecutive days, this Lease shall remain unaffected thereby, and City shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, City shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by City for the period of the Taking.

## **14. ASSIGNMENT AND SUBLETTING**

Except as provided in this Section below, City shall not directly or indirectly sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder or permit all or any portion of the Premises to be occupied by anyone other than itself or sublet all or any portion of the Premises, without Landlord's prior written consent in each instance, which shall not be unreasonably withheld or delayed (subject to Landlord's rights under Section 22.1(e)). City shall have the right from time to time, upon notice to but without the consent of Landlord, to transfer this Lease or use and occupancy of all or any of the Premises to any department, commission or agency of the City and County of San Francisco for uses permitted under this Lease.

## **15. DEFAULT; REMEDIES**

### **15.1 Events of Default by City**

Any of the following shall constitute an event of default by City hereunder:

(a) City's failure to make any timely payment of Rent and to cure such nonpayment within five (5) business days after receipt of written notice thereof from Landlord, provided that for the first two (2) monthly payments of Rent at the beginning of the Term, City shall have twenty (20) days to cure any such nonpayment after written notice thereof from Landlord;

(b) City's abandons the Premises (within the meaning of California Civil Code Section 1951.3); or

(c) City's failure to perform any other covenant or obligation of City hereunder (not involving the payment of money) and to cure such non-performance within thirty (30) days of the date of receipt of notice thereof from Landlord, provided that if more than thirty (30) days are reasonably required for such cure, no event of default shall occur if City commences such cure within such period and diligently prosecutes such cure to completion.

### **15.2 Landlord's Remedies**

Upon the occurrence of any event of default by City that is not cured within the applicable grace period as provided above, Landlord shall have all rights and remedies available pursuant to law or granted hereunder, including the following:

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate City's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that City proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2.

(b) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as Landlord does not terminate City's right to possession, if City has the right to sublet or assign, subject only to reasonable limitations.

### **15.3 Landlord's Default**

If Landlord fails to perform any of its obligations under this Lease, then (without limiting any of City's other cure rights under this Lease) City may, at its sole option, perform such obligation at Landlord's expense if such failure continues after ten (10) days from the date City gives notice to Landlord of City's intention to perform such cure. However, in the case of a default which for causes beyond Landlord's control (excluding any financial inability to perform) cannot with due diligence be cured within such ten (10)-day period, such ten (10)-day period shall be extended if Landlord, promptly upon receipt of City's notice, advises City of Landlord's intention to take all steps required to cure such default, and Landlord promptly commences such cure and diligently prosecutes the same to completion. Subject to the other provisions of this Lease relating to abatement of Rent, if Landlord fails to cure any default within the cure period provided above, then, whether or not City elects to cure Landlord's default as provided herein, the Base Rent and any other charges hereunder shall be abated based on the extent to which such default interferes with City's ability to carry on its business at the Premises.

Notwithstanding the foregoing, if any such default by Landlord continues for sixty (60) days and impairs City's ability to carry on its business in the Premises, then City shall have the right to terminate this Lease upon written notice to Landlord within thirty (30) days after the expiration of such sixty (60)-day period. City's rights hereunder shall not limit in any way any of its other rights and remedies hereunder or at law or in equity.

## **16. INDEMNITIES**

### **16.1 City's Indemnity**

City shall indemnify, defend and hold harmless ("Indemnify") Landlord and its Agents from and against any and all claims, costs and expenses, including, without limitation, reasonable attorneys' fees (collectively, "Claims"), incurred as a result of (a) City's use of the Premises, (b) any default by City in the performance of any of its material obligations under this Lease, or (c) any negligent acts or omissions of City or its Agents in, on or about the Premises or the Property; provided, however, City shall not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. City's obligations under this Section shall survive the termination of the Lease.

### **16.2 Landlord's Indemnity**

Landlord shall Indemnify City and its Agents against any and all Claims incurred as a result of (a) any default by Landlord in the performance of any of its obligations under this Lease or any breach of any representations or warranties made by Landlord under this Lease, or (b) any negligent acts or omissions of Landlord or its Agents in, on or about the Premises or the Property; provided, however, Landlord shall not be obligated to Indemnify City or its Agents to the extent any Claim arises out of the negligence or willful misconduct of City or its Agents. In any action or proceeding brought against City or its Agents by reason of any Claim Indemnified by Landlord hereunder, Landlord may, at its sole option, elect to defend such Claim by attorneys selected by Landlord. Landlord shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. Landlord's obligations under this Section shall survive the termination of this Lease.

## **17. INSURANCE**

### **17.1 City's Self-Insurance**

Landlord acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any insurance with respect to this Lease. City assumes the risk of damage to any of City's Personal Property and any Alterations constructed by City resulting from those causes for which Landlord is not required to indemnify City hereunder.

### **17.2 Landlord's Insurance**

At all times during the Term, Landlord shall keep the Building (excluding the land upon which it is located) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under a cause of loss-special form property insurance policy in an amount equal to one hundred percent (100%) of the full

insurance replacement value (replacement cost new, including, debris removal and demolition) thereof. Landlord shall, upon request by City, provide to City a certificate of insurance issued by the insurance carrier, evidencing the insurance required above. The certificate shall expressly provide that the policy is not cancelable or subject to, reduction of coverage or otherwise subject to modification except after thirty (30) days prior written notice to City. Landlord hereby waives any rights against City for loss or damage to the Premises or any other part of the Property, to the extent covered by Landlord's property insurance.

In addition, Landlord, at no cost to City, shall procure and keep in effect at all times during the Term insurance as follows: Commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars (\$50,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU).

### **17.3 Waiver of Subrogation**

Notwithstanding anything to the contrary contained herein, Landlord hereby waives any right of recovery against City for any loss or damage sustained by Landlord with respect to the Building or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of City, to the extent such loss or damage is covered by insurance which Landlord is required to purchase under this Lease or is otherwise actually recovered from valid and collectible insurance covering Landlord. Landlord agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Building or the Premises; provided, Landlord's failure to do so shall not affect the above waiver.

Notwithstanding anything to the contrary contained herein, City hereby waives any right of recovery against Landlord for any loss or damage sustained by City with respect to City's Personal Property or Alterations, to the extent such loss or damage is covered by insurance purchased by City or would have been covered by insurance which would have been considered to be commercially available to City, had City not elected to self-insure.

### **18. ACCESS BY LANDLORD**

Landlord reserves for itself and any designated Agent the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord shall give any reasonable notice), after giving City at least twenty four (24) hours' advance written or oral notice, for the purpose of **(a)** inspecting the Premises, **(b)** supplying any service to be provided by Landlord hereunder, **(c)** showing the Premises to any prospective purchasers, mortgagees or, during the last six (6) months of the Term of this Lease, tenants, **(d)** posting notices of non-responsibility, and **(e)** altering, improving or repairing the Premises and any portion of the Building, and Landlord may for that purpose erect, use and maintain necessary structures in and through the Premises where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, and further provided that City's use shall not be interfered with.

### **19. ESTOPPEL CERTIFICATES**

Either party, from time to time during the Term upon not less than ten (10) days' prior written notice from the other party, may reasonably request the other party to execute, acknowledge and deliver to such persons or entities designated by such other party a certificate stating: **(a)** the Commencement Date and Expiration Date of this Lease, **(b)** that this Lease is unmodified and in full force and effect (or, if there have been modifications, this the Lease is in

full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), and (d) the date to which Rent has been paid.

## **20. SURRENDER OF PREMISES**

Upon the expiration or sooner termination of this Lease, City shall surrender the Premises to Landlord in good order and condition, reasonable use and wear and damage by fire or other casualty excepted. Within ten (10) days after the Expiration Date, City shall remove from the Premises all of City's Personal Property and any Alterations City desires to remove from the Premises pursuant to the provisions of Section 7.1 (Alterations by City), above. City shall repair or pay the cost of repairing any damage to the Premises or the Building resulting from such removal. Notwithstanding anything to the contrary in this Lease, City shall not be required to demolish or remove from the Premises any leasehold improvements. City's obligations under this Section shall survive the expiration or earlier termination of this Lease.

## **21. HAZARDOUS MATERIALS**

### **21.1 Definitions**

As used in this Lease, the following terms shall have the meanings hereinafter set forth:

(a) "Environmental Laws" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Material, whether now in effect or hereafter adopted.

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended (42 U.S.C. Section 9601 et seq.), or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "Release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Building, or in, on, under or about the Property.

### **21.2 Landlord's Representations and Covenants**

Landlord represents and warrants to City that, to the best of Landlord's knowledge, the following statements are true and correct and will be true and correct as of the Commencement Date: (a) the Property is not in violation of any Environmental Laws; (b) the Property is not now, nor has it been, used for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited quantities as are customarily used in offices, which limited use has been and is in compliance with Environmental Laws; (c) the Property does not consist of any landfill or contain any underground storage tanks; (d) the Building does not consist of any asbestos-containing materials or building materials that contain any other Hazardous Material, nor do the Premises contain any lead-based paints; (e) there has been and is no Release of any Hazardous Material in



the Building or in, on, under or about the Property; and (f) the Property is not subject to any claim by any governmental regulatory agency or third party related to the Release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in the Building or in, on, under or about the Property, or the migration of Hazardous Material from or to other real property. Subject to City's obligations under this Section below, Landlord shall maintain the Property throughout the Term in compliance with all Environmental Laws that could affect the health, safety and welfare of City's employees or City's use, occupancy or enjoyment of the Premises for their intended purposes.

### **21.3 Landlord's Environmental Indemnity**

Without limiting Landlord's Indemnity in Section 16.2 (Landlord's Indemnity), above, Landlord shall Indemnify City and its Agents against any and all Claims arising during or after the Term of this Lease (a) as a result of any breach of any of Landlord's representations, warranties or covenants in the preceding Section, or (b) in connection with any presence or Release of Hazardous Material in the Building or on, under or about the Property, unless City or its Agents caused such Release.

### **21.4 City's Covenants**

Neither City nor its Agents shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property, in violation of any Environmental Laws. Without limiting the uses which are permitted under the terms of this Lease, Landlord acknowledges that City may use the Premises for office purposes, to store vehicles and to operate a sign shop, meter repair shop and paint shop, and connection with such uses may use substances such as cleaning fluids, gasoline, diesel and other vehicle fluids, paints and solvents, including the materials listed on the attached Exhibit C, so long as such use is in compliance with all applicable Environmental Laws.

### **21.5 City's Environmental Indemnity**

If City breaches its obligations contained in the preceding Section 21.4, or if City or its Agents cause the Release of Hazardous Material from, in, on or about the Premises or the Property, then City shall Indemnify Landlord against any and all Claims arising during or after the Term of this Lease as a result of such Release, except to the extent Landlord or its Agents is responsible for the Release. The foregoing Indemnity shall not include any Claims resulting from the non-negligent aggravation by City, its Agents or Invitees of physical conditions of the Premises, or other parts of the Property, existing prior to City's occupancy.

## **22. SPECIAL PROVISIONS**

### **22.1 Purchase Option; Exercise of Purchase Option; Approval of Transaction**

(a) **Purchase Option; Exercise of Purchase Option.** City shall have the right (the "Purchase Option") to purchase the Premises for Purchase Price set forth in Section 22.2 below, pursuant to the terms and conditions set forth in this Section 22 and the Agreement of Purchase and Sale for Real Estate attached hereto as Exhibit G (the "Purchase Agreement"). City shall exercise the purchase right, if at all, by delivering to Landlord written notice of City's exercise of such right (the "Exercise Notice") on or before the date which is seven (7) years following the Commencement Date (the "Exercise Deadline").

**(b) Determination of Fair Market Value and Purchase Price.** If the Purchase Price for the Premises will be the Fair Market Purchase Price, as provided in Section 22.2 below, then promptly following the City's exercise of the Purchase Option the parties shall determine the Fair Market Purchase Price for the Premises in accordance with the provisions of the attached Exhibit D. Further, if the Purchase Price for the Premises will be an Agreed Purchase Price, as set forth in Section 22.2 below, and SFMTA determines that SFMTA requires an updated appraisal to confirm that the applicable Agreed Purchase Price reflects the then-fair market value of the Premises, then prior to or promptly following City's exercise of the Purchase Option, SFMTA may, at its election, obtain an Initial Appraisal (as defined in Exhibit D) of the current fair market value of the Premises in accordance with the provisions of the attached Exhibit D, provided that the results of such Initial Appraisal shall be for City's information only and shall not result in any change to the Agreed Purchase Price.

**(c) Approval of Transaction or Revocation of Option Exercise; Execution of Purchase Agreement.** Promptly following City's exercise of the Purchase Option and, if applicable, receipt of the Initial Appraisal or determination of the Fair Market Purchase Price, SFMTA shall promptly (i) seek approval of the purchase transaction from the Board of Directors of SFMTA and, to the extent required, the City's Board of Supervisors, or (ii) provide Landlord with written notice that SFMTA is withdrawing the Exercise Notice, if the Agreed Purchase Price is not supported by the Initial Appraisal or if the Senior Manager of Real Estate for SFMTA does not believe the Board of the SFMTA will approve of the Fair Market Purchase Price or the City's Director of Property does not believe the Board of Supervisors or the Mayor will approve of the Fair Market Purchase Price. Promptly following exercise of the Purchase Option, determination of the Purchase Price, and receipt of approval from the Board of Directors of SFMTA and, to the extent required, the City's Board of Supervisors, City shall execute and deliver the Purchase Agreement to Landlord. Landlord shall deliver a countersigned copy of the Purchase Agreement to City within five (5) days of Landlord's receipt of the Purchase Agreement signed by City. If the Board of Directors of SFMTA or, to the extent required, the City's Board of Supervisors, fails to approve the purchase transaction by the Approval Deadline (as defined below), SFMTA may withdraw the Exercise Notice by written notice to Landlord. As used herein, the "Approval Deadline" shall be the date which is three (3) months after the later of City's delivery of the Exercise Notice to Landlord or the determination of the Purchase Price (or such earlier date as is required to close the transaction by the ultimate Purchase Deadline described in the final sentence of Section 22.1(d) below). The Approval Deadline may be extended only by written agreement of Landlord.

**(d) Expiration of Option Exercise; Expiration of Purchase Option.** City's exercise of the Purchase Option shall be void and of no further force and effect if (i) City withdraws the Exercise Notice as provided in Section 22.1(c) above. Further, except as otherwise agreed by Landlord, City's exercise of the Purchase Option shall be void and of no further force and effect if (i) the Board of Directors of SFMTA or, to the extent required, the City's Board of Supervisors, fails to approve the purchase transaction by the Approval Deadline, or (ii) City fails to complete the transaction as provided in the Purchase Agreement prior to the Purchase Deadline for any reason other than a delay by Landlord hereunder or a default by the seller thereunder. As used herein, the "Purchase Deadline" shall be the date which is three (3) months after the Approval Deadline. The Purchase Deadline may be extended only by written agreement of Landlord. If an Exercise Notice is voided as provided above, City shall have no further right to purchase the Premises under this Section 22. City's rights under this Section 22 shall be null, void and of no force of effect if City fails to deliver Exercise Notice to Landlord on or before the Exercise Deadline. Notwithstanding anything to the contrary in this Section 22, in no event shall the Purchase Deadline be later than the date which is seven (7) years following the Effective Date (except as otherwise extended in writing by Landlord).

## 22.2 Purchase Price.

As used herein, the "Purchase Price" is the following sum for the periods shown:

<u>Date of Completion of Purchase</u>	<u>Purchase Price</u>
Initial 18 months of Term	Agreed Purchase Price of \$7,875,000.00
Months 19-24 of Term	Agreed Purchase Price of \$8,111,250.00
Months 25-36 of Term	Agreed Purchase Price of \$8,347,500.00
Year 4 - 7 Expiration Date	Fair Market Purchase Price based on new appraisal with no floor price

Completion of Purchase shall not be deemed to have occurred until all purchase funds due Landlord are in fact paid to Landlord or others claiming under Landlord's interest.

## 22.3 Due Diligence Deliveries.

Within fifteen (15) days after the Commencement Date, Seller covenants to deliver to City all of the Documents (as defined below) pertaining to the condition and operation of the Premises, to the extent such documents exist and are in the possession or control of Landlord, its property manager or its asset manager and have not been previously delivered to City during the course of negotiation of this Lease. Landlord further agrees to promptly deliver to City any such Documents thereafter discovered, created or received by Landlord, its property manager or its asset manager (each, a "Newly Discovered Document") through the date the date the City's right to purchase the Premises becomes void pursuant to the provisions of Section 22.1(a) above, if applicable. If City does not exercise the right to purchase the Premises, City shall promptly return to Landlord the originals of all Documents previously delivered to City by or on behalf of Landlord. As used herein, the "Documents" shall mean the following documents, all to the extent such documents exist and are in the possession or control of any of Landlord, any member of Landlord, Landlord's property manager or its asset manager: (i) structural calculations for the Buildings; (ii) site plans, digital copies of the as-built plans and specifications for the Buildings and measurement of the Building, recent inspection reports by Landlord; (iii) existing service contracts, utility contracts, maintenance contract, employment contracts, management contracts, brokerage and leasing commission agreements with respect to the Premises, the obligations of which may continue following the closing contemplated by the Purchase Agreement (hereafter, the "Closing"); (iv) presently effective warranties or guaranties received by Landlord or Landlord's predecessors in interest from any contractors, subcontractors, suppliers or materialmen in connection with any construction, repair or alteration of the Premises; (v) current certificates of insurance for carriers insuring the Premises, as well as any information or reports relative to the claims history of the Premises; (vi) any environmental reports, studies, surveys, tests and assessments; (vii) any soils and geotechnical reports, including without limitation, any reports relating to the presence of asbestos or asbestos containing materials located at the Premises; and (viii) any other contracts or documents necessary for the operation of the Premises or which will be binding on the Premises after the Closing.

## 22.4 Inspections and Inquiries.

From and after the Commencement Date and continuing through the date the City's right to purchase the Premises becomes void pursuant to the provisions of this Section 22 above, if applicable (the "Due Diligence Period"), City shall be permitted to make such examinations, tests, analyses, investigations, surveys, inquiries and other inspections in connection with City's examination of the Premises as City deems necessary or desirable. Notwithstanding the foregoing, City shall not perform any borings, samplings, soils tests, groundwater tests or other intrusive physical environmental audit procedures on the Premises without first providing Landlord a detailed work plan describing with specificity the nature, scope, location and purpose

of all of such activities to be performed on the Premises and thereafter obtaining Landlord's prior written consent to such activities, which Landlord shall not unreasonably withhold, condition or delay. City, at its sole expense, shall repair any and all damage resulting from any of the tests, studies, inspections and investigations performed by or on behalf of City that are permitted under this Section 22. Landlord hereby irrevocably authorizes City and its agents to make all inquiries with and applications to any regulatory authority with jurisdiction over the Premises as City may reasonably require to complete its due diligence investigations on the Premises; provided, however, that no such inquiry or application shall be made prior to the Commencement Date and no such application shall impact Landlord's ownership of or title to the Premises in the event the Closing fails to occur.

### **22.5 Representations and Warranties.**

Landlord represents and warrants as follows: (i) Landlord has not received any written notice of pending or threatened litigation that would have a material and adverse affect on the use, operation or value of the Premises or the ability of Landlord, as seller, to perform its obligations under the Purchase Agreement, (ii) Landlord has not granted any option or right of first refusal or first opportunity to any third party to acquire any fee interest in any of the Premises which right or option is either superior to the rights granted to City in this Lease or would be in effect or enforceable following the transfer of the Premises to City at Closing, (iii) Landlord has not received any written notice from any governmental authority having jurisdiction that the Premises are in violation of any applicable law, ordinance or regulation, including, without limitation, any Environmental Laws, which remains uncured and which could reasonably have a material adverse effect on the operation of the Premises following the Closing; (iv) during the ownership of the Premises by Landlord, the Premises has not been used in any manner for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material; (v) during the ownership of the Premises by Landlord there has been no Release of any Hazardous Material in, on, or under the Premises; and (vi) the reports, studies, assessments, investigations and other materials to be made available to City for its review pursuant to Section 22.4 above, constitute all written materials in the possession, custody or control of Landlord or its property manager relating to the presence of Hazardous Materials at, on or under the Premises, and the compliance of the Premises with Environmental Laws; provided that, without limiting any other provision hereof, Landlord makes no representation or warranty as to whether City is entitled to rely on any such reports, studies, assessments, investigations or other materials, and if City desires to rely on the same, City shall be responsible for obtaining, at its sole cost and expense, written permission from the preparer of any such item.

### **22.6 Purchase Option Personal.**

City's Purchase Option is personal to City, and shall not be assignable to any other person under any circumstances, unless Landlord consents to the assignment of such Purchase Option, which consent may be granted or withheld in Landlord's sole and absolute discretion.

## **23. GENERAL PROVISIONS**

### **23.1 Notices**

Except as otherwise specifically provided in this Lease, any notice given under this Lease shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, to: (a) City at Tenant's address set forth in the Basic Lease Information; or (b) Landlord at Landlord's address set forth in the Basic Lease Information; or (c) such other address as either Landlord or City may designate as its new address for such purpose by notice given to the other in accordance with this Section. Any notice hereunder shall be deemed to have been given and received two (2) days after the date

when it is mailed if sent by first-class, certified mail, one day after the date when it is mailed if sent by Express Mail, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile.

### **23.2 No Implied Waiver**

No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. No acceptance of full or partial Rent by Landlord while City is in default hereunder shall constitute a waiver of such default by Landlord. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Landlord or City given in one instance under the terms of this Lease shall not relieve the other party of any obligation to secure the consent to any other or future instance under the terms of the Lease.

### **23.3 Amendments**

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, the Director of Property, or his or her designee, shall be authorized to provide such approval, except as otherwise provided by applicable law, including the Charter of the City and County of San Francisco. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Landlord, and City's agreement may be made upon the sole approval of the Executive Director/CEO of the SFMTA, or his or her designee; provided, however, material amendments or modifications to this Lease **(a)** changing the legal description of the Premises, **(b)** increasing the Term, **(c)** increasing the Rent, **(d)** changing the general use of the Premises from the use authorized under Section 5.1 of this Lease, and **(e)** any other amendment or modification which materially increases City's liabilities or financial obligations under this Lease shall additionally require the approval of the Board of Directors of SFMTA.

### **23.4 Authority**

Landlord represents and warrants to City that the execution and delivery of this Lease by Landlord has been duly authorized and does not violate any provision of any agreement, law or regulation to which Landlord or the Property is subject.

### **23.5 Parties and Their Agents; Approvals**

If applicable, the word "Landlord" as used in this Lease shall include the plural as well as the singular. As used in this Lease, the term "Agents" when used with respect to either party shall include the agents, employees, officers and contractors of such party, and the term "Invitees" when used with respect to City shall include the clients, customers, invitees, guests, licensees, assignees or subtenants of City. All approvals, consents or other determinations permitted or required by City under this Lease, including but not limited to the exercise of any

option granted to City, shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject to any applicable limitations in the City's Charter.

### **23.6 Interpretation of Lease**

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intent and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Except as otherwise specifically provided herein, wherever in this Lease Landlord or City is required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval of consent shall be stated in reasonable detail in writing. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Lease, whether or not language of non-limitation, such as "without limitation" or similar words, are used.

### **23.7 Successors and Assigns**

Subject to the provisions of Section 14 relating to assignment and subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and City and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Lease.

### **23.8 Brokers**

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein, except for the broker, if any, identified in the Basic Lease Information, whose commission, if any is due, shall be the sole responsibility of Landlord pursuant to a separate written agreement between Landlord and such broker, and City shall have no liability therefor. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Lease.

### **23.9 Severability**

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law.

### **23.10 Governing Law**

This Lease shall be construed and enforced in accordance with the laws of the State of California and the City's Charter.

### **23.11 Entire Agreement**

The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease.

### **23.12 Attorneys' Fees**

In the event that either Landlord or City fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Lease, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

### **23.13 Holding Over**

Should City hold over in possession of the Premises after the expiration of the Term with Landlord's consent, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a month-to-month tenancy. Such tenancy shall be on all the terms and conditions set forth in this Lease and at one hundred ten percent (110%) of the monthly Base Rent in effect during the last month of the Term of this Lease or such other rental as Landlord and City may mutually agree in writing as a condition to Landlord's consent to such holding over, and City shall continue as a month-to-month tenant until the tenancy shall be terminated by Landlord giving City or City giving Landlord at least thirty (30) days' prior written notice of termination. Should City hold over without Landlord's consent, the rent payable by City during the period of such holding over shall be one hundred twenty-five percent (125%) of the monthly Base Rent in effect during the last month of the Term of this Lease, and such tenancy shall otherwise be on the terms and conditions contained herein.

### **23.14 Cumulative Remedies**

All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

### **23.15 Time of Essence**

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

### **23.16 Survival of Indemnities**

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it affect any provision of this Lease that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee and continues at all times thereafter.

### **23.17 Signs**

City may erect or post signs on or about the Premises subject to Landlord's prior approval. Landlord reserves the right to review the placement, design, and plan for any such sign prior to its erection or posting and agrees that the approval thereof shall not be unreasonably withheld or delayed.

### **23.18 Quiet Enjoyment and Title**

Landlord covenants and represents that it has full right, power and authority to grant the leasehold estate hereunder, and covenants that City, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term of this Lease as against all persons or entities claiming by and through Landlord or on account of any action, inaction or agreement of Landlord or its Agents. Without limiting the provisions of Section 16.2 (Landlord's Indemnity), Landlord agrees to Indemnify City and its Agents against Claims arising out of any assertion that would interfere with City's right to quiet enjoyment as provided in this Section.

### **23.19 Bankruptcy**

Landlord represents and warrants to City that Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Landlord's knowledge, no such filing is threatened. Landlord and City agree that City's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services, facilities and amenities of the Premises and the Building as provided herein, and that if any of such services, facilities or amenities are terminated, or materially limited or restricted on account of any such case or proceeding, or for any other reason, City shall have the right to **(a)** contract directly with any third-party provider of such services, facilities or amenities to obtain the same, and **(b)** offset against the Base Rent or other charges payable hereunder any and all reasonable costs and expenses incurred by City in obtaining such services, facilities or amenities.

### **23.20 Transfer of Landlord's Interest**

Landlord shall have the right to transfer its interest in the Property, the Building or this Lease to any other financially responsible person or entity. In the event of any such transfer, Landlord shall be relieved, upon notice to City of the name and address of Landlord's successor,



of any obligations accruing hereunder from and after the date of such transfer and upon delivering to City an express assumption by the transferee of all of Landlord's obligations hereunder.

### **23.21 Non-Liability of City Officials, Employees and Agents**

Notwithstanding anything to the contrary in this Lease, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Landlord, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Landlord, its successors and assigns, or for any obligation of City under this Lease.

### **23.22 MacBride Principles - Northern Ireland**

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

### **23.23 Controller's Certification of Funds**

The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by City under this Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term of this Lease commences, sufficient funds for the payment of Rent and any other payments required under this Lease are not appropriated, then City may terminate this Lease, without penalty, liability or expense of any kind to City, as of the last date on which sufficient funds are appropriated. City shall use its reasonable efforts to give Landlord reasonable advance notice of such termination.

### **23.24 Prevailing Wages for Construction Work**

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

## **23.25 Non Discrimination in City Contracts and Benefits Ordinance**

### **(a) Covenant Not to Discriminate**

In the performance of this Lease, Landlord agrees not to discriminate against any employee of, any City employee working with Landlord, or applicant for employment with Landlord, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

### **(b) Subcontracts**

Landlord shall include in all subcontracts relating to the Premises a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Landlord shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Landlord's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

### **(c) Non-Discrimination in Benefits**

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

### **(d) HRC Form**

As a condition to this Lease, Landlord shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Landlord hereby represents that prior to execution of the Lease: **(a)** Landlord executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and **(b)** the HRC approved such form.

### **(e) Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of property to City are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Landlord shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Landlord understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of Fifty Dollars (\$50) for each person for each calendar day during which such person was discriminated against in

violation of the provisions of this Lease may be assessed against Landlord and/or deducted from any payments due Landlord.

### **23.26 Tropical Hardwood and Virgin Redwood Ban**

(a) Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, neither Landlord nor any of its contractors shall provide any items to City in the construction of any leasehold improvements or otherwise in the performance of this Lease which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

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

(c) In the event Landlord fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Landlord shall be liable for liquidated damages for each violation in an amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Landlord from any contract with the City and County of San Francisco.

### **23.27 Bicycle Storage Facilities**

Article 1.5, Section 155.1, of the San Francisco Planning Code (the "Planning Code") requires the provision of bicycle storage at City-leased buildings at no cost to Landlord and if funds are available. In the event public and/or private donations, grants or other funds become available, at any time during the Term of this Lease including any extension thereof, City may, by giving a 60-day advanced written notice to Landlord, install compliant bicycle storage in the Building garage or City may install bicycle racks in other location(s) in front of the Building, which are required to meet the Class 1 and/or Class 2 requirements of the Planning Code. Landlord, at no cost to Landlord, shall reasonably cooperate with City regarding the location of such spaces in furtherance of the implementation of such requirements of the Planning Code.

### **23.28 Resource-Efficient City Buildings and Pilot Projects**

Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Landlord hereby agrees that it shall comply with all applicable provisions of such code sections.

### **23.29 Counterparts**

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

### **23.30 Effective Date**

The date on which this Lease shall become effective (the "Effective Date") is the date upon which (a) the Board of Directors of City's SFMTA, in their sole and absolute discretion, adopt a resolution approving this Lease in accordance with all applicable laws and (b) this Lease is duly executed by the parties hereto.

### **23.31 Certification by Landlord**

By executing this Lease, Landlord certifies that neither Landlord nor any of its officers or members have been suspended, disciplined or disbarred by, or prohibited from contracting with, any federal, state or local governmental agency. In the event Landlord or any of its officers or members have been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefore together with any relevant facts or information requested by City. Any such suspension, disbarment, discipline or prohibition may result in the termination or suspension of this Lease. Landlord acknowledges that this certification is a material term of this Lease.

### **23.32 Memorandum of Lease**

On the Effective Date, Landlord and City shall execute the memorandum of lease in the form attached hereto as Exhibit E (the "Memorandum of Lease"), and City shall cause the Memorandum of Lease to be recorded in the Official Records of the City and County of San Francisco within two (2) business days thereafter. Upon termination of the Purchase Option, City shall execute in recordable form such documents as reasonably requested by Landlord to establish that the Property is no longer subject to the option.

### **23.33 Sunshine Ordinance**

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

### **23.34 Conflicts of Interest**

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

### **23.35 Notification of Limitations on Contributions**

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Landlord acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more.

Landlord further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Landlord's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Landlord; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Landlord. Additionally, Landlord acknowledges that Landlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Landlord further agrees to provide to City the names of each person, entity or committee described above.

### **23.36 Preservative-Treated Wood Containing Arsenic**

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

### **23.37 Cooperative Drafting**

This Lease has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Lease reviewed and revised by legal counsel. No party shall be considered the drafter of this Lease, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Lease.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL THE BOARD OF DIRECTORS OF CITY'S SFMTA SHALL HAVE DULY ADOPTED A RESOLUTION APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS THE BOARD OF DIRECTORS OF CITY'S SFMTA APPROVES THIS LEASE, IN ITS SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

[No further text this page.]

Landlord and City have executed this Lease as of the date first written above.

LANDLORD:

ZOCALO PROPERTIES LLC,  
a California limited liability company

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

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

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, acting by and through its  
Municipal Transportation Agency

By: \_\_\_\_\_  
NATHANIEL P. FORD SR.  
Executive Director/CEO  
San Francisco Municipal Transportation Agency

APPROVED BY:

San Francisco Municipal Transportation Agency  
Board of Directors

Resolution No: \_\_\_\_\_

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

Attest:

\_\_\_\_\_  
Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

**EXHIBIT A**

**LEGAL DESCRIPTION OF PREMISES**

THAT CERTAIN REAL PROPERTY SITUATION IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

All that certain real property as described and delineated upon that certain Map entitled "Parcel Map 299", which Map was filed for record July 5, 2006, in the Office of the Assessor/Recorder of the City and County of San Francisco, State of California, in Book 46 of Parcel Maps, Pages 186-187, inclusive.

APN: 4849 -017

Commonly known as 1508 Bancroft Avenue

**EXHIBIT B**

**NOTICE OF COMMENCEMENT DATE**

[Date]

Mr. Nathaniel P. Ford Sr.  
San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 7th Floor  
San Francisco, CA 94103

Ms. Amy L. Brown  
Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102

RE: Acknowledgement of Commencement Date, Lease Between ZOCALO PROPERTIES LLC (Landlord), and the CITY AND COUNTY OF SAN FRANCISCO (Tenant), for premises located at 1508 Bancroft Street, San Francisco, California

Dear Ms. Brown and Mr. Ford:

This letter will confirm that for all purposes of the Lease, the Commencement Date (as defined in Section 3.2 of the Lease) is \_\_\_\_\_, 2010. Accordingly, the Exercise Deadline for the Purchase Option set forth in Section 22.1 of the Lease is \_\_\_\_\_, 2013.

Please acknowledge your acceptance of this letter by signing and returning a copy of this letter.

Very truly yours,

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

Accepted and Agreed:

By: \_\_\_\_\_  
Nathaniel P. Ford Sr., Executive Director/CEO  
San Francisco Municipal Transportation Agency

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



## EXHIBIT C

### HAZARDOUS MATERIALS LIST

#### Traffic Signal Shop, Sign Shop Materials

1. 3 M Brand Wire Pulling Lubricant
2. 3 M Loop Sealant
3. Acetylene
4. Acid Core Solder A-Core B-Core
5. Adios Graffiti Remover
6. American Graffiti Removal
7. Blazer Torch Model GB-2001
8. Developer Fluid
9. Dry Cut Diamond Blades
10. Fabick MP-55A Amber Colored
11. Flare - Railway or Highway Fusee
12. GOJO Natural Orange Pumice Cleaner
13. Hand Cleaner – Orange Hand Lotion
14. Hand Wipes C-422 Rough Touch Scrubs
15. Home Run- Graffiti Removal
16. Lexite NF Aerosol
17. LPS 1 Greaseless Lubricant
18. LPS CFC-Free Electro Contact Cleaner
19. LPS Gold Galvanize
20. Lubricant
21. NC-123 Plus Aerosol
22. NEV-SZ REG NSBT16
23. Nickel Anti-Seize
24. RIDGID Nu-Clear Thread Cutting Oil
25. Rust Destroyer
26. Rust Inhibitive Ironclad Retardo
27. Sealer: P-606, P-606E, P-6068, P-606V, P-6061
28. T 308+Epoxy-ahesive for anchoring to concrete
29. Tel-X Plus Aerosol
30. Velvet Oil Base / Gritless
31. Yield Aerosol

#### Paint Shop Materials

1. Used oils: motor oil, heating oil for thermoplastic kettles, used paint thinners
2. Used spray paint aerosol cans (empty are put in 55 gallon drums)
3. Block form Thermoplastic used for striping i.e. lane lines, crosswalks etc
4. Methacrylate
5. Two part epoxy for stencil work
6. Latex and oil base paints that are used for curb and bus zone painting
7. Propane
8. Paint Thinners
9. Gasoline

Meter Shop Materials

1. Batteries
2. Welding gases/supplies,
3. Propane
4. Cement/rapid set
5. Oils & lubricants
6. Gasoline
7. Spray paints
8. Cleaners/degreasers.

## EXHIBIT D

### APPRAISAL PROCEDURE

1. Initial Appraisal. As part of its due diligence prior to exercise of the Purchase Option or prior to seeking approval of the Board of Directors of the SFMTA or the City's Board of Supervisors, SFMTA may obtain an appraisal of the current fair market value of the Premises (an "Initial Appraisal"). SFMTA shall bear the fees, costs and expenses of the appraiser and of any experts and consultants used by the appraiser. The fair market value of the Premises as established by the Initial Appraisal shall not be binding on Landlord.

2. Joint Appraisal. If the Purchase Price will be the Fair Market Purchase Price as provided in Section 22.2 of the Lease, SFMTA shall select an appraiser (the "Proposed Appraiser") meeting the qualifications set forth in Section 6 below. SFMTA shall send Landlord written notice (the "Proposed Appraiser Notice") of SFMTA's selection of the Proposed Appraiser, together with proposed joint appraisal instructions for the Proposed Appraiser and a copy of the Proposed Appraiser's resume. If Landlord agrees to the Proposed Appraiser and the parties agree to the joint appraisal instructions for the Proposed Appraiser within 15 days following Landlord's receipt of the Proposed Appraiser Notice, the appraisal prepared by the Proposed Appraiser pursuant to such joint appraisal instructions shall be referred to as the "Joint Appraisal," and the current fair market value determination in the Joint Appraisal shall be the "Fair Market Purchase Price".

3. Separate Appraisals. If Landlord does not agree to the Proposed Appraiser or the parties do not timely agree on the joint appraisal instructions for the Proposed Appraiser within 15 days following Landlord's receipt of the Proposed Appraiser Notice, Landlord shall have the right to select an alternate appraiser ("Landlord's Appraiser") meeting the qualifications set forth in Section 6 below. Landlord shall provide SFMTA with written notice of Landlord's selection of Landlord's Appraiser ("Landlord's Appraiser Selection Notice"), together with a copy of Landlord's Appraiser's resume, within 15 days of the expiration of the 15 day period specified above. If Landlord does provide Landlord's Appraiser Selection Notice within such 15 day period, the Proposed Appraiser shall be the sole appraiser and shall prepare an appraisal of the fair market value of the Premises, which shall be the Fair Market Purchase Price. If Landlord timely delivers the Landlord's Appraiser's Selection Notice, the Proposed Appraiser and Landlord's Appraiser shall each make an independent determination of fair market value of the Premises. The appraisers may share and have access to objective information in preparing their appraisals, but will independently determine the appropriate assumptions to make based on the provisions of Section 22 of the Lease, this Section and each appraiser's own assessment of the market. Neither of the appraisers shall have access to the appraisal of the other (except for the sharing of objective information contained in such appraisals) until both of the appraisals are submitted in accordance with the provisions of this Section. Neither party shall communicate with the appraiser appointed by the other party regarding the instructions contained in this Section before the appraisers complete their appraisals. If either appraiser has questions regarding the instructions in this Section or the interpretation of this Lease, such appraiser shall use his or her own professional judgment and shall make clear all assumptions upon which his or her professional conclusions are based, including any supplemental instructions or interpretive guidance received from the party appointing such appraiser. There shall not be any arbitration or

adjudication of the instructions to the appraisers contained in this Section. Each appraiser shall complete, sign and submit its written appraisal setting forth the fair market value to the Parties within 30 days after the appointment of the last of such appraisers. If the higher appraised fair market value is not more than one hundred ten percent (110%) of the lower appraised fair market value, then the Fair Market Purchase Price shall be an average of such two (2) appraised values.

4. Third Appraiser. If the fair market value specified in the two appraisals differ by more than ten percent (10%) of the higher of the two, then first two (2) appraisers shall attempt to appoint a disinterested and independent third appraiser meeting the qualifications stated in Section 6 below within 10 days after the first two (2) appraisals have been submitted to the parties. Such appraiser shall consider the appraisals submitted by the parties as well as any other relevant written evidence which the parties may choose to submit. If a party chooses to submit any such evidence, it shall deliver a complete and accurate copy thereof to the other party at the same time it submits the same to the appraiser. Neither party shall conduct ex parte communications with the appraiser regarding the subject matter of the appraisal. If the first two (2) appraisers are unable to agree on the third appraiser, either appraiser, by giving ten (10) days' notice to the other appraiser, may file a petition with the American Arbitration Association solely for the purpose of selecting a third appraiser who meets the qualifications stated in this Section. If an appraiser suggests the name of a third appraiser to the arbitration service, the appraiser shall also submit a declaration by the proposed third appraiser disclosing any work performed by such appraiser for either party, any entity related to either party, or their attorneys, principals, or officers, and any relationship between the third appraiser and either party that could reasonably be construed as a conflict of interest. The parties hereby waive any right to challenge the selection of the third appraiser, whether by the agreement of the first two arbitrators, or by the American Arbitration Association, for any reason other than fraud, corruption or undue influence, and expressly waives any right to challenge the third appraiser based upon a conflict of interest by reason of work the third appraiser has performed for either party, any entity related to either party, or their respective attorneys, principals, or officers, and any relationship between the third appraiser and either party that could be reasonably construed as a conflict of interest. Notwithstanding the foregoing, neither party waives any challenge for a conflict of interest based on work performed by the third appraiser for either party, any entity related to either party, or their respective attorneys, principals, or officers, and any relationship between the third appraiser and either party that could be construed as a conflict of interest, if the third appraiser fails to disclose such work to both parties in the declaration. Each party shall bear one-half (1/2) of the cost of any fee charged by the American Arbitration Association for appointing the third appraiser.

Within thirty (30) days after his or her appointment, the third appraiser shall conduct a hearing at which City and Landlord may each make supplemental oral and/or written presentations, with an opportunity for testimony by the first two (2) appraisers and questioning by the parties and the third appraiser. Within 10 days following the hearing, the third appraiser shall select the appraised fair market value determined by one or the other of the first two (2) appraisers that is the closer, in the opinion of the third appraiser, to the actual fair market value. The determination of the third appraiser shall be limited solely to the issue of deciding which of the appraisals of the two (2) appraisers is closest to the actual fair market value. The third appraiser shall have no right to propose a middle ground or to modify either of the two (2) appraisals, or any provision of the Lease or the Purchase Agreement. The fair market value so determined shall be the "Fair Market Purchase Price."

5. Fees and Expenses. SFMTA shall bear the fees, costs and expenses of the Proposed Appraiser and of any experts and consultants used by such Proposed Appraiser and Landlord shall bear the fees, costs and expenses of Landlord's Appraiser and of any experts and consultants used by such Landlord's Appraiser. Landlord shall pay the cost of the third appraiser, if any, and City shall reimburse Landlord for one half the actual and reasonable cost of such third appraiser.

6. Qualifications. All appraisers specified above shall be competent, licensed, qualified by training and experience in the City of San Francisco, and shall be a member in good standing of the Appraisal Institute (MAI), or, if the Appraisal Institute no longer exists, shall hold the senior professional designation awarded by the most prominent organization of appraisal professionals then awarding professional designations. Without limiting the foregoing, each appraiser shall have extensive experience valuing commercial real estate development sites in the City of San Francisco.

**EXHIBIT E**

**FORM OF MEMORANDUM OF LEASE**

RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:

City and County of San Francisco  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property

FOR RECORDER'S USE ONLY

**MEMORANDUM OF LEASE**

This Memorandum of Lease ("Memorandum"), dated for reference purposes as of \_\_\_\_\_, 2010, is by and between ZOCALO PROPERTIES LLC, a California limited liability company ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, acting by and through its Municipal Transportation Agency ("City").

**Recitals**

A. Concurrently herewith, Landlord and City have entered into that certain Lease, dated \_\_\_\_\_, 2010 (the "Lease"), pursuant to which Landlord leased to City and City leased from Landlord the real property more particularly described in the attached Exhibit A (the "Property"), which is incorporated by this reference.

B. The Lease provides City an option to purchase the Property (the "Purchase Option") on the terms specified in Section 22.1 of the Lease.

C. Landlord and City desire to execute this Memorandum to provide constructive notice of the Lease and the Purchase Option to all third parties, and all of the terms and conditions of the Lease are incorporated herein by reference as if they were fully set forth herein and reference is made to the Lease itself for a complete and definitive statement of the rights and obligations of Landlord and Tenant thereunder.

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Term. Pursuant to the terms of the Lease, Landlord leased the Property to City for a term commencing on the date Landlord delivers possession of the Property to City as set forth in the Lease. The Term of the Lease shall expire on the date that is nine (9) years and six (6) months after the Commencement Date (as such term is defined in the Lease), unless earlier terminated in accordance with the terms of the Lease.

2. Lease Terms. The lease of the Property to City is made pursuant to the Lease, which is incorporated in this Memorandum by reference. This Memorandum shall not be deemed to modify, alter or amend in any way the provisions of the Lease. In the event any conflict exists between the terms of the Lease and this Memorandum, the terms of the Lease

shall govern. Except as otherwise defined in this Memorandum, capitalized terms shall have the meanings given them in the Lease.

3. Successors and Assigns. This Memorandum and the Lease shall bind and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject, however, to the provisions of the Lease.

IN WITNESS WHEREOF, Landlord and City have executed this Memorandum of Lease as of the day and year first above written.

LANDLORD:

ZOCALO PROPERTIES LLC,  
a California limited liability company

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_

CITY:

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, acting by and through its  
Municipal Transportation Agency

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

NATHANIEL P. FORD SR.  
Executive Director/CEO  
San Francisco Municipal Transportation Agency

APPROVED AS TO FORM:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_  
Deputy City Attorney

State of California            )  
                                          )  
County of \_\_\_\_\_)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)



State of California )  
 )  
County of \_\_\_\_\_)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

State of California )  
 )  
County of \_\_\_\_\_)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A**  
**to**  
**Memorandum of Lease**

**Legal Description of Property**

THAT CERTAIN REAL PROPERTY SITUATION IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

All that certain real property as described and delineated upon that certain Map entitled "Parcel Map 299", which Map was filed for record July 5, 2006, in the Office of the Assessor/Recorder of the City and County of San Francisco, State of California, in Book 46 of Parcel Maps, Pages 186-187, inclusive.

APN: 4849 -017

Commonly known as 1508 Bancroft Avenue

**EXHIBIT F**

**FORM OF SUBORDINATION, NONDISTURBANCE AND ATTORNMENT  
AGREEMENT**

**[Attached Below]**

**EXHIBIT F**

**FORM OF SUBORDINATION, NONDISTURBANCE AND ATTORNMENT  
AGREEMENT**

RECORDING REQUESTED BY, AND  
WHEN RECORDED, MAIL TO:

City and County of San Francisco  
Real Estate Division  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102  
Attn: Director of Property

---

SUBORDINATION, NON-DISTURBANCE,  
ATTORNMENT AND ESTOPPEL AGREEMENT

THIS AGREEMENT is entered into as of \_\_\_\_\_, 2010, by and between CITY AND COUNTY OF SAN FRANCISCO ("City" or "Lessee"), WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank"), and ZOCALO PROPERTIES LLC (referred to herein as "Borrower" and "Lessor"), as follows.

**RECITALS**

A. Bank, as successor in interest to San Jose National Bank, has extended credit or may hereafter extend credit to Borrower secured, in whole or in part, by a Construction Trust Deed (the "Deed of Trust"), dated September 1, 1999, recorded on September 9, 1999 in the San Francisco County Real Property Records, as Instrument Number 1999-G654351-00, covering that certain real property situated in San Francisco County, California, commonly known as 1501, 1505, 1509 Armstrong and 1540, 1544, 1548, & 1588 Bancroft Avenue, San Francisco, California and described on Exhibit One attached hereto and incorporated herein by this reference (the "Property").

B. Lessor and Lessee are entering into a lease of all of the Property for a term of nine (9) years and six (6) months with an option to purchase (the "Lease"), which Lease is dated on or about the date hereof. Bank has approved the form of the Lease. A Memorandum of the Lease will be recorded in the Official Records of the Assessor/Recorder of the City and County of San Francisco contemporaneously with the recordation of this Agreement. It is a condition of Bank's agreement to extend or continue credit to Borrower secured by the Property that the security of the Deed of Trust be and at all times remain a lien or charge on the Property prior and superior to the rights of Lessee under the Lease, and it is a condition precedent to Lessee's

entering into the Lease that Bank agree not to disturb Lessee's possessory rights and rights to purchase the Premises if Bank exercises its rights under the Deed of Trust.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. SUBORDINATION.

(a) Subordination of Lease. The Deed of Trust and any and all extensions, renewals, modifications or replacements thereof shall be and at all times remain a lien or charge on the Property prior and superior to the Lease. Subject to the terms of this Agreement, Lessee intentionally and unconditionally waives, relinquishes and subordinates the priority and superiority of the Lease and Lessee's right and interest to the Property thereunder to the lien or charge of the Deed of Trust, and any and all extensions, renewals, modifications or replacements thereof.

(b) Reliance. Lessee acknowledges that Bank, in extending or continuing to extend credit to Borrower secured by the Property is doing so in material reliance on this Agreement. Bank acknowledges that Lessee is entering into the Lease in material reliance on this Agreement.

(c) Acknowledgments of Lessee. Lessee acknowledges that it has such information with respect to any credit extended by Bank to Borrower, and all loan documents executed in connection therewith, as Lessee deems necessary in order to grant this subordination. Lessee further agrees that Bank is under no obligation or duty to, nor has Bank represented that it has or will, see to the application of the proceeds of any such credit by any person or entity, and any application or use of any such proceeds for purposes other than those for which they were intended shall not defeat this subordination.

(d) Entire Subordination Agreement. This Agreement constitutes the whole and only agreement between the parties hereto with regard to the subordination of the Lease to the lien or charge of the Deed of Trust; there are no agreements (written or oral) outside or separate from this Agreement other than the Lease with respect to the subject matter hereof; and all prior negotiations with respect thereto, if any, are merged into this Agreement. This Agreement shall supersede and cancel, but only insofar as would affect the priority between the Deed of Trust and the Lease, any prior agreements as to such subordination, including without limitation those provisions, if any, contained in the Lease which provide for the subordination thereof to the lien of a deed of trust or mortgage affecting all or any portion of the Property.

2. LEASE. Lessee hereby covenants and agrees that, so long as the Deed of Trust remains in force and effect:

(a) No Modification, Termination or Cancellation. Lessee acknowledges and agrees that Bank shall not be bound by any amendment, modification, termination or cancellation (except in conformity with Section 2(b) below) of the Lease made without Lender's written consent which consent may be withheld at the discretion of the Bank if the change would decrease the amount of rent payable by Lessee, shorten the term of the Lease, materially increase the obligations of Lessor, or materially decrease the obligations of Lessee under the Lease. In all other instances,

the consent of Bank shall not be unreasonably withheld, conditioned or delayed and shall be deemed given if notice by the Bank that its consent is denied is not given to Lessee within thirty (30) days of notice of the proposed action.

(b) Notice of Default. If any breach or default of Lessor under the Lease would give Lessee the right, immediately or after the lapse of a period of time, to cancel or terminate the Lease or abate the rent payable thereunder or to claim a partial or total eviction, Lessee shall not exercise such right until it shall have notified Bank in writing of such breach or default by Lessor under the Lease. Lessee agrees that Bank shall have the right (but not the obligation) to cure any breach or default specified in such notice within the time periods set forth below, and Lessee shall not declare a default of the Lease, as to Bank, if Bank cures such breach or default within thirty (30) days after the expiration of the time period provided in the Lease for the cure thereof by Lessor; provided however, that if such breach or default cannot with diligence be cured by Bank within such thirty (30) day period (and so long as the default does not materially interfere with Lessee's use and occupation of the Premises), such period shall be extended for such additional period as shall be reasonable necessary, provided Bank commences the action to remedy the same within such thirty (30) day period, provides Lessee with written notice of Bank's election to remedy the same within such thirty (30) day period, and pursues such cure with diligence.

(c) No Advance Rents. Lessee shall not make any payments or prepayments of rent more than one (1) month in advance of the time when the same become due under the Lease.

(d) Assignment of Rents. Upon receipt by Lessee of written notice from Bank that Bank has elected to terminate the license granted to Lessor to collect rents, as provided in the Deed of Trust, and directing Lessee to make payment thereof to Bank, Lessee shall comply with such direction to pay and shall not be required to determine whether Lessor or Borrower is in default under any obligations to Bank. Lessor consents to the foregoing and agrees that any payments made by Lessee to Bank pursuant to the foregoing shall be credited against sums due under the Lease.

(e) Purchase Option. Bank understands and agrees that the Lease includes a purchase option for the benefit of Lessee. In the event that Bank (or any successor) acquires title to the Property through foreclosure or otherwise prior to Lessee 's exercise of the purchase option or Lessor's conveyance of the Property to Tenant following such exercise, then Bank shall recognize the Lease, including Lessee 's purchase option, and shall comply with Lessor's obligations to convey the Property to Lessee upon Lessee 's exercise of the purchase option and Lessee's completion of its obligations under the purchase agreement as set forth in the Lease.

3. ATTORNNMENT. If Bank or any other transferee acquires Lessor's right, title and interest in and to the Property pursuant to a judicial or non-judicial foreclosure of the Deed of Trust or a deed in lieu thereof or in any other manner whereby Bank or such transferee succeeds to the interest of Lessor under the Lease, Lessee agrees as follows for the benefit of Bank or such transferee:

(a) Payment of Rent. Lessee shall pay to Bank or such transferee all rental payments required to be made by Lessee pursuant to the terms of the Lease for the remaining term thereof.

(b) Continuation of Performance. Lessee shall be bound to Bank or such transferee for the remaining term thereof in accordance with all of the terms of the Lease, and Lessee hereby attorns to Bank or such transferee as its landlord, such attornment to be effective and self-operative without the execution of any further instrument immediately upon Bank or such transferee succeeding to Lessor's interest in the Lease and giving written notice thereof to Lessee.

(c) Limit on Offset. Neither Bank nor such transferee shall be subject to any offsets or defenses which Lessee may have by reason of any act or omission of Lessor as the prior lessor under the Lease (except to the extent that (A) such offset or defense is expressly provided for in the Lease, (B) Bank has been notified in writing of the situation giving rise to such offset or defense, and (C) Bank has failed to remedy such default of conditions within the same period of time given Lessor under the Lease), nor for the return of any sums which Lessee may have paid to Lessor as the prior lessor under the Lease as security deposits, advance rentals paid more than one month in advance, or otherwise, except to the extent that such sums are actually delivered by Lessor to Bank or such transferee. Under no circumstance shall Bank or its transferee have liability to Lessee exceeding any offset to the payment of rent by reason of any act of omission of Lessor as the prior lessor under the Lease. The foregoing shall not relieve Bank or such transferee of the obligation to cure any conditions of the Property the existence of which constitute a lessor default under the Lease and which continue at the time of succession or acquisition by Bank or such transferee, or deprive Lessee of the right to terminate the Lease for a breach of a lessor covenant which is not cured as provided for herein or in the Lease and as a result of which there is a material interference with Lessee's permitted use and occupation of the Property.

(d) Subsequent Transfer. If Bank or such transferee, by succeeding to Lessor's interest under the Lease, becomes obligated to perform the covenants of a lessor thereunder, then, upon any further transfer by Bank or such transferee of its interest as a lessor under the Lease, all of such obligations shall terminate as to Bank or such transferee, provided that further transferee assumes all such obligations.

4 NON-DISTURBANCE. In the event of a foreclosure of the Deed of Trust, or a transfer of the Property in lieu thereof or in any other manner whereby Bank or such transferee succeeds to the interest of Lessor under the Lease, so long as there shall then exist no breach, default or event of default by Lessee under the Lease beyond any applicable notice, grace and cure period, (a) the leasehold interest of Lessee shall not be extinguished or terminated by reason of such foreclosure, (b) the Lease shall continue in full force and effect, and (c) Bank and its successors-in-interest shall recognize and accept Lessee as the tenant under the Lease, subject to the terms and conditions of the Lease as modified by this Agreement.

5. ESTOPPEL. From time to time during the term of the lien of the Deed of Trust, within thirty (30) days after written request from Bank, City shall execute and deliver to Bank a certificate stating: (a) the commencement date and expiration date of the Lease, (b) that the



Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that to its knowledge, there are no defaults under the Lease (or if so, specifying the same), (d) the date to which rent has been paid, and (e) any other information that may be reasonably required. From time to time during the term of the lien of the Deed of Trust, within thirty (30) days after written request from City, Bank shall execute and deliver to City a certificate stating that to its knowledge there are no defaults under the Deed of Trust or the loan documents secured thereby.

6. INSURANCE AND CONDEMNATION PROCEEDS. Anything in this Agreement or the Deed of Trust to the contrary notwithstanding, Bank agrees that it shall permit any insurance or condemnation proceeds to be used for the purpose of reconstructing the improvements located on the Property, unless Bank, under a standard of good faith and fair dealing, believes its security is impaired by the casualty or condemnation giving rise to such proceeds and, in the case of an insurance award, the insurance proceeds (together with a commercially reasonable deductible) are insufficient to reconstruct the improvements and building to at least the same condition prior to the casualty resulting in the claim for which the insurance proceeds are paid.

7. MISCELLANEOUS.

(a) Remedies Cumulative. All remedies provided herein are cumulative, not exclusive, and shall be in addition to any and all other rights and remedies provided by law and by other agreements between Bank and Borrower, Lessor or any other person or entity.

(b) Costs, Expenses and Attorneys' Fees. If any party hereto institutes any judicial or administrative action or proceeding to enforce any rights or obligations under this Agreement, or seeking damages or any other judicial or administrative remedy, the prevailing party shall be entitled to recover from the other party all costs and expenses, including reasonable attorneys' fees (to include outside counsel fees and all allocated costs of the prevailing party's in-house counsel), whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including without limitation, any adversary proceeding, contested matter or motion brought by Bank or any other person) relating to Borrower, Lessee or any other person or entity. For purposes of this Agreement, fees allocated for attorneys of the City's Office of the City Attorney or in-house attorneys of the Bank shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the attorney's services were rendered who practice law in the City of San Francisco in law firms with approximately the same number of attorneys as employed by, respectively, the Office of the City Attorney or the Bank's in-house legal department.

(c) Notices. All notices, requests and demands which any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to each party at the address set forth below its signature, or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class

and postage prepaid. For the convenience of the parties, copies of notices may also be given by telefacsimile to the telefacsimile number, if any, provided from time to time; however, no party may give official or binding notice by telefacsimile.

Notices to Lessee shall be delivered to:

San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Real Estate Section  
Re: 1508 Bancroft

with a copy to:

City and County of San Francisco  
Real Estate Department  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Attn: Director of Property

and a copy to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Pl.  
San Francisco, CA 94102  
Attn: Real Estate/Finance Team

Notices to the Bank shall be delivered to

Boise Loan Operations  
Wells Fargo Bank  
MAC U1851-014  
3033 Elder Street  
Boise, Idaho, 83705  
***(Notices to Bank must reference the loan number 9968130443-18 and the Borrower, Zocalo Properties, LLC.)***

(d) Further Assurances. At the request of any party hereto, each other party shall execute, acknowledge and deliver such other documents and/or instruments as may be reasonably required by the requesting party in order to carry out the purpose of this Agreement, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein, and provided further that any document to be signed by the City must be approved as to form by the San Francisco City Attorney and must not violate the City's Charter or Administrative Code.

(e) Borrower; Lessor. If Borrower and Lessor are the same, each reference in this Agreement to Borrower or Lessor shall be deemed a reference to said person or entity in its respective capacity.

(f) Successors, Assigns; Governing Law. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, legal representatives, successors, assigns and other transferees of the parties hereto, and shall be governed by and construed in accordance with the laws of the State of California.

(g) Conflicts. In the event of any inconsistency between the terms of this Agreement and the Lease, the terms of this Agreement shall control.

(h) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute and be construed as one and the same instrument.

[No further text this page.]

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

**LESSEE:**

CITY AND COUNTY OF  
SAN FRANCISCO, a municipal corporation, acting  
by and through its Municipal Transportation Agency

By: \_\_\_\_\_  
NATHANIEL P. FORD SR.  
Executive Director/CEO  
San Francisco Municipal Transportation Agency  
Address: San Francisco Municipal Transportation  
Agency  
1 South Van Ness Avenue, 7th Floor  
San Francisco, CA 94103

**BANK:**

WELLS FARGO BANK,  
NATIONAL ASSOCIATION

By: \_\_\_\_\_  
Name: Michael Barker  
Title: Vice President  
Address: Wells Fargo Bank, N.A.  
Credit Management Group  
1298 E. 14th Street, Suite 400  
San Leandro, CA 94577

**RECOMMENDED:**

\_\_\_\_\_  
AMY L. BROWN, Director of Property

**APPROVED AS TO FORM:**

DENNIS J. HERRERA, City Attorney

By: \_\_\_\_\_  
Anita L. Wood  
Deputy City Attorney

**BORROWER/LESSOR:**

**ZOCALO PROPERTIES LLC:**

By: \_\_\_\_\_  
Name: Jeremy Sommer  
Title: Member  
Address: 1551 Bancroft Ave  
San Francisco, CA 94124-3216

By: \_\_\_\_\_  
Name: Dermot Conran  
Title: Member  
Address: 1551 Bancroft Ave  
San Francisco, CA 94124-3216

**OBTAIN NOTARY ACKNOWLEDGMENTS**

**EXHIBIT ONE**  
**DESCRIPTION OF PROPERTY**

THAT CERTAIN REAL PROPERTY SITUATION IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

All that certain real property as described and delineated upon that certain Map entitled "Parcel Map 299", which Map was filed for record July 5, 2006, in the Office of the Assessor/Recorder of the City and County of San Francisco, State of California, in Book 46 of Parcel Maps, Pages 186-187, inclusive.

APN: 4849 -017

Commonly known as 1508 Bancroft Avenue

EXHIBIT G  
TO  
INDUSTRIAL LEASE

AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE

by and between

ZOCALO PROPERTIES LLC,

as Seller

and

CITY AND COUNTY OF SAN FRANCISCO,

as Buyer

For the purchase and sale of

Property located at 1508 Bancroft Avenue, Assessor's Block 4849, Lot 17  
San Francisco, California

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**AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE**  
(1508 Bancroft Avenue, Assessor's Block 4849, Lot 17, San Francisco)

THIS AGREEMENT OF PURCHASE AND SALE FOR REAL ESTATE (this "Agreement") dated for reference purposes only as of \_\_\_\_\_, 2010, is by and between ZOCALO PROPERTIES LLC, a California limited liability company ("Seller"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Buyer" or "City"), acting by and through the San Francisco Municipal Transportation Authority ("SFMTA").

**RECITALS**

A. City currently leases from Seller certain real property in the City and County of San Francisco commonly known as 1508 Bancroft Avenue pursuant to the terms of that certain Industrial Lease between Seller and City dated as of \_\_\_\_\_, 2010 (the "Lease"). The Lease grants the City the option to purchase the premises pursuant to the terms and conditions set forth in Section 22.1 of the Lease (the "Purchase Option").

B. City exercised the Purchase Option on \_\_\_\_\_, 20\_\_ (the "Option Exercise Date"), and in accordance with the terms of Purchase Option, City and Seller have executed and do hereby enter into this Agreement.

**AGREEMENT**

IN CONSIDERATION of the foregoing and the payment of the non-refundable sum of Ten Dollars (\$10) by City, the receipt of which is hereby acknowledged by Seller, and the respective agreements contained herein below, Seller and City agree as follows

**1. PURCHASE AND SALE**

**1.1 Property Included in Sale**

Seller agrees to sell and convey to City, and City agrees to purchase from Seller, subject to the terms, covenants and conditions hereinafter set forth, the following:

(a) the real property consisting of approximately forty-five thousand (45,000) square feet of land, located in the City and County of San Francisco, commonly known as 1508 Bancroft Avenue, Assessor's Block 4849, Lot 17, San Francisco, California, and more particularly described in Exhibit A attached hereto (the "Land");

(b) all improvements located on the Land, including, without limitation, (i) that certain 2-story warehouse and office building comprised of approximately ninety thousand (90,000) square feet and commonly known as 1508 Bancroft Avenue (the "Building"), and (ii) all fixtures and apparatus directly used in connection with the operation or occupancy of the Land and its improvements such as heating and air conditioning systems and facilities used to provide any utility, refrigeration, ventilation, or other services (collectively with the Building, the "Improvements");

(c) any and all rights, privileges, and easements incidental or appurtenant to the Land or Improvements, including, without limitation, any and all minerals, oil, gas and other hydrocarbon substances on and under the Land, as well as any and all development rights, air rights, water, water rights, riparian rights and water stock relating to the Land, and any and all easements, rights-of-way or other appurtenances used in connection with the beneficial use and enjoyment of the Land or Improvements, and any and all of Seller's right, title and interest in and to all roads and alleys adjoining or servicing the Land or Improvements (collectively, the "Appurtenances");

(d) all personal property owned by Seller located on or in or used in connection with the Land or Improvements as of the date of this Agreement and as of the Closing Date (as defined in Section 6.2, [Closing Date]), including (the "Personal Property"); and

(e) any intangible personal property now or hereafter owned by Seller and used in the ownership, use or operation of the Land, Improvements or Personal Property, including all licenses, permits and certificates of occupancy issued by governmental authorities relating to the use, maintenance, occupancy and/or operation of the Property, and all warranties and guaranties made by or received from any third party with respect to any building, building component, structure, system, fixture, machinery, equipment, or material situated on, contained in any building or other improvement situated on, or comprising a part of any building or other improvement situated on, any part of the Property (collectively, the "Intangible Property").

(f) all books and records relating to tenants, keys, and other materials of any kind owned by Seller and in the possession or control of Seller or its property manager or asset manager, if any, which are used in the continuing operation of the Improvements (collectively, the "Books and Records")

All of the items referred to in Subsections (a), (b), (c), (d), (e) and (f) above are collectively referred to as the "Property."

## **2. PURCHASE PRICE**

### **2.1 Purchase Price**

The total purchase price for the Property is \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Purchase Price").

### **2.2 Payment**

On the Closing Date (as defined in Section 6.2 [Closing Date]), City shall pay the Purchase Price, adjusted pursuant to the provisions of Article 7 [Expenses and Taxes], and reduced by any credits due City hereunder.

Seller acknowledges and agrees that if Seller fails at Closing to deliver to City the documents required under items (iii) and (iv) of Section 6.3 [Seller's Delivery of Documents], Title Company (as defined in Section 2.3 below) may be required to withhold a portion of the Purchase Price pursuant to Section 1445 of the United States Internal Revenue Code of 1986, as amended (the "Federal Tax Code") or Sections 18662 and 26131 of the California Revenue and

Taxation Code (the "State Tax Code"). Any amount properly so withheld by Title Company shall be deemed to have been paid by City as part of the Purchase Price, and Seller's obligation to consummate the transaction contemplated herein shall not be excused or otherwise affected thereby.

### **2.3 Funds**

All payments made by any party hereto shall be in legal tender of the United States of America, paid by wire transfer of immediately available funds to Chicago Title Company (the "Title Company"), as escrow agent, arranged through the Title Company's offices located at 455 Market Street, Suite 2100, San Francisco, CA 94105, Attention: Nichole Carr.

## **3. TITLE TO THE PROPERTY**

### **3.1 Conveyance of Title to the Property**

At the Closing Seller shall convey to City, or its Nominee (as defined in Section 5.1(e), below), marketable fee title to the Land, the Improvements and the Appurtenances, by duly executed and acknowledged grant deed in the form attached hereto as Exhibit B (the "Deed"). Such Deed shall be subject only to the following (the "Accepted Conditions of Title"):

(a) general real estate taxes not yet due or payable as of the date of the Closing; (b) all title matters relating to the Property that are (i) Approved Title Matters (as defined in Section 5.1(a) below), (ii) Newly Discovered Title Matters that Seller has not agreed, in one or more Seller's Removal Notices (as defined below in Section 5.1(a)) to cure, except to the extent, if any, that Seller agrees in one or more Seller's Removal Notices to cure the same, and (iii) all other exceptions, if any, created by City or agreed to by City in writing, including, without limitation, any liens arising from labor, material or services provided at the request of City pursuant to this Agreement or the Lease. Seller's obligation to cure any Newly Discovered Title Matters shall be limited as set forth in Section 5.1(a), below.

### **3.2 Title Insurance**

It shall be a condition precedent to City's obligation to close the purchase of the Property that Title Company shall be irrevocably committed to issue to City, or its Nominee, (i) an ALTA extended coverage owner's policy of title insurance (6/17/06) (provided that City obtains a survey of the Property and satisfies any requirements of the Title Company required to issue an ALTA policy which are within City's control), or at City's sole option, a CLTA policy of title insurance (the "Owner Title Policy") in the amount (the "Owner Title Policy Amount") of the greater of (x) the Purchase Price, or (y) the Certificates of Participation (as defined in Section 5.1(e) below or other financing debt, insuring fee simple and marketable title to the Land, the Appurtenances (to the extent the Title Company may agree in writing, during the Applicable Period (as defined below), to insure such Appurtenances), and the Improvements in City, or its Nominee, as applicable, free of the rights of tenants or other occupants (other than pursuant to the Lease), and all other exceptions, liens and encumbrances except solely for the Accepted Conditions of Title pursuant to Sections 3.1 and 5.1(a) of this Agreement, and (ii) an ALTA extended coverage policy, or at City's sole option, a CLTA policy, with a leasehold endorsement, insuring City's leasehold estate created by a project lease between the Nominee, as

landlord, and City, as tenant, that may be required as a condition to execution, sale and delivery of the Certificates of Participation or other debt instruments (the "Leasehold Policy"; together with the Owner Title Policy, the "Title Policy"). The Title Policy shall provide full coverage against mechanics' and materialmen's liens arising out of the construction, repair or alteration of any of the Property (except for any liens arising from labor, material or services provided at the request of City in connection with its inspection of the Property pursuant to this Agreement or any liens for which City is liable under the terms of the Lease), shall not contain any exclusion from coverage for creditor's rights or bankruptcy, and the Title Policy shall contain an affirmative endorsement (Form ALTA 9.5 (6/17/06) or equivalent CLTA endorsement) that there are no violations of restrictive covenants, if any, affecting the Property, and such special endorsements as City may reasonably request, including an ALTA 112.2 endorsement and any other endorsements required for issuance and execution of the Certificates of Participation and as the Title Company may agree in writing, during the Applicable Period (as defined below), to issue at the Closing. As used in this Section 3.2 [Title Insurance], "Applicable Period" means prior to the Closing, with respect to any Newly Disclosed Title Matter (as defined in Section 5.1(a) below) or with respect to any title matter relating solely to the issuance of the Certificates of Participation. If requested by City, the Title Policy and/or the Leasehold Policy shall also provide for reinsurance with direct access with such companies and in such amounts as City may reasonably request, and the Title Company may agree in writing to provide at the Closing.

#### **4. BUYER'S DUE DILIGENCE INVESTIGATIONS**

##### **4.1 Due Diligence and Time for Satisfaction of Conditions**

City acknowledges and agrees that City is in possession of the Land and Improvements pursuant to the terms of the Lease and has, before entering into this Agreement, investigated and inspected, either independently or through agents of City's own choosing, the condition of the Property and the suitability of the Property for City's intended use. Seller confirms that, in accordance with the provisions of Section 22.1 of the Lease, Seller has previously delivered to City the following documents, all to the extent such documents exist and are in the possession or control of any of Seller, any member of Seller, or Seller's property manager or asset manager: (i) structural calculations for the Improvements; (ii) site plans and digital copies of the as-built plans and specifications for the Improvements and measurement of the Improvements; (iii) recent inspection reports by Seller's engineers; (iv) existing service contracts, utility contracts, maintenance contracts, employment contracts, management contracts, and brokerage and leasing commission agreements with respect to the Property, the obligations of which may continue following the Closing; (v) presently effective warranties or guaranties received by Seller or Seller's predecessors in interest from any contractors, subcontractors, suppliers or materialmen in connection with any construction, repair or alteration of the Property; (vi) current certificates of insurance for carriers insuring the Property, as well as any information or reports relative to the claims history of the Property; (vii) any environmental reports, studies, surveys, tests and assessments; (viii) any soils and geotechnical reports, including without limitation, any reports relating to the presence of asbestos or asbestos containing materials located at the Property; and (ix) any other contracts or documents necessary for the operation of the Property or which will be binding on the Property after the Closing (collectively, the "Documents"). Seller further agrees to promptly deliver to City any such Documents discovered, created or received by Seller,

its property manager or its asset manager (each, a “Newly Discovered Document”) from the date of such initial delivery through Closing. In addition to the Documents, Seller confirms that Seller has delivered to City a Natural Hazards Disclosure Statement for the Property as required under California law. The Natural Hazards Disclosure Statement was based on a report or reports of a licensed engineer, land surveyor, geologist, or expert in natural hazard discovery, which report or reports was attached to such Natural Hazards Disclosure Statement. City acknowledges that the Natural Hazards Disclosure Statement shall be based solely on the information contained in the report or reports attached thereto, and Seller shall have no liability for any inaccuracy in such reports. In no event shall such Natural Hazards Disclosure Statement or any such report be deemed a representation or warranty of Seller or impose any liability or obligation on Seller.

If a Newly Discovered Document is delivered to City on or after the date which is ten (10) business days prior to the Option Exercise Date, and such Newly Discovered Document affects or discloses a matter or condition which potentially adversely affects the City's use or occupancy of the Premises as originally intended, then City shall be permitted to rescind the exercise of City's option to purchase the Property, by written notice to Seller given within ten (10) business days after City's receipt of such Newly Discovered Document, and in such event this Agreement shall terminate and City shall have no further obligation to purchase the Property. Notwithstanding the foregoing, Seller shall have five (5) business days after receipt of City's termination notice to notify City in writing (“Seller's Cure Notice”) as to what curative action Seller agrees to undertake in order to cure or correct the matter or condition disclosed by the Newly Discovered Document prior to Closing. If Seller does not provide the Seller's Cure Notice to City within such five (5) business day period, Seller shall be deemed to have elected not to cure the matter or condition disclosed by the Newly Discovered Document and in such event this Agreement shall terminate and City shall have no further obligation to purchase the Property. City shall notify Seller in writing within five (5) business days of receipt of Seller's Cure Notice if City reasonably dispute that Seller's proposed curative action would satisfactorily cure the disclosed condition or matter, and in such event this Agreement shall terminate and City shall have no further obligation to purchase the Property. If City does not timely notify Seller that the proposed curative action would be unsatisfactory, Seller shall have thirty (30) days from the date of City's receipt of the Seller Cure Notice to cure or correct the matter or condition disclosed by the Newly Discovered Document to City's reasonable satisfaction. If Seller does not cure or correct the matter or condition disclosed by the Newly Discovered Document to City's reasonable satisfaction within such thirty (30) day period, City may elect to terminate this Agreement by written notice to Seller given within ten (10) days after the expiration of such thirty (30) day period, and in such event this Agreement shall terminate and City shall have no further obligation to purchase the Property. If necessary, the Closing shall be extended to permit the completion of the notice and cure procedure described above, subject however to any timing constraints related to the successful issuance, delivery and sale of the Certificates of Participation (as defined in Section 5.1(e) below). In the event that this Agreement is terminated for any reason, City shall promptly return to Seller the originals of all Documents previously delivered to City by or on behalf of Seller.

## 5. CLOSING CONDITIONS

### 5.1 City's Conditions to Closing

The following are conditions precedent to City's obligation to purchase the Property (collectively, "Conditions Precedent"):

(a) The title exceptions listed on the attached Exhibit C are hereby approved by City (collectively, the "Approved Title Matters"). If any title matter affecting the Property which is not an Approved Title Matter and is not reflected in a preliminary title report or updated title report obtained by City on or before the date which is ten (10) business days prior to the Option Exercise Date is disclosed to City prior to Closing (each, a "Newly Discovered Title Matter"), City shall have ten (10) business days in which to give Seller written notice approving or disapproving of such Newly Discovered Title Matter. If City fails to give such notice within such time period, City shall be deemed to have disapproved such Newly Discovered Title Matter. If such disapproval notice is timely given, or if City is deemed to have disapproved such Newly Discovered Title Matter, then Seller shall have fifteen (15) days after receipt of City's notice to notify City in writing ("Seller's Removal Notice") as to what, if any, curative action Seller agrees to undertake in order to cure any Newly Discovered Title Matter at or prior to Closing. In the event Seller does not provide the Seller's Removal Notice to City within such fifteen (15) day period, Seller shall be deemed to have elected not to cure the Newly Discovered Title Matter. If Seller gives such Seller's Removal Notice to City electing not to cure any of the Newly Discovered Title Matters, or if Seller is deemed to have made such election, then Seller shall not be in default and City shall have fifteen (15) days to elect to proceed with the purchase subject to the Newly Discovered Title Matters and such Newly Discovered Title Matters shall be deemed to be Accepted Conditions of Title (except to the extent that Seller may have agreed in such Seller's Removal Notice to take action to cure the same) or to terminate this Agreement without any liability on the part of Seller. If City fails to give Seller notice of its election within such fifteen (15) days, City shall be deemed to have elected to terminate this Agreement. If necessary, the Closing shall be extended to permit the completion of the notice and election procedure described above, subject however to any timing constraints related to the successful issuance, delivery and sale of the Certificates of Participation. If Seller gives Seller's Removal Notice and agrees therein to take any action to cure any Newly Discovered Title Matter and fails to take such action prior to the Closing, and City is unwilling to take title subject thereto, Seller shall be in default, and City shall have the rights and remedies provided in Section 11.2, below.

(b) Seller shall not be in default in the performance of any covenant or agreement to be performed by Seller under this Agreement, and all of Seller's representations and warranties contained in Section 8.1 below shall have been true and correct as of the Option Exercise Date, except in each case, as disclosed in the Due Diligence Information (as defined below). In addition, Seller's Closing Certification (as defined in Section 6.4(a), below) shall not contain any material exceptions or qualifications. As used herein, "Due Diligence Information" means all information disclosed in the Documents or other materials provided to City, by Seller or otherwise, prior to the date which is ten (10) business days prior to the Exercise Date, including any title report or survey made available to or obtained by City.

(c) As of the Closing Date, there shall have occurred no material adverse change in the physical condition of the Property since the Exercise Date, reasonable wear and tear and loss by casualty or the act, neglect, default, or omission of City and its Agents and Invitees excepted (subject to the provisions of Article 9 [Risk of Loss and Possession]).

(d) Title Company shall be committed at the Closing to issue to City, or its Nominee, (i) the Owner Title Policy as provided in Section 3.2 [Title Insurance], in the amount of the Owner Title Policy Amount, subject only to the Accepted Conditions of Title (excluding the project lease between the Nominee, as landlord, and City, as tenant), together with the title endorsements provided in Section 3.2; and (ii) the Leasehold Policy, together with the title endorsements provided in Section 3.2, insuring the leasehold estate under the project lease between the Nominee, as landlord, and City, as tenant.

(e) City may elect to finance the acquisition of the Property with proceeds from the execution, sale and delivery of certificates of participation (the "Certificates of Participation"), a financing mechanism that will require fee simple title, subject only to the Accepted Conditions of Title, to be taken in the name of a nominee of City (the "Nominee") which, as landlord, will lease the Property to City. The Nominee, which will be a bank or other fiduciary, will act as trustee for holders of the Certificates of Participation. Seller hereby consents to the use of a Nominee to take title to the Property if City so elects. In the event that the Nominee takes title to the Property, Seller and City shall execute an agreement, in a form reasonably acceptable to both parties, terminating the Lease as of the Closing Date. City's obligations to close the acquisition of the Property under this Agreement are contingent upon, and subject to, the successful execution, sale and delivery before the Closing of Certificates of Participation or other financing debt in an amount sufficient to pay the Purchase Price for the Property, certain improvements thereto and related transaction costs. Following the Board of Supervisor's enacting of a resolution approving the sale of Certificates of Participation or other debt to financing the acquisition of the Property, City shall use diligent efforts to effect such execution, sale and delivery of the Certificates of Participation and to complete all other action that is necessary in connection therewith, provided that Seller understands and acknowledges that the terms and conditions of the execution and delivery of such Certificates of Participation or other debt, including that the Purchase Price is supported by a current appraisal of the market value of the Property, must be acceptable to City, the Board of Supervisors and the Mayor of the City and County of San Francisco, in their sole discretion. Other than as expressly provided above in this subparagraph with respect to City using its diligent efforts following Board of Supervisor approval, City makes no representation, warranty or assurance such Certificates of Participation or other debt will be issued, delivered or sold. Seller agrees to execute and deliver, at no cost or liability to Seller, to City upon request any and all certificates, agreements, authorizations or other documents as City may deem reasonably necessary or appropriate in connection with the execution, delivery and sale of the Certificates of Participation or other debt, provided that such certificates, agreements, authorizations and other documents shall not increase Seller's obligations or diminish Seller's rights under this Agreement or the documents required to be delivered by Seller at the Closing. Subject to the foregoing and the other terms and conditions hereof, City may, at its option, initiate a validation proceeding in superior court with respect to such Certificates of Participation or other debt instruments. Seller understands and acknowledges that if such a validation proceeding is initiated, the Certificates of Participation or other debt instruments will not be executed until a judgment in favor of City is



issued in such proceeding and the applicable appeal period expires without written challenge and without the filing of a notice of appeal.

Subject to the terms and conditions hereof, City will use diligent efforts to complete the execution, sale and delivery of the Certificates of Participation or other financing debt on or before \_\_\_\_\_, 201\_\_; provided, however, in the event City has not successfully completed the execution, sale and delivery of the Certificates of Participation by such date, then City and Seller each shall have the right, in its sole discretion, to terminate this Agreement by delivery of notice of termination to the other party, and neither party shall have any further rights or obligations hereunder, except as otherwise expressly provided herein.

**(f)** After the completion of all required environmental review, including without limitation, under the California Environmental Quality Act (“CEQA”), SFMTA's Board of Directors, in its sole discretion, shall have enacted a resolution (and taken such other action as may be required) approving, adopting and authorizing this Agreement and the transactions contemplated hereby (excluding the execution, delivery and sale of the Certificates of Participation to finance the transaction), and such resolution shall have become effective on or before \_\_\_\_\_, 201\_\_.

**(g)** Seller shall have deposited the items described in Section 6.3(a) below [Seller’s Delivery of Documents] into escrow at or before 1:00 p.m. on the day occurring at least five (5) business days before the Closing Date (except as otherwise provided in such Section 6.1(a) below).

**(h)** This Agreement shall not have been terminated in accordance with its terms.

Except for the termination right of both parties provided in the last sentence of subparagraph (e) above, the City’s Conditions Precedent contained in the foregoing subparagraphs (a) through (g) are solely for the benefit of City. If any of the City’s Conditions Precedent are not satisfied, City shall have the right in its sole discretion either to waive in writing the City’s Condition Precedent in question and proceed with the purchase or, in the alternative, terminate this Agreement, provided that the City’s Conditions Precedent described in items (e) and (f) above may not be waived. Except as otherwise provided herein, the waiver of any of the City’s Conditions Precedent shall not relieve Seller of any liability or obligation with respect to any representation, warranty, covenant or agreement of Seller. The parties shall have the right, but not the obligation, to agree, each in its sole and absolute discretion, to extend the Closing Date for a reasonable period of time as agreed by the parties, to allow such City’s Conditions Precedent to be satisfied; provided however, if such conditions are not satisfied at the expiration of such extension period, City shall have the right to waive in writing such conditions and proceed with the purchase or, in the alternative, terminate this Agreement. In addition, if the Certificates of Participation have not been issued within the time frames set forth in subparagraph (e) above, either City or Seller shall have the right to terminate this Agreement as provided in such subparagraph (e). In each case where City has the right pursuant to this paragraph to waive in writing one or more of City’s Conditions Precedent or terminate this Agreement at or before a specified time, City shall be deemed to have terminated this Agreement if City fails to deliver written notice to Seller waiving such condition(s) before such time.

In the event the sale of the Property is not consummated because of a default under this Agreement on the part of Seller, City shall have the remedies set forth below in Section 11.2.

## **5.2 Cooperation with City**

Seller shall cooperate with City and do all acts as may be reasonably requested by City with regard to the fulfillment of any Conditions Precedent including, without limitation, execution of any documents, applications or permits, but Seller's representations and warranties to City shall not be affected or released by City's waiver or fulfillment of any Condition Precedent. Seller hereby irrevocably authorizes City and its Agents to make all inquiries with and applications to any person or entity, including, without limitation, any regulatory authority with jurisdiction as City may reasonably require to complete its due diligence investigations.

## **6. ESCROW AND CLOSING**

### **6.1 Opening of Escrow**

Within three (3) business days after the Effective Date, the parties shall open escrow by depositing an executed counterpart of this Agreement with Title Company, and this Agreement shall serve as instructions to Title Company as the escrow holder for consummation of the purchase and sale contemplated hereby. Seller and City agree to execute such additional or supplementary instructions as may be appropriate to enable the escrow holder to comply with the terms of this Agreement and close the transaction; provided, however, that in the event of any conflict between the provisions of this Agreement and any additional supplementary instructions, the terms of this Agreement shall control.

### **6.2 Closing Date**

The consummation of the purchase and sale contemplated hereby (the "Closing") shall be held and (except as otherwise provided in Sections 6.3 and 6.4, below) delivery of all items to be made at the Closing under the terms of this Agreement shall be made at the offices of Title Company located at 455 Market Street, Suite 2100, San Francisco, California 94105, on \_\_\_\_\_, 201\_\_ **[insert Purchase Deadline established in accordance with Section 22 of the Lease]**, or on such earlier or later date as City and Seller may mutually agree in writing (the "Closing Date"), subject to the provisions of Sections 5.1 and 5.2. The Closing shall occur no later than 10:00 A.M. San Francisco time on the Closing Date. The Closing Date may not be extended without the prior written approval of both Seller and City, except as otherwise expressly provided in this Agreement. In the event the Closing does not occur on or before the Closing Date, Title Company shall, unless it is notified by both parties to the contrary within five (5) days after the Closing Date, return to the depositor thereof items which may have been deposited hereunder. Any such return shall not, however, limit the provisions hereof or otherwise relieve either party hereto of any liability it may have for its wrongful failure to close.

### **6.3 Seller's Delivery of Documents**

(a) At or before 1:00 p.m. on the date occurring at least five (5) business days before the Closing Date, or at such later date as may be indicated below for any specific item,

Seller shall deposit into escrow for delivery at Closing to City, or the Nominee designated by City at least two (2) business days prior to such date, through escrow, the following:

- (i) a duly executed and acknowledged Deed;
- (ii) a duly executed assignment of the Intangible Property;
- (iii) a properly executed affidavit pursuant to Section 1445(b)(2) of the Federal Tax Code in the form attached hereto as Exhibit D, and on which City is entitled to rely, that Seller is not a “foreign person” within the meaning of Section 1445(f)(3) of the Federal Tax Code;
- (iv) a properly executed California Franchise Tax Board Form 593 certifying that Seller is a California resident if Seller is an individual or that Seller has a permanent place of business in California or is qualified to do business in California if Seller is a corporation or other evidence satisfactory to City that Seller is exempt from the withholding requirements of Sections 18662 and 26131 of the State Tax Code;
- (v) such resolutions, authorizations, or other partnership documents or agreements relating to Seller as the Title Company may reasonably require to demonstrate the authority of Seller to enter into this Agreement and consummate the transactions contemplated hereby, and such proof of the power and authority of the individuals executing any documents or other instruments on behalf of Seller to act for and bind Seller;
- (vi) a duly executed certification regarding the accuracy of Seller's representations and warranties as of the Closing Date, including any exceptions or qualifications thereto as of such date ("Seller's Closing Certification"); and
- (vii) a duly executed owner's declaration substantially in the form attached hereto as Exhibit E.

(b) In conjunction with the Closing Date, Seller shall, to the extent such documents exist and are in the possession or control of any of Seller, its property manager or other Agents, deliver to City, or the Nominee, outside of escrow, the following:

- (i) the Documents (which must be delivered to City within five (5) days after the Closing Date); and
- (ii) all keys to the Property and Improvements located thereon.

The provisions of Section 6.3(b) shall survive the Closing.

#### **6.4 City's Delivery of Documents and Funds**

At or before 1:00 p.m. on the date occurring at least five (5) business days before the Closing Date, or such later date as may be indicated below for any specific item, City, or the Nominee designated by City at least two (2) business days prior to such date, shall deposit the following into escrow for delivery to the Seller:

(a) an acceptance of the Deed executed by City's Director of Property;

(b) The Purchase Price, as provided in Article 2 hereof shall be delivered into escrow on the Closing Date.

## **6.5 Other Documents**

Seller and City shall each deposit such other instruments as are reasonably required by Title Company as escrow holder or otherwise required to close the escrow and consummate the purchase of the Property in accordance with the terms hereof; provided, however, that no such instrument shall increase the obligations or diminish the rights of Seller or City under this Agreement or under any of the documents required hereunder to be delivered at Closing by Seller or City, respectively. Without limiting the foregoing, Seller and City shall each deposit an agreement (the "Designation Agreement") designating Title Company as the "Reporting Person" for the transaction pursuant to Section 6045(e) of the Federal Tax Code and the regulations promulgated thereunder, and executed by Seller, City and Title Company. The Designation Agreement shall be substantially in the form attached hereto as Exhibit F and, in any event, shall comply with the requirements of Section 6045(e) of the Federal Tax Code and the regulations promulgated thereunder.

## **7. EXPENSES AND TAXES**

### **7.1 Rent and Other Apportionments**

The following adjustments shall be made with respect to the Property, and the following procedures shall be followed:

At least ten (10) days before the Closing Date, Seller shall prepare and deliver, or cause the escrow holder to prepare and deliver, to City an unaudited statement for the Property (the "Preliminary Proration Statement") showing prorations for the items set forth below, calculated as of 12:01 a.m. on the Closing Date, on the basis of a 365-day year. City and Seller shall agree upon any adjustments to be made to the Preliminary Proration Statement before the Closing, and at the Closing, City or Seller, as applicable, shall receive a credit equal to the net amount due City or Seller, as applicable, pursuant to the Preliminary Proration Statement as finally agreed upon by City and Seller. The items to be covered by the Preliminary Proration Statement are as follows:

- (i) rents prorated on an accrual basis;
- (ii) charges for Seller's insurance costs pursuant to the Lease;

- (iii) non-delinquent real property taxes and assessments for the tax year of the Closing; provided that if the real property tax assessment for the fiscal year in which the Closing occurs has not been issued as of the Closing Date, real property taxes shall be prorated based on the most recent assessed value of the Property, multiplied by the current tax rate, and such tax proration shall be subject to adjustment pursuant to Section 7.2 below; general real estate taxes payable for all tax years prior to the year of the Closing shall be paid by Seller in full at or before Closing;
- (iv) any installments of Special Taxes payable with respect to any Mello-Roos Community Facilities District, and any installments of unpaid interest (only) on any improvement bonds which are a lien on the Property; and
- (v) permits, licenses and/or inspection fees (calculated on the basis of the period covered), but only to the extent transferred to City.

### **7.2 Post-Closing Adjustments**

Notwithstanding anything to the contrary contained in this Article 7, (i) if the amount of the real property taxes and assessments payable with respect to the Property for any period before Closing is determined to be more than the amount of such real property taxes and assessments that is prorated herein (in the case of the current year) or that was paid by Seller (in the case of any prior year) Seller and City shall promptly adjust the proration of such real property taxes and assessments after the determination of such amounts, and Seller shall pay to City any increase in the amount of such real property taxes and assessments applicable to any period before Closing; and (ii) if the amount of the real property taxes and assessments payable with respect to the Property for any period before Closing is determined to be less than the amount of such real property taxes and assessments that is prorated herein (in the case of the current year) or that was paid by Seller (in the case of any prior year), due to an appeal of the taxes by Seller, a reassessment of the value of the Property or otherwise, Seller and City shall promptly adjust the proration of such real property taxes and assessments after the determination of such amounts, and (a) City shall pay to Seller any refund received by City representing such a decrease in the amount of such real property taxes and assessments applicable to any period before Closing; and (b) Seller shall be entitled to retain any refund received by Seller representing such a decrease in the amount of such real property taxes and assessments applicable to any period before Closing. Each party shall give notice to the other party of any adjustment of the amount of the real property taxes and assessments payable with respect to the Property for any period before Closing within thirty (30) days after receiving notice of any such adjustment.

### **7.3 Closing Costs**

City shall pay the premium for the Title Policy and the cost of the endorsements thereto, the cost of any survey obtained by City, escrow and recording fees for the sale. Seller shall be responsible for all costs (including without limitation, any prepayment fees, penalties or other charges) incurred in connection with the removal of title matters other than the Accepted Conditions of Title (including the Newly Discovered Title Matters which Seller has elected to

remove), including all costs incurred in connection with the prepayment or satisfaction of any loan, bond or other indebtedness secured by the Property including, without limitation, any prepayment fees, penalties or charges. The parties anticipate that no transfer taxes will be applicable to the sale to City. If transfer taxes are payable on the sale, such transfer taxes shall be paid 50% by Seller and 50% by City. Any other costs and charges of the escrow for the sale not otherwise provided for in this Section 7.3 or elsewhere in this Agreement shall be allocated in accordance with the closing customs for San Francisco County, as determined by Title Company.

#### **7.4 Survival**

The provisions of this Article shall survive the Closing.

### **8. REPRESENTATIONS AND WARRANTIES**

#### **8.1 Representations and Warranties of Seller**

Seller represents and warrants to and covenants with City as follows:

(a) To the best of Seller's knowledge, there are now, and at the time of the Closing will be, no material physical or mechanical defects of the Property, and no violations of any laws, rules or regulations applicable to the Property, including, without limitation, any earthquake, life safety and handicap laws (including, but not limited to, the Americans with Disabilities Act).

(b) Other than the Lease, there are no leases which will bind the Property following the Closing.

(c) No document or instrument furnished or to be furnished by the Seller to the City in connection with this Agreement contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

(d) Seller does not have knowledge of any condemnation, either instituted or planned to be instituted by any governmental or quasi-governmental agency other than City, which could detrimentally affect the use, operation or value of the Property.

(e) To Seller's knowledge, all water, sewer, gas, electric, telephone, and drainage facilities and all other utilities required by law or by the normal use and operation of the Property are and at the time of Closing will be installed to the property lines of the Property and are and at the time of Closing will be adequate to service the Property.

(f) There are no easements or rights of way which have been acquired by prescription or which are otherwise not of record with respect to the Property, and there are no easements, rights of way, permits, licenses or other forms of agreement which afford third parties the right to traverse any portion of the Property to gain access to other real property. There are no disputes with regard to the location of any fence or other monument of the Property's boundary nor any claims or actions involving the location of any fence or boundary.

**(g)** There is no litigation pending or, after due and diligent inquiry, to the best of Seller's knowledge, threatened, against Seller or any basis therefor that arises out of the ownership of the Property or that might detrimentally affect the use or operation of the Property for its intended purpose or the value of the Property or the ability of Seller to perform its obligations under this Agreement.

**(h)** Seller is the legal and equitable owner of the Property, with full right to convey the same, and without limiting the generality of the foregoing, Seller has not granted any option or right of first refusal or first opportunity to any third party to acquire any interest in any of the Property.

**(i)** Seller is a limited liability company duly organized and validly existing under the laws of the State of California and is in good standing under the laws of the State of California, this Agreement and all documents executed by Seller which are to be delivered to City at the Closing are, or at the Closing will be, duly authorized, executed and delivered by Seller, are, or at the Closing will be, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, are, and at the Closing will be, sufficient to convey good and marketable title (if they purport to do so), and do not, and at the Closing will not, violate any provision of any agreement or judicial order to which Seller is a party or to which Seller or the Property is subject.

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

**(k)** Seller knows of no facts nor has Seller failed to disclose any fact that would prevent City from using and operating the Property after Closing in the normal manner in which it is intended.

**(l)** Seller hereby represents and warrants to and covenants with City that the following statements are true and correct and will be true and correct as of the Closing Date: (i) neither the Property nor to the best of Seller's knowledge any real estate in the vicinity of the Property is in violation of any Environmental Laws; (ii) the Property is not now, nor to the best of Seller's knowledge has it ever been, used in any manner for the manufacture, use, storage, discharge, deposit, transportation or disposal of any Hazardous Material, except for the use of such substances in such limited quantities as are customarily used in offices or warehouses (not including the warehousing of Hazardous Material); (iii) there has been no release and there is no threatened release of any Hazardous Material in, on, under or about the Property; (iv) there have not been and there are not now any underground storage tanks, septic tanks or wells or any aboveground storage tanks at any time used to store Hazardous Material located in, on or under the Property, or if there have been or are any such tanks or wells located on the Property, their location, type, age and content has been specifically identified in Seller's Environmental Disclosure, they have been properly registered with all appropriate authorities, they are in full

compliance with all applicable statutes, ordinances and regulations, and they have not resulted in the release or threatened release of any Hazardous Material into the environment; (v) the Property does not consist of any landfill or of any building materials that contain Hazardous Material; and (vi) the Property is not subject to any claim by any governmental regulatory agency or third party related to the release or threatened release of any Hazardous Material, and there is no inquiry by any governmental agency (including, without limitation, the California Department of Toxic Substances Control or the Regional Water Quality Control Board) with respect to the presence of Hazardous Material in, on, under or about the Property, or the migration of Hazardous Material from or to other property. As used herein, the following terms shall have the meanings below:

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

**(ii)** "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Section 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Improvements or are naturally occurring substances on or about the Property; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and "source," "special nuclear" and "by-product" material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq. Notwithstanding the foregoing, Hazardous Materials shall not include any ordinary office and janitorial supplies which are used, stored and disposed of in customary quantities and in accordance with applicable Environmental Laws.

**(iii)** "Release" or "threatened release" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside any of the improvements, or in, on, under or about the Property. Release shall include, without limitation, "release" as defined in Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601).

**(m)** Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Federal Tax Code.

**(n)** No brokerage or similar fee is due or unpaid by Seller with respect to the Lease.



## **8.2 Indemnity**

Seller, on behalf of itself and its successors and assigns, hereby agrees to indemnify, defend and hold harmless City, its Agents and their respective successors and assigns, from and against any and all liabilities, claims, demands, damages, liens, costs, penalties, losses and expenses, including, without limitation, reasonable attorneys' and consultants' fees, resulting from any misrepresentation or breach of warranty or breach of covenant made by Seller in this Agreement or in any document, certificate, or exhibit given or delivered to City pursuant to or in connection with this Agreement. The foregoing indemnity includes, without limitation, costs incurred in connection with the investigation of site conditions and all activities required to locate, assess, evaluate, remediate, cleanup, remove, contain, treat, stabilize, monitor or otherwise control any Hazardous Material. The indemnification provisions of this Section shall survive beyond the Closing, or, if title is not transferred pursuant to this Agreement, beyond any termination of this Agreement.

## **9. RISK OF LOSS AND POSSESSION**

### **9.1 Risk of Loss**

If any of the Property is damaged or destroyed prior to the Closing Date, or if condemnation proceedings are commenced against any of the Property, then the rights and obligations of Seller and City hereunder shall be as follows:

(a) If such damage or destruction is fully covered by Seller's insurance except for the deductible amount thereunder, and the insurer agrees to timely pay for the entire cost of such repair, and such damage or destruction would cost less than Two Hundred Fifty Thousand Dollars (\$250,000.00) (the "Threshold Damage Amount") to repair or restore, then this Agreement shall remain in full force and effect and City shall acquire the Property upon the terms and conditions set forth herein. In such event, City shall receive a credit against the Purchase Price equal to such deductible amount, and Seller shall assign to City at Closing all of Seller's right, title and interest in and to all proceeds of insurance on account of such damage or destruction pursuant to an instrument satisfactory to City.

(b) If such damage or destruction is not fully covered by Seller's insurance, other than the deductible amount, and would cost less than the Threshold Damage Amount to repair or restore, then the transaction contemplated by this Agreement shall be consummated with City receiving a credit against the Purchase Price at the Closing in an amount reasonably determined by Seller and City (after consultation with unaffiliated experts) to be the cost of repairing such damage or destruction.

(c) If the cost of such damage or destruction would equal or exceed the Threshold Damage Amount, or if condemnation proceedings are commenced against any of the Property, then, City shall have the right, at its election, either to terminate this Agreement in its entirety, or only as to that portion of the Property damaged or destroyed or subject to condemnation proceedings (in which case there shall be an equitable adjustment to the Purchase Price), or to not terminate this Agreement and purchase the Property (or the portion not damaged or affected by condemnation, as the case may be). City shall have thirty (30) days after Seller notifies City

that an event described in this Subsection (c) has occurred to make such election by delivery to Seller of an election notice. City's failure to deliver such notice within such thirty (30)-day period shall be deemed City's election to terminate this Agreement in its entirety. If this Agreement is terminated in its entirety or in part pursuant to this Subsection (c) by City's delivery of notice of termination to Seller, then City and Seller shall each be released from all obligations hereunder pertaining to that portion of the Property affected by such termination. If City elects not to terminate this Agreement, Seller shall notify City of Seller's intention to repair such damage or destruction, in which case this Agreement shall remain in full force and effect, or notify City of Seller's intention to give City a credit against the Purchase Price at the Closing in the amount reasonably determined by City and Seller (after consultation with unaffiliated experts) to be the cost of repairing such damage or destruction and, in the event of a result of such condemnation proceeding, the value of any Property taken as a result of such proceeding, in which case this Agreement shall otherwise remain in full force and effect, and Seller shall be entitled to any proceeds of insurance or condemnation awards. Any repairs elected to be made by Seller pursuant to this Subsection shall be made within one hundred eighty (180) days following such damage or destruction and the Closing shall be extended until the repairs are substantially completed. As used in this Section, the cost to repair or restore shall include the cost of lost rental revenue, including additional rent and base rent.

## **9.2 Insurance**

Through the Closing Date, Seller shall maintain or cause to be maintained, at Seller's sole cost and expense, a policy or policies of property insurance in amounts equal to the full replacement value of the Improvements, insuring against all insurable risks, including, without limitation, fire, vandalism, malicious mischief, lightning, windstorm, water, [**to be determined:** earthquake, flood] and other perils customarily covered by casualty insurance and the costs of demolition and debris removal. Seller shall furnish City with evidence of such insurance upon request by City.

## **9.3 Possession**

Possession of the Property shall be delivered to City on the Closing Date.

# **10. MAINTENANCE; CONSENT TO NEW CONTRACTS**

## **10.1 Maintenance of the Property by Seller**

Between the date of Seller's execution of this Agreement and the Closing, Seller shall perform all work required to be done by the landlord under the terms of the Lease.

## **10.2 City's Consent to New Contracts Affecting the Property; Termination of Existing Contracts**

After the Effective Date, Seller shall not enter into any Lease or contract, or any amendment thereof, or permit any tenant of the Property to enter into any sublease, assignment or agreement pertaining to the Property, without in each instance obtaining City's prior written consent thereto. City agrees that it shall not unreasonably withhold or delay any such consent. Seller shall terminate prior to the Closing, at no cost or expense to City, any and all management

agreements affecting the Property that City does not agree in writing prior to the Closing to assume.

## **11. DEFAULT AND REMEDIES**

### **11.1 City Default**

(a) If City defaults before the Closing under any provision of this Agreement and Seller has actual knowledge of such default(s) before the Closing, or if City defaults on its obligation to close the transaction contemplated hereby, then Seller shall have the right, as its sole and exclusive remedies for such default(s), (i) to terminate this Agreement and recover reimbursement from City for Seller's actual out-of-pocket expenses incurred in connection with its negotiation of this Agreement and its preparation to close the transaction contemplated hereby, up to a maximum of \$2,000.00, and neither party shall have any further liability or obligation to the other hereunder, except for provisions of this Agreement which expressly state that they shall survive the termination of this Agreement, or (ii) continue this Agreement in effect pending Seller's action for damages hereunder.

(b) Seller acknowledges that any claim Seller may have against City arising under this Agreement may, as a matter of law, be subject to limitations on timing of presentment pursuant to Section 911.2 and other relevant provisions of the California Government Code; provided, however, that nothing in this sentence shall be deemed to cause any such claim to be subject to such sections of the California Government Code which would not, as a matter of law, be subject to such sections in the absence of this sentence.

### **11.2 Seller Default**

In the event the sale of the Property is not consummated because of a default under this Agreement on the part of Seller or if a Condition Precedent cannot be fulfilled because Seller frustrated such fulfillment by some affirmative act or negligent omission, City may, at its sole election, either (1) terminate this Agreement by delivery of notice of termination to Seller, whereupon Seller shall pay to City any title, escrow, legal and inspection fees incurred by City and any other expenses incurred by City in connection with the negotiation of this Agreement, the performance of its due diligence review of the Property, and its preparation to close the transaction contemplated hereby, including in each instance attorneys' fees, and neither party shall have any further rights or obligations hereunder, except for provisions of this Agreement which expressly state that they shall survive the termination of this Agreement or (2) continue this Agreement pending City's action for specific performance and/or damages hereunder, including, without limitation, City's costs and expenses incurred hereunder.

### **11.3 Termination**

Upon any termination provided for in this Agreement, each of the parties will be discharged from any further obligations and liabilities under this Agreement, except for the obligations and liabilities that expressly survive such termination under the terms of this Agreement.

**12. GENERAL PROVISIONS**

**12.1 Notices**

Any notice, consent or approval required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given upon (i) hand delivery, against receipt, (ii) one (1) business day after being deposited with a reliable overnight courier service, or (iii) two (2) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

CITY: San Francisco Municipal Transportation Agency  
Attn: Senior Manager, Real Estate Section  
1 South Van Ness Avenue, 8th Floor  
San Francisco, CA 94103  
Facsimile No.: 415-701-4341

with a copy to: Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: Real Estate/Finance Team  
Re: 1508 Bancroft  
Facsimile No.: 415-554-4755

SELLER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile No.: ( ) \_\_\_\_\_

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile No.: ( ) ]

TITLE COMPANY: Nicole T. Carr  
Chicago Title Company  
355 Market Street, Suite 2100  
San Francisco, CA 94105  
Facsimile No.: (415) \_\_\_\_\_  
Escrow Account: #160290798

or to such other address as either party may from time to time specify in writing to the other upon five (5) days prior written notice in the manner provided above. For convenience of the parties, copies of notices may also be given by telefacsimile, to the telephone number listed above, or such other numbers as may be provided from time to time. However, neither party may give official or binding notice by facsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

## **12.2 Brokers and Finders**

Neither party has had any contact or dealings regarding the Property, or any communication in connection with the subject matter of this transaction, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the purchase and sale contemplated herein [, **except for** \_\_\_\_\_, **whose commission, if any is due, shall be the sole responsibility of Seller pursuant to a separate written agreement with such broker, and City shall have no liability whatsoever therefor**]. In the event that any [other] broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his or her claim shall be responsible for such commission or fee and shall indemnify and hold harmless the other party from all claims, costs, and expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the indemnified party in defending against the same. The provisions of this Section shall survive the Closing.

## **12.3 Successors and Assigns**

This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns. City shall have the right, upon notice to Seller, to assign its right, title and interest in and to this Agreement to the Nominee or one (1) or more assignees at any time before the Closing Date.

## **12.4 Amendments**

Except as otherwise provided herein, this Agreement may be amended or modified only by a written instrument executed by City and Seller.

## **12.5 Continuation and Survival of Representations and Warranties**

All representations and warranties by the respective parties contained herein or made in writing pursuant to this Agreement are intended to be, and shall remain, true and correct as of the Closing, shall be deemed to be material, and, together with all conditions, covenants and indemnities made by the respective parties contained herein or made in writing pursuant to this Agreement (except as otherwise expressly limited or expanded by the terms of this Agreement), shall survive the execution and delivery of this Agreement and the Closing, or, to the extent the context requires, beyond any termination of this Agreement. All statements contained in any certificate or other instrument delivered at any time by or on behalf of Seller in conjunction with the transaction contemplated hereby shall constitute representations and warranties hereunder.

## **12.6 Governing Law**

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

## **12.7 Merger of Prior Agreements**

The parties intend that this Agreement (including all of the attached exhibits and schedules, which are incorporated into this Agreement by reference) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Agreement shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Agreement.

## **12.8 Parties and Their Agents; Approvals**

The term "Seller" as used herein shall include the plural as well as the singular. If there is more than one (1) Seller, then the obligations under this Agreement imposed on Seller shall be joint and several. As used herein, the term "Agents" when used with respect to either party shall include the agents, employees, officers, contractors and representatives of such party. All approvals, consents or other determinations permitted or required by City hereunder shall be made by or through the Executive Director/CEO of City's SFMTA unless otherwise provided herein, subject to applicable law.

## **12.9 Interpretation of Agreement**

The article, section and other headings of this Agreement and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

## **12.10 Attorneys' Fees**

In the event that either party hereto fails to perform any of its obligations under this Agreement or in the event a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting party or the non-prevailing party in such dispute, as the case may be, shall pay the prevailing party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Agreement, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice

in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney.

### **12.11 Sunshine Ordinance**

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

### **12.12 Conflicts of Interest**

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

### **12.13 Notification of Limitations on Contributions**

Through its execution of this Agreement, Seller acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Seller 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. Seller further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Seller's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than twenty percent (20%) in Seller; any subcontractor listed in the contract; and any committee that

is sponsored or controlled by Seller. Additionally, Seller acknowledges that Seller must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Seller further agrees to provide to City the name of the each person, entity or committee described above.

#### **12.14 Non-Liability of City Officials, Employees and Agents**

Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City shall be personally liable to Seller, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Seller, its successors and assigns, or for any obligation of City under this Agreement.

#### **12.15 Earned Income Credit (EIC) Forms**

San Francisco Administrative Code Section 12O requires that employers provide their employees with IRS Form W-5 (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) Seller shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Seller 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 Seller; 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 Section 12.15(a) of this shall constitute a material breach by Seller of the terms of this Agreement. If, within thirty (30) days after Seller receives written notice of such a breach, Seller fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Seller 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 Seller 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.

#### **12.16 Counterparts**

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



### **12.17 Effective Date**

As used herein, the term "Effective Date" shall mean the date on which the Board of Directors of City's SFMTA, in their sole and absolute discretion, adopt a resolution approving this Agreement in accordance with all applicable laws and (b) this Agreement is duly executed by the parties hereto.

### **12.18 Agreement Not to Market Prior to Effective Date**

Seller agrees that unless and until this Agreement terminates pursuant to its terms, Seller shall not negotiate with any other parties pertaining to the sale of the Property and shall not market the Property to third parties.

### **12.19 Acceptance of Agreement by Seller**

This Agreement shall be null and void unless Seller accepts it and returns to City four (4) fully executed counterparts hereof on or before 5:00 p.m. San Francisco Time on \_\_\_\_\_, 201\_.

### **12.20 Cooperative Drafting.**

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, SELLER ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY TO THIS AGREEMENT UNLESS AND UNTIL APPROPRIATE LEGISLATION OF CITY'S BOARD OF SUPERVISORS SHALL HAVE BEEN DULY ENACTED APPROVING THIS AGREEMENT AND AUTHORIZING THE TRANSACTIONS CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON THE DUE ENACTMENT OF SUCH LEGISLATION, AND THIS AGREEMENT SHALL BE NULL AND VOID IF THE BOARD OF DIRECTORS OF CITY'S SFMTA DOES NOT APPROVE THIS AGREEMENT, IN ITS SOLE DISCRETION. APPROVAL OF ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH LEGISLATION WILL BE ENACTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

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

SELLER:

ZOCALO PROPERTIES LLC,  
a California limited liability company

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_

CITY AND COUNTY OF SAN FRANCISCO,  
a municipal corporation, acting by and through  
its Municipal Transportation Agency

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

NATHANIEL P. FORD SR.  
Executive Director/CEO  
Municipal Transportation Agency

APPROVED BY:

San Francisco Municipal Transportation Agency  
Board of Directors

Resolution No: \_\_\_\_\_

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

Attest:

\_\_\_\_\_  
Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

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

Anita L. Wood  
Deputy City Attorney

Title Company agrees to act as escrow holder in accordance with the terms of this Agreement and to execute the Designation Agreement (attached hereto as Exhibit F) and act as the Reporting Person (as such term is defined in the Designation Agreement). Title Company's failure to execute below shall not invalidate the Agreement between City and Seller.

TITLE COMPANY:

CHICAGO TITLE INSURANCE COMPANY

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

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**

**REAL PROPERTY DESCRIPTION**

All that certain real property located in the County of San Francisco, State of California, described as follows:

THAT CERTAIN REAL PROPERTY SITUATION IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

All that certain real property as described and delineated upon that certain Map entitled "Parcel Map 299", which Map was filed for record July 5, 2006, in the Office of the Assessor/Recorder of the City and County of San Francisco, State of California, in Book 46 of Parcel Maps, Pages 186-187, inclusive.

APN: 4849 -017

Commonly known as 1508 Bancroft Avenue

**EXHIBIT B**  
**GRANT DEED**

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Director of Property  
Real Estate Division  
City and County of San Francisco  
25 Van Ness Avenue, Suite 400  
San Francisco, California 94102

The undersigned hereby declares this instrument to be  
exempt from Recording Fees (Govt. Code § 27383).

Documentary Transfer Tax of \$0 based on  
full value of the property conveyed

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

**GRANT DEED**  
(Assessor's Parcel No. \_\_\_\_\_)

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

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

Executed as of this \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

State of California            )  
                                          ) ss  
County of San Francisco    )

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

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CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the foregoing Grant Deed to the City and County of San Francisco, a municipal corporation, is hereby accepted pursuant to Board of Supervisors' Resolution No. 18110 Series of 1939, approved August 7, 1957, and the grantee consents to recordation thereof by its duly authorized officer.

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

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

Director of Property



**EXHIBIT A TO GRANT DEED**

**REAL PROPERTY DESCRIPTION**

All that certain real property located in the County of San Francisco, State of California, described as follows:

THAT CERTAIN REAL PROPERTY SITUATION IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

All that certain real property as described and delineated upon that certain Map entitled "Parcel Map 299", which Map was filed for record July 5, 2006, in the Office of the Assessor/Recorder of the City and County of San Francisco, State of California, in Book 46 of Parcel Maps, Pages 186-187, inclusive.

APN: 4849 -017

Commonly known as 1508 Bancroft Avenue

**EXHIBIT C**

**TITLE EXCEPTIONS**

**None**  
**[Or list]**

**EXHIBIT D**

**CERTIFICATE OF TRANSFEROR  
OTHER THAN AN INDIVIDUAL  
(FIRPTA Affidavit)**

Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, the transferee of certain real property located in the City and County of San Francisco, California, that withholding of tax is not required upon the disposition of such U.S. real property interest by ZOCALO PROPERTIES LLC, a California limited liability company ("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Transferor's U.S. employer identification number is \_\_\_\_\_; and

3. Transferor's office address is \_\_\_\_\_

---

Transferor understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalty of perjury, I declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

Dated: \_\_\_\_\_, 201\_.

**EXHIBIT E**

**FORM OF OWNER'S DECLARATION**

The undersigned hereby declares and certifies to Chicago Title Insurance Company (the "Title Company"), with respect to that certain real property commonly known as 1508 Bancroft Avenue, located in the City and County of San Francisco, California (the "Premises"), that:

(1) the undersigned has not entered into any written agreement for any repair, work of improvement or materials furnished to the Premises within the last one hundred eighty (180) days which has not been paid for, and the undersigned has not received any written notice asserting any currently existing claim based on any such repair, work or materials; and

(2) to the actual knowledge of the undersigned, there is no one in possession of the Premises other than the City and County of San Francisco pursuant to that certain Industrial Lease dated \_\_\_\_\_, 2010.

This Declaration is given for the purpose of inducing the Title Company to issue its policy(ies) of title insurance in favor of the City and County of San Francisco or its nominee ("Transferee"), and its lender, which may provide coverage as to the items mentioned above in connection with the undersigned's transfer of the Premises to Transferee on or about the date hereof.

Dated this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

[\_\_\_\_\_]



## EXHIBIT F

### DESIGNATION AGREEMENT

This DESIGNATION AGREEMENT (the "Agreement") dated as of \_\_\_\_\_, 200\_, is by and between ZOCALO PROPERTIES LLC, a California limited liability company ("Seller"), the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City"), and CHICAGO TITLE INSURANCE COMPANY ("Title Company").

A. Pursuant to that certain Purchase Agreement entered into by and between Seller and City, dated \_\_\_\_\_, 201\_ (the "Purchase Agreement"), Seller has agreed to sell to City, and City has agreed to purchase from Seller, certain real property located in City and County of San Francisco, California, more particularly described in Exhibit A attached hereto (the "Property"). The purchase and sale of the Property is sometimes hereinbelow referred to below as the "Transaction").

B. Section 6045(e) of the United States Internal Revenue Code of 1986 and the regulations promulgated thereunder (collectively, the "Reporting Requirements") require an information return to be made to the United States Internal Revenue Service, and a statement to be furnished to Seller, in connection with the Transaction.

C. Pursuant to Subsection 2(b)(i) of the Purchase Agreement, an escrow has been opened with Title Company, Escrow No. \_\_\_\_\_, through which the Transaction will be or is being accomplished. Title Company is either (i) the person responsible for closing the Transaction (as described in the Reporting Requirements) or (ii) the disbursing title or escrow company that is most significant in terms of gross proceeds disbursed in connection with the Transaction (as described in the Reporting Requirements).

D. Seller, City and Title Company desire to designate Title Company as the "Reporting Person" (as defined in the "Reporting Requirements") with respect to the Transactions.

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

1. Title Company is hereby designated as the Reporting Person for the Transaction. Title Company shall perform all duties that are required by the Reporting Requirements to be performed by the Reporting Person for the Transaction.

2. Seller and City shall furnish to Title Company, in a timely manner, any information requested by Title Company and necessary for Title Company to perform its duties as Reporting Person for the transaction.

3. Title Company hereby requests Seller to furnish to Title Company Seller's correct taxpayer identification number. Seller acknowledges that any failure by Seller to provide Title Company with Seller's correct taxpayer identification number may subject Seller to civil or

criminal penalties imposed by law. Accordingly, Seller hereby certifies to Title Company, under penalties of perjury, that Seller's correct taxpayer identification number is \_\_\_\_\_.

4. The names and addresses of the parties hereto are as follows:

SELLER:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_  
Facsimile No.: ( ) \_\_\_\_\_

CITY:

San Francisco Municipal Transportation Agency  
Attn: Senior Manager, Real Estate Section  
1 South Van Ness Avenue, 8th Floor  
San Francisco, CA 94103  
Facsimile No.: 415-701-4341

with a copy to:

Director of Property  
25 Van Ness Avenue, Suite 400  
San Francisco, CA 94102  
Facsimile No.: \_\_\_\_\_

TITLE COMPANY:

Chicago Title Company  
355 Market Street, Suite 2100  
San Francisco, CA 94105  
Attn: Nicole T. Carr  
Escrow Account: #160290798  
Facsimile No.: ( ) \_\_\_\_\_

5. Each of the parties hereto shall retain this Agreement for a period of four (4) years following the calendar year during which the date of closing of the Transaction occurs.



IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date and year first above written.

SELLER:

ZOCALO PROPERTIES LLC,  
a California limited liability company

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

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

Date: \_\_\_\_\_

CITY:

CITY AND COUNTY OF SAN FRANCISCO, a  
municipal corporation, acting by and through its  
Municipal Transportation Agency

By: \_\_\_\_\_  
NATHANIEL P. FORD SR.  
Executive Director/CEO

Date: \_\_\_\_\_

TITLE COMPANY:

CHICAGO TITLE INSURANCE COMPANY

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

Date: \_\_\_\_\_



**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** ADMINISTRATION, TAXIS & ACCESSIBLE SERVICES

**BRIEF DESCRIPTION:**

Adopting the proposed federal fiscal year 2011-2013 Overall Goal of **22** percent for participation by Disadvantaged Business Enterprises in contracts financed with assistance from the Federal Transit Administration.

**SUMMARY:**

- As a condition of receiving federal funding, the SFMTA must comply with the Disadvantaged Business Enterprise (DBE) Program requirements contained in Part 26 of Title 49 of the Code of Federal Regulations (Part 26). Until this year, this included submission of an annual DBE goal to the Federal Transit Administration (FTA) by August 1.
- The U.S. Department of Transportation recently issued new regulations amending Part 26, which require DOT grantees to establish a DBE overall goal as a percentage of all FTA funds expected to be expended for a three-year period, instead of annually.
- The SFMTA proposes a federal fiscal year (FFY) 2011-2013 goal of 22 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 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.

**ENCLOSURES:**

1. Resolution
2. Methodology

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

FINANCE \_\_\_\_\_

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

SECRETARY \_\_\_\_\_

ADOPTED RESOLUTION BE RETURNED TO: Virginia Harmon , Senior Manager, Equal Opportunity

**ASSIGNED SFMTAB CALENDAR DATE** \_\_\_\_\_

## **PAGE 2**

### **PURPOSE:**

As a recipient of federal financial assistance from the FTA, SFMTA must have an approved DBE Program and set three-year goal for DBE participation in DOT-assisted contracts. This overall DBE goal must be submitted to the FTA by August 1; however, the FTA has granted the SFMTA an extension until August 4, 2010 to submit the goal.

### **GOAL:**

#### Benefit to the SFMTA 2008 – 2012 Strategic Plan

The SFMTA will further the following goal of the Strategic Plan through adoption of the 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

### **DESCRIPTION:**

#### 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 ("Part 26"). 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.

DOT recently issued new regulations amending Part 26, which went into effective on March 5, 2010. The new regulations require DOT grantees to establish a DBE overall goal as a percentage of all FTA funds expected to be expended during a three-year period. This contrasts with previous DOT requirements calling for the establishment of an annual overall DBE goal.

Under the DBE Program, SFMTA sets the three-year DBE goal 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 equal to or less than \$750,000 in order to be certified as DBEs.

Part 26 also requires 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 eligible to certify firms as DBEs.

### SFMTA's DBE Program

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. On May 30, 2003, the SFMTA Board adopted a revised DBE Program incorporating changes to Part 26.

### 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.* (9<sup>th</sup> Cir. 2005) 407 F.3d 983, a case in which a majority owned business challenged Washington's DBE program and the federal regulations governing that program. 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 within the relevant market.

In response to the *Western States Paving* decision, on March 23, 2006, DOT published 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 overall DBE goal solely through race-neutral measures. Since the SFMTA does not currently have sufficient evidence of discrimination or its effects within the relevant local market to justify submission of race-conscious goals, the SFMTA has been using race neutral measures to achieve the DBE goal. Staff continues to collect data to assess whether there is evidence of discrimination in the local market. When we have five years of data reflecting SFMTA efforts to meet the Agency's DBE goal using solely race neutral measures, we will initiate a disparity analysis in accordance with federal regulations and guidance.

### 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 2011 through 2013 to achieve the DBE goal.

### Overall DBE Goal

Part 26 requires the SFMTA Board to approve an overall goal for DBE participation in FTA-assisted contracts. As discussed above, DOT recently amended Part 26 to require DOT grantees to establish a DBE overall goal as a percentage of all FTA funds expected to be expended over a three-year period. The three-year goal tracks each federal fiscal year, which starts on October 1 and ends on September 30. The three-year 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.

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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 goal to the FTA by August 1, 2010, for review, along with a description of the methodology used to establish the goal.

The Contract Compliance Office (CCO) calculated availability estimates for minority-owned and/or women-owned business enterprises (M/WBEs) using the US Census Bureau's Survey of Business Owners for 2002, the latest year for which there is complete data of this type. CCO has produced weighted estimates of availability for Construction, Transportation, Professional and Other 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 goal of **22** percent of DBE participation in projected new FTA-assisted contracts for 2011-2013. A description of the methodology and the three-year DBE goal is enclosed. SFMTA intends to use race-neutral means (its SBE Program) to achieve the goal.

As required under Part 26, SFMTA will publish a notice announcing its proposed DBE Goal for FFY 2011-2013. The notice will appear in the following local and minority focused-publications: The Bay Area Reporter, China Press, El Reportero, San Francisco Bay View, Sing Tao Daily, World Journal, West Portal Monthly and The Western Edition. 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.

### **FUNDING IMPACT:**

SFMTA must comply with Part 26 as a condition of receiving federal funds

### **OTHER APPROVALS RECEIVED OR STILL REQUIRED:**

In accordance with Part 26, SFMTA's FFY 2011-2013 overall DBE goal must be submitted to the FTA for review.

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

### **RECOMMENDATION:**

Staff recommends that the SFMTA Board of Directors approve the proposed federal fiscal year 2011-2013 Overall DBE Goal of **22** percent.

<sup>1</sup>As used in this discussion, the terms "race-conscious", "race-neutral", and "race-based" include both race and gender.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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, 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.* (9<sup>th</sup> 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, 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); and

WHEREAS, The Regulations require the SFMTA to (1) set an overall goal for DBE participation in its DOT-assisted contracts for a three-year period; 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 overall DBE Participation goal for federal fiscal year (FFY) 2011-2013; and

WHEREAS, SFMTA staff followed one of the methodologies set forth in Part 26 and arrived at an overall annual goal of 22 percent for DBE participation in DOT-assisted contracts for FFY 2011-2013; and

WHEREAS, As required under the Regulations, the proposed overall DBE goal will be advertised beginning August 13, 2010 for a 30-day public review period, and a concurrent 45-day comment period; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors has reviewed the methodology used to determine the proposed FFY 2011-2013 three year overall DBE goal for contracting by the SFMTA, and adopts a three-year overall goal of 22 percent for DBE participation in FTA-assisted contracts for FFY 20011-2013; 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 2011-2013 three-year overall DBE 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 to the Board of Directors  
San Francisco Municipal Transportation Agency



# SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

## FY 2011 – 2013 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 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 **22** percent for DBE contracting for federal fiscal years (FFYs) 2011-2013. 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 Three Availability by Minority Group and Industry for San Francisco Consolidated Metropolitan Statistical Area (CMSA), All firms, Survey of Business Owners). This figure will generally represent the ready, willing and able DBEs available to work on SFMTA FFYs 2011-2013 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/DBEProgram/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 **B. 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 FFYs 2011-2013 FTA-assisted contracts.

#### **I. METHODOLOGY TO ESTABLISH OVERALL GOAL**

##### **A. STEP 1 - DETERMINING 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 'Notes' below Table Three 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 FFYs 2011-2013 FTA-assisted contracts.

As mentioned above, the DBE goal includes only contracts that SFMTA, at the time it sets the goal, expects to award during FFYs 2011 - 2013. 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 overall goal is 22 percent, but the current actual DBE goal commitment is 24 percent.

### ***STEP 1 – BASE FIGURE***

SFMTA expects to award a total of **27** contracts during Federal Fiscal Years 2011-2013.

These contracts in Table 1 are in applicable 5-digit NAICS Code. In Table 2, the contracts are summarized by 2-digit NAICS Code. Note that one contract may include participation in more than one NAICS Code.

**TABLE ONE**  
**FFY 2011-2013 FTA Contracting Opportunities**

<b>Item #</b>	<b>Project Name</b>	<b>Target Date</b>	<b>Commercial &amp; Institutional Building Construction</b>	<b>Other Heavy &amp; Civil Engineering Construction</b>	<b>Electrical</b>	<b>Other Building Equipment Contractor</b>	<b>Heavy Duty Truck Mfg</b>	<b>General Freight Trucking, Local</b>	<b>Professional, Scientific &amp; Technical Services</b>	<b>Fiscal Year 2011-2013 Total</b>	<b>% of Anticipated Contract Award</b>
<b>NAICS</b>	<b>North American Industry Classification System Code</b>		<b>236220</b>	<b>237990</b>	<b>238210</b>	<b>238290</b>	<b>336120</b>	<b>484110</b>	<b>54</b>		
1	Central Subway Project UMS Utility Relocation No.2 - 1251 (CP02)	Jan-11	1,513,200	15,888,600	7,818,200					<b>25,220,000</b>	<b>2.53%</b>
2	No. 5 Fulton Ductbank Construction	Jan-11	6,265,000	6,265,000	5,370,000					<b>17,900,000</b>	<b>1.80%</b>
3	Job Order Contracting Program (No. 1)	Jan-11	3,000,000	2,000,000						<b>5,000,000</b>	<b>0.50%</b>
4	Job Order Contracting Program (No. 2)	Jan-11	2,500,000	2,500,000						<b>5,000,000</b>	<b>0.50%</b>
5	Job Order Contracting Program (No. 3)	Jan-11			5,000,000					<b>5,000,000</b>	<b>0.50%</b>
6	Muni Metro Subway Escalator Rehabilitation Ph. I Station Construction	Jan-11	290,000		290,000	5,220,000				<b>5,800,000</b>	<b>0.58%</b>
7	Central Subway-TBM Procurement, Launch Box & Tunnel Construction	Feb-11		134,400,000	11,600,000			14,000,000		<b>160,000,000</b>	<b>16.05%</b>
8	C3 Interim OCC Furnishing & Systems	Mar-11	2,000,000		2,000,000					<b>4,000,000</b>	<b>0.40%</b>
9	Motor Generator(M/G) Replacement	Mar-11		175,000						<b>175,000</b>	<b>0.02%</b>

Item #	Project Name	Target Date	Commercial & Institutional Building Construction	Other Heavy & Civil Engineering Construction	Electrical	Other Building Equipment Contractor	Heavy Duty Truck Mfg	General Freight Trucking, Local	Professional, Scientific & Technical Services	Fiscal Year 2011-2013 Total	% of Anticipated Contract Award
NAICS	North American Industry Classification System Code		236220	237990	238210	238290	336120	484110	54		
10	Neoplan Midlife Overhaul Project	Mar-11		9,000,000			9,000,000			18,000,000	1.81%
11	Green Center Rail Replacement	Apr-11	1,480,000	11,840,000	1,480,000					14,800,000	1.48%
12	Bayview Opera House, Phase II	Apr-11	70,000	1,260,000	70,000					1,400,000	0.14%
13	John Woods Motor Coach Facility - Vehicle Lift Replacement Phase I	Jul-11	570,000	2,280,000	950,000					3,800,000	0.38%
14	Presidio & Potrero ETI Bus Hoist Lifts	Sep-11		2,000,000						2,000,000	0.20%
15	Trolley Coach Replacement Project , QAQC (As-Needed)	Oct-11							2,000,000	2,000,000	0.20%
16	NABI Bus Replacement, QAQC (As-Needed)	Jan-12							2,000,000	2,000,000	0.20%
17	Historic Car, Rehabilitation of EX-SEPTA Cars - 16PCC	Jan-12		9,200,000			9,200,000			18,400,000	1.85%
18	Job Order Contract (No. 4)	Mar-12	3,000,000	1,000,000	1,000,000					5,000,000	0.50%

Item #	Project Name	Target Date	Commercial & Institutional Building Construction	Other Heavy & Civil Engineering Construction	Electrical	Other Building Equipment Contractor	Heavy Duty Truck Mfg	General Freight Trucking, Local	Professional, Scientific & Technical Services	Fiscal Year 2011-2013 Total	% of Anticipated Contract Award
NAICS	North American Industry Classification System Code		236220	237990	238210	238290	336120	484110	54		
19	C3 Integrated Systems Replacements (may be combined with Central Subway Surface Improvement, Trackwork & Systems)	Mar-12		5,600,000	50,400,000					56,000,000	5.62%
20	Central Subway - Union Square/Market St. Station Construction	Mar-12	10,200,000	107,100,000	52,700,000					170,000,000	17.06%
21	Central Subway - Chinatown Station Construction	Mar-12	7,500,000	99,000,000	43,500,000					150,000,000	15.05%
22	Operator's Restroom – Phase 4	Apr-12	97,500	455,000	97,500					650,000	0.07%
23	Central Subway - Moscone Station Construction	Jun-12	6,300,000	65,700,000	18,000,000					90,000,000	9.03%
24	Mission Bay Loop	Jun-12	125,000	2,250,000	125,000					2,500,000	0.25%
25	Central Subway - Surface Improvement, Trackwork & Systems	Oct-12	11,000,000	34,000,000	55,000,000					100,000,000	10.03%
26	Carl/Cole Rail Replacement	Jul-13	1,200,000	8,400,000	2,400,000					12,000,000	1.20%
27	Van Ness Bus Rapid Transit (BRT)	Sep-13	12,000,000	84,000,000	24,000,000					120,000,000	12.04%

Item #	Project Name	Target Date	Commercial & Institutional Building Construction	Other Heavy & Civil Engineering Construction	Electrical	Other Building Equipment Contractor	Heavy Duty Truck Mfg	General Freight Trucking, Local	Professional, Scientific & Technical Services	Fiscal Year 2011-2013 Total	% of Anticipated Contract Award
NAICS	North American Industry Classification System Code		236220	237990	238210	238290	336120	484110	54		
<b>TOTAL:</b>			<b>69,110,700</b>	<b>604,313,600</b>	<b>281,800,700</b>	<b>5,220,000</b>	<b>18,200,000</b>	<b>14,000,000</b>	<b>4,000,000</b>	<b>996,645,000</b>	<b>100%</b>
<b>PERCENTAGE OF TOTAL ANTICIPATED CONTRACT AWARD:</b>			<b>6.93%</b>	<b>60.63%</b>	<b>28.27%</b>	<b>0.52%</b>	<b>1.83%</b>	<b>1.40%</b>	<b>0.40%</b>	<b>100%</b>	

**SUMMARY OF PROJECTED FTA FUNDING AVAILABILITY PER NORTH AMERICAN INDUSTRIAL CLASSIFICATION (NAICS)  
CATEGORIES**

**TABLE TWO  
FFY 2011-2013 FTA Dollars by NAICS Code**

<b>Item #</b>	<b>Project Name</b>	<b>Target Date</b>	<b>Construction</b>	<b>Manufacturing</b>	<b>Transportation &amp; Warehousing</b>	<b>Professional, Scientific &amp; Technical Services</b>	<b>Fiscal Year 2011-2013 Total</b>
<b>NAICS</b>	<b>North American Industry Classification System Code</b>		<b>23</b>	<b>31-33</b>	<b>48-49</b>	<b>54</b>	
1	Central Subway Project UMS Utility Relocation No.2 (CP02)	Jan-11	25,220,000	0	0	0	<b>25,220,000</b>
2	No. 5 Fulton Ductbank Construction	Jan-11	17,900,000	0	0	0	<b>17,900,000</b>
3	Job Order Contracting Program (No. 1)	Jan-11	5,000,000	0	0	0	<b>5,000,000</b>
4	Job Order Contracting Program (No. 2)	Jan-11	5,000,000	0	0	0	<b>5,000,000</b>
5	Job Order Contracting Program (No. 3)	Jan-11	5,000,000	0	0	0	<b>5,000,000</b>
6	Muni Metro Subway Escalator Rehabilitation Ph. I Station Construction	Jan-11	5,800,000	0	0	0	<b>5,800,000</b>
7	Central Subway-TBM Procurement, Launch Box & Tunnel Construction	Feb-11	146,000,000	0	14,000,000	0	<b>160,000,000</b>

<b>Item #</b>	<b>Project Name</b>	<b>Target Date</b>	<b>Construction</b>	<b>Manufacturing</b>	<b>Transportation &amp; Warehousing</b>	<b>Professional, Scientific &amp; Technical Services</b>	<b>Fiscal Year 2011-2013 Total</b>
<b>NAICS</b>	<b>North American Industry Classification System Code</b>		<b>23</b>	<b>31-33</b>	<b>48-49</b>	<b>54</b>	
8	C3 Interim OCC Furnishing & Systems	Mar-11	4,000,000	0	0	0	<b>4,000,000</b>
9	Motor Generator(M/G) Replacement	Mar-11	175,000	0	0	0	<b>175,000</b>
10	Neoplan Midlife Overhaul Project	Mar-11	9,000,000	9,000,000	0	0	<b>18,000,000</b>
11	Green Center Rail Replacement	Apr-11	14,800,000	0	0	0	<b>14,800,000</b>
12	Bayview Opera House, Phase II	Apr-11	1,400,000	0	0	0	<b>1,400,000</b>
13	John Woods Motor Coach Facility - Vehicle Lift Replacement Phase I	Jul-11	3,800,000	0	0	0	<b>3,800,000</b>
14	Presidio & Potrero ETI Bus Hoist Lifts	Sep-11	2,000,000	0	0	0	<b>2,000,000</b>
15	Trolley Coach Replacement Project , QAQC (As-Needed)	Oct-11	0	0	0	2,000,000	<b>2,000,000</b>
16	NABI Bus Replacement, QAQC (As-Needed)	Jan-12	0	0	0	2,000,000	<b>2,000,000</b>



<b>Item #</b>	<b>Project Name</b>	<b>Target Date</b>	<b>Construction</b>	<b>Manufacturing</b>	<b>Transportation &amp; Warehousing</b>	<b>Professional, Scientific &amp; Technical Services</b>	<b>Fiscal Year 2011-2013 Total</b>
<b>NAICS</b>	<b>North American Industry Classification System Code</b>		<b>23</b>	<b>31-33</b>	<b>48-49</b>	<b>54</b>	
17	Historic Car, Rehabilitation of EX-SEPTA Cars - 16PCC	Jan-12	9,200,000	9,200,000	0	0	<b>18,400,000</b>
18	Job Order Contract (No. 4)	Mar-12	5,000,000	0	0	0	<b>5,000,000</b>
19	C3 Integrated Systems Replacements (may be combined with Central Subway Surface Improvement, Trackwork & Systems)	Mar-12	56,000,000	0	0	0	<b>56,000,000</b>
20	Central Subway - Union Square/Market St. Station Construction	Mar-12	170,000,000	0	0	0	<b>170,000,000</b>
21	Central Subway - Chinatown Station Construction	Mar-12	150,000,000	0	0	0	<b>150,000,000</b>
22	Operator's Restroom – Phase 4	Apr-12	650,000	0	0	0	<b>650,000</b>
23	Central Subway - Moscone Station Construction	Jun-12	90,000,000	0	0	0	<b>90,000,000</b>
24	Mission Bay Loop	Jun-12	2,500,000	0	0	0	<b>2,500,000</b>
25	Central Subway - Surface Improvement, Trackwork & Systems	Oct-12	100,000,000	0	0	0	<b>100,000,000</b>

<b>Item #</b>	<b>Project Name</b>	<b>Target Date</b>	<b>Construction</b>	<b>Manufacturing</b>	<b>Transportation &amp; Warehousing</b>	<b>Professional, Scientific &amp; Technical Services</b>	<b>Fiscal Year 2011-2013 Total</b>
<b>NAICS</b>	<b>North American Industry Classification System Code</b>		<b>23</b>	<b>31-33</b>	<b>48-49</b>	<b>54</b>	
26	Carl/Cole Rail Replacement	Jul-13	12,000,000	0	0	0	<b>12,000,000</b>
27	Van Ness Bus Rapid Transit (BRT)	Sep-13	120,000,000	0	0	0	<b>120,000,000</b>
<b>TOTAL:</b>			<b>960,445,000</b>	<b>18,200,000</b>	<b>14,000,000</b>	<b>4,000,000</b>	<b>996,645,000</b>
<b>PERCENTAGE:</b>			<b>96.37%</b>	<b>1.83%</b>	<b>1.40%</b>	<b>0.40%</b>	<b>100.00%</b>

In establishing the Base Figure for the relative availability of DBEs in the San Francisco CMSA, SFMTA relied on information from the 2002 US Census Bureau. This information is reflected in Table Three – Availability by Minority Group and Industry for San Francisco CMSA, All Firms, Survey of Business Owners.

**TABLE THREE**  
**Availability by Minority Group and Industry for San Francisco CMSA, All Firms**

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
Manufacturing	31-33	138	0.8%	1,015	5.6%	2,268	12.5%	117	0.6%	3,538	19.5%	3,229	17.8%	6,151	33.9%	18,132
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%	7880*	4.6%	20,694	13.7%	1,058	0.7%	25,386	21.4%	47,527	31.4%	64,930	43.0%	151,135
Other Services	81	3,048	5.0%	7,856	12.8%	12,911	21.0%	914	1.5%	24,729	40.3%	24,444	39.7%	39,354	63.9%	61,564

- 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:  $[G] = ([A] + [B] + [C] + [D]) \times (1 - [F]) + [F]$

\*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.

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 Four below.

**TABLE FOUR**  
**FFY 2011–2013 Summary of DBE Availability**  
**By NAICS Code and Weighted By FTA Dollars**

	NAICS CODE	Scope of Work	TOTAL DBES	US CENSUS (all firms)	% of Available DBE Firms	% of Anticipated Contract \$\$ to be Awarded	DBE Availability Weighted by Anticipated Contract \$\$
1	23	Construction	13,238	50,130	26.40%	93.37%	24.65%
2	31-33	Manufacturing	6,151	18,132	33.90%	1.83%	0.62%
3	48-49	Transportation & Warehousing	10,028	18,005	55.70%	1.40%	0.78%
4	54	Professional, Scientific, & Technical Assistance	64,930	151,135	43.00%	0.40%	0.17%
<b>TOTAL:</b>			<b>133,701</b>	<b>298,966</b>		<b>100.00%</b>	<b>26.22%</b>

The formula used to calculate the Base Figure is:

Number of Ready, Willing, and Able DBEs in the San Francisco CMSA / Number of All Ready, Willing and Able Firms = Base Figure

**BASE FIGURE FORMULA**

**BASE FIGURE=**

$$\begin{aligned}
 &13,238 \text{ construction DBEs} / 50,130 \text{ All construction firms} \times 93.37 \\
 &+ \\
 &6,151 \text{ Manufacturing DBEs} / 18,132 \text{ All Manufacturing firms} \times 1.83 \\
 &+ \\
 &10,028 \text{ Transportation \& warehouse DBEs} / 18,005 \text{ All Transportation \& warehouse firms} \times 1.40 \\
 &+ \\
 &64,930 \text{ Professional \& Technical DBEs} / 151,135 \text{ All Professional \& Technical firms} \times .40
 \end{aligned}$$

**BASE FIGURE=**

$$(.2640)(.9337) + (.3390)(.0183) + (.5570)(.0140) + (.4300)(.0040) = \text{relative availability}$$

**BASE FIGURE=**

$$(.2465) + (.0062) + (.0078) + (.0017) = 26.22\% = 26.22\%$$

Therefore, SFMTA's Base Figure representing the relative availability of DBE firms in the San Francisco CMSA is: 26.22 percent

## B. 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 2005 – 2010 as follows:

FY 2009-10: Annual DBE goal was 22%, actual DBE commitments equaled **24%** (1st,2nd Quarter)  
FY 2008-09: Annual DBE goal was 29%, actual DBE commitments equaled **10%**  
FY 2007-08: Annual DBE goal was 25%, actual DBE commitments equaled **24%**  
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%**

DOT has published “Tips for Goal-Setting in the Disadvantaged Business Enterprise Program” (Reference: <http://www.osdbu.dot.gov/DBEProgram/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 17.5 percent. In using this figure to determine the adjustment for past participation, the following formula was used:

### Steps:

1. Base Figure = 26.22%
2. Median Past Participation = 17.5%
3. Adjustment factor =  
(base figure 26.22%) + (median past participation 17.5%) divided by 2 = 21.86%

An impact of past DBE participation has resulted in an adjustment to the base figure of 26.22% DBE participation for FTA-assisted contracts to be awarded in FFYs 2011-2013. The adjusted DBE participation goal is 21.86% or **22%** for FFY 2011-2013.

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 providing 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").

The SFMTA SBE program applies 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; Telecommunications; Construction—Building (Heavy); Construction—Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection; and, Transportation . These categories are included in the SBE program to ensure that the program is race-neutral. In these

categories, the 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 or woman owned business that is certified as a federal DBE and meets the size standard established for the SFMTA SBE Program. The SFMTA intends to set contract goals for SBE participation for these types of FTA-funded contracts

## **II. Public Participation Process**

To provide for public participation in this goal-setting process, the SFMTA, working in concert with the members of the Business Outreach Committee (BOC) conducted a public participation meeting on April 21, 2010 at the Metropolitan Transportation Commission (MTC) auditorium and a town hall meeting on May 4, 2010, which was conducted at the Alameda-Contra Costa Transit District auditorium. The BOC membership is comprised of the Alameda-Contra Costa Transit District (AC Transit), Alameda County Congestion Management Agency (ACCMA), Alameda County Transportation Improvement Authority (ACTIA), Bay Area Rapid Transit District (BART), Central Contra Costa Transit Authority (CCCTA), City of Rio Vista, Golden Gate Bridge, Highway and Transportation District (GGBHTD), Metropolitan Transportation Commission (MTC), San Francisco Bay Area Water Emergency Transportation Authority (WETA), San Francisco Municipal Transportation Agency (SFMTA), San Mateo County Transit District (SamTrans/Caltrain), Santa Clara Valley Transportation Authority (VTA), and the Transbay Joint Powers Authority (TJPA).

The meetings were conducted to obtain pertinent input from businesses and organizations that are most impacted by the DBE goals established for DOT-assisted contracts.

The meetings provided DBEs, small businesses and business support organizations 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 distributed over 2000 invitations to small and DBE businesses, and business support organizations.

During the public participation and town hall meetings, the SFMTA presented, as did the other agencies, DOT-assisted contracting opportunities for FFYs 2011-2013.

During the public participation and town hall meetings, DBE owners expressed their concerns about how they continue to find it difficult to participate on DOT-assisted contracts. They asked how they could better access opportunities. Concerns were expressed about how many DBE businesses are not solicited by primes to participate on projects, and how primes are unresponsive to DBEs who attempt to work with them, despite having the requisite skills and experience needed. Some DBE owners stated how they have been in business for many years, yet find it difficult to grow their businesses, because they lack access to DOT-assisted projects.

Many of the DBEs in attendance at the town hall meeting stated that a DBE certification is an important tool for attaining work. They further stated that the DBE certification has been instrumental in their ability to obtain contracts.

The BOC provided information about how to access project solicitations for their respective agencies at the public participation and town hall meetings. The BOC encouraged small and DBE owners to seek assistance from agency representatives. Each BOC agency provided information on contracts projected to be awarded during FFYs 2011 -2013. The information included breakdown of anticipated project scope and contract

advertisement dates. The SFMTA presented detailed information about upcoming opportunities on its Central Subway project, which is the agency's largest DOT-assisted project in decades.

In response to the comments expressed during the public participation and town hall meeting, SFMTA will continue to review contracts to determine how to improve small and DBE businesses access to contracting opportunities. The SFMTA will encourage prime contractors to subcontract portions of the work that they might otherwise perform with their own forces.

SFMTA continues to outreach aggressively to small and DBE businesses, independently, with the BOC and other public agencies. Outreach activities include providing advance notice of upcoming projects; three months to one year in advance. Other activities include conducting networking events that provide opportunities for small DBE business owners to meet prime contractors, DBE certification workshops, and events designed for small and DBE vendors to meet with buyers from BOC agencies and prime contractors. SFMTA participates in the preparation of the quarterly BOC newsletter that provides listing of upcoming projects, outreach events, and guidance on how to participate in public contracting. SFMTA continues to seek ways to improve its DBE outreach efforts.

### **Conclusion:**

The San Francisco Municipal Transportation Agency has prepared this methodology report for submission to FTA Region IX, in compliance with the procedures outlined in 49 CFR Part 26, as amended, requiring DOT grantees to establish a DBE overall goal as a percentage of all FTA funds expected to be expended in the three forthcoming federal fiscal years.

The 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 22 percent overall DBE goal has been established for all FTA-funded contracts anticipated to be awarded for FFYs 2011-2013.

SFMTA will monitor its overall DBE goal by tracking each individual contract throughout the term of the contract for DBE participation and payments respective to the federal fiscal year of award.



**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Executive Director/CEO to enter into an agreement with CityPass, Inc. for the Marketing and Sale of Fare Media for a term of five years, with two options for an additional two years each.

**SUMMARY:**

- CityPass, Inc. (CityPass) operates the San Francisco CityPass program, combining admission passes to several San Francisco cultural and tourist attractions into a single-price ticket book sold primarily to visitors to San Francisco.
- In January 2000, the SFMTA executed an Agreement with CityPass, Inc. for a pilot program to market the MUNI Seven Day Passport ("Passport") as one of the several participating attractions of the San Francisco CityPass program.
- The program continues to operate per the terms of the pilot program agreement.
- Muni Passports are a page contained in the CityPass ticket book, and Muni accepts the ticket books, when presented by passengers, as valid Passports. SFMTA staff also sell CityPass books at their retail locations.
- SFMTA receives full payment for the value of the Passports in CityPass ticket books sold at the Agency's retail locations, and a proportionate share from each San Francisco CityPass ticket book sold by other vendors.
- The CityPass program generates approximately \$900,000 a year in pass-through revenue for the SFMTA.
- The SFMTA seeks to continue participation in the CityPass program and requests authorization to enter into an agreement for the Marketing and Sale of Fare Media with CityPass for a term of 5 years, with two options for an additional two years each.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Agreement

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

FINANCE \_\_\_\_\_

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

SECRETARY \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO Diana Hammons

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

## PAGE 2

### PURPOSE

The purpose of the calendar item is to authorize the Executive Director/CEO to enter into an Agreement with CityPass Inc. for the Marketing and Sale of Fare Media for a term of five years, with two options for an additional two years each.

### GOALS

The completion of the program would assist the SFMTA in meeting the following Strategic Goals:

- Goal 1:** Customer Focus: To improve tourism by facilitating the availability of public transportation to tourists visiting San Francisco.
- Objective 1** Reduce congestion through major corridors caused by tourists driving cars.
- Goal 2:** Financial Capacity: To enable SFMTA to receive additional revenues resulting from CityPass' promotional program and CityPass' wholesale tour operator sales program.
- Objective 2.1** Identify increased revenue from sale of CityPass books to San Francisco tourists at all the SFMTA sales kiosks.
- Objective 2.2** Increase revenue through CityPass over that received from basic fares. SFMTA receives a discounted amount for all CityPass ticket books sold at other attractions, even if a ticket book is never used on Muni.

### DESCRIPTION

CityPass is the national leader in city attraction packaging marketing to the tourism sector. The company began operations in 1997 in San Francisco and Seattle. Today CityPass has 11 different city programs serving 73 attractions. The CityPass ticket book is designed to be used by visitors to a city. The San Francisco CityPass ticket book expires after nine days of use, and this ensures it is used almost exclusively by visitors. Other participating San Francisco attractions are the Blue & Gold Fleet Bay Cruise, California Academy of Sciences, the Aquarium of the Bay, the San Francisco Museum of Modern Art, the Exploratorium and the De Young/ Legion of Honor Fine Arts Museums (patrons may choose admission to either the Exploratorium or the De Young/ Legion of Honor Museums, but not both).

In January, 2000, SFMTA entered into a pilot program agreement with CityPass to include the MUNI Seven Day Passport ("Passport") in the San Francisco CityPass ticket book as one of the several participating attractions of the San Francisco CityPass program. Under the pilot program, SFMTA agreed to sell the CityPass ticket book at its retail locations. In return, SFMTA received the full face value of the Passport for each CityPass ticket book sold at an SFMTA retail location. In addition, SFMTA received a percentage of the revenues from each San Francisco CityPass ticket book sold by other vendors, including those sold by CityPass and the other participating attractions. SFMTA received this share of revenue from each ticket book sold regardless of whether the Passport was actually used.

## **PAGE 3**

SFMTA has continued to participate in the CityPass program in accordance with the pilot program agreement. The proposed agreement retains the structure of the pilot program. CityPass is responsible for marketing and distribution of the CityPass ticket book. The SFMTA also agrees to sell CityPass ticket books at the SFMTA ticket sales locations. The SFMTA will receive, on a monthly basis, a portion of the revenue from all Ticket Book sales, in accordance with a formula set forth in the Agreement. In addition to the revenue received from sales, SFMTA is paid for all other ticket books sold at other San Francisco attractions participating in the CityPass program. This payment comes from the pool of funds available after

- 1) each selling attraction has been paid their gate price plus \$1.50:
- 2) net amounts are accumulated after sales by wholesalers:
- 3) the CityPass management fee is deducted from the pool.

Funds are distributed using a formula which weights number of visitors with an attraction's price. SFMTA receives payment for all ticket books regardless of whether or not the 7-day passport is ever used. The CityPass management fee is scaled downward from 23% as sales unit volume increases. In 2009, the management fee average was 21%.

### **FUNDING IMPACT**

The CityPass program generates approximately \$900,000 a year in pass-through revenue for the SFMTA through its sales program. Nothing in this agreement precludes the authority of the Board of Directors from setting fares for Passports.

### **ALTERNATIVES CONSIDERED**

The SFMTA could decide to withdraw from participation in the City Pass program. Staff concluded, however, that this program provides vital marketing of SFMTA services to San Francisco visitors and a convenient distribution channel to obtain fare media.

### **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

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

### **RECOMMENDATION**

Staff recommends that the San Francisco Municipal Transportation Agency Board of Directors authorize the Executive Director/CEO to execute the proposed Agreement with CityPass, Inc. for the Marketing and Sale of Fare Media for a term of five years with two options for an additional two years each .

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The San Francisco Municipal Transportation Agency ("SFMTA") regularly markets a Municipal Railway (MUNI) Seven-Day Passport ("Passport"), a ticket good for seven consecutive days of unlimited rides on revenue vehicles and streetcars operated by MUNI, including cable cars; and

WHEREAS, CityPass, Inc. ("CityPass") operates the San Francisco CityPass program, combining admission passes to several San Francisco cultural and tourist attractions, including the Blue & Gold Fleet Bay Cruise, the California Academy of Sciences, the San Francisco Museum of Modern Art and a choice of either the Exploratorium or the De Young and Legion of Honor Fine Arts Museums into a single-price ticket book sold primarily to visitors to San Francisco; and

WHEREAS, In January, 2000, the SFMTA entered into a pilot program agreement with CityPass to include the Passport in the San Francisco CityPass Ticket Book as one of the several participating attractions of the San Francisco CityPass program; and

WHEREAS, The SFMTA has continued to participate in the CityPass program in accordance with the terms of the pilot program agreement; and

WHEREAS, The SFMTA proposes to enter an Agreement with CityPass for the Marketing and Sale of Fare Media for a term of five years with two options for an additional two years each, under which CityPass would include the Passport in the San Francisco CityPass Ticket Book as one of the several participating attractions of the San Francisco CityPass program; and

WHEREAS, Under the Agreement, the Passport would be a page contained in the CityPass Ticket Book, and MUNI would accept CityPass Ticket Books, when presented by passengers, as valid Passports; and

WHEREAS, SFMTA would receive, on a monthly basis, a portion of the revenue from all Ticket Book sales, in accordance with a formula set forth in the Agreement; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors hereby authorizes the Executive Director/CEO to execute an Agreement with CityPass, Inc. for the Marketing and Sale of Fare Media for a five-year term with two options for an additional two years each.

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

\_\_\_\_\_  
Secretary, Municipal Transportation Agency

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.11**

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

**DIVISION:** Office of the Board of Directors

**BRIEF DESCRIPTION:**

Appointing Terrie Williams, manager, Budget and Grants, Finance and Information Technology to the Board of Trustees for the Transport Workers Union-San Francisco Municipal Railway Trust Fund.

**SUMMARY:**

- San Francisco Civil Service Commission Rule 406.4 provides that the Transportation Workers Union-San Francisco Municipal Railway Trust Fund (Trust Fund) shall be administered by a six member Board of Trustees.
- Two of the trustees are appointed by the SFMTA Board of Directors and serve at the pleasure of the SFMTA Board of Directors. The first trustee is Cam Beach, a member of the SFMTA Board of Directors.
- The second trustee, Elena Chiong, recently retired therefore it is appropriate to appoint a replacement trustee. It is recommended that the SFMTA Board of Directors appoint Terrie Williams, manager, Budget and Grants in the Finance and Information Technology Division, as a second trustee representative to the Trust Fund's Board of Trustees.

**ENCLOSURES:**

1. MTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

\_\_\_\_\_

FINANCE \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION \_\_\_\_\_

BE RETURNED TO

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

## **PAGE 2.**

### **PURPOSE**

To appoint Ms. Terrie Williams, manager, Budget and Grants in the SFMTA's Finance and Information Technology division to serve on the Trust Fund's Board of Trustees.

### **GOAL**

The SFMTA will further the following goals and objectives of the Strategic Plan:

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

Objective 4.1 – Increase revenue by 20% or more by 2012 by improving collections and identifying new sources

Objective 4.2 - Ensure efficient and effective use of resources

### **DESCRIPTION**

Pursuant to the City and County of San Francisco's Charter, each year a study is conducted to determine the wages that may be paid to SFMTA operators. The Charter provides that the maximum amount that may be paid is the average of the two highest wage schedules in effect on July 1st of that year for comparable platform employees and coach or bus operators of other public transit systems operated primarily within municipalities with a population of not less than 500,000 and employing at least 400 operators.

As part of this annual survey, an actuarial study is also conducted which is used to determine the monetary value of the difference between retirement, health and vacation benefits provided by the City and the benefits paid to operators for the two public transit systems used to determine SFMTA operator wages. As provided by Charter Section A8.404 (f), an amount not to exceed the difference between these benefits shall be converted to a dollar amount and deposited into the Trust Fund.

San Francisco Civil Service Commission Rule 406.4 provides that the Trust Fund shall be administered by a six member Board of Trustees.

Two of the trustees are appointed by the SFMTA Board of Directors and serve at the pleasure of the SFMTA Board of Directors. Cam Beach, a member of the SFMTA Board of Directors, currently serves on the Trust Fund's Board of Trustees. The second trustee, Elena Chiong, recently retired.

Three trustees are appointed by the Transport Workers Union, Local 250A. The remaining appointment is made by the Civil Service Commission. Civil Service Commission Rule 406.4 also grants these appointing authorities one alternate trustee appointment to serve when a trustee is not available to attend Trust Fund meetings. Currently there are no alternative trustees.

**PAGE 3.**

The key powers and duties of the Board of Trustees include establishing a detailed procedure for the receipt of monies to the Trust Fund and for the administration of the Trust Fund; the types of benefits that shall be made available to transit operators and the procedures for the disbursement of such benefits; and procedures for the investment of funds.

The SFMTA Board of Directors had appointed SFMTA Controller Elena Chiong to serve as the SFMTA's second appointee however Ms. Chiong recently retired and the position is now vacant.

to the fiduciary responsibility entrusted to the Trust Fund's Board of Trustees, Chief Financial Officer Sonali Bose recommends that Ms. Terrie Williams, manager, Budget and Grants with the Finance and Information Technology Division be appointed to serve on the Board of Trustees.

**ALTERNATIVE CONSIDERED**

None

**FUNDING IMPACT**

None

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

No other approvals are required. The San Francisco Municipal Transportation Agency (SFMTA) Board of Directors has the authority to appoint SFMTA trustees.

**RECOMMENDATION**

The City Attorney's Office review is not required because it is a policy matter for the SFMTA Board of Directors.

Staff recommends that the SFMTA Board approve the attached resolution authorizing the appointment of Terrie Williams, the SFMTA's manager of Budget and Grants to serve on the Board of Trustees for the Transportation Workers Union-San Francisco Municipal Railway Trust Fund.

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SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, San Francisco Civil Service Commission Rule 406.4 provides that the Transport Workers Union-San Francisco Municipal Railway Trust Fund shall be administered by a six member Board of Trustees; and

WHEREAS, Two of the trustees are appointed by the San Francisco Municipal Transportation Agency Board of Directors and serve at the pleasure of the SFMTA Board of Directors; now, therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors does hereby appoint Terrie Williams, manager, Budget and Grants to the Board of Trustees for the Transportation Workers Union-San Francisco Municipal Railway Trust Fund.

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

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency



**THIS PRINT COVERS CALENDAR ITEM NO.: 12**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** CAPITAL PROGRAMS AND CONSTRUCTION

**BRIEF DESCRIPTION:**

Requesting authorization to award San Francisco Municipal Transportation Agency Contract CS-156, Agency Capital Program Controls System Procurement and Related Support Services, to Hill International as negotiated for an amount not to exceed \$22,268,541 for a term not to exceed eight years, with expenditures limited to \$13,481,000 pending receipt and certification of additional funding.

**SUMMARY:**

- The selected Consultant will provide necessary consulting services to specify and implement an agency-wide program controls system and provide related support services for the Central Subway Project.
- SFMTA Board of Directors adopted Resolution No. 09-168 on September 15, 2009 authorizing the Executive Director/CEO to issue a Request for Proposal (RFP), evaluate proposals, select the highest ranking proposal, and to negotiate a contract for Contract No. CS-156, Agency Capital Program Controls System Procurement and Related Support Services.
- SFMTA advertised the RFP on October 21, 2009 and completed the contract negotiations with the highest ranked firm in July 2010.

**ENCLOSURES:**

1. SFMTA Board of Directors Resolution
2. Project Fund Contributions
3. Project Budget & Financial Plan
4. List of Subcontractors
5. Contract

**APPROVALS:**

**DATE:**

DIRECTOR OF DIVISION  
PREPARING ITEM

\_\_\_\_\_

\_\_\_\_\_

FINANCE  
EXECUTIVE  
DIRECTOR/CEO

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

SECRETARY

\_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION BE RETURNED  
TO

\_\_\_\_\_ Jessie Katz

**ASSIGNED SFMTAB CALENDAR**

**DATE:**

\_\_\_\_\_

## **PAGE 2.**

### **PURPOSE**

Requesting authorization to award San Francisco Municipal Transportation Agency (SFMTA) Contract CS-156, Agency Capital Program Controls System Procurement and Related Support Services, to Hill International for an amount not to exceed \$22,268,541 for a term not to exceed eight years.

### **GOAL**

The Central Subway Project is consistent with the SFMTA Strategic Plan in the following goals and objectives:

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

Objective 1.3 Reduce emissions as required by SFMTA Clean Air Plan

Objective 1.4 Improve accessibility across transit service

Objective 1.5 Increase percentage of trip using more sustainable modes

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

Objective 2.2 Ensure efficient transit connectivity and span of service

Objective 2.4 Reduce congestion through major corridors

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

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

Objective 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits

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

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

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

Objective 4.2 Ensure efficient and effective use of resources

**PAGE 3.**

## **DESCRIPTION**

### **Background:**

The Project is the second phase of SFMTA's Third Street Light Rail Project, and will add 1.67 miles of light rail track north from the northern end of the new Third Street Light Rail at Fourth and King Streets to a terminal in Chinatown. The Project will serve regional destinations, including Chinatown (the most densely populated area of the country that is not currently served by modern rail transportation), Union Square, Moscone Convention Center, Yerba Buena, SoMa and AT&T Park. The Project will also connect BART and Caltrain (the Bay Area's two largest regional commuter rail services), serve a low auto ownership population of transit customers, increase transit use and reduce travel time, reduce air and noise pollution, and provide congestion relief. The public interest and necessity require the construction and operation of the Project to achieve such benefits.

The Project will include twin bore, subsurface tunnels to connect the Project's three subway stations and provide direct rail service to Union Square and Chinatown. The Project has been planned and located in a manner that will be most compatible with the greatest public good and the least private injury.

A draft Supplemental Environmental Impact Statement, Environmental Impact Report was issued for the Project on October 17, 2007. The San Francisco Planning Commission certified the Final SEIS/SEIR as accurate and in compliance with CEQA, NEPA and Chapter 31 of the San Francisco Administrative Code on August 7, 2008. On August 19, 2008, the SFMTA Board of Directors adopted Resolution No. 08-150, adopting CEQA Findings, a Statement of Overriding Considerations for the Project, and the Mitigation Monitoring and Reporting Plan for the Project. On September 16, 2008, the Board of Supervisors unanimously rejected an appeal of the Planning Commission's certification of the SEIS/SEIR. A notice of determination was filed on September 18, 2008. The Record of Decision was issued by the Federal Transit Administration ("FTA") on November 26, 2008. None of the circumstances in which further environmental review would be required under CEQA or NEPA are present.

### **Current Status:**

The Project has completed the preliminary engineering work. On January 7, 2010, the FTA issued its approval for the Project to enter into Final Design. Project construction is scheduled to begin in 2010, and the start of revenue operation is scheduled for 2018.

### **Purpose and Scope of Contract:**

The anticipated complexity of the Central Subway, including tunneling and/or cut-and-cover construction, in proximity to sensitive urban structures and facilities, poses significant

## **PAGE 4.**

coordination, project management, and construction cost control and schedule management challenges to the City. The SFMTA's current tools to monitor and control large capital projects are outdated and require extensive resources to maintain. Given the substantial capital investment in the Central Subway and the target project completion schedule of 2018, it is in the best interest of the Agency to engage a qualified consultant with specific experience and expertise in project controls with specialties in transit, tunneling, and underground construction scheduling and estimating to design, implement, maintain and train SFMTA staff in the use of a project controls system for the Third Street Light Rail Program, Central Subway Phase 2.

The SFMTA seeks to procure a project management and software system (the "Capital Program Controls System" or "CPCS") capable of tracking capital project budgeting, financing, contractor payments, project design and construction scheduling, and contract claims management. The system will be implemented first on the Central Subway Program, and will then be implemented on all other SFMTA capital projects led by the Capital Programs and Construction Division.

The purpose of this contract is to develop, implement, and operate and train SFMTA staff in using a program controls system, and provide related services for monitoring and controlling the Central Subway Project and other Agency capital projects. Services include, but are not limited to, the following:

- furnish services as necessary to implement an independent project controls
- specify the hardware and software requirements to establish an integrated project controls system
- implement the project controls system with integration to existing legacy systems
- streamline existing capital project management business and related workflow processes consistent with the project controls system
- provide training of Agency staff
- provide operations and maintenance manuals

The contract term is for eight years to provide development and implementation and operational services, and support services for the program controls services during the design, construction and close-out phase of the Central Subway Project.

The SFMTA intends that the Capital Program Controls System resulting from this contract will be utilized and benefit the Agency's other capital projects.

### **Selection Process:**

SFMTA Board of Directors adopted Resolution No. 09-168 on September 15, 2009 authorizing the Executive Director/CEO to issue a Request for Proposal (RFP), receive and evaluate proposals, select the highest ranking proposal, and negotiate a contract for Contract No. CS-156, Agency Capital Program Controls System Procurement and Related Support Services.

**PAGE 5.**

The RFP was advertised on October 21, 2009 and contained a 26 percent Small Business Enterprise (SBE) participation goal. Two proposals were submitted on January 8, 2010 in response to the advertisement. The two proposals were submitted by the Hill International, Inc. and Shaw Environmental & Infrastructure, Inc. Proposals were evaluated by a technical selection committee comprised of members from various SFMTA divisions, City Departments and BART. Hill International, Inc. was selected as the highest ranked proposer.

Negotiations with Hill International have been underway since the middle of June. The negotiations have focused on clarifying the program controls system delivery, software procurement, and determining reasonable compensation to ensure that the SFMTA and City are obtaining high quality and cost-effective services that will help control and monitor not only the Central Subway Project but also other projects that the SFMTA manages. During the negotiations, it was agreed that the consultant at the request of the City would procure the appropriate software and software licenses for the project, that the software license terms would generally conform to the City's form license, that the software license must be assignable to the City, and that the assignment would be on or before completion of the Program Controls System.

As a result of these negotiations, SFMTA management concludes that the award of the contract to Hill International, Inc. will support SFMTA goals and objectives in the delivery of the Central Subway Project by ensuring efficient and effective use of public resources.

SFMTA successfully negotiated a contract with the consultant in July 2010 for a total compensation amount not to exceed \$22,268,541 and an eight year term.

Funding for work to be performed and authorized by the SFMTA will be certified by the Controllars' Office and the SFMTA's Chief Financial Officer prior to the issuance of the notice to proceed for any task order issued under this contract not included in the initial certified amount of \$13,481,000 (see "Funding Impact", page 6).

The Contract Compliance Office has determined that Hill International will meet the 26% SBE participation goal established for this project.

**ALTERNATIVES CONSIDERED**

The SFMTA current project monitoring and controls system is outdated and is not adequate to manage the Central Subway Project. Given the substantial capital investment in the Central Subway and the target project completion schedule of 2018, it is in the best interest of the Agency to engage a qualified consultant with specific experience and expertise in project controls with specialties in transit, tunneling, and underground scheduling and estimating, and other services for project monitoring and establish a project controls system for the Central Subway Phase of the Third Street Project.

**FUNDING IMPACT**

The following SFMTA capital projects will provide the initial \$13,481,000 in certified funding for the Capital Program Controls System and related program control professional services for those projects:

<b>PROJECT</b>	<b>AMOUNT</b>
Third Street Light Rail, Phase 2 (Central Subway Project)	\$10,000,000
Church & Dubose Rail Replacement	\$381,000
Green Facility	\$519,000
California St. Cable Car Inf. Improvements	\$262,000
Hatch Covers Project, Phase 2	\$47,000
5-Fulton Duct Bank Replacement	\$245,000
Islais Creek Motor Coach Facility Phase 2	\$763,000
Escalator Replacement/Rehab., Phase 1	\$98,000
ITS Radio System Replacement	\$1,166,000
<b>Total Initial Certified Amount</b>	<b>\$13,481,000</b>

Funds to pay for program controls services for other SFMTA capital projects will be provided by funding programmed for those projects, which are listed in Enclosure 2. The Central Subway Project Budget & Financial Plan is set forth in Enclosure 3.

**OTHER APROVALS RECEIVED OR STILL REQUIRED**

This contract is subject to approval by the Civil Service Commission and the Board of Supervisors.

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the Executive Director to execute Contract CS-156, Agency Program Controls System Procurement and Related support Services, with Hill International, Inc. for an amount not to exceed \$22,268,541 for a term not to exceed eight years and to authorize expenditure amount not to exceed \$13,481,000.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The Final Environmental Impact Statement/Environment Impact Report (Final EIR/EIR) for the two-phase of the Third Street Light Rail Project (the "Project") was completed in November 1998; and,

WHEREAS, The former Public Transportation Commission approved Resolution No. 99-009 on January 19, 1999, which adopted the environmental findings pursuant to the California Environmental Quality Act (CEQA) for the Project, including mitigation measures as set forth in the Project's Final Environmental Impact Report and Mitigation Monitoring Report; and,

WHEREAS, Design and construction of the 1.7-mile Central Subway ("Central Subway Project") is Phase 2 of the Third Street Light Rail Transit Project; and,

WHEREAS, The anticipated complexity of the Central Subway Project, in proximity to sensitive urban structures and facilities, poses significant coordination, management, design and construction challenges to the City; and,

WHEREAS, The City does not have the specialized expertise or staff resources to provide project controls for a project of this size and intricacy; and,

WHEREAS, The SFMTA conducted a competitive selection process for a qualified consultant to develop and implement a Capital Program Controls System, to train SFMTA staff in its use, and to provide related services to the Central Subway Project, and Hill International, Inc. was selected as the most qualified proposer; and,

WHEREAS, Staff and Hill International have engaged in a detailed contract negotiation to determine the costs and resources necessary to provide the agency program controls system and related support services; and,

WHEREAS, Hill International has represented that it has the requisite experience, expertise, resources and staff to provide a Capital Program Controls System and related services; and,

WHEREAS, The Capital Program Controls System will benefit the Central Subway Project and other SFMTA capital projects; and

WHEREAS, The Central Subway Project will provide \$10,000,000 in funding for the Capital Program Controls System and related professional services for the Central Subway Project, and other current SFMTA capital projects will provide an additional \$3,481,000 in certified funding for Capital Program Controls System services for those projects; and,

WHEREAS, Other SFMTA capital projects will provide funding for Capital Programs Control System services provided to those projects, which amounts are not yet programmed but are expected to total \$8,787,541, for a total contract amount not to exceed \$22,268,541 for the Capital Program Controls System; and,

WHEREAS, Execution of the contract is contingent upon an approval by the Civil Service Commission and the Board of Supervisors; and,

WHEREAS, Contract No. CS-156 will assist SFMTA in meeting the Strategic Plan Objective No. 4.2 -- to ensure the efficient and effective use of resources; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute Contract CS-156, Agency Capital Program Controls System Procurement and Related Support Services with Hill International, Inc. an amount not to exceed \$22,268,541 and for a term not to exceed eight years; and be it

FURTHER RESOLVED, That upon certification of future programmed grant funding for the capital projects listed herein, the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to authorize contract expenditures in an amount not to exceed a total of \$22,268,541 for Capital Programs Control System services under this contract; and be it

FURTHER RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute software licenses or assignments of software licenses that are procured for the Agency Capital Program Controls System; and be it

FURTHER RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors requests that the Board of Supervisors approve Contract CS-156, Agency Capital Program Controls System Procurement and Related Support Services with Hill International, Inc. for an amount not to exceed \$22,268,541 and a term not to exceed eight years.

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

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency



ENCLOSURE 2  
CS 156 PROGRAM CONTROLS  
Project Fund Contributions

<b>PROJECT</b>	<b>AMOUNT</b>
Church & Duboce Rail Replacement	\$381,000
Green Facility	\$519,000
Subway Infrastructure Rehabilitation	\$38,000
Subway Ventilation Study	\$3,000
Girder Rail Procurement	\$71,000
Carl St. (N-Line)	\$155,000
Twin Peaks Tunnel (K/L/M-Lines)	\$390,000
J-Line Special Track work	\$103,000
M-Line Special Track work	\$148,000
L-Line: Ulloa/Forest Side - 48th/Taraval	\$381,000
Central Subway	\$10,000,000
California Street Cable Car Infrastructure Improvements	\$262,000
Hyde St. Infrastr. / Vital Circuit Wiring	\$149,000
Mason St. Infrastr. / Vital Circuit Wiring	\$139,000
Powell St. Infrastr. / Vital Circuit Wiring	\$241,000
Hatch Covers - Phase 2	\$47,000
Re-level Re-winder Machine	\$1,000
Regauge/Regrade Mason/Washington Curve	\$170,000
Jackson/Mason Hold Down Bumper Bar Mod	\$21,000
Rehabilitate & Reinforce Barn Turntable	\$26,000
Signal Preempts - Various Locations	\$64,000
Chafing Bars at Pull Curves	\$21,000
Overhaul DC Motors and Gear Boxes	\$32,000
California St. Infrastr. - phase 2	\$89,000
Hyde St. Infrastr. - phase 2	\$93,000
Mason St. Infrastr. - phase 2	\$98,000
Powell St. Infrastr. - phase 2	\$102,000
Miscellaneous Special Projects	\$30,000
5-Fulton Duct Bank Replacement	\$245,000
Third/Fourth Rehab	\$20,000
16th St. Kansas to Conn.	\$89,000
3rd/20th loop	\$1,000
Miscellaneous poles	\$7,000
Miscellaneous Special projects	\$13,000
Van Ness Avenue Poles	\$266,000
M-Line south of 19th Ave. poles/wire	\$75,000
N-Line poles- Carl/Cole	\$13,000
N-Line poles west of Sunset tunnel	\$120,000
Bernal substation	\$92,000
33-Stanyan on 18th St.	\$98,000
J-church- 18th to 30th	\$93,000
Trolley Feeder Upgrades	\$212,000

<b>PROJECT</b>	<b>AMOUNT</b>
M miscellaneous poles (phase 2)	\$67,000
Van Ness MG replacement	\$10,000
C3: DTS & MMX & MP integrated SCADA	\$117,000
C3: Passenger Info (PA/PDS) with ATCS I/F	\$194,000
ATCS: Sunset Tunnel Signal Rehab	\$7,000
19th Ave Rossmoor re-signaling	\$4,000
ATCS: Upgrade Station Controllers & IO/DT Power Supplies	\$15,000
ATCS: Add Digital Signal Processors to Axle Counters	\$11,000
ATCS: Replace old VCC Hardware	\$37,000
ATCS: Conversion from inductive loop to Radio	\$266,000
Surface & Subway Train Control improvements reserve (1/3 of overall program)	\$111,000
J-Church 2 x-overs signal elements	\$13,000
M-Line turnouts (rail) signal elements	\$7,000
Islais Creek Motor Coach Maintenance Facility- Phase I	\$763,000
Islais Creek Motor Coach Maintenance Facility- Phase 2	\$466,000
Escalator Replacement/Rehabilitation - Phase I	\$98,000
Escalator Replacement/Rehabilitation - Phase 2	\$98,000
ITS Radio System Replacement	\$1,166,000
Central Control and Communications (C3)	\$3,702,000
<b>TOTAL</b>	<b>\$22,270,000</b>

ENCLOSURE 3  
 THIRD STREET LIGHT RAIL PROJECT  
 CENTRAL SUBWAY

San Francisco Municipal Railway Contract No. CS-156

<b>Cost</b>	<b>(\$Million)</b>
Conceptual and Preliminary Engineering	59.41
Program Management & Construction Management	132.78
Final Design	85.94
Construction Contracts	986.68
Vehicles	26.39
Contingency	160.26
Right-of-Way	34.84
Other Professional Services	92.00
<b>Total Central Subway Cost</b>	<b>\$ 1,578.30</b>

<b>Funding</b>	<b>(\$Millions)</b>
Federal 5309 New Starts	942.20
State RTIP Grant	88.00
CMAQ	6.03
State TCRP Grant	14.00
Proposition 1B-2006 MTC Share	100.00
Proposition 1B-MTA Share	100.00
Proposition Additional 1B-MTA Share	40.00
Proposition K Sales Tax Funds	123.98
High Speed Rail Funds	27.00
Option Local and Regional Sources	137.09
<b>Total Central Subway Funding</b>	<b>\$ 1,578.30</b>

ENCLOSURE 4  
 THIRD STREET LIGHT RAIL PROJECT  
 CENTRAL SUBWAY  
 LIST OF SUBCONTRACTORS

**CS-156**

	DBE	SBE	LBE
Acumen Building Enterprises	X	X	
Baines Group	X		X
C M Pros		X	X
EcoSys			
Jacobs Engineering Group			
Kal Krishnan Consulting Services, Inc.	X		
M. Lee Corporation	X	X	X
PACO Group, Inc.	X		
Stellar Services	X		

**THE CITY AND COUNTY OF SAN FRANCISCO**



**Contract for Procurement and Implementation of an Agency Capital Program  
Controls System and Related Support Services**

**Contract No. CS-156**

**(CCO 09-1104)**

**between the**

**San Francisco Municipal Transportation Agency**

**and**

**Hill International, Inc.**

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**Agreement between the City and County of San Francisco and  
Hill International, Inc.  
for Procurement and Implementation of an Agency Capital Program Controls  
System  
and Related Support Services  
(Contract No. CS-156)**

This Agreement, dated for convenience as September 1, 2010 is made in the City and County of San Francisco, State of California, by and between: Hill International, Inc., 303 Lippincott Centre, Marlton, New Jersey 08053 (Contractor) and the City and County of San Francisco, a municipal corporation (City), acting by and through its San Francisco Municipal Transportation Agency (SFMTA).

**Recitals**

**A.** SFMTA wishes to obtain the services of a qualified firm to provide the SFMTA assistance in designing, procuring, and implementing a capital program controls system and related software to serve the Central Subway Project and other SFMTA capital projects.

**B.** A Request for Proposals (RFP) was issued on October 21, 2009, and City selected Contractor as the highest qualified scorer pursuant to the RFP.

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

**D.** Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number CS-156 (\_\_\_\_\_) on \_\_\_\_\_, 2010.

Now, THEREFORE, the parties agree as follows:

**1. Definitions**

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

Acceptance: The formal written acceptance by the SFMTA Board of Director or the SFMTA Executive Director/CEO that all Work, or a specific portion thereof, under the Contract has been satisfactorily completed.

Additional Work: Work that is requested by the SFMTA but is supplementary to the scope of Contractor's Work described in the RFP and the Contract.

Award: Notification from the City to Contractor of acceptance of Contractor's proposal, subject to the execution and approval of a satisfactory Contract therefore and bond to secure the performance thereof, and to such other conditions as may be specified or otherwise required by law.

Capital Program Controls System (CPCS): The computer software, business processes, and related services to be provided by Contractor under this Agreement as described in the RFP at Section 2.4 (Task 2 Scope).

**Certification:** Certification by the Controller that funds necessary to make payments as required under the Contract are available in accordance with the City's Charter.

**City:** City and County of San Francisco, a municipal corporation.

**Contract; Agreement:** The written Contract executed by the City and Contractor, covering the performance of the work and furnishing of labor, materials, equipment, tools, and services, including work incidental to the procurement, to include the RFP, Technical Specifications, Contractor's Proposal, the Contract bonds or other security, and all Contract Modifications and Amendments to the Contract.

**Contract Modification:** A written order, issued by the City to Contractor, covering changes in the Contract documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes. (See Section 49)

**Contractor:** Hill International, Inc.

**Controller:** Controller of the City.

**Corrective Action Plan:** The plan submitted by Contractor to cure a breach of contract, as provided in Section 21.

**Days:** Unless otherwise designated, the word "days" refers to working (business) days of the City, which are Monday through Friday, excluding City-observed holidays.

**Defect(s):** Patent or latent malfunctions or failure in manufacture or design of any component or subsystem that causes the CPCS to cease operating or to operate in a degraded mode.

**Effective Date:** The date on which the SFMTA has received all required approvals for this Contract and the SFMTA notifies the Contractor that the Controller has certified funding necessary for the Contractor to proceed with the work.

**Fixed Fee:** The fee paid to Contractor that is Contractor's profits and shall also cover any costs and expenses borne by Contractor that are not otherwise compensable under this Agreement.

**Lump Sum:** The compensation paid to Contractor by City for completion of Task 2 Work and identified portions thereof, and of Additional Work as negotiated by the parties.

**Notice To Proceed:** A written notice to the Contractor of the date on which it shall begin prosecution of the work to be done under the Contract.

**Project:** The Capital Program Controls System and related services for Task 1 and Task 2, as described in the RFP at Section 2 that the Contractor shall produce for the City, in accordance with this Contract, the RFP, and the Proposal.

**Project Manager:** The Project Manager assigned to the Contract for the SFMTA, or other City agent designated by the SFMTA.

**Proposal:** The technical and management information and prices submitted in response to the Request for Proposals.

**Request for Proposals; RFP:** The Request for Proposals for an Agency Capital Program Controls System Procurement and Related Support Services issued by the SFMTA on October 21, 2009 and all addenda thereto.

**SFMTA:** The San Francisco Municipal Transportation Agency, an agency of the City with responsibility for the Municipal Railway Department and the Department of Parking and Traffic.

**Subcontractor:** Any individual, partnership, firm, or corporation, which performs work on the Project or provides equipment, software, supplies, or services under a contract with Contractor. As used herein, the terms subcontractor, sub-consultant, and supplier are synonymous.

**Technical Specifications:** The specifications, provisions, and performance requirements that describe and detail the Work and the materials, products, components, hardware, software and other requirements of the Project that the Contractor must meet or perform.

**Work:** The furnishing of all labor, supervision, services, products, materials, machinery, equipment, hardware, software, tools, supplies, and facilities and the performance of all requirements called for by the Contract and necessary to the completion of the Project, as required by the RFP.

Whenever the words “as directed,” “as required,” “as permitted,” or words of like effect are used, it shall be understood as the direction, requirement, or permission of the SFMTA. The words “sufficient,” “necessary,” or “proper,” and the like, mean sufficient, necessary or proper in the judgment of the SFMTA, unless otherwise indicated by the context.

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

This Agreement is subject to the budget and fiscal provisions of the City’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 2 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

## **3. Term of the Agreement**

Subject to Section 2, the term of this Agreement shall Eight Years from the Effective Date, unless otherwise modified by a properly approved written amendment to the Contract.

## **4. Effective Date of Agreement**

This Agreement shall become effective when the SFMTA has received all necessary approvals for this Agreement, the Controller has certified to the availability of funds, and the City has issued the first written Notice to Proceed (NTP) to Contractor to commence the Work.

## **5. Contractor's Services**

5.1. **Project: Task 1 and Task 2.** The Project is comprised of Task 1 and Task 2. Task 2 encompasses the design and implementation of the CPCS, as described in Section 2.4 of the RFP. Task 1 is comprised of the consulting and management services to apply and utilize the CPCS to support the management and construction of the Central Subway Project, as those services are described in Section 2.3 of the RFP. The Contractor agrees to perform the services provided for in the RFP, including Section 2.4 (Technical Specifications), and in the Contractor's Proposal, according to the Baseline Schedule and subsequent agreed Project schedules issued as part of amendments to the Agreement, Task Orders, and Annual Work Plans.

5.2. **Technical Specifications.** Contractor shall perform the Work and complete the CPCS in accordance with the technical specifications and performance requirements set out in the RFP. See RFP, Section 2 (Scope of Services), and with particular attention to Sections 1.3, 1.6 (Task 2), 2.2.2, and 2.4

5.3. **Design Review.** When plans, drawings, requests for information, procedures or other deliverables are submitted to SFMTA for approval and/or comments, the Contractor shall delineate any deviations from the Contract specifications in such deliverables. SFMTA shall attempt to approve, disapprove and/or comment on such deliverables within 10 days after receipt, unless a longer review period required due to the size or complexity of the deliverable or due to the number of deliverables under SFMTA review. If the SFMTA does not approve a deliverable, Contractor shall correct the deliverable to conform to SFMTA comments and resubmit the deliverable for SFMTA review. Neither SFMTA review nor approval of any plans, drawings, procedures, other deliverables or the materials supplied under this Contract shall in any way relieve the Contractor of its obligations to perform Work under the provision of this Contract.

5.4. **Time of Essence.** Time is of the essence in the performance of this Agreement.

5.5. **Data Security Protocols and Risk of Loss.** Contractor shall comply with SFMTA/Central Subway Program data security protocols and back-up requirements. Contractor shall bear all risk of loss from failure to comply with such protocols and back-up requirements.

## 6. Compensation

6.1. **Contract Amount.** In no event shall the amount of this Agreement exceed **Twenty-Two Million Two Hundred Sixty-Eight Thousand Five Hundred Forty-One Dollars (\$22,268,541)**, unless the Contract Amount is modified by amendment to the Contract as provided herein. Contractor's compensation for its Work on Task 1 shall not exceed Seventeen Million One Hundred Twelve Thousand Eight Hundred Seventy-Three Dollars (\$17,112,873). Contractor's compensation for its Work on Task 2 shall not exceed Five Million One Hundred Fifty-Five Thousand Six Hundred Sixty-Eight Dollars (\$5,155,668), including all allowances and bonds.

6.2. **Payment.** Payments shall be conditioned on the SFMTA's provisional acceptance of Work and deliverables due under the Project Schedule. Payment in accord with provisional acceptance does not constitute final acceptance of the Work or any portion thereof. Progress payments shall be made by the City to Contractor at the address specified in the Section entitled "Notices to the Parties."

(a) **Task 1.** Contractor's compensation for Work in Task 1 shall be according to negotiated task orders and annual work plans. Contractor's compensation shall be calculated based on Contractor's reimbursable costs plus a negotiated Fixed Fee. Reimbursable costs shall be calculated based on direct salary rates and overhead (as listed in Appendix D to this Contract), as those

costs are allowed under Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments" and as specifically authorized therein and as allowed under the compensability standards set out in 48 C.F.R. parts 31.105, 31.2, 31.6 and the Cost Accounting Standards set out in 48 C.F.R. part 9904 et seq. The Fixed Fee for any annual work plan or task order shall not exceed 7.5 percent of Contractor's reimbursable costs. Direct salary rates per position listed in Appendix D to the Contract are subject to annual increase based on the lesser of the Consumer Price Index (CPI) or two percent (2%). The CPI shall be defined as the Consumer Price Index for San Francisco-Oakland-San Jose, All Items, [1982-84=100] for all Urban Consumers. Applicable overhead for the first year from the Effective Date shall be based on Contractor's existing audited rate, and shall be adjusted each year retroactively based on an annual audit of Contractor's overhead costs. Lacking an existing audited rate, the use of a first year provisional office overhead rate of 100% and a field overhead rate of 120% are agreed that shall be adjusted retroactively based on an annual audit of the Contractor's overhead costs. Contractor shall not receive a markup or other profit on Overhead Direct Costs. No sooner than the 15<sup>th</sup> day of each month, Contractor shall submit monthly invoices for Task 1 Work completed up to the last day of the preceding month.

**(b) Task 2.** Contractor's compensation for Work in Task 2 shall be in Lump Sum as Contractor completes each Deliverable listed in Appendix E. Additional Work in Task 2 shall be compensated by Lump Sum under a negotiated Task Order, with the price based on the estimated number of personnel hours required to perform the work of the Task Order multiplied by the applicable billable rates listed in Appendix E that includes a reasonable Fixed Fee (not to exceed 7.5 percent of the sum of billable rates for the Task Order). Additional Work direct salary of the billable rates listed in Appendix E are subject to annual increase based on the lesser of the CPI or two percent (2%). The CPI shall be defined as the Consumer Price Index for San Francisco-Oakland-San Jose, All Items, [1982-84=100] for all Urban Consumers. Contractor shall submit invoices only for completed Task 2 Work. Contractor shall not submit in any month more than one invoice for Task 2 Work.

**6.3. Invoices.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must identify the Work invoiced, state whether the Work is Task 1 or Task 2 and the period in which the Work was performed. No more than one invoice per month shall be submitted. Invoices shall be accompanied by appropriate supporting documentation. All amounts paid by City to Contractor shall be subject to audit by City.

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

**6.5. No Interest; Price Adjustments.** In no event shall the City be liable for interest or late charges for any late payments. Except as provided in Section 6.2, the City will not make price adjustments to this Contract to protect Contractor from economic inflation.

## **7. Guaranteed Maximum Costs**

**7.1.** 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.

7.2. 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.

7.3. 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.

7.4. 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.

## **8. Retention**

The City will retain ten percent (10%) of each invoice for Task 2 Work submitted by Contractor. The retention will be applied to Task 2 services, but shall exclude the purchase and license costs of any software purchase. An escrow agreement may be established at a bank approved by the Contractor and the City for security deposits in lieu of the City retaining a percentage of contract earnings. In that event, ten percent (10%) of each invoice paid by the City shall be deposited with the escrow agent at the time of payment. Upon the Capital Program Controls System acceptance at the end of 90 day post production, the Contractor may request and the City may release the retention.

## **9. 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.

## **10. Disallowance**

If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise



excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

## **11. Taxes**

11.1. 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.

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

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

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

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

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

## **12. 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, services, systems, or workmanship that does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced or such Work reperformed by Contractor without delay.

## **13. 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.

#### **14. 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.

#### **15. Independent Contractor; Payment of Taxes and Other Expenses**

**15.1. 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.

**15.2. 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.

## **16. Insurance; Bonds; Letters of Credit**

### **16.1. Insurance**

**(a)** Without in any way limiting Contractor's liability pursuant to the "Indemnification" Section of this Agreement, Contractor shall maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage's:

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

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

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

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

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

**(c)** All policies (and bonds, as described in Section 16.3 below) shall provide 30 days' advance written notice to City of cancellation or reduction in coverage for any reason, mailed to the following address:

San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue,  
3rd Floor San Francisco, CA 94103  
Attention: Shahnam Farhangi  
In Re: Contract No. CS-156

**(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 do the following: (a) furnish to City certificates of insurance and additional insured policy endorsement with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and are satisfactory to City, in form evidencing all coverage's set forth above for Valuable Papers, Commercial Liability and Commercial Automobile Liability Insurance policies that such policies are primary insurance to any other insurance available to the Additional Insured, 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., and (b) furnish complete copies of policies promptly upon City request.

(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.

16.2. **Letters of Credit.** In lieu of the bonds required under Section 16.3 of the Contract, Contractor may submit an irrevocable letter of credit that meets the following requirements:

(a) **Requirements.** Any letter of credit submitted in lieu of a bond or other required security under this Agreement shall be a confirmed, clean, irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation, in a form approved by the City's Risk Manager and the City Attorney. It must have an original term of one year, with automatic renewals of the full amount throughout the term of the Agreement and throughout the performance of Contractor's obligations the under the Agreement. If Contractor fails to deliver the letter of credit as required, City will be entitled to cancel this Agreement. The letter of credit must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the bank signed by the SFMTA's Executive Director/CEO or Director of Capital Programs and Construction on behalf of the City and County of San Francisco.

(b) **Financial Institution..** The letter of credit must be issued on a form and issued by a financial institution acceptable to the City in its sole discretion, which financial institution must (a) be a bank or trust company doing business and having an office in the City and County of San Francisco, (b) have a combined capital and surplus of at least \$25,000,000.00, and (c) be subject to supervision or examination by federal or state authority and with at least a Moody's A rating.

**(c) Demand on Letter of Credit.** The letter of credit will constitute a security deposit guaranteeing faithful performance by Contractor of all terms, covenants, and conditions of this Agreement, including all monetary obligations set forth herein. If Contractor defaults with respect to any provision of this Agreement, SFMTA may make a demand under the letter of credit for all or any portion thereof to compensate City for any loss or damage that they may have incurred by reason of Contractor's default, negligence, breach or dishonesty. Such loss or damage may include without limitation any damage to or restoration of City property or property that is required to be constructed, maintained or repaired pursuant to this Agreement, payments to City, and claims for liquidated damages; provided, however, that City will present its written demand to said bank for payment under said letter of credit only after City first has made its demand for payment directly to Contractor, and five full Days have elapsed without Contractor having made payment to City. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the letter of credit those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the services described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of the letter of credit is so used or applied by City, Contractor, within 10 business days after written demand by City, shall reinstate the letter of credit to its original amount; Contractor's failure to do so will be a material breach of this Agreement.

**(d) Expiration or Termination.** The letter of credit must provide for 60 Days notice to City in the event of non-extension of the letter of credit; in that event, Contractor shall replace the letter of credit at least 10 business Days prior to its expiration. In the event the City receives notice from the issuer of the letter of credit that the letter of credit will be terminated, not renewed or will otherwise be allowed to expire for any reason during the period from the commencement of the term of this Agreement to 90 Days after the expiration or termination of this Agreement, or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs last, and Contractor fails to provide the City with a replacement letter of credit (in a form and issued by a financial institution acceptable to the City) within 10 Days following the City's receipt of such notice, such occurrence shall be an event of default, and, in addition to any other remedies the City may have due to such default (including the right to terminate this Agreement), the City shall be entitled to draw down the entire amount of the letter of credit (or any portion thereof) and hold such funds in an account with the City Treasurer in the form of cash guarantying Contractor's obligations under this Agreement. In such event, the cash shall accrue interest to the Contractor at a rate equal to the average yield of Treasury Notes with one-year maturity, as determined by the Treasurer. In the event the letter of credit is converted into cash pursuant to this paragraph, upon termination of this Agreement, Contractor shall be entitled to a full refund of the cash (less any demands made thereon by the City) within 90 Days of the termination date, including interest accrued through the termination date.

**(e) Return of Letter of Credit.** The letter of credit will be returned within 90 Days after the end of the term of this Agreement, as defined in Section 16.2, provided that Contractor has faithfully performed throughout the life of the Agreement, Contractor has completed its obligations under the Agreement, there are no pending claims involving Contractor's performance under the Agreement and no outstanding disagreement about any material aspect of the provisions of this Agreement. In the event this Agreement is assigned, as provided for in

Section 31, City will return or release the letter of credit not later than the effective date of the assignment, provided that the assignee has delivered to the City an equivalent letter of credit, as determined by City.

**(f) Excessive Demand.** If City receives any payments from the aforementioned bank under the letter of credit by reason of having made a wrongful or excessive demand for payment, City will return to Contractor the amount by which City's total receipts from Contractor and from the bank under the letter of credit exceeds the amount to which City is rightfully entitled, together with interest thereon at the legal rate of interest, but City will not otherwise be liable to Contractor for any damages or penalties.

### 16.3. **Bonds.**

(a) Within fifteen (15) calendar days of the Effective Date and prior to commencing any Work, Contractor must file with SFMTA the following bonds:

(i) A corporate surety bond, in a sum not less than 100 percent of the amount of the Task 2 Scope services, to guarantee the faithful performance of the Contract.

(ii) A corporate surety bond, in a sum not less than 100 percent of the amount of the Task 2 Scope services, to guarantee the payment of wages for services engaged and of bills contracted for materials, supplies, and equipment used in the performance of the Contract.

(b) The forms for these bonds are furnished herewith (see RFP, Form of Bond).

(c) Corporate sureties issuing these bonds and issuing bonds guaranteeing bids 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 of not less than "A-, VIII" and shall be satisfactory to the Agency and to Controller of the City and County of San Francisco.

(d) The amount of the Task 2 Scope services, as used to determine the amounts of the bonds, shall be the total amount fixed in the Contractor's proposal for the performance of the Work (or the corrected total if errors are found).

(e) During the period covered by this Agreement, if any of the sureties upon the bonds shall become insolvent or unable, in the opinion of SFMTA, to pay promptly the amount of such bonds to the extent to which surety might be liable, the Contractor within 30 days after notice given by the Agency to the Contractor, shall by supplemental bonds or otherwise substitute another and sufficient surety approved by SFMTA in place of the surety becoming insolvent or unable to pay. If the Contractor fails within such 30-day period to substitute another sufficient surety, the Contractor shall, if the Agency so elects, be deemed to be in default in the performance of his obligations hereunder and upon the said bonds, and the Agency in addition to any and all other remedies, may terminate the Contract or bring any proper suit or proceeding against monies then due or which thereafter may become due the Contractor under this Agreement for the amount for which the surety, insolvent or unable to pay as aforesaid, shall have justified on the bonds, and the monies so deducted shall be held by the City as collateral for the performance of the conditions of the bonds.

**16.4. Reduction in Bond or Letter of Credit.** Contractor may request and the SFMTA in its sole discretion may approve reduction in bonds or letter(s) of credit submitted in lieu of bonds upon Contractor's completion and the SFMTA's acceptance of Task 2 Work.

## 17. Indemnification

17.1. **General Indemnity.** To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or willful misconduct of the Contractor, any subcontractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

17.2. **Limitations.** No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

17.3. **Intellectual Property Infringement.** Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Contractor's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

## 18. 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.

## 19. Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 6 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR 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.

## 20. Liquidated Damages

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Task 2, are delayed beyond the scheduled milestones and timelines as provided in the approved Project Schedule, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the amounts listed below for each day of delay beyond scheduled milestones and timelines are 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 SFMTA.

The assessment of liquidated damages is Six Thousand Dollars (\$6,000) for each and every day delayed beyond the scheduled milestone for Task 2 Scope services.

## **21. Default; Remedies**

**21.1. Event of Default.** Each of the following shall constitute an event of default ("Event of Default") following notice and a reasonable cure period under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 9 (False Claims), 11 (Taxes), 16 (Insurance), 25 (Confidential Information), 31 (Assignment), 38 (Drug Free Work Place), 54 (Compliance with Laws) or 58 (Protection of Private Information).

(b) 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.

(c) Contractor (i) is generally not paying its debts as they become due, (ii) 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, (iii) makes an assignment for the benefit of its creditors, (iv) 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 (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) 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, (ii) 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 (iii) ordering the dissolution, winding-up or liquidation of Contractor.

**21.2. Remedies.** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of 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. 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, but the City's assessment of liquidated damages against Contractor for delay shall preclude the City from seeking further compensation from Contractor for damages arising from Contractor's delay.

## 22. Termination for Convenience

22.1. **Exercise of Option.** 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.

22.2. **Contractor Actions.** 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:

- (a) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- (b) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (c) Terminating all existing orders and subcontracts.
- (d) 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.
- (e) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (f) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- (g) 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.

22.3. **Contractor Invoice.** 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:

- (a) 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 Contractor's audited overhead rate. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding Subsection (a), 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 7.5% of such cost.

(c) 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.

(d) 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.

**22.4. Non-Recoverable Costs.** 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 22.3. 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 22.3.

**22.5. Deductions.** In arriving at the amount due to Contractor under this Section, City may deduct: (a) all payments previously made by City for work or other services covered by Contractor's final invoice; (b) any claim which City may have against Contractor in connection with this Agreement; (c) any invoiced costs or expenses excluded pursuant to the immediately preceding Subsection (22.4); and (d) 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.

**22.6. Survival.** City's payment obligation under this Section shall survive termination of this Agreement.

## **23. Rights and Duties Upon Termination or Expiration**

**23.1 Surviving Provisions.** This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

- |                                                  |                                                                       |
|--------------------------------------------------|-----------------------------------------------------------------------|
| 9. Submitting false claims                       | 15. Independent Contractor;<br>Payment of Taxes and Other<br>Expenses |
| 10. Disallowance                                 |                                                                       |
| 11. Taxes                                        | 16. Insurance                                                         |
| 12. Payment does not imply<br>acceptance of work | 17. Indemnification                                                   |
| 14. Responsibility for equipment                 | 18. Incidental and Consequential<br>Damages                           |
|                                                  | 19. Liability of City                                                 |

- |                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>25. Proprietary or confidential information of City</p> <p>27. Ownership of Results</p> <p>28. Works for Hire</p> <p>29. Audit and Inspection of Records</p> <p>49. Modification of Agreement.</p> <p>50. Authority of SFMTA Project Manager.</p> <p>51. Agreement Made in California; Venue</p> | <p>52. Construction</p> <p>53. Entire Agreement</p> <p>56. Disputes</p> <p>57. Severability</p> <p>58. Protection of private information</p> <p>64. FTA Requirements</p> <p>65. Warranty Provisions</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**23.2 Contractor Duties.** Subject to the immediately preceding Subsection 23.1, upon termination of this Agreement prior to expiration of the term specified in Section 23, 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.

#### **24. Conflict of Interest**

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

#### **25. 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.

#### **26. Notices to the Parties and City Liaison**

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

**To City:**

Municipal Transportation Agency  
One South Van Ness 7<sup>th</sup> Floor  
San Francisco, California 94107  
Attn: Shahnam Farhangi  
Phone: 415-701-4284  
Fax: 415-701-4300  
Email: shahnam.farhanghi@SFMTA.com

**To Contractor:**

Hill International, Inc.  
303 Lippincott Centre  
Marlton, NJ 08053  
Attn: James W. Palmer  
Senior Vice President and Director  
Tel: 856-810-5866  
Email: jimpalmer@hillintl.com

**With a copy to:**

William H. Dengler, Jr.  
Senior Vice President and General Counsel  
303 Lippincott Centre  
Marlton, NJ 08053  
Fax: 856-810-9407  
Email: williamdengler@hillintl.com

26.2. Any notice of default must be sent by registered mail.

26.3. **City Liaison.** The SFMTA's Director of Capital Programs and Construction will appoint a SFMTA Project Manager who shall serve as the City Liaison and will be the primary contact person between the SFMTA and Contractor. The current City Liaison/Project Manager is:

Arthur Wong  
SFMTA Central Subway Project Office  
821 Howard Street  
San Francisco, CA 94103  
Tel: 415-701-4305  
Fax: 415-701-5222  
Email: arthur.wong@sfmta.com

## 27. 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.

## 28. 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.

## **29. Audits 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.

## **30. Subcontracting and SBE Participation**

30.1. 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.

30.2. The Contractor is permitted to subcontract portions of the services to be performed under this Agreement to the following sub-consultants to perform the Project as described in Contractor's Proposal:

- (a) Task 1:
  - (i) Jacobs Engineering
  - (ii) Baines Group, Inc.
  - (iii) Kai Krishnan Consulting Services
  - (iv) Acumen
  - (v) CM Pros
  - (vi) M. Lee Corp.
  - (vii) Stellar Services
  - (viii) KKCS
  - (ix) PACO Group
  
- (b) Task 2
  - (i) Stellar
  - (ii) Hill
  - (iii) Ecosys

30.3. The Contractor will be permitted to subcontract additional portions of the Work subject to the prior written approval of the Director of Capital Programs and Construction and the SFMTA's Contract Compliance Office. Subcontractors shall be solely responsible to the Contractor throughout the performance of their services under this Agreement. Assignment by the Contractor of Work to subcontractors shall not relieve the Contractor of any obligation to the City for the Work performed.

30.4. Contractor shall submit a request for any intended substitution of subcontractors listed in Subsection 30.3 above to the SFMTA's Project Manager and the SFMTA Contract Compliance Office prior to the substitution of subcontractors performing any Work under the terms of this Agreement. In the event that a DBE subcontractor is unable to perform successfully and is to be replaced, the Contractor will be required to make good faith efforts to replace the original DBE subcontractor with another DBE subcontractor. No substitution of sub-consultants shall be made at any time without the prior written approval of the Municipal Transportation Agency Board of Directors.

30.5. Contractor shall comply with the twenty-six percent (26%) Small Business Enterprise (SBE) goal that the City has established for this Contract. The provisions and requirements concerning SBE participation set out in the RFP and the SBE participation forms submitted by Contractor with its Proposal are hereby incorporated by reference as if fully set out herein.

### **31. 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 as required by the City law. No approval of any assignment, transfer or delegation of duties shall constitute approval of any subsequent assignment, transfer or delegation of duties.

### **32. 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.

### **33. 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.

33.1. **Provision of Forms to Employees.** 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.

**33.2. Failure to Comply.** 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.

**33.3. Flowdown to Subcontractors.** 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.

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

## **34. Claims**

Contractor shall not be entitled to the payment of any additional compensation for any action, or failure to act, by the SFMTA Project Manager, including failure or refusal to issue a Contract Modification or for the happening of any event, thing, occurrence, or other cause, unless Contractor shall have given the SFMTA Project Manager due written notice of potential claim.

The written notice of potential claim shall set forth the reasons for which Contractor believes additional time or additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the SFMTA Project Manager prior to the time that Contractor shall have performed the work giving rise to the potential claim for additional compensation, or in all other cases, within 15 days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.

It is the intention of this Section that differences between the parties arising under and by virtue of the Contract be brought to the attention of the SFMTA Project Manager at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly be taken. Contractor hereby agrees that it shall have no right to additional time or compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written notice of potential claim as required herein.

## **35. Nondiscrimination; Penalties**

**35.1. 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.

**35.2. 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.

**35.3. 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.

**35.4. 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.

**35.5. 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) 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.

## **36. 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.

## **37. Tropical Hardwoods 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.

### **38. 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.

### **39. 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.

### **40. 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.

### **41. 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.

### **42. 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.

#### **43. Notification of 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.

#### **44. Requiring Minimum Compensation for Covered Employees**

44.1. 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.5 and 12.P.5.1 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](http://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.

44.2. 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.

44.3. 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 reputedly presumed to be retaliation prohibited by the MCO.

44.4. 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.

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

44.6. 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.

44.7. 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.

44.8. 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.

44.9. 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.

#### **45. Requiring Health Benefits for Covered Employees**

45.1. 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 Section 12Q.5.1 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](http://www.sfgov.org/olse). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

45.2. 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.

45.3. 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.

45.4. 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.

45.5. 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.

45.6. 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.

45.7. 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.

45.8. 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.

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

45.10. 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.

45.11. 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.

45.12. 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.

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

45.14. 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.

## **46. First Source Hiring Program**

46.1. **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.

46.2. **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:

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

(b) 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.

(c) 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.

(d) 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 non-duplicative, and facilitate a coordinated flow of information and referrals.

(e) 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.

(f) Set the term of the requirements.

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

(h) 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.

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

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

46.4. **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.

46.5. **Liquidated Damages.** Contractor agrees:

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

(b) 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;

**(c)** 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.

**(d)** 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;

**(e)** 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:

**(i)** 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

**(ii)** 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.

**(f)** 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

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.

46.6. **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.

#### 47. 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.

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

As of July 1, 2003, Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromate copper arsenate preservative, ammonia cal copper zinc arsenate preservative, or ammonia cal 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.

#### 49. Modification of Agreement

49.1. **Modification in Writing.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required by law. Contractor shall cooperate with the SFMTA to submit to the Contract Compliance Office any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

49.2. **Additional Work.** The City may order changes in the Work under this Agreement and may direct Contractor to perform Additional Work necessary to this Agreement, and the Contractor shall promptly comply with such orders, except that:

- (a) If changes ordered in design, workmanship, services, or materials are of such a nature as to increase or decrease the cost, or the time required to execute the change in scope of Work, the City shall make a reasonable and proper adjustment in the Contract Amount, delivery schedule, or both as agreed upon by the Contractor and the City as the reasonable and proper allowance for the increase or decrease required.



(b) No order for any alteration, modification, or Additional Work that will increase or decrease the cost of the Work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the Project Manager. No oral statement of any person whatsoever shall in any manner or degree modify or otherwise affect the terms of this Contract, which include the requirements of the Technical Specifications as stated in the RFP.

(c) Additional Work may be compensated from available allowance funds if designated for that use, or by addition to the Contract Amount.

#### **50. Authority of SFMTA Project Manager**

The SFMTA's Project Manager shall decide all questions, which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the Work; all questions, which may arise as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. In discharging the responsibilities outlined above, the SFMTA Project Manager shall at all times act fairly and reasonably. Any appeal of the SFMTA Project Manager's decisions shall be in accordance with the provisions of Section 56 of this Agreement. As with any claim, request for change order, dispute concerning or Additional Work, Contractor shall be paid in accordance with the payment provisions of this Contract when the dispute is finally resolved.

Should any dispute arise as to the meaning and intent of the Contract, prior to a party taking any legal action, pursuant to the procedures set out in Section 56.2, the issue shall be referred to the SFMTA's Director of Capital Programs and Construction or his designee, who, with input from SFMTA staff and from the Contractor, shall decide the true meaning and intent of the Contract. The Director's decision in this regard shall be administratively final and conclusive.

#### **51. 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.

#### **52. Construction**

All paragraph captions are for reference only and shall not be considered in construing this Agreement. The Contract shall be interpreted in accordance with the applicable laws of the State of California and the provisions of the City's Charter and Administrative Code, including but not limited to Chapter 6 of the San Francisco Administrative Code, which is incorporated by this reference as if set forth herein in full. The Contract is also subject to the guidelines and requirements of the Federal Transit Administration (FTA), federal Department of Transportation. The SFMTA has not adopted and shall not be bound by Federal Acquisition Regulations (FAR) requirements except to the extent that the FTA so requires.

#### **53. 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 49.

#### **54. Compliance with Laws**

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

#### **55. 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.

#### **56. Disputes**

**56.1. Notice of Dispute.** For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within ten (10) days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with fourteen (10) days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position.

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

**56.3. No Cessation of Work.** Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the SFMTA Project Manager.

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

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

compensation shall only be effected by a modification to the Agreement, as provided in Section 49.

### **57. 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.

### **58. 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.

### **59. 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.

## **60. 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.

## **61. FTA Requirements**

The provisions contained in "FTA Requirements for Personal Services and Procurement Contracts," attached as Appendix A, are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

## **62. Warranty Provisions**

The Contractor warrants that for a period of 12 months from the date of Final System Acceptance (the "Warranty Period"), the Capital Program Controls System, its component parts and software will operate as provided by the design specifications. During the Warranty Period, if the CPCS fails to operate within the design specifications, the Contractor shall at its own expense repair or provide a patch or work around so that the CPCS will function within the design specifications. The Contractor agrees to provide said fix within one week of notification by the SFMTA. If the time required to fix the CPCS exceeds one week from notification, then the warranty period shall be extended by the same amount of that additional time.

## **63. Unavoidable Delays**

**63.1. Definition.** An Unavoidable Delay is an interruption of the Work beyond the control of the Contractor, which the Contractor could not have avoided by the exercise of care, prudence, foresight, and diligence. Such delays include and are limited to acts of God; floods; windstorms; tornadoes; wars; riots; insurrections;

epidemics; quarantine restrictions; strikes and lockouts; freight embargoes; acts of a governmental agency; priorities or privileges established for the manufacture, assembly, or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the Work ordered by the City insofar as they necessarily require additional time in which to complete the entire Project; delay by the City in meeting its obligations under the most current approved Project schedule; the prevention by the City of the Contractor's commencing or prosecuting the Work. The duration of said Unavoidable Delays shall be limited to the extent that the commencement, prosecution, and completion of the Work are delayed thereby, as determined by the City.

**63.2. Notification of Delay.** The Contractor shall notify SFMTA as soon as the Contractor has, or should have, knowledge that an event has occurred that will delay any part of the Work. Within five days, the Contractor shall confirm such notice in writing, furnishing as much detail as is available.

**63.3. Request for Extension.** The Contractor agrees to supply, as soon as such data are available, any reasonable proof that is required by SFMTA to make a decision on any request for extension due to Unavoidable Delays. SFMTA shall examine the request and any documents supplied by the Contractor and shall determine if the Contractor is entitled to an extension and the duration of such extension. SFMTA shall notify the Contractor of its decision in writing. The granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for delays due to the fault of Contractor or of any other rights or remedies to which the City is entitled.

## **64. Cooperative Drafting**

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

## **65. Priority of Documents**

In case of any ambiguity or conflict between the RFP, the Contractor's Proposal and this Agreement, the following priority of documents shall govern the following order, with first having the highest priority:

- 65.1. This Agreement, the Included Appendices listed in Section 66, and all properly approved amendments to the Agreement
- 65.2. The RFP and all addenda thereto
- 65.3. Contractor's Proposal

## **66. Included Appendices**

The following documents appended to this Agreement are incorporated by reference as if fully set out herein.

- Appendix A: FTA Requirements For Personal Services And Procurement Contracts
- Appendix B: Software License Agreement
- Appendix C: Task 2 Schedule
- Appendix D: Task 1 Rate Schedule

Appendix E: Task 2 Cost Schedule and Rate Schedule  
Appendix F: Clarification of Agreement

[Remainder of page intentionally left blank.]

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

<p>CITY</p> <p>Approved:</p> <hr/> <p>NATHANIEL P. FORD, SR. Executive Director/CEO San Francisco Municipal Transportation Agency</p> <p>Municipal Transportation Agency Board of Directors Resolution No. _____ Dated: _____ Attest:</p> <hr/> <p>Secretary, SFMTA Board of Directors</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robert K. Stone Deputy City Attorney</p>	<p>CONTRACTOR</p> <hr/> <p>James W. Palmer Senior Vice President and Director Hill International, Inc.</p> <p>City vendor number: _____</p>
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## APPENDIX A

### FTA REQUIREMENTS FOR FEDERALLY FUNDED PERSONAL SERVICES AND PROCUREMENT CONTRACTS

#### I. DEFINITIONS

- A. Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- B. Contractor** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.
- C. Cooperative Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.
- D. Federal Transit Administration (FTA)** is an operating administration of the U.S. Department of Transportation.
- E. FTA Directive** includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.
- F. Grant Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.
- G. Government** means the United States of America and any executive department or agency thereof.
- H. Project** means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.
- I. Recipient** means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.
- J. Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.



- K. **Third Party Contract** means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.
- L. **Third Party Subcontract** means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.
- M. **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

## II. FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and FTA, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

## III. ACCESS TO RECORDS

- A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i) (11).

## IV. DEBARMENT AND SUSPENSION

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

## V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

- A. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

- B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

## VI. CIVIL RIGHTS

- A. **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:
1. **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  2. **Age** - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
  3. **Disabilities** - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities

Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

- C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- VII. PATENT RIGHTS** (*applicable to contracts for experimental, research, or development projects financed by FTA*)
- A. **General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.
- B. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- VIII. RIGHTS IN DATA AND COPYRIGHTS** (*applicable to contracts for planning, research, or development financed by FTA*)
- A. **Definition.** The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.
- B. **Federal Restrictions.** The following restrictions apply to all subject data first produced in the performance of this Agreement.
1. **Publication of Data.** Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of

such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

2. **Federal License.** In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, “for Federal Government purposes,” any subject data or copyright described below. As used in the previous sentence, “for Federal Government purposes” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party:
  - i. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and
  - ii. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.
3. **FTA Intention.** When FTA awards Federal assistance for an experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City’s use the costs of which are financed with Federal transportation funds for capital projects.
4. **Hold Harmless.** Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.
5. **Restrictions on Access to Patent Rights.** Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the

scope of any license or other right otherwise granted to the Federal Government under any patent.

6. **Application to Data Incorporated into Work.** The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.
  7. **Application to Subcontractors.** Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- C. **Provision of Rights to Government.** Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.
- D. **Flow Down.** The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.
- IX. **Contract Work Hours and Safety Standards** (*applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)
- A. **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
  - B. **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph A of this section the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.
  - C. **Withholding for unpaid wages and liquidated damages** - The City and County of San Francisco shall upon its own action or upon written request of an

authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- D. Subcontracts** - The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

#### **X. ENERGY CONSERVATION REQUIREMENTS**

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

#### **XI. CLEAN WATER REQUIREMENTS** *(applicable to all contracts in excess of \$100,000)*

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

#### **XII. CLEAN AIR** *(applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year)*

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

#### **XIII. PRIVACY**

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

#### **XIV. DRUG AND ALCOHOL TESTING**

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

#### **XV. TERMINATION FOR CONVENIENCE OF CITY** *(required for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

#### **XVI. TERMINATION FOR DEFAULT** *(required for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

#### **XVII. BUY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$100,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j) (2) (C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

#### **XVIII. CARGO PREFERENCE – USE OF UNITED STATES FLAG VESSELS**

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of

Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

## **XIX. RECYCLED PRODUCTS**

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

## **XX. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS** *(applies to contracts for rolling stock)*

To the extent applicable, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(l) and FTA implementing regulations at 49 CFR Part 663, and to submit the following certifications:

- A. Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.
- B. Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.

## **XXI. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS**

- A.** The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B.** The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in



whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

## **XXII. FLY AMERICA**

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

## **XXIII. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

**APPENDIX B**

**[FORM] SOFTWARE LICENSE AGREEMENT**

**Software license agreements procured by Contractor shall conform to the requirements set out in form software license agreement or as otherwise approved by the City.**

Agreement between the City and County of San Francisco and

**[insert name of software vendor]**

This agreement (the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, in the City and County of San Francisco, State of California, by and between: [insert name and address of Contractor], ("Contractor" or "Vendor") and the City and County of San Francisco ("City), a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency, hereinafter referred to as "Purchasing."

**Recitals**

WHEREAS, the SFMTA wishes to license certain software from Contractor; and,

WHEREAS, Contractor represents and warrants that it is qualified to provide such software and services required by City as set forth under this Agreement.

Now, THEREFORE, the parties agree as follows:

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

**ACCEPTANCE** Notice from the City to Contractor that the Licensed Software meets the specifications contained in the Documentation. City's Acceptance of the Licensed Software shall be governed by the procedures set forth in Section 7.

**AGREEMENT** This document and any attached appendices and exhibits, including any future written and executed amendments.

**AUTHORIZATION;  
AUTHORIZATION  
DOCUMENT** This Agreement, a task order, or annual work plan of the City, properly executed by the SFMTA and Purchasing, and certified

by the Controller for the specific funding of this Agreement or any modification thereof.

DESIGNATED CPU	Any central processing unit or attached processor complex, including its peripheral units, described in the Authorization Document. The Authorization Document may designate more than one CPU.
DESIGNATED SITE	The facility or facilities specified in Appendix A, attached hereto and incorporated by reference as though fully set forth herein, or any other facility as the parties may designate from time to time in writing, where the Designated CPU is located.
DOCUMENTATION	The technical publications relating to the use of the Licensed Software, such as reference, installation, administrative and programmer manuals, provided by Contractor to City.
LICENSED SOFTWARE	One or more of the proprietary computer software programs identified in the Authorization Document (stating the name of program, version number), all related materials, Documentation, all corrections, patches or updates thereto, and other written information received by City from Contractor, whether in machine-readable or printed form. The Authorization Document may identify more than one software product or more than one copy of any product.
OBJECT CODE	Machine readable compiled form of Licensed Software provided by Contractor.
SOURCE CODE	The human readable compliable form of the Licensed Software to be provided by Contractor.
SPECIFICATIONS	The functional and operational characteristics of the Licensed Software as described in Contractor's current published product descriptions and technical manuals.

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

**2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City'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 of this Agreement.

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

**3. Term of the Agreement.** Subject to Section 5, the license granted under this Agreement shall commence upon acceptance of the Licensed Software and shall continue in perpetuity unless sooner terminated in accordance with the provisions of this Agreement.

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

**5. License**

**a. Grant of License.** Subject to the terms and conditions of this Agreement, Contractor grants City a non-exclusive and non-transferable perpetual enterprise license for the SFMTA to use the Licensed Software. City acknowledges and agrees that the Licensed Software is the proprietary information of Contractor and that this Agreement grants City no title or right of ownership in the Licensed Software.

Contractor agrees that in the event it discontinues its obligations under the terms of this Agreement, except as expressly provided for in Section 30(Termination), or ceases to market and/or provide maintenance and support for the Licensed Software, and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, it will provide City, without charge, one (1) copy of the then-current Source Code for all of the programs and all supporting Documentation for the Licensed Software then operating and installed at City's locations. If City should obtain the Source Code and the Documentation pursuant to this section, the only use made of the Source Code and the Documentation will be for the proper maintenance of the Licensed Software in connection with City's use of the Licensed Software as provided for, and limited by, the provisions of this Agreement.

In furtherance of its obligations as stated above, Contractor will provide to City or place into escrow a copy of the Source Code which corresponds to the most current version of the Licensed Software. Contractor agrees to update, enhance or otherwise modify such Source Code promptly upon its release of a new version of the Licensed Software to its other Licensees such that the Source Code is maintained as corresponding to the newest released version of the Licensed Software. City's right to possession of the Source Code will be governed by Appendix A.

**b. Restrictions on Use.** City is authorized to use the Licensed Software only for City's internal purposes and only on the Designated CPU or the Designated Site specified in the Authorization Document. City agrees that it will, through its best efforts, not use or permit the Licensed Software to be used in any manner, whether directly or indirectly, that would enable any other person or entity to use the Licensed Software on other than the Designated CPU or Site.

**c. Use on other than Designated CPU or Site.** A single back-up or replacement CPU may be used as a substitute for a Designated CPU at any time, provided that City provides Contractor with written notice of such hardware substitution, including information regarding the replacement hardware as required for the Designated CPU pursuant to this Agreement, that City refrain from using the Licensed Software simultaneously on both the Designated CPU and the substitute CPU, and that the Licensed Software be removed from or rendered inoperable on the Designated CPU by the City in a timely manner subsequent to installation of the Licensed Software upon the substitute CPU.

For the purpose of any bona fide City disaster recovery plan or with respect to the use of computer software in its municipal operations, City may make one copy of the Licensed Software for archival purposes and use such archival copy on a CPU other than the Designated CPU, or at a site other than the Designated Site, so long as such alternative CPU or site is owned or controlled by City. The use of such archival copy shall be limited to (1) the purpose of conducting limited testing of the disaster recovery plan's procedures and effectiveness and (2) during any period subsequent to the occurrence of an actual disaster during which the City cannot operate the Licensed Software on the Designated CPU or at the Designated Site. City agrees to furnish evidence of its disaster recovery plan and procedures upon Contractor's request.

**d. Transfer of Products.** City may move the Licensed Software and supporting materials to another City site which physically replaces the original installation site upon prior written notice to Contractor.

**e. Documentation.** Contractor shall provide City with the Licensed Software specified in the Authorization Document, and a minimum of two copies of the Documentation per installation. Contractor grants to City permission to duplicate all printed Documentation for City's internal use.

**f. Proprietary Markings.** City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Licensed Software or any related materials or Documentation.

**g. Authorized Modification.** City shall also be permitted to develop, use and modify Application Program Interfaces (API's), macros and user interfaces. For purposes of this Agreement, such development shall be deemed an authorized modification. Any such APIs, macros or other interfaces developed by the City shall become the property of the City.

## 6. Delivery

**a. Delivery.** One copy of each of the Licensed Software products in computer readable form shall be shipped to the City not

later than **[insert date, or the date specified in Appendix A]**. Program storage media (magnetic tapes, disks and the like) and shipping shall be provided at no charge by Contractor.

**b. Installation.** Contractor shall install the programs by **[insert date]**.

**c. Risk of Loss.** If any of the Licensed Software products are lost or damaged during shipment or before installation is completed, Contractor shall promptly replace such products, including the replacement of program storage media if necessary, at no additional charge to the City. If any of the Licensed Software products are lost or damaged while in the possession of the City, Contractor will promptly replace such products without charge, except for program storage media, unless supplied by the City.

**7. Acceptance Testing.** After Contractor has installed the Licensed Software, the City shall have a period of **[insert number]** days (“Acceptance Testing Period”) from the date of installation to verify that the Licensed software substantially performs to the specifications contained in the Documentation. In the event that the City determines that the Licensed Software does not meet such specifications, the City shall notify the Contractor in writing, and Contractor shall modify or correct the Licensed Software so that it satisfies the Acceptance criteria. The date of Acceptance will be that date upon which City provides Contractor with written notice of satisfactory completion of Acceptance testing. If City notifies Contractor after the Acceptance Testing Period that the Licensed Software does not meet the Acceptance criteria of this section, then City shall be entitled to terminate this License in accordance with the procedures specified in Section 30(b) herein, and shall be entitled to a full refund of the license fee.

**8. Training.** Contractor will provide up to \_\_\_\_\_ days of training in the use and operation of the Licensed Software at a location to be determined by the SFMTA. Upon request by the City, Contractor will provide additional training at its current best government rates.

**9. Contractor’s Default.** Failure or refusal of Contractor to perform or do any act herein required shall constitute a default. In the event of any default, in addition to any other remedy available to City, this Contract may be terminated by City upon ten days written notice. Such termination does not waive any other legal remedies available to City.

## **10. Maintenance and Support**

**a. Maintenance and Support Services.** After Acceptance of the Licensed Software and subject to the terms, conditions, and charges set forth in this Section, Contractor will provide City with maintenance and support services for the Licensed Software as follows: (i) Contractor will provide such assistance as necessary to cause the Licensed Software to perform in accordance with the Specifications as set forth in the Documentation; (ii) Contractor will provide, for City’s use, whatever improvements,

enhancements, extensions and other changes to the Licensed Software Contractor may develop, and (iii) Contractor will update the Licensed Software, as required, to cause it to operate under new versions or releases of the operating system specified in the Authorization Document so long as such updates are made generally available to Contractor's other Licensees.

**b. Changes in Operating System.** If City desires to obtain a version of the Licensed Software that operates under an operating system not specified in the Authorization Document, Contractor will provide City with the appropriate version of the Licensed Software, if available, on a 90-day trial basis without additional charge, provided City has paid all maintenance and support charges then due. At the end of the 90-day trial period, City must elect one of the following three options: (i) City may retain and continue the old version of the Licensed Software, return the new version to Contractor and continue to pay the applicable rental or license fee and maintenance charges for the old version; (ii) City may retain and use the new version of the Licensed Software and return the old version to Contractor, provided City pays Contractor the applicable rental or license fee and maintenance charges for the new version of the Licensed Software; or (iii) City may retain and use both versions of the Products, provided City pays Contractor the applicable rental or license fee and maintenance charges for both versions of the Licensed Software. City will promptly issue the necessary Authorization Document(s) to accomplish the above.

**c. Charges**

(1) **Limited Term License.** When the license term specified in the Authorization Document is less than perpetual, all charges for maintenance and support are included in the periodic license or rental fee.

(2) **Perpetual License.** Where the license term specified in the Authorization Document is perpetual, all charges for maintenance and support are as follows:

(a) **Periodic Payment License.** If the license fee specified in the Authorization Document is payable in periodic payments, there will be no additional charge for maintenance and support during the period for which such periodic payments are payable or the first year of the term, whichever is longer.

(b) **Lump Sum Payment Licenses.** If the license fee specified in the Authorization Document is payable in one lump sum, there will be no additional charge for the maintenance and support during the first year of the term.

**d. Charges for Subsequent Years.** For each year after the period for which periodic payments are payable, or each year after the first year of the lump sum payment license, as the case may be, Contractor will continue to provide City with the maintenance and support services as described in subsection A above, provided City issues a purchase order or modification to this License Agreement and pays Contractor in advance the annual maintenance and support charges then in effect. If there is an increase in annual maintenance and support charges, Contractor shall give City written notice of such increase at least thirty (30) days prior to the expiration of the applicable maintenance period. Annual maintenance and support charges shall not increase more

than **[insert percentage]** % of the rate of the year immediately prior to such increase. Contractor will make maintenance and support services available to City for a minimum of **[insert number]** years.

**11. Warranties: Right to Grant License.** Contractor hereby warrants that it has title to and/or the authority to grant a license of the Licensed Software to the City.

**12. Warranties: Conformity to Specifications.** Contractor warrants that when the Licensed Software specified in the Authorization Document and all updates and improvements to the Licensed Software are delivered to City, they will be free from defects as to design, material, and workmanship and will perform on the Designated CPU in accordance with the Contractor's published specifications for the Licensed Software for a period of one year from City's Acceptance of such Licensed Software.

**13. Infringement Indemnification.** If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the Licensed Software infringes a patent, copyright, or any right of a third party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the Licensed Software constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement.

In the event a final injunction is obtained against City's use of the Licensed Software by reason of Infringement, or in Contractor's opinion City's use of the Licensed Software is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the Licensed Software as contemplated hereunder, (b) replace the Licensed Software with a non-infringing, functionally equivalent substitute Licensed Software, or (c) suitably modify the Licensed Software to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Licensed Software. If none of these options is reasonably available to Contractor, then the applicable Authorization Document or relevant part of such Authorization Document may be terminated at the option of either party hereto and Contractor shall refund to City all amounts paid under this Agreement for the license of such infringing Licensed Software. Any unauthorized modification or attempted modification of the Licensed Software by City or any failure by City to implement any improvements or updates to the Licensed Software, as supplied by Contractor, shall void this indemnity unless City has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on City's use or combination of the Licensed Software with products or data of the type for which the Licensed Software was neither designed nor intended to be used.



**14. Payment.** Compensation shall be due and payable within 45 days of the date of invoice. In no event shall the amount of this Agreement exceed **[give dollar amount in number and words – no pennies and no “.00”]**. The breakdown of costs associated with this Agreement is provided for in Appendix A. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until Licensed Software, **[insert “and services” if appropriate]** required under this Agreement are received from Contractor and approved by **[insert name of department]** as being in accordance with this Agreement.

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

**15. Guaranteed Maximum Costs.** The City’s obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor’s performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained. 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.

**16. Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique identifying 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.”

**17. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code Section 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 attorney’s fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false

claim. A 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. (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.

**18. Taxes.** Payment of any taxes, including possessory interest taxes, and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor.

**19. 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, the Licensed Software, although the unsatisfactory character of such work, or Licensed Software may not have been apparent or detected at the time such payment was made. Software, components, or workmanship that does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

**20. 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.

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

## **22. 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.

### **23. 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 be endorsed to provide:

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

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

**d.** All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

**e.** 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.

**f.** 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.

**g.** 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.

**h.** 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.

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

j. (Reserved)

**24. Indemnification and General Liability.** 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, 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 active negligence or willful misconduct of City and in 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.

**25. 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 of limitation of any rights which City may have under applicable law.

**26. Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 14 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.

**27. Nondisclosure.** City agrees that it shall treat the Licensed Software with the same degree of care as it treats like information of its own, which it does not wish to disclose to the public, from the date the Licensed Software is Accepted by the City until the license is terminated as provided herein. The obligations of the City set forth above, however, shall not apply to the Licensed Software, or any portion thereof, which:

- a. is now or hereafter becomes publicly known;
- b. is disclosed to the City by a third party which the City has no reason to believe is not legally entitled to disclose such information;
- c. is known to the City prior to its receipt of the Licensed Software;

- d. is subsequently developed by the City independently of any disclosures made hereunder by Contractor;
- e. is disclosed with Contractor's prior written consent;
- f. is disclosed by Contractor to a third party without similar restrictions.

**28. 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 the 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.

**29. 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.

### **30. Termination**

**a. Basis for Termination by Contractor.** Contractor shall have the right to terminate this Agreement if City is delinquent in making payments of any sum due under this Agreement and continues to be delinquent for a period of ninety days after the last day payment is due; provided, however, that written notice is given to City by Contractor of the expiration date of the ninety-day delinquency period at least ten days prior to the expiration date or, to terminate this Agreement if City commits any other breach of this Agreement and fails to remedy such breach within thirty days after receipt of written notice by Contractor of such breach.

**b. Basis for Termination by City.** City shall have the right, without further obligation or liability to Contractor (except as specified in Sections 29 (Protection of Private Information) and 30(c) (Disposition of Licensed Software on Termination) hereof): (i) to immediately terminate this Agreement or the applicable Authorization Document if Contractor commits any breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by City of such breach, in which event, Contractor shall reimburse City in the same manner as for the removal of the Licensed Software due to infringement under Section 13; or (ii) to terminate this Agreement or the applicable Authorization Document upon ninety (90) days prior written notice for any reason if the license granted hereunder is for any term other than perpetual. In the event the license granted is perpetual, termination of this Agreement or the applicable

Authorization Document by City shall be effective upon receipt by Contractor of written notice of said termination.

**c. Disposition of Licensed Software on Termination.** Upon the expiration or termination of this Agreement or an applicable Authorization Document for any reason other than as provided for in Section 5(a) (Grant of License), City shall immediately: (i) return the Licensed Software to Contractor together with all Documentation; (ii) purge all copies of the Licensed Software or any portion thereof from all CPU's and from any computer storage medium or device on which City has placed or permitted others to place the Licensed Software; and (iii) give Contractor written certification that through its best efforts and to the best of its knowledge, City has complied with all of its obligations under Section 30(c).

**d. Survival.** This section and the following sections of this Agreement shall survive termination or expiration of this Agreement:

- |                                                                       |                                                           |
|-----------------------------------------------------------------------|-----------------------------------------------------------|
| 13. Infringement Indemnification                                      | 26. Liability of City                                     |
| 17. Submitting False Claims;<br>Monetary Penalties                    | 27. Nondisclosure                                         |
| 18. Taxes                                                             | 28. Proprietary or Confidential<br>Information of City    |
| 19. Payment Does Not Imply<br>Acceptance                              | 29. Protection of Private Information                     |
| 21. Responsibility for Equipment                                      | 39. Non-Waiver of Rights of Work                          |
| 22. Independent Contractor;<br>Payment of Taxes and Other<br>Expenses | 40. Modification of Agreement                             |
| 23. Insurance                                                         | 41. Administrative Remedy for<br>Agreement Interpretation |
| 24. Indemnification and General<br>Liability                          | 42. Agreement Made in California;<br>Venue                |
| 25. Incidental and Consequential<br>Damages                           | 43. Construction                                          |
|                                                                       | 44. Entire Agreement                                      |

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

To City:                   Shahnam Farhangi  
                                  SFMTA  
                                  1 South Van Ness Avenue, Third Floor  
                                  San Francisco, CA 94102

To Contractor:

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail, by courier or by overnight delivery service.

**32. Bankruptcy.** In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect.

**33. 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.

**34. 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.

**35. 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.

**36. Sunshine Ordinance.** In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to requests for proposals 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.



**37. 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 the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. 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. Contractor further agrees to provide to City the names of each person, entity or committee described above.

**38. 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 the City's Campaign and Governmental 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.

**39. 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.

**40. 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.

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

**42. 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.

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

**44. Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. If any provision of this Agreement is held to be unenforceable, this Agreement shall be construed without such provision.

**45. 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.

**46. 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 a material breach of this Agreement.

**47. Food Service Waste Reduction Requirements.** 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 \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$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.

**48. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

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

**CITY**

**CONTRACTOR**

Approved:

**[company name]**

\_\_\_\_\_  
NATHANIEL P. FORD, SR.  
Executive Director/CEO  
San Francisco Municipal  
Transportation Agency

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.

Municipal Transportation Agency  
Board of Directors  
Resolution No. \_\_\_\_\_  
Dated: \_\_\_\_\_  
Attest:

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.

\_\_\_\_\_  
Secretary

Approved as to Form:

Dennis J. Herrera  
City Attorney

\_\_\_\_\_  
**[name of authorized representative]**  
**[title]**  
**[optional: address]**  
**[optional: city, state, ZIP]**

By:

City vendor number: **[vendor number]**

\_\_\_\_\_  
Robert K. Stone  
Deputy City Attorney

**APPENDIX C  
TASK 2 SCHEDULE**

**HILL INTERNATIONAL**

Activity Name	Orig Dur	Planned Start	Planned Finish	Budgeted Labor Units	Budgeted Total Cost
SFMTA Project Plan CS 156 – Task 2	376	01-Jun-10	15-Nov-11	21222	\$2,552,292
NTP	0	01-Jun-10		0	\$0
Milestone – Startup Phase Completed	0		13-Jul-10	0	\$0
Milestone – Business Analysis Phase Completed	0		14-Dec-10	0	\$0
Milestone – Design Phase Completed	0		04-Feb-11	0	\$0
Milestone – Development Phase Completed	0		02-May-11	0	\$0
Milestone – Validation Phase Completed	0		20-Jul-11	0	\$0
Milestone – Deployment Phase Completed	0		15-Nov-11	0	\$0
Milestone – Full System Production Phase Completed	0		15-Nov-11	0	\$0
Startup Phase	33	01-Jun-10	16-Jul-10	1392	\$154,420
STP 1.0 Project Management & Quality Plan (PMQP)	33	01-Jun-10	16-Jul-10	684	\$88,000
STP 2.0 Baseline Resource Loaded Project Schedule	28	03-Jun-10	13-Jul-10	244	\$23,000
STP 3.0 Communications/Organizational Change Manager	18	01-Jun-10	24-Jun-10	164	\$13,220
STP 4.0 Create Core Project Team Training Plan	25	08-Jun-10	14-Jul-10	300	\$30,200
Business Analysis Phase	137	01-Jun-10	14-Dec-10	3906	\$469,400
BA 5.0 Project Kickoff	2	01-Jun-10	02-Jun-10	48	\$8,000
BA 6.0 Business Process Reengineering (BPR) Recommen	66	08-Jun-10	09-Sep-10	904	\$124,200
BA 7.0 RIDS Analysis (Reports-Interfaces-Data-Security)	69	09-Jun-10	15-Sep-10	1312	\$150,200
BA 8.0 Updated Business Requirements & Traceability Matrix	7	09-Aug-10	17-Aug-10	76	\$5,400
BA 9.0 Core Project Team Training	5	18-Aug-10	24-Aug-10	40	\$6,000
BA 10.0 Technical Infrastructure Analysis, Procurement Specifications	57	11-Jun-10	31-Aug-10	274	\$24,800
BA 11.0 Software & Hardware Installation & Technical Environmental	74	30-Aug-10	14-Dec-10	1252	\$150,800
Design Phase	122	18-Aug-10	09-Feb-11	3052	\$345,000
DS 12.0 Fit-Gap Analysis & Findings	26	08-Oct-10	15-Nov-10	268	\$30,400
DS 13.0 Functional & Technical Specifications for Reports	20	15-Nov-10	15-Dec-10	220	\$21,000
DS 14.0 Functional & Technical Specifications for Interface	25	18-Aug-10	22-Sep-10	220	\$15,000
DS 15.0 Functional & Technical Specifications for Data	25	22-Nov-10	30-Dec-10	220	\$18,000
DS 16.0 Functional Specifications for Security	26	30-Dec-10	04-Feb-11	260	\$18,000
DS 17.0 Requirements Gap Cost-Benefit Analysis and Customization	21	22-Oct-10	22-Nov-10	256	\$33,000
DS 18.0 Final To-Be Functional Design & Business Changes	35	27-Oct-10	17-Dec-10	500	\$78,000
DS 19.0 Functional and Technical Specifications for Workflow	35	27-Oct-10	17-Dec-10	500	\$62,000
DS 20.0 Best Practice Organizational Model Recommendations	35	18-Aug-10	06-Oct-10	300	\$35,400
DS 21.0 Training Assessment Findings & Recommendations	37	17-Dec-10	09-Feb-11	308	\$34,200

Activity Name	Orig Dur	Planned Start	Planned Finish	Budgeted Labor Units	Budgeted Total Cost
<b>Development Phase</b>	<b>120</b>	<b>15-Nov-10</b>	<b>05-May-11</b>	<b>7463</b>	<b>\$865,492</b>
DV 22.0 Application/Workflow Configuration & Documentation	31	17-Dec-10	01-Feb-11	560	\$61,200
DV 23.0 Queries and Reports Development & Documentation	25	18-Jan-11	22-Feb-11	520	\$63,000
DV 24.0 Interfaces and Integration Development & Documentation	55	18-Jan-11	05-Apr-11	1000	\$114,000
DV 25.0 Data Conversion Implementation & Reconciliation	40	08-Feb-11	05-Apr-11	1687	\$163,520
DV 26.0 Security Implementation & Documentation	17	17-Dec-10	12-Jan-11	256	\$30,600
DV 27.0 Unit & Functional Testing Results Documentation	12	05-Apr-11	21-Apr-11	424	\$56,400
DV 28.0 Requirements Traceability Validation	7	21-Apr-11	02-May-11	280	\$41,272
DV 29.0 Validation (Testing) Phase Plan	86	15-Nov-10	18-Mar-11	532	\$69,600
DV 30.0 Training Materials Development	67	01-Feb-11	05-May-11	2204	\$265,900
<b>Validation Phase</b>	<b>115</b>	<b>09-Feb-11</b>	<b>20-Jul-11</b>	<b>2393</b>	<b>\$261,660</b>
VL 31.0 Deliver UAT Orientation/Training	43	09-Feb-11	11-Apr-11	344	\$50,760
VL 32.0 Implement UAT Testing & Formal Signoff of Functional	58	11-Apr-11	30-Jun-11	1420	\$142,000
VL 33.0 Implement Performance Testing & Acceptance Signoff	31	16-May-11	28-Jun-11	328	\$33,200
VL 34.0 Operations Procedures & Training	20	16-May-11	13-Jun-11	185	\$24,300
VL 35.0 Final Training Materials	14	30-Jun-11	20-Jul-11	116	\$11,400
<b>Deployment Phase</b>	<b>172</b>	<b>18-Mar-11</b>	<b>15-Nov-11</b>	<b>3016</b>	<b>\$456,320</b>
DP 36.0 Deliver Formal End User Training	26	30-Jun-11	05-Aug-11	352	\$42,720
DP 37.0 Go Live Help Desk and Field Support Operational	56	18-Mar-11	06-Jun-11	460	\$75,000
DP 38.0 Cut Over Plan & Go Live Communications Package	40	18-Apr-11	13-Jun-11	168	\$26,000
DP 39.0 Go Live Readiness Checklist Assessment	42	25-Apr-11	22-Jun-11	104	\$12,400
DP 40.0 Post Production Support Plan	48	25-Apr-11	30-Jun-11	220	\$27,000
DP 41.0 Implement Cut-Over (Go Live)	2	05-Aug-11	09-Aug-11	64	\$11,200
DP 42.0 Post Production Issues Management & Resolution	66	09-Aug-11	09-Nov-11	1584	\$250,800
DP 43.0 Final System Acceptance	4	09-Nov-11	15-Nov-11	64	\$11,200

**APPENDIX D**  
**TASK 1 RATE SCHEDULE**



**Task 1: Central Subway Program Controls Staff Classification Pricing Data****ACUMEN BUILDING ENTERPRISE, INC.  
Subconsultant – DBE/CUPC SBE**

<b>Proposed Staff Classification</b>	<b>* Direct Hourly Rate</b>	<b>Assumed OH Rate</b>	<b>Assumed Profit %</b>	<b>Total Burdened Hourly Rate (Excluding Allowable Reimbursable Expenses)</b>	<b>Comments</b>
Senior Project Controls Manager <i>Te-Chuan Chang Gregory Demetrulias</i>	\$65.00	114.2%	7.5%	\$149.67	
Document Control Administrator	\$56.50	114.2%	7.5%	\$130.10	
Claims Analyst	\$65.00	114.2%	7.5%	\$149.67	
Senior Cost/Schedule Engineer	\$65.00	114.2%	7.5%	\$149.67	
Cost / Schedule Analyst <i>Benjamin Murray</i>	\$60.00	114.2%	7.5%	\$138.16	
Junior Scheduler <i>Jun Yi</i>	\$28.00	114.2%	7.5%	\$64.47	
Senior Estimator	\$60.00	114.2%	7.5%	\$138.16	
Admin. Assistant	\$25.00	114.2%	7.5%	\$57.57	
Data Entry Clerk	\$20.00	114.2%	7.5%	\$46.05	

- *Above rates reflect average 2010 direct hourly rates for listed classifications and are subject to annual adjustment specified in the Agreement.*
- Above rates assume field rates for full-time participation. Participation will be considered full-time if the assignment is for more than 6 months. If not, office overhead rates will apply.
- All OCDs including mileage will comply with SFMTA requirements for reimbursables.

**Task 1: Central Subway Program Controls Staff Classification Pricing Data**  
**BAINES GROUP**  
**Subconsultant – CUCP/DBE HRC**

<b>Proposed Staff Classification</b>	<b>* Direct Hourly Rate</b>	<b>Assumed OH Rate</b>	<b>Assumed Profit %</b>	<b>Total Burdened Hourly Rate (Excluding Allowable Reimbursable Expenses)</b>	<b>Comments</b>
Project Executive <i>Ronald Fowler</i>	\$75.00	100%	7.5%	\$161.25	
Senior Project Controls Manager <i>Carl Holmes</i> <i>Marty Militano</i>	\$65.00	100%	7.5%	\$139.75	
Senior Project Manager <i>Vincent Gaines</i>	\$65.00	100%	7.5%	\$139.75	
Project Manager <i>Rene Angel</i> <i>Joe Cartagena</i>	\$58.00	100%	7.5%	\$124.70	
Contracts Manager <i>Sokari Frank</i>	\$35.00	100%	7.5%	\$75.25	
Senior Cost/Schedule Engineer <i>Sikandar Khatri</i>	\$66.00	100%	7.5%	\$141.90	
Cost / Schedule Analyst <i>Nahel Simon</i>	\$40.00	100%	7.5%	\$86.00	
Senior Estimator <i>Sunil Shah</i>	\$66.00	100%	7.5%	\$141.90	
Community Outreach <i>Michael Baines</i>	\$93.75	100%	7.5%	\$201.56	
Admin. Assistant <i>Tanya Washington</i>	\$25.00	100%	7.5%	\$53.75	

- *Above rates reflect average 2010 direct hourly rates for listed classifications and are subject to annual adjustment specified in the Agreement.*
- Above rates assume field rates for full-time participation. Participation will be considered full-time if the assignment is for more than 6 months. If not, office overhead rates will apply.
- All OCDs including mileage will comply with SFMTA requirements for reimbursables.

**Task 1: Central Subway Program Controls Staff Classification Pricing Data**  
**CM PROS**  
**Subconsultant – SB (Micro) HRC**

<b>Proposed Staff Classification</b>	<b>* Direct Hourly Rate</b>	<b>Assumed OH Rate</b>	<b>Assumed Profit %</b>	<b>Total Burdened Hourly Rate (Excluding Allowable Reimbursable Expenses)</b>	<b>Comments</b>
Senior Project Manager <i>Samir Messiah</i>	\$80.00	118%	7.5%	\$187.48	
Senior Document Control Administrator	\$60.00	118%	7.5%	\$140.61	
Contracts Manager	\$70.00	118%	7.5%	\$164.05	
Senior Cost/Schedule Engineer <i>Anas Nasr Robert Saidon Saeed Tirmizi William Solomon Jordan Herrmann</i>	\$70.00	118%	7.5%	\$164.05	
Cost / Schedule Analyst <i>Hersey Gulfo Hany El Banna</i>	\$70.00	118%	7.5%	\$164.05	
Scheduler <i>Filipina Gancho</i>	\$50.00	118%	7.5%	\$117.18	
Senior Estimator	\$65.00	118%	7.5%	\$152.33	
Estimator	\$50.00	118%	7.5%	\$117.18	
Admin. Assistant	\$50.00	118%	7.5%	\$117.18	
Data Entry Clerk	\$35.00	118%	7.5%	\$82.02	

- *Above rates reflect average 2010 direct hourly rates for listed classifications and are subject to annual adjustment specified in the Agreement.*
- Above rates assume field rates for full-time participation. Participation will be considered full-time if the assignment is for more than 6 months. If not, office overhead rates will apply.
- All OCDs including mileage will comply with SFMTA requirements for reimbursables.

**Task 1: Central Subway Program Controls Staff Classification Pricing Data****HILL INTERNATIONAL, INC.  
Prime Consultant – Task 1 Leader**

<b>Proposed Staff Classification</b>	<b>* Direct Hourly Rate</b>	<b>Assumed OH Rate</b>	<b>Assumed Profit %</b>	<b>Total Burdened Hourly Rate (Excluding Allowable Reimbursable Expenses)</b>	<b>Comments</b>
Project Executive <i>Jim Palmer</i>	\$135.58	116.75%	7.5%	\$315.90	
Program Controls Director <i>Jose Diaz</i>	\$84.62	116.75%	7.5%	\$197.16	
Admin. Assistant <i>Susan Bailey</i>	\$36.30	116.75%	7.5%	\$84.58	
Program Controls Project Manager <i>Ben Botorabi</i>	\$80.29	116.75%	7.5%	\$187.08	
Contract/Claims Administration Manager <i>William Cook</i>	\$120.19	116.75%	7.5%	\$280.06	
Systems and Project Reporting Manager <i>Jonathan Liebe</i>	\$45.52	116.75%	7.5%	\$106.06	
Cost / Schedule Analyst <i>Ross Scaffidi</i>	\$54.33	116.75%	7.5%	\$126.59	
Senior Claims Advisor <i>Frank Giunta</i> <i>Alann Ramirez</i> <i>Dennis Allen</i> <i>Maurice Masucci</i>	\$150.36	116.75%	7.5%	\$350.35	
Claims Advisor <i>Robert Dieterle</i> <i>Brian Larkin</i> <i>Daniel Stewart</i>	\$97.92	116.75%	7.5%	\$228.15	
Claims Analyst <i>Samuel Hatfield</i> <i>Philip Law</i> <i>Carol Kranick</i>	\$51.70	116.75%	7.5%	\$120.46	

<b>Proposed Staff Classification</b>	<b>* Direct Hourly Rate</b>	<b>Assumed OH Rate</b>	<b>Assumed Profit %</b>	<b>Total Burdened Hourly Rate (Excluding Allowable Reimbursable Expenses)</b>	<b>Comments</b>
Systems Engineer <i>Abu George Philip Toni Huynh Mark Haskin Ed Baliton Ed Biebel</i>	\$52.12	116.75%	7.5%	\$121.43	
Senior Estimator/Cost Engineers <i>Clarence Bossard Manuel de la Hoz Jim Oswell</i>	\$66.03	116.75%	7.5%	\$156.83	
Estimator/Cost Engineers <i>Leonard Law Desideria Culanag Charles Dombrowski Leonard Posten</i>	\$40.46	116.75%	7.5%	\$94.29	
Document Control Manager <i>Evelyn Cabrera Marylin Hennegan Darlene Scott</i>	\$38.95	116.75%	7.5%	\$90.76	
Document Control Administrator <i>Lauren Potter Kian Kludsikofsky Teresa Schwanauer</i>	\$25.53	116.75%	7.5%	\$59.48	
Senior Contracts Manager <i>Adam Winegard Calvin Lee</i>	\$85.82	116.75%	7.5%	\$199.96	

<b>Proposed Staff Classification</b>	<b>* Direct Hourly Rate</b>	<b>Assumed OH Rate</b>	<b>Assumed Profit %</b>	<b>Total Burdened Hourly Rate (Excluding Allowable Reimbursable Expenses)</b>	<b>Comments</b>
Contracts Manager <i>Lonnie Milburn Wayne Farmer Brett Ayoob Christopher Derchin</i>	\$50.12	116.75%	7.5%	\$116.78	
Senior Scheduler <i>Raquel Shoheit Jose Berrios Marv Carson</i>	\$60.35	116.75%	7.5%	\$140.61	
Scheduler <i>Megan Syrnick Ronald Ewert Kristina Marino</i>	\$44.16	116.75%	7.5%	\$102.89	
Construction Accountant <i>Edith Lee</i>	\$45.00	116.75%	7.5%	\$104.85	
Public Relations/ Community Outreach <i>Margena Wade</i>	\$46.80	116.75%	7.5%	\$109.05	

- *Above rates reflect average 2010 direct hourly rates for listed classifications and are subject to annual adjustment specified in the Agreement.*
- Above rates assume field rates for full-time participation. Participation will be considered full-time if the assignment is for more than 6 months. If not, office overhead rates will apply.
- All OCDs including mileage will comply with SFMTA requirements for reimbursables.

**Task 1: Central Subway Program Controls Staff Classification Pricing Data****JACOBS ENGINEERING GROUP, INC.  
Subconsultant – Primary Partner**

<b>Proposed Staff Classification</b>	<b>* Direct Hourly Rate</b>	<b>Assumed OH Rate</b>	<b>Assumed Profit %</b>	<b>Total Burdened Hourly Rate (Excluding Allowable Reimbursable Expenses)</b>	<b>Comments</b>
Senior Project Controls Manager <i>Margaret Berry Mark Dalquist</i>	\$80.00	96.94%	7.5%	\$169.37	
Claims Analyst <i>Eileen Francisco</i>	\$65.00	96.94%	7.5%	\$137.61	
Senior Document Control Administrator	\$45.00	96.94%	7.5%	\$95.27	
Contracts Manager	\$65.00	96.94%	7.5%	\$137.61	
Senior Cost/Schedule Engineer <i>Carrie Sandman Sandy Su Bijan Yaghoubzadeh Frank Domingo</i>	\$65.00	96.94%	7.5%	\$137.61	
Cost / Schedule Analyst <i>Yvonne Lee Claudia Martinez Jake McMurtry Frank Nguyen</i>	\$50.00	96.94%	7.5%	\$105.86	
Scheduler <i>Alexis Ayers Rhonda Villasana</i>	\$57.00	96.94%	7.5%	\$120.67	
Senior Estimator <i>Michael Mills Lal Yapa Dan Bulosan</i>	\$75.00	96.94%	7.5%	\$158.78	
Estimator	\$65.00	96.94%	7.5%	\$137.61	
Admin. Assistant	\$30.00	96.94%	7.5%	\$63.51	
Data Entry Clerk	\$20.00	96.94%	7.5%	\$42.34	

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- All OCDs including mileage will comply with SFMTA requirements for reimbursables.



**Task 1: Central Subway Program Controls Staff Classification Pricing Data****KAL KRISHNAN CONSULTING SERVICES, INC.  
Subconsultant – CUCP/DBE UCP**

<b>Proposed Staff Classification</b>	<b>* Direct Hourly Rate</b>	<b>Assumed OH Rate</b>	<b>Assumed Profit %</b>	<b>Total Burdened Hourly Rate (Excluding Allowable Reimbursable Expenses)</b>	<b>Comments</b>
Senior Cost/Schedule Engineer <i>Raymond Saavedra Tony Hsieh</i>	\$67.18	109.23%	7.5%	\$151.10	
Contracts Manager	\$55.00	109.23%	7.5%	\$127.00	
Cost / Schedule Analyst <i>Alexander Lampros</i>	\$54.18	109.23%	7.5%	\$121.86	
Scheduler <i>Helen Shi</i>	\$54.18	109.23%	7.5%	\$121.86	
Senior Estimator <i>Frank Bavand</i>	\$67.18	109.23%	7.5%	\$151.10	
Estimator <i>Ben Aralar John Grigorian</i>	\$54.18	109.23%	7.5%	\$121.86	
Admin. Assistant <i>Angela Mukirae</i>	\$30.00	109.23%	7.5%	\$67.48	
Data Entry Clerk	\$15.00	109.23%	7.5%	\$35.00	

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- All OCDs including mileage will comply with SFMTA requirements for reimbursables.

**Task 1: Central Subway Program Controls Staff Classification Pricing Data****M. LEE CORPORATION  
Subconsultant – SB(Micro) HRC UCP**

<b>Proposed Staff Classification</b>	<b>* Direct Hourly Rate</b>	<b>Assumed OH Rate</b>	<b>Assumed Profit %</b>	<b>Total Burdened Hourly Rate (Excluding Allowable Reimbursable Expenses)</b>	<b>Comments</b>
Project Manager/Lead Estimator <i>Martin Lee</i>	\$65.00	135%	7.5%	\$164.21	
Senior Estimator <i>David Cromb</i> <i>Teresa Schmidt</i> <i>Joyce Nolan</i>	\$58.00	135%	7.5%	\$146.52	
Estimator <i>Sunil Shah</i>	\$50.00	135%	7.5%	\$126.31	
Senior Schedule Engineer	\$58.00	135%	7.5%	\$146.52	
Scheduler	\$48.00	135%	7.5%	\$121.26	
Cost / Schedule Analyst	\$48.00	135%	7.5%	\$121.26	

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- Above rates assume field rates for full-time participation. Participation will be considered full-time if the assignment is for more than 6 months. If not, office overhead rates will apply.
- All OCDs including mileage will comply with SFMTA requirements for reimbursables.

**Task 1: Central Subway Program Controls Staff Classification Pricing Data****PACO GROUP, INC.  
Subconsultant – CUCP/DBE**

<b>Proposed Staff Classification</b>	<b>* Direct Hourly Rate</b>	<b>Assumed OH Rate</b>	<b>Assumed Profit %</b>	<b>Total Burdened Hourly Rate (Excluding Allowable Reimbursable Expenses)</b>	<b>Comments</b>
Sr. Business Process Analyst <i>Christopher Saldanha Guillermo Padilla</i>	\$65.62	138.00%	7.5%	\$164.70	
Business Process Analyst <i>Rajender Bekkary Jorge Reinoso</i>	\$44.71	138.00%	7.5%	\$122.38	
Senior Cost/Sched. Eng. <i>Vera Lovejoy Carlos Sanchez</i>	\$70.00	138.00%	7.5%	\$191.89	
Senior Proj. Controls Mgr. <i>Gerry Finn</i>	\$80.00	138.00%	7.5%	\$204.68	
Scheduler <i>Dwayne Young Isaac Ponte Mirza Mohsin Stan Michalowski Larry Yi-You Raif Ahmad</i>	\$52.50	138.00%	7.5%	\$127.93	
Project Manager <i>Zoltan Stacho</i>	\$77.00	138.00%	7.5%	\$197.00	

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- Above rates assume field rates for full-time participation. Participation will be considered full-time if the assignment is for more than 6 months. If not, office overhead rates will apply.
- All OCDs including mileage will comply with SFMTA requirements for reimbursables.

**Task 1: Central Subway Program Controls Staff Classification Pricing Data****STELLAR SERVICES  
Subconsultant – CUCP/DBE**

<b>Proposed Staff Classification</b>	<b>* Direct Hourly Rate</b>	<b>Assumed OH Rate</b>	<b>Assumed Profit %</b>	<b>Total Burdened Hourly Rate (Excluding Allowable Reimbursable Expenses)</b>	<b>Comments</b>
Program Controls Director <i>Jerome Gold</i>	\$79.00	146%	7.50%	\$208.92	
Senior Project Manager <i>Anna Hu</i>	\$75.60	146%	7.50%	\$199.92	
IT Project Manager <i>John Liu</i>	\$56.17	146%	7.50%	\$148.54	
Project Manager <i>James Tsao</i>	\$65.50	146%	7.50%	\$173.21	
Senior Database Administrator <i>Yong Che</i>	\$54.50	146%	7.50%	\$144.13	
Document Control Manager <i>Arthur Huang</i>	\$47.50	146%	7.50%	\$125.61	
Training Manager <i>Rozaliya Kiperman</i>	\$47.50	146%	7.50%	\$125.61	
Senior Cost/Schedule Engineer <i>Jimmy Aslam</i>	\$46.80	146%	7.50%	\$123.76	
Cost/Schedule Analyst <i>Hao Jiang</i>	\$33.17	146%	7.50%	\$87.72	
Senior IT Engineer <i>Jeffrey Lai</i>	\$45.66	146%	7.50%	\$120.75	
IT Engineer <i>Steve Li</i> <i>Anver Haniffa</i>	\$29.50	146%	7.50%	\$78.01	
Sr. Web Administrator <i>John Yang</i>	\$50.49	146%	7.50%	\$133.52	
Web Administrator <i>Marcus Bloodworth</i> <i>Mike Zheng</i> <i>Xin Guan</i>	\$37.10	146%	7.50%	\$98.11	

Proposed Staff Classification	* Direct Hourly Rate	Assumed OH Rate	Assumed Profit %	Total Burdened Hourly Rate (Excluding Allowable Reimbursable Expenses)	Comments
Database Engineer <i>Hiren Patel</i> <i>Rudy Kalik</i> <i>Shane Wang</i>	\$43.53	146%	7.50%	\$115.12	
Senior Database Architect <i>Vivian Liu</i>	\$62.50	146%	7.50%	\$165.28	
Integration Specialist <i>Yan Zhuang</i> <i>Yang Zhang</i>	\$35.90	146%	7.50%	\$94.94	

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- All OCDs including mileage will comply with SFMTA requirements for reimbursables.

**APPENDIX E**  
**TASK 2 COST SCHEDULE AND RATE SCHEDULE**

**Task 2: CPCS Specification & Implementation Fixed Fee**

<b>Deliverable ID</b>	<b>Deliverable Name</b>	<b>Fixed Fee</b>
STP 1.0	Project Management & Quality Plan (PMQP)	\$83,072
STP 2.0	Baseline Resource Loaded Project Schedule	\$23,760
STP 3.0	Communications/Organizational Change Management Plan	\$12,480
STP 4.0	Core Project Team Training Plan	\$32,000
<b>Startup Phase Sub Total</b>		<b>\$151,312</b>
BA 5.0	Project Kickoff	\$7,664
BA 6.0	Business Process Reengineering (BPR) Recommendations	\$151,836
BA 7.0	RIDS Analysis	\$139,776
BA 8.0	Updated Business Requirements & Traceability Matrix	\$5,064
BA 9.0	Core Project Team Training	\$5,800
BA 10.0	Technical Infrastructure Analysis, Procurement Specifications & Acquisition Support	\$23,928
BA 11.0	Software & Hardware Installation & Technical Environments Maintenance	\$145,800
<b>Business Analysis Phase Sub Total</b>		<b>\$443,868</b>
DS 12.0	Fit-Gap Analysis & Findings	\$28,152
DS 13.0	Functional & Technical Specifications for Reports	\$19,740
DS 14.0	Functional & Technical Specifications for Interfaces and Systems Integration	\$15,000
DS 15.0	Functional & Technical Specifications for Data Conversion	\$17,400
DS 16.0	Functional Specifications for Security	\$17,400
DS 17.0	Requirements Gap Cost-Benefit Analysis and Customizations Approval	\$31,592
DS 18.0	Final To-Be Functional Design & Business Changes	\$74,800
DS 19.0	Functional and Technical Specifications for Workflow	\$59,440
DS 20.0	Best Practice Organizational Model Recommendations	\$33,000
DS 21.0	Training Assessment Findings & Recommendations	\$33,160
<b>Design Phase Sub Total</b>		<b>\$329,684</b>
DV 22.0	Application/Workflow Configuration & Documentation	\$60,400
DV 23.0	Queries and Reports Development & Documentation	\$61,600
DV 24.0	Interfaces and Integration Development & Documentation	\$111,600
DV 25.0	Data Conversion Implementation & Reconciliation Proof Documentation	\$175,120
DV 26.0	Security Implementation & Documentation	\$30,080
DV 27.0	Proposer Unit & Functional Testing Results Documentation	\$51,120
DV 28.0	Requirements Traceability Validation	\$39,144
DV29.0	Validation (Testing) Phase Plan	\$67,560
DV 30.0	Training Materials Development	\$268,000
<b>Development Phase Sub Total</b>		<b>\$864,624</b>
VL 31.0	Deliver UAT Orientation/Training	\$48,920
VL 32.0	Implement UAT Testing & Formal Signoff of Functional	\$145,000

<b>Deliverable ID</b>	<b>Deliverable Name</b>	<b>Fixed Fee</b>
	Testing	
VL 33.0	Implement Performance Testing & Acceptance Signoff	\$33,200
VL 34.0	IT Operations Procedures & Training	\$23,456
VL 35.0	Final Training Materials	\$14,600
<b>Validation Phase Sub Total</b>		<b>\$265,176</b>
DP 36.0	Deliver Formal End User Training	\$42,920
DP 37.0	Go Live Help Desk and Field Support Operational and Logistics Plan	\$75,000
DP 38.0	Cut Over plan & Go Live Communications Package	\$21,736
DP 39.0	Go Live Readiness Checklist Assessment	\$10,104
DP 40.0	Post Production Support Plan	\$27,000
DP 41.0	Implement Cut-Over (Go Live)	\$11,200
DP 42.0	Post Production Issues Management & Resolution	\$247,200
DP 43.0	Final System Acceptance	\$9,888
<b>Deployment Phase Sub Total</b>		<b>\$445,048</b>
<b>Task 2 Total Implementation Fixed Fee Cost</b>		<b>\$2,499,712</b>

**ALLOWANCE SUMMARY TABLE**

	Hill Estimated Costs	SFMTA Allowance
SFMTA Allowance for Core and Support Software	\$700,534	\$1,050,000
SFMTA Allowance for Software Customization		\$480,000
SFMTA Allowance for Supplemental Work		\$1,022,000

**BONDS** (Based on Hill Implementation Fixed Fee + SFMTA Allowance Items)

Hill International Surety Bonds	\$53,548
Stellar Surety Bonds	\$50,408
Subtotal Bonds	\$103,956



**Task 2: CPCS Staff Fully Burdened Rates (All Inclusive)**

**HILL INTERNATIONAL  
Prime Consultant**

<b>Proposed Staff Classification</b>	<b>Fully Burdened Hourly Rate (all inclusive, including profit, travel, etc.)</b>	<b>Comments</b>
Business Process Project Manager	\$180	
Change Management Lead	\$166	
Training Lead	\$154	
Scheduling Business Process Lead	\$154	
Tech Writer	\$118	
Contract Manager Business Process Lead	\$154	
Training support	\$128	

**Task 2: CPCS Staff Fully Burdened Rates (All Inclusive)****EcoSys  
Subconsultant**

<b>Proposed Staff Classification</b>	<b>Fully Burdened Hourly Rate (all inclusive, including profit, travel, etc.)</b>	<b>Comments</b>
Funds Manager Implementer	\$200	
Ecosys Developer	\$200	

**Task 2: CPCS Staff Fully Burdened Rates (All Inclusive)**

**Stellar Services  
Primary Partner  
Task 2 Leader – CUCP/DBE**

<b>Proposed Staff Classification</b>	<b>Fully Burdened Hourly Rate (all inclusive, including profit, travel, etc.)</b>	<b>Comments</b>
Tech Requirements & Configuration Lead	<b>\$135</b>	
Primavera & Functional Tester & Contract Manager Implementer	<b>\$110</b>	
Deliverables Manager	<b>\$165</b>	
Open Text Developer	<b>\$150</b>	
SharePoint and Oracle Developer	<b>\$135</b>	
Document Control Business Process Lead	<b>\$165</b>	
Infrastructure Lead	<b>\$135</b>	
IT Project Manager	<b>\$215</b>	
Integration Lead	<b>\$135</b>	
SharePoint & Progress Report Developer & Integration Support	<b>\$110</b>	
Sr. Database Developer	<b>\$135</b>	

## APPENDIX F

### CLARIFICATION OF AGREEMENT

In the course of final negotiations for this Agreement, the Parties identified provisions in the Agreement that may be ambiguous or incomplete. The following provisions clarify the intent of the Parties and the meaning of the Agreement.

#### **1. Project Schedule.**

1.1. Contractor shall as the second deliverable (STP 2.0) provide a Project Baseline Schedule (which when approved shall replace Appendix C to this Agreement) for the SFMTA's review and approval that sets out in calendar days commencing on the Effective Date the following: (1) the days in which it will complete each Milestone or other Deliverable for the Project; (2) the days in which the City shall review and provide comments to Contractor on each Milestone or other Deliverable; (3) the Days in which it will complete the Project. The Baseline Schedule shall be approved by the Parties in writing. Contractor's incorporation of City's comments to deliverables, correction, or reperformance of Work shall not extend the Project schedule, unless approved by both parties in writing.

1.2. Contractor shall complete each Milestone or other Deliverable and the Project as a whole within the periods agreed by the Parties in the approved Baseline Schedule, as that schedule may be amended by written agreement of the Parties.

1.3. Contractor shall complete Capital Program Controls System design and implementation and 3-month post production support (Task 2) within 18 months of the date the City first issues Notice to Proceed to Contractor.

1.4. Contractor may request an extension of time to complete the Project or any portion thereof by amendment of the Baseline Schedule if said extension is necessary due to delay that is not caused by the Contractor. Any extension of time must be memorialized in a written amendment to the Contract.

1.5. Liquidated damages for Contractor's delay apply to each day beyond the period provided in the most recent approved Project Schedule for the completion of the Capital Program Controls System design and implementation (Task 2). Contractor shall have 18 months to complete Task 2, unless said time to complete Task 2 is extended by amendment to the Contract. The period for completion of Task 2 shall commence on the date the City first issues Notice to Proceed to Contractor. . Liquidated damages for Contractor's delay shall not apply to any period for which the City has granted in writing an extension of time for completion of Task 2.

#### **2. Incorporation of City's Comments**

Contractor shall provide the City sufficient opportunity to respond and provide comments and critique of each of Contractor's Deliverables. Contractor shall amend each Deliverable in accordance with the City's comments, or shall in writing communicate to the City why it deems it inappropriate to do so. Incorporation and

response to the City's comments is included within the Contract Price and is not Additional Work.

### **3. Notice and Opportunity to Cure**

If the City determines that Contractor is in breach of this Agreement, prior to declaring Contractor in default of the Agreement, the City shall provide written notice to Contractor of the nature and circumstances of the breach. Contractor shall have Five (5) calendar days to dispute said notice and provide the City with explanation or proof that it is not in breach of Contract. If Contractor does not dispute that it is in breach of this Agreement or if the City rejects Contractor's dispute of breach, Contractor shall have 15 calendar days from the date that the City issued the notice of breach either to cure the breach or provide a plan and schedule acceptable to the City by which it will cure the breach.

### **4. Software Procurement**

If requested by the City, Contractor shall procure the software required for the Project (as specified in Contractor's Proposal) and related software use licenses. The City shall assist Contractor in those procurements. All software license agreements for software procured by Contractor shall list the City as a licensee. The terms of each said software license must be acceptable to and approved by the City and shall generally conform to the license contract terms described in Appendix B to this Agreement. If the Contractor is listed in any software license as a licensee, the Contractor's rights under that license must be assignable to the City. For any software that the City determines it will procure itself, Contractor shall provide support and assistance in negotiating the license(s) for that software. The method or means by which software is procured for the Project is not Additional Work, and shall have not relieve Contractor of its obligations as to the functionality of the software it has specified or approved for the Project.

### **5. Compensation for Additional Work**

5.1. Where the City designates Additional Work to be performed in Task 2, the City shall pay Contractor a negotiated Lump Sum amount as compensation for that Work, which shall include a Fixed Fee.

5.2. The City shall make monthly progress payments for Additional Work designated to be paid cost plus Fixed Fee. Other Additional Work shall be paid Lump Sum based on agreed Milestones or completion of the Additional Work deliverable(s), where the time to complete all Lump Sum Work under the relevant Task Order exceeds one month.

5.3. For Work and Additional Work that the City designates to be paid as Cost Cost-plus-Fixed Fee, the City will reimburse Contractor for only those expenses that are allowed under the principles set out in the Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments" and as specifically authorized therein and as allowed under the compensability standards set out in 48 C.F.R. parts 31.105, 31.2, 31.6 and the Cost Accounting Standards set out in 48 C.F.R. part 9904 et seq. Compensation for Cost-plus-Fixed-Fee Work will be computed as follows:

- (a) Actual direct salaries paid by Contractor and sub-consultants, subject to proof.
- (b) Actual costs or prices of approved Reimbursable Expenses for the Contractor and sub-consultants at any tier, net of any discounts, rebates, refunds, or other items of value received by Contractor or any of its sub-consultants that have the effect of reducing the cost or price actually incurred. Compensation for materials and expenses shall be at direct cost, without any mark-up.
- (c) Contractor shall not “mark-up” or request additional compensation for work performed by sub-consultants.
- (d) Costs for which Contractor seeks compensation must be necessary in order to accomplish the work and reasonable for the services performed.

## **6. Additional Obligations and Qualifications**

6.1. Implementation of systems other than those specifically identified or those whose functions are identified in the RFP shall be Additional Work.

6.2. The City will provide sufficient staff and resources to the support the Project and completion of the Work according to the Baseline Schedule, including access to SFMTA documents, personnel and systems, and providing prompt responses to Contractor's requests for information, responses to submittals, and review of deliverables. The SFMTA will provide Contractor with all available documentation it possesses as to operation of existing legacy systems and the City's current business practices. The City makes no warranty or representations as to the accuracy or completeness of said documents. Contractor shall commence its work by reviewing and validating said documents.

6.3. Each Party recognizes and affirms that it has an obligation to meet agreed deadlines set out in the Baseline Schedule and in such other written schedules that the Parties may establish. Where no response time is stated in the Baseline Schedule or other agreed schedule, Contractor shall provide the City adequate and reasonable time to review and provide responsive comments to Contractor submittals, deliverables and requests for information.

6.4. Contractor is responsible for full integration between and/or among the proposed CPCS software modules. Contractor is also responsible for integration between CPCS and legacy systems as defined in the RFP. Integration with any other software packages shall be treated as Additional Work.

6.5. The City shall provide support and resources to assist Contractor in cleaning, migrating and validating data from legacy systems into the CPCS, but Contractor shall at all times have primary responsibility for the means, methods, performance and quality of that work. Contractor shall generally use fully automated flat file integration methods to transfer data between legacy systems and the Capital Program Control System ("CPCS"). Contractor may use in its discretion utilize alternative methods of data migration where the use of such methods is more efficient or effective.

6.6. Contractor's Proposal is premised on the use of commercially available software, the functions and code fields of which can be configured to meet the CPCS functions and performance requirements (as set out in Table 1 of the RFP) without extensive customization of the software. Customization of software authorized by the City shall be compensated as Additional Work under the applicable Customization allowance.

**THIS PRINT COVERS CALENDAR ITEM NO. 13**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Requesting approval of the Central Subway Project's *Relocation Impact Study and Last Resort Housing Plan* and requesting authority to implement the relocations according to the standards, guidelines, and recommendations set forth in the *Relocation Plan*.

**SUMMARY:**

- The SFMTA intends to acquire two fee parcels for construction of the Central Subway Project (the "Project"): 266-286 4th Street for the Moscone Station, and 933-949 Stockton Street for the Chinatown Station.
- For any federally funded construction project that requires acquisition of real property and relocation of persons and personal property, federal regulations require that the SFMTA develop a *Relocation Impact Study and Last Resort Housing Plan* (the "*Relocation Plan*"). The purpose of the *Relocation Plan* is to explain the SFMTA's process for relocating all impacted commercial and residential tenants at the two fee parcels that will be acquired for the Project.
- The FTA concurred with the *Relocation Plan*.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Central Subway Project Cost and Funding Summary Chart
3. Summary of How Goodwill Loss is Established
4. Relocation Plan
5. Relocation Brochure
6. Relocation Handbook

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION  
PREPARING ITEM

\_\_\_\_\_

\_\_\_\_\_

FINANCE

\_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO

\_\_\_\_\_

\_\_\_\_\_

SECRETARY

\_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION  
BE RETURNED TO

Ken Yee

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



## PAGE 2

### PURPOSE

The SFMTA is required to relocate commercial and residential tenants at the two fee parcels to be acquired for the Central Subway Project, as well as any personal property belonging to owners of the parcels. SFMTA staff requests that the SFMTA Board of Directors review and approve the *Relocation Plan*, which will also be submitted to the Board of Supervisors for its respective review and approval.

### GOAL

Acquisition of the fee parcels for the Central Subway Project is consistent with the SFMTA Strategic Plan in the following goals and objectives:

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

- Objective 1.3 Reduce emissions as required by SFMTA Clean Air Plan
- Objective 1.4 Improve accessibility across transit service
- Objective 1.5 Increase percentage of trip using more sustainable modes

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

- Objective 2.2 Ensure efficient transit connectivity and span of service
- Objective 2.4 Reduce congestion through major corridors

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

- Objective 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups
- Objective 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits
- Objective 3.3 Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life
- Objective 3.4 Enhance proactive participation and cooperatively strive for improved regional transportation

Goal 4 – Financial Capacity to ensure financial stability and effective resource utilization

- Objective 4.2 Ensure efficient and effective use of resources

**DESCRIPTION**

**Background**

The Central Subway Project, Phase II of the Third Street Light Rail Transit Project, will provide rail service to the Financial District and Chinatown, the most densely developed areas of San Francisco. The new light rail line will serve regional destinations such as Chinatown, Union Square, the Moscone Convention Center, Yerba Buena and AT&T Park as well as connect directly to Bay Area Rapid Transit (BART) and Caltrain, the Bay Area's two largest regional commuter rail services. The primary purpose of the Third Street LRT Project is to accommodate existing and future transit ridership in the corridor with greater reliability, comfort and speed. By 2030, the San Francisco Planning Department projects a 26 percent increase in overall corridor population and a 61 percent increase in corridor employment. These increases are greater than the increases anticipated for the City as a whole. The Central Subway will serve both the mobility needs of existing land uses (with 56,000 riders projected for 2016) and future development (with 78,000 riders projected for 2030).

The Third Street Light Rail Transit Project will significantly improve travel times, reducing a current 46-minute bus trip between the southern terminus in Visitacion Valley and the northern terminus in Chinatown by 15 minutes to a more reasonable 31-minute light rail transit ride. For riders using only the Central Subway portion of the Project, travel times will be reduced to less than half of current travel times, from a 20-minute bus ride to a 7-minute subway ride between the Caltrain terminal and Chinatown. The Central Subway will allow transit to bypass the congestion faced by traffic and buses on city streets. Critical populations will be well served by the Project, bringing improved service to low-income, minority and no-car households, decreasing travel time and improving reliability. Over half of the benefits for those who use the Central Subway are expected to accrue to low-income people, who comprise 19 percent of the total households along the Third Street alignment. The 2000 census shows that 54 percent of the households along the entire corridor do not have access to a vehicle; within the Central Subway portion of the alignment 68 percent of the households are transit-dependent.

**Property Acquisitions for the Project**

Most of the Central Subway Project will be built in and under land already owned by the City. However, SFMTA needs to acquire two fee parcels and three easements located within or adjacent to the Project's right-of-way (ROW) for station construction and tunneling operations. The acquisitions of the three easements for the Project do not require relocation of individuals or businesses.

The Project has identified two proposed parcels that must be acquired in fee: one for construction of the Moscone Station (266-286 4th Street) and one for the Chinatown Station (933-949 Stockton Street). These properties were deemed necessary for primary station access through in-depth feasibility and constructability analyses.

On April 20, 2010, the SFMTA Board of Directors approved the Project's two fee acquisitions for station construction (Resolution Nos. 10-049 and 10-050).

***Relocation Plan***

The purpose of the *Relocation Plan* is to study the impacts associated with the displacement of commercial and residential occupants, and develop solutions to minimize the adverse impacts of displacement. The *Relocation Plan* is an evolving document; thus, even after it is approved by this Board and the Board of Supervisors, it will continue to be updated as new information is obtained. Some of the elements of the *Relocation Plan* include the following:

- the number of households to be displaced, the family characteristics of the persons to be displaced, with special consideration given to impacts on minorities, seniors, and persons with disabilities;
- an estimate of the number of comparable replacement dwellings in the area that may be available to meet the needs of the persons to be displaced;
- information about the businesses to be displaced;
- an estimate of the availability of replacement business sites;
- the relocation advisory services and benefits to be offered by the SFMTA to residential and commercial tenants.

On July 13, 2010 the FTA reviewed and concurred with the *Relocation Plan* (Enclosure 4), including the *Brochure* and *Handbook* (Enclosures 5 and 6), which will be attached to the *Relocation Plan*.

Universal Field Services (SFMTA's Relocation Consultant) and the Chinatown Community Development Center (CCDC), subconsultants to the Project Management/Construction Management consultant, AECOM, have been engaged to assist with relocation of residential and commercial tenants who will need to be relocated as a result of the Project. The Relocation Consultant specializes in relocations resulting from displacement of persons due to public projects. CCDC is assisting the Relocation Consultant in Chinatown with outreach and translations in meetings with the residential and commercial tenants.

SFMTA staff, the Relocation Consultant, and CCDC have conducted extensive interviews and held many meetings with residential and commercial tenants. All official notices, letters, and outreach materials have been translated into Chinese for the non-English-speaking tenants.

**Residential Relocation Assistance Program**

The residential relocation assistance program includes advisory assistance to help tenants find comparable replacement housing. Such assistance will also include providing social services, moving assistance and replacement housing payments. Under federal law, residential tenants are entitled to housing payments for either the difference between the new rent and the old rent for 42 months, or the difference between the new rent and 30% of the tenant's monthly income for 42 months. Normally, the replacement housing payment is capped at \$5,250; however, when it is difficult to find comparable decent, safe and sanitary replacement housing, the FTA will consider increasing the amount of assistance under what is known as the Last Resort Housing Program. The *Relocation Plan* received concurrence from the FTA for increased subsidies for the residential tenants under this program.

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As explained more fully below, to address the concerns of residential tenants for long-term relocation solutions (longer than the 42-month subsidy provided by the FTA), SFMTA and the Mayor's Office of Housing (MOH) are negotiating a Memorandum of Understanding (MOU) for 18 dwelling units to be offered to the residential tenants at a low-income housing project being planned at Broadway and Sansome Streets.

### **Recommendations in the *Relocation Plan***

There are five major policy issues in the *Relocation Plan* for consideration by this Board:

1. Overcrowded Living Conditions, and SFMTA Housing Occupancy Standards
2. Long-Term Replacement Housing Plan – 2nd move to the Broadway and Sansome Project
3. Rental of Residential Units Prior to Acquisition
4. Rent Differential Payment Procedures –Last Resort Housing
5. Rent-Up of Vacant Replacement Housing Units

Below are summaries of the issues and SFMTA staff recommendations. Further information can be found in Enclosure 2.

#### **1. Overcrowded Living Conditions, and SFMTA Housing Occupancy Standards**

The FTA recommended that SFMTA have housing occupancy standards or guidelines to employ in searching for comparable replacement housing for the 19 households living in 18 overcrowded dwelling units at 933-949 Stockton Street. Comparable replacement housing must be decent, safe and sanitary, be adequate in size and functionally equivalent to the current housing situation, be within the financial means of the tenants, and be in a location that is not less desirable than the current location:

SFMTA is proposing the following guidelines, which will be applied consistently for families of like size and composition:

- Replacement dwelling units must have at least one bedroom or living/sleeping room for each two persons.
- Replacement dwellings which differ from the displacement dwelling (e.g., in size) may be considered comparable if they include other features which make them equal to or better than the displacement dwelling.
- One person may qualify for a separate bedroom if that person is disabled or incapacitated and requires additional space for medical equipment or maneuverability.
- Separate bedrooms and gender separation may be provided for children 12 years of age or older.
- Comparable replacement dwellings may include bathrooms within each individual unit.

Replacement housing will also have to comply with the San Francisco Housing Code, which provides as follows:

SF Housing Code Section 503(b): requires at least 1 room have not less than 120 square feet (s.f.) of superficial floor area (sfa). Every room used for both cooking and living or both living and sleeping must have not less than 144 s.f. of sfa. A bedroom must have at least 70 s.f. of sfa, for a maximum of 2 persons; there must be at least 50 additional s.f. of sfa area for each additional person occupying the bedroom. Children under age 6 are not counted for determining whether a family with minor children complies with the Housing Code.

## **2. Long-Term Replacement Housing – 2nd move to the Broadway/Sansome Project**

As part of the *Relocation Plan*, the SFMTA's Relocation Consultant will be helping the residential tenants at 939-949 Stockton Street locate replacement housing over the next 15 months. The Relocation Consultant plans on proposing three available comparable replacement units to each household. The tenants are also free to search for and propose their own replacement units.

As mentioned above, the FTA will provide funding for up to 42 months of rent for the residential tenants moving from the Chinatown site. The tenants, who are currently under rent control, are concerned about what happens after the 42-month period. Although SFMTA has no legal obligation to do so, SFMTA staff is recommending a long-term housing option for the tenants. SFMTA staff and the Mayor's Office of Housing (MOH) are negotiating an MOU regarding MOH's planned Broadway/Sansome Project. The proposed terms of the MOU are as follows:

- SFMTA will provide \$8 million in non-federal funds for the hard and soft construction costs for 18 affordable residential dwelling units in Broadway/Sansome. This will be a non-equity position with no guaranteed payback to the SFMTA. MOH would loan the funds to CCDC and, as a condition of the loan, CCDC would make 18 units of replacement housing (unit mix to be determined) available for the displaced tenants from the Chinatown site at affordable rental rates if they are within the "affordable" income category and choose to move into Broadway/Sansome. The tenants will be guaranteed low rental rates for as long as they reside at the project. Only the tenants who sign the lease are eligible to remain on the property for as long as they are income-eligible.
- SFMTA's payment of the \$8 million will be disbursed in two installments -- half at the time the construction loan closes and the other half when the project receives a temporary certificate of occupancy.
- SFMTA will provide no additional rent or utility subsidy for Broadway/Sansome. The tenants will be responsible for paying 30 percent of their eligible income in rent, which amount will rise or be reduced annually if the tenants' income rises or falls. The tenants will have to demonstrate prior to moving into Broadway/Sansome, and annually thereafter, that they are within the "affordable" income category or else they will not be able remain at the site.

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- If Broadway/Sansome is not completed within 42 months, the SFMTA would use non-federal funds to cover the rental subsidy for the tenants until the tenants are able to move into the Project. Those tenants who elect not to move into Broadway/Sansome would only receive rental subsidies for 42 months. If Broadway/Sansome was not able to secure financing to be completed, the disbursed SFMTA funds would be returned and the SFMTA would explore other options for long-term replacement housing.

The proposed Broadway/Sansome Project will further satisfy the City policy, contained in the Chinatown Area Plan (a section of the City's General Plan) of replacing affordable housing units that are demolished in Chinatown.

SFMTA has requested that FTA pay the costs of a second move for those tenants to choose to and are income-eligible to move into Broadway/Sansome after it is constructed.

### **3. Rental of Residential Units Prior to Acquisition**

The SFMTA is requesting that FTA approve a “protective rental plan” so the property owner of 933-949 Stockton St. does not re-rent any residential or commercial unit at the property once it is vacated. The City Attorney's Office has drafted a “protective rental agreement” and sent it to the attorney representing the owner of the Chinatown site to review.

With a protective rental plan, SFMTA would pay the property owner an amount equal to the rental payments the property owner would have reasonably received if it had leased vacant units to new tenants. The protective rental agreement would terminate when the SFMTA gains possession of the property.

The SFMTA has considered the following factors in its decision to enter into a protective rental agreement:

- Comparable vacant rental properties in the subject area are scarce.
- There is a good probability that vacant building units would be re-rented prior to the SFMTA gaining control of the property.
- The SFMTA's possible cost of relocation benefits to any subsequent tenants would exceed the cost to pay the owner to keep vacated building units vacant.
- Reoccupation of the vacated building units might delay delivery of the property for construction.
- The FTA has advised that protective rental agreements are a customary practice in federal projects requiring relocation of tenants.

### **4. Rent Differential Payment Procedures – Last Resort Housing**

Federal regulations guarantee a rent differential payment of up to \$5,250 to assist permanently displaced households in either renting or purchasing a replacement dwelling. Federal regulations also provide that whenever a project cannot proceed in a timely manner because comparable replacement dwellings are not available within the \$5,250 regulatory maximum, alternate assistance may be justified. This is known as the Last Resort Housing Program.

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In the *Relocation Plan*, SFMTA has requested rent differential payments under the provisions of Last Resort Housing due to the following factors:

- Rents at the Chinatown site are below market rate due to rent control and overcrowded, below-code conditions
- Comparable decent, safe and sanitary replacement housing is scarce in the Chinatown neighborhood, and current market rates are high and not subject to rent control for new occupants of an existing unit.

The SFMTA intends to set up an escrow account to make monthly installment payments directly to the new landlords of the residential tenants after they have moved into their replacement housing.

Regardless of the amount, a displaced person's rent differential is fully "vested" immediately upon occupancy at the replacement dwelling, even if there is a later change in the person's income, occupancy, family characteristics, rental rate, or in the condition or location of the actual replacement property.

### **5. Rent-Up of Vacant Replacement Housing Units**

The SFMTA's Relocation Consultant has conducted a survey and advises that there currently are vacant dwelling units available in Chinatown and in nearby neighborhoods in San Francisco. However, vacancies change constantly. Thus, the SFMTA may want to rent vacant replacement dwelling units to hold them in case the residential tenants of the Chinatown site want to occupy them.

The *Relocation Plan* provides that the SFMTA may decide to participate in the rent-up of vacant comparable housing units as they become available and hold them as potential replacement housing resources for the tenants of 933-949 Stockton Street. The carrying cost of such rentals would be a project expense eligible for federal reimbursement.

### **Services Available for Commercial Tenants**

The business relocation assistance program for commercial tenants will provide advisory assistance, moving cost assistance, and reestablishment payments. Although not reimbursable by the FTA, California law also requires compensation for loss of goodwill. SFMTA has hired a goodwill appraiser to assess the loss of goodwill resulting from relocation of the commercial tenants. SFMTA has included a summary of the relocation process for commercial tenants and an explanation of how goodwill benefits are calculated in Enclosure 4. The services available for commercial tenants are described below.

#### Business Planning and Advisory Services:

SFMTA's Relocation Consultant will be performing the following services for commercial tenants:

## PAGE 9

- Explaining relocation payments, the basis of monetary benefits and how they are determined.
- Assisting the business in identifying realty and personalty issues
- Conducting interviews with the businesses to obtain replacement site requirements, anticipated difficulties in finding a replacement site, and identification and resolution of personal property
- Identifying suitable replacement business locations
- Assisting displaced businesses in obtaining and becoming established in a suitable replacement location
- Minimizing hardships by providing counseling and advice as to other sources that may be available to assist the business, such as programs administered by the Small Business Administration

### Monetary Benefits Available to Businesses:

- Reimbursement of actual costs for moving expenses for personal property, including packing and unpacking, dismantling and reassembling of the property. It also includes modifications to personal property and utilities necessary to adapt them to the replacement site. Reimbursement for moving expenses also includes the cost of, replacement licenses, permits, and fees and actual reasonable and necessary professional services to plan the move, move, and reinstall the personal property.
- In addition, a \$10,000 maximum business re-establishment expense payment, which covers modifications to make the replacement location suitable for conducting the business, including exterior signage, redecoration (such as paint, paneling, or carpeting), and advertisements..
- In lieu of actual moving and reestablishment expenses, businesses could receive a fixed payment of not less than \$1,000 or more than \$20,000 based on the prior earnings of the business, substantiated through tax returns, financial statements or similar evidence.
- Compensation for loss of goodwill. The actual goodwill payment will not be determined until after a new site is secured by the commercial tenants and will depend on the individual circumstances of each tenant and provisions of their leases, if any. See Enclosure 4 for a discussion of goodwill.

### **Relocation Appeal Process**

The *Relocation Handbook* and *Relocation Brochure* each describe the appeals process for residential and commercial tenants, respectively. Appeals will be conducted by the City's Relocation Appeals Board, which holds regular meetings on the first Wednesday of every month at 11:00 a.m. whenever there is pending business. Each residential and commercial tenant has been given copies of the respective booklet, which has been translated into Chinese for those tenants not fluent in English.



**ALTERNATIVES CONSIDERED**

If SFMTA acquires the two properties in fee, SFMTA is required to relocate all impacted commercial and residential tenants. There are no other alternatives to this obligation under applicable law.

**FUNDING IMPACT**

The \$1.578 billion FTA New Starts Project, including the proposed relocation expenses, is to be funded by a combination of federal, state and local money. SFMTA staff estimates that approximately \$4,187,600 will be spent in relocating residential and commercial tenants, which sum includes expenses for the Relocation Consultant. The Project's cost and funding summary is set forth in Enclosure 6.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

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

The FTA concurred with the *Relocation Plan* on July 13, 2010.

The *Relocation Plan* will also be submitted to the Board of Supervisors for its approval.

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors approve the Central Subway Project's *Relocation Impact Study and Last Resort Housing Plan, Relocation Brochure* and *Relocation Handbook*.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The Central Subway Project (“Project”) – Phase II of the Third Street Light Rail Project will extend the Muni light rail line (primarily by subway) to serve the South of Market, Union Square and Chinatown neighborhoods; and

WHEREAS, The SFMTA Board of Directors adopted Resolution No. 10-049 on April 20, 2010, which requested the Board of Supervisors to consider adoption of a Resolution of Necessity for the acquisition of the Property at 266-286 4<sup>th</sup> Street, San Francisco, for the Moscone Station construction; and

WHEREAS, The SFMTA Board of Directors adopted Resolution No. 10-050 on April 20, 2010, which requested the Board of Supervisors to consider adoption of a Resolution of Necessity for the acquisition of the Property at 933-949 Stockton Street, San Francisco, for the Chinatown Station construction; and

WHEREAS, The SFMTA is required to relocate all impacted owners, commercial and residential tenants under federal, state and local law; and

WHEREAS, For any federally funded construction project that requires acquisition of real property and relocation of persons and personal property, federal regulations (49 CFR Part 24) require that the SFMTA develop a *Relocation Impact Study and Last Resort Housing Plan* (the "*Relocation Plan*"); the purpose of the *Relocation Plan* is to explain the SFMTA's process for relocating all impacted commercial and residential tenants at the two fee parcels that will be acquired for the Project; and

WHEREAS, The Federal Transit Administration has reviewed and approved the Relocation Plan for compliance with federal law and guidelines; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors has reviewed and approves the *Relocation Impact Study and Last Resort Housing Plan*, including the recommendations contained therein; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors recommends that the Board of Supervisors approve the Central Subway Project's *Relocation Impact Study and Last Resort Housing Plan*; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to take such actions that are consistent with the City's Charter and all applicable law to implement the relocations according to the standards, guidelines, and recommendations set forth in the *Relocation Plan*.

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

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

## Enclosure 2

### THIRD STREET LIGHT RAIL PROJECT CENTRAL SUBWAY

San Francisco Municipal Railway

Project Budget and Financial Plan

<b>Cost</b>	<b>(\$Million)</b>
Conceptual and Preliminary Engineering	59.41
Program Management & Construction Management	132.78
Final Design	85.94
Construction Contracts	986.68
Vehicles	26.39
Contingency	160.26
Right-of-Way	34.84
Other Professional Services	92.00
<b>Total Central Subway Cost</b>	<b>\$ 1,578.30</b>

<b>Funding</b>	<b>(\$Millions)</b>
Federal 5309 New Starts	942.20
State RTIP Grant	88.00
CMAQ	6.03
State TCRP Grant	14.00
Proposition 1B-2006 MTC Share	100.00
Proposition 1B-MTA Share	100.00
Proposition Additional 1B-MTA Share	40.00
Proposition K Sales Tax Funds	123.98
High Speed Rail Funds	27.00
Option Local and Regional Sources	137.09
<b>Total Central Subway Funding</b>	<b>\$ 1,578.30</b>

## Enclosure 3

### Summary of How Goodwill Loss is Established

#### **Goodwill:**

Goodwill consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in a probable retention of old or acquisition of new patronage.

#### **Goodwill is a part of business value, which includes:**

- Furniture and Equipment (F&E) (tangible assets)
- Working capital (tangible assets)
- Goodwill (intangible assets)

**Business value equals profits times a multiplier. Goodwill value equals Furniture and Equipment (F&E) minus Inventory.**

**Compensation for Goodwill loss is available if the business owner proves all of the following\***

1. The loss is caused by the acquisition of the property.
2. The loss cannot be prevented by relocation or by taking reasonable steps to preserve the Goodwill.
3. Compensation for Goodwill loss will not be duplicated by other payments made.  
*\*Documents are necessary to support claims.*

#### **Goodwill Loss Process**

Step 1: Establish Goodwill at current site

Step 2: Determine Goodwill at relocation site

Step 3: Calculate Goodwill loss caused by acquisition by SFMTA

#### **Relocation Site Factors**

- What is different at the new location?
- Traffic counts
- Visibility location (corner, side street, etc.)
- Access for customers and deliveries
- Economic changes
- Competition changes
- Occupancy costs (rent)
- Square footage
- Customer demographics

## Quantifying Goodwill at the Relocation Site

- Is it the same business at the relocation site?
- Will expenses increase, decrease or remain the same?
- Will revenues increase, decrease or remain the same?
- How will the changes affect profits?
- New equipment and improvements?
- Different for every business.

## Illustration of Goodwill Loss

### Step 1: Current Location

Revenue	\$500,000
Less:	
Cost of Goods Sold	(\$200,000)
Operating Expenses	<u>(\$200,000)</u>
Owner's Cash Flow	\$100,000

### Step 2: Estimate Value

Owner's Cash Flow	\$100,000
Owner's Cash Flow Multiplier	x 3.0
Fair Market Value of Total Assets	\$300,000
Less:	
Fixtures and Equipment	(\$150,000)
Working Capital	<u>(\$50,000)</u>
Goodwill Value	\$100,000

### Step 3: Relocation Site Changes

- Move to Similar Location
- Same Revenues
- Changes:
  - Increased Rent by \$20,000 per year
  - Required Additional Equipment Investment not covered by relocation and reestablishment - \$30,000

### Step 4: Relocation Site Goodwill Impact

Owner's Cash Flow	\$100,000
Less: increase in Rent	<u>(\$20,000)</u>
Owner's Cash Flow – Relocation Site	\$80,000
Multiplier	<u>x 3.0</u>
Fair Market Value of Total Assets	\$240,000

Less: New Fixtures and Equipment	(\$180,000)
Working Capital	<u>(\$50,000)</u>
Goodwill Value:	\$10,000

**Step 5: Goodwill Loss**

Goodwill Value – Before Acquisition:	\$100,000
Goodwill Value at Relocation Site:	<u>\$10,000</u>
Goodwill Loss:	\$90,000

# Relocation Impact Study and Last Resort Housing Plan

Relocation Program Planning Information for the  
San Francisco Municipal Transportation Agency's  
Central Subway Project

For Review

July 16, 2010

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# Executive Summary

The San Francisco Municipal Transportation Agency (SFMTA), an agency of the City and County of San Francisco (the "City"), operates the Municipal Railway (Muni) which serves approximately 700,000 riders per day. In the mid-1990's, SFMTA completed expansion of the Muni light rail vehicle (LRV) tracks from Market Street to Mission Bay. Between 2000 and 2006



SFMTA planned, funded and built 5.4 more miles of tracks, right of way and public benefits infrastructure improvements through Mission Bay, the Southeast Waterfront, India Basin, Bay View and Visitation Valley, and into Daly City. Metro East, SFMTA's new LRV rail maintenance yard, opened in September 2008.

SFMTA's Third Street Light Rail Transit (LRT) Project is the most significant capital investment in generations for the seventh largest transit system in the nation. Phase 1 of the 6.9-mile, two-phase project began revenue service in April 2007, restoring light rail service to the heavily transit-dependent Third Street corridor of San Francisco for the first time in 50 years.

Phase 2, the Central Subway project, will provide rail service to the Financial District and Chinatown, the most densely developed areas of San Francisco. If approved, the new 1.67-mile light rail line will serve Chinatown, Union Square, Moscone Convention Center, Yerba Buena and AT&T Park, as well as connect directly to BART and Caltrain, the Bay Area's two largest regional-commuter rail services. The new light rail track will continue from the northern end of the new Third Street light rail line at Fourth and King Streets to a terminal in Chinatown.

Surface tracks would run from Mission Bay through the area South of Market Street (SOMA), enter the Central Subway near Harrison Street, and continue north under Stockton Street to Chinatown, one of the City's most densely populated residential and retail areas. The current alignment of the locally preferred alternative places the subway under Fourth Street, with three new underground subway stations to be located at Moscone Center, Market Street/Union Square and

Chinatown.

In November 2008, the Federal Transit Administration (FTA) issued a Record of Decision, which granted environmental clearance of the project. SFMTA has prepared appraisals of the property to be acquired. Utility relocation commenced in January 2010. Construction is expected to begin in 2011, and revenue service is projected to start in 2018.

The SFMTA has developed this Relocation Impact Study and Last Resort Housing Plan (Study) to provide the occupants of the proposed project area, the citizens of San Francisco, and SFMTA with information concerning the anticipated impacts of the proposed project and the measures that may be taken to mitigate such impacts. Specifically, this Study concerns itself with the resources available to relocate 19 households and 10 businesses to replacement sites in the area, and permanently replace 18 dwelling units that will be demolished at 933-949 Stockton Street. Three principal topics will be highlighted in this Study.

### Relocation Impact

This section of the Study describes the effects of the development of the Central Subway line into Chinatown on the occupants who might be required to relocate. Information in this section is the result of general research. The Relocation Impact section will describe the project area, the types and size of properties that might be affected, and general occupant characteristics. Particular attention will be placed on the occupant interviews, which define the occupants' personal concerns regarding their replacement site needs.

### Replacement Site Resources

An analysis was completed on the availability of available replacement sites to determine the feasibility of relocating potentially affected occupants into the area.

### Relocation Assistance Program

This section outlines the policies and procedures that would govern the treatment of all project occupants. These policies and procedures are governed by federal and state laws and regulations.

## Anticipated Project Impact

The list of affected property and property interests that may be needed to allow for the proposed project construction was initially compiled during the conceptual design phase of the Project and has been updated as design and engineering work has progressed. Following is a list of anticipated Project impacts:

- The construction of the Central Subway line as designed would require the use of space at the Union Square Garage that is under the jurisdiction of the City's Recreation and Parks Department, and the Ellis/O'Farrell Garage, which is under the jurisdiction of the SFMTA. The SFMTA will not know the impact on the garages until at least final design of the Project has been completed to a level of 65 percent. The SFMTA contemplates that the Project will eliminate parking spaces at both garages, but there may also be impacts to business tenants in the Union Square Garage and to tenants with businesses on Union Square Plaza above the garage. When the relocation impact, if any, is known, SFMTA will revise this Relocation Plan accordingly.

- The California Department of Transportation (Caltrans) owns property that will be used as a construction laydown area under the I-80 freeway under a lease and encroachment permit.
- SFMTA is negotiating with BART for use of the entries to the proposed new Union Square/Market Street Station on Market Street.
- Certain sub-sidewalk basement spaces owned by the City are used by the adjacent property owner pursuant to a revocable permit. Such revocable permits provide that upon revocation, the permittee must remove all improvements at its sole cost and expense. The revocation of the permits will not result in business displacement or qualify as a personal property move given that the revocation of the permits does not constitute a real property acquisition under the Uniform Act.
- If the Project proceeds as planned, SFMTA will need to negotiate for the purchase of the two occupied properties and provide Relocation Assistance to the occupants of those properties. If SFMTA is able to acquire the properties, all occupants will need to relocate from the two sites to allow for Project construction. Altogether, 10 businesses and 19 households would be required to relocate.

The SFMTA has appraised the two properties that would need to be acquired to allow for two station sites.

“Property 1,” a service station at the corner of Folsom and 4<sup>th</sup> Streets in the Yerba Buena Neighborhood South of Market Street, is owned and operated by Convenience Retailers LLC, a multi-state gas service station and convenience store enterprise. It is also occupied by an independent contractor hired by the property owner for smog shop services.

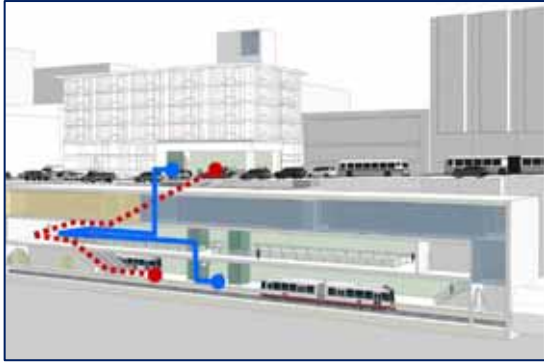
“Property 2,” owned by a private entity, is located at Stockton and Clay Streets in Chinatown. This property contains eight retail tenants, including four restaurants, two hair salons, one meat market, and a professional office tenant on the ground floor. The second floor contains 18 residential units, which are occupied by 19 families (approximately 56 individuals).

- The SFMTA will also be acquiring three subsurface easements along the corridor, none of which will require relocation of personal property. The owner of one of the easements to be acquired also owns a parking lot currently leased to the Bank of America, which the City will have to license on a temporary basis for its Project construction activities. This may require temporary business displacement and relocation of personal property. When the relocation impact, if any, is known, the SFMTA will revise this Relocation Plan accordingly.

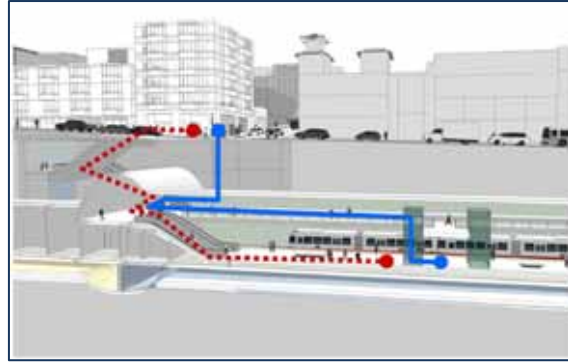


Central Subway Occupants	Absentee Landlords	Business Occupants	Residential Households
<b>Property #1</b>	<b>0</b>	<b>2</b>	<b>0</b>

Central Subway Occupants	Absentee Landlords	Business Occupants	Residential Households
<b>Property #2</b>	<b>1</b>	<b>8</b>	<b>18</b>



Proposed Moscone Station Site  
Property #1



Proposed Chinatown Station Site  
Property #2



Proposed Union Square/Market Street Station  
(No Tenant Relocation Impact)

## Governing Laws and Regulations

The SFMTA has adopted a Relocation Assistance Program as described herein in order to provide Displaced Persons with the benefits to which they are entitled under governing regulations. The SFMTA's Relocation Assistance Program was developed in compliance with the following federal laws and regulations:

<b>Law:</b>	The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C 4601, <i>et seq.</i> )
<b>Regulations:</b>	Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-Assisted Programs (49 CFR 24)
<b>Policy:</b>	FTA Circular C5010.1D dated November 1, 2008

Congress has determined that persons being displaced by a publicly funded project have the right to receive assistance in understanding the laws and regulations that protect them if they are required to move for a project<sup>1</sup>. A knowledgeable Relocation Advisor will be available to work with each affected occupant to help them through the process, to provide them with

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<sup>1</sup> Under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, if a Displaced Person is an alien not lawfully present in the United States such person is not eligible for relocation payments or assistance unless ineligibility would result in exceptional and extremely unusual hardship to the alien's spouse, parent or child, and such spouse, parent or child is a citizen or an alien lawfully admitted for permanent residence.



notices as required, to help them to identify and secure replacement sites, and to provide them with verbal and written information. SFMTA has engaged Universal Field Services, Inc. (the "Relocation Consultant") to provide relocation advisory assistance for the occupants affected by this project and will be available to answer questions and to help the occupants throughout the project. SFMTA has also obtained the services of the Chinatown Community Development Center (CCDC) to ensure that information and assistance is available to the occupants in languages that they can understand.

## Anticipated Project Schedule

SFMTA has developed a schedule that should provide for an orderly and timely relocation of occupants. It is anticipated that SFMTA will allow approximately 15 months between the date of the first written offers to purchase the two occupied properties and the date that the two properties would need to be vacant. If the SFMTA acquires the properties, the Relocation Consultant would have approximately 12 to 15 months to assist affected occupants with identifying and securing replacement properties.

<b>2003 – 2009</b>	<i>Preliminary Engineering and Environmental Planning</i>
<b>February 2008</b>	<i>SFMTA Selected Updated Locally Preferred Alternative</i>
<b>November 2008</b>	<i>SFMTA Received FTA Record of Decision</i>
<b>2009 – 2012</b>	<i>Final Design</i>
<b>2009 - 2010</b>	<i>Preparation of Draft Relocation Plan</i>
<b>Late 2009/Early 2010</b>	<i>Initial Offers to Property Owners</i>
<b>Late 2009/Early 2010</b>	<i>Occupants Became Entitled to Receive Relocation Assistance Utility Relocation</i>
<b>Summer/Fall 2010</b>	<i>Relocation Plan to SFMTA Board &amp; Board of Supervisors</i>
<b>Summer/Fall 2011</b>	<i>Full Funding Grant Agreement</i>
<b>Fall 2011</b>	<i>Property Needed for Construction</i>
<b>2011 – 2018</b>	<i>Project Construction</i>
<b>2018</b>	<i>Pre-Revenue Service</i>

## Project Funding

Phases 1 and 2 of the Third Street LRT Project are funded through a combination of federal, state and local funds. Below is a chart that summarizes the overall project costs and funding:

	T Third (Phase 1) (\$ Millions)	Central Subway (Phase 2) (\$ Millions)	Total (Phase 1 & 2) (\$ Millions)	Percentage of Total
Federal Funds	\$123.40	\$948.23	\$1,071.63	48%
State Funds	\$160.70	\$342.00	\$502.70	23%
Local Funds	\$364.30	\$288.07	\$652.37	29%
Total	\$648.40	\$1,578.30	\$2,226.70	100%

## Project Assurances

The SFMTA has developed a Relocation Assistance Program (the "Program") that will provide monetary assistance to all eligible residential and non-residential occupants in compliance with the Uniform Relocation Assistance Act. The total amount of relocation payments that may be provided to affected occupants is estimated to be approximately \$3,500,000. The Program will ensure that uniform, fair, and equitable treatment is afforded to persons displaced from their homes or businesses as a result of SFMTA's transit development activities, and that such persons shall not suffer disproportionate injury as a result of actions taken for the benefit of the public as a whole. SFMTA will also ensure that the following conditions are met:

1. Fair and reasonable relocation payments will be provided to eligible persons as required by applicable laws and regulations.
2. SFMTA has adopted a Program that complies with applicable laws and guidelines.
3. All eligible persons will receive a standard information statement that describes the rights they are entitled to claim under applicable laws and regulations.
4. All eligible persons will be adequately informed of the assistance, benefits, policies, practices and procedures, including grievance procedures, provided for in the Act and Guidelines.
5. Decent, Safe, and Sanitary housing will be available within a reasonable period of time prior to displacement sufficient in number, size and cost for the eligible persons who require them.
6. Adequate provisions have been made to provide orderly, timely, and efficient relocation of eligible persons to available housing without regard to race, color, religion, sex, martial status, or national origin with minimum hardship to those affected.
7. The Study will be available for public review and comment.

## Staffing Requirements and Site Office

SFMTA and other City staff will work together as the Real Estate Team to negotiate for the acquisition of property and property interests. The Relocation Consultant, which specializes in relocations resulting from the displacement of persons due to public projects, will provide relocation assistance services to owners, businesses and tenants in the affected areas. The following staff of the Relocation Consultant will provide relocation assistance services to affected tenants over the anticipated 15-month period. They are generally available between 8:00 a.m. and 5:00 p.m., and by appointment during evenings and on weekends at the Project



office at 821 Howard Street, which is centrally located on the Project corridor and easily accessible by public transportation:

Micole Alfaro  
Universal Field Services, Inc.  
Central Subway Project  
821 Howard Street  
San Francisco, CA 94103  
(415) 701-5293  
micole.alfaro@sfmta.com

Leslie Finnigan  
Universal Field Services, Inc.  
1600 Sacramento Inn Way, Suite 216  
Sacramento, CA 95815  
(916) 564-9980  
lfinnigan@ufsrw.com.

The Chinatown Community Development Center (CCDC) has been retained to assist with working in the Chinatown community. CCDC staff will act as translators and interpreters to ensure that affected occupants understand and are provided full assistance in accordance with the Program. In recent months, the CCDC has worked with the community to provide them with information on the proposed project and to encourage their participation in the planning process.

CCDC has several office sites within Chinatown that are accessible from Property #2. Regular site office hours can be maintained by the Relocation Consultant and CCDC interpretive staff to provide regular relocation advisory services to the affected occupants. In addition to meeting with tenants at the Project office or at CCDC offices, the Relocation Consultant and CCDC staff will work together to meet occupants at their residences or places of business during times that are convenient to them, including evenings and weekends.

## **Concurrent Displacement**

Several locally and federally funded projects are currently planned within San Francisco that would impact San Francisco residents and businesses in 2010. However, impacts from these projects vary greatly from the Central Subway Project, both in location and in the type of residential and commercial displacement that is anticipated. As a result, it is not anticipated that the concurrent displacement would compete for similar replacement site resources.

For example, the Transbay Terminal Project would require the acquisition of one building in the South of Market Street area in 2010. That building is a condominium development with ten live-work spaces. It is not anticipated that the occupants of the live-work spaces would compete for housing needed for the tenants affected by the Central Subway Project.

## Relocation Impact – Property #1 and #2

The Central Subway Project would require the acquisition in fee of two occupied properties. As mentioned above, Property #1 is a gas service station located at the corner of 4<sup>th</sup> and Folsom Streets. The property is privately owned by Convenience Retailers, a multi-state gas service station and convenience store enterprise. The property is also occupied by the independent contractor retained by the property owner for smog shop services. If SFMTA proceeds with the Project, the businesses would need to move from the site.

Property #2 is located in San Francisco's Chinatown, the oldest Chinatown in North America and one of the most densely populated neighborhoods in the United States.

Chinatown is roughly one mile long by 1.34 miles wide. The rich history of this area provides insight into the area housing, the various sub districts within Chinatown, and the strong community resources available to assist the largely low-income immigrant population from China and other Asian countries as they attempt to assimilate into the greater city. Like the rest of the City, Chinatown was decimated in the 1906 earthquake. New construction was developed to accommodate the population of single, male immigrants and the retail and services targeted to the worker population.

A new corridor along Grant Avenue was developed at the same time to target the tourism trade. Many of those two- and three-story buildings with ground floor retail and upper level Single Room Occupancy (SRO) hotels are still occupied today. Many of these buildings show significant signs of deferred maintenance. Units that were originally constructed to house bachelors are now occupied by individuals and families.

### Impact to Residential Occupants

There are no residential occupants in Property #1.

There are 19 households in 18 dwelling units that would be required to relocate as a result of this Project in Property #2. It is estimated that there are 6,500 housing units in Chinatown. Most of those units are Single-Room Occupancy (SRO) units with kitchens and shared bathroom facilities.<sup>2</sup> Based on market research of available replacement dwellings, comparable units (with kitchens and community bathrooms) are not currently available in the Chinatown and the surrounding areas. As such, in addition to meeting requirements for Decent, Safe and Sanitary (DS&S) Comparable Replacement Dwellings (see page 23), replacement dwellings will include bathrooms within each individual unit. Much of the rental stock in Chinatown is subject to rent control under the City's Residential Rent Stabilization and Arbitration Ordinance (the "Rent Control Ordinance") and reflects lower rental rates because of long-term residents. As units become vacant, they are rented to new occupants at market rental rates.

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<sup>2</sup> An SRO is a multiple-tenant building that usually houses one or two people in individual rooms (sometimes two rooms, or two rooms with a bathroom or half bathroom). Tenants of SROs typically share bathrooms and/or kitchens, while some SRO rooms may include kitchenettes, bathrooms, or half-baths. Although many are former hotels, SROs are primarily rented as a permanent residence.

Property #2, owned by Norman P. Chan, Inc., is subject to rent control under the Rent Control Ordinance. Pursuant to the Rent Control Ordinance, the San Francisco Rent Board establishes the allowable rent increase for residential units subject to the ordinance on an annual basis.

The annual allowable increase amount effective March 2, 2010 through February 28, 2011 is 0.1%. The restrictions on rent increases are applicable to tenants in occupancy and do not apply to tenants renting a vacant unit.

Chinatown's tight knit community provides a tremendous level of support to new occupants searching for employment and housing. (Please see attached map of Community Resources.) Much of the housing and employment in the area is secured through connections with family associations, Chinese language newspapers, and other Chinese language resources. Because of the low vacancy rate in Chinatown, the units that do become available are rented quickly. Many immigrants to the area choose to rent in Chinatown despite the high rental rates, overcrowded conditions, and poor building maintenance because of the flexibility of the property owners and managers to rent to persons without evidence of strong credit or employment history. In addition, the occupants enjoy the other retail, religious, social networking, and social services available in the community.

The 18 apartments/rooms in Property #2 that would be demolished to allow for the construction of the subway station in Chinatown are all situated within a 7,192-square foot area above first floor retail space. Residents are able to access community and cultural resources within walking distance. The majority of the units contain a small living area and a kitchen. The bathrooms are shared. The building was recently rehabilitated, improving flooring, kitchen areas, restroom facilities, windows and common areas.

SFMTA, CCDC, and the Relocation Consultant have been meeting with the residential tenants to determine the housing needs of each occupant. The units house between one and five people. Current information indicates that the households are low income, as defined under HUD guidelines.

## **Overcrowded Conditions**

Preliminary data indicate that many of the affected households have been living in overcrowded conditions that do not meet Decent, Safe, and Sanitary standards (DS&S). The term "Decent, Safe, and Sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. Regulations dictate that Displaced Persons shall not be relocated to inadequate, substandard housing as a consequence of public acquisition of their dwelling units. A DS&S dwelling must be adequate in size with respect to the number of rooms and area of living space needed to accommodate the Displaced Person.

## **SFMTA Housing Occupancy Standards**

With respect to existing buildings, San Francisco Housing Code Section 503(b) requires that at least one room have not less than 120 square feet of superficial floor area.<sup>3</sup> Every room which is used for both cooking and living or both living and sleeping must have not less than 144 square feet of superficial floor area. A bedroom must have at least 70 square feet of superficial floor area for a maximum of two persons; there must be at least 50 additional square feet of superficial floor area for each additional person occupying the bedroom. Children under the age of six are not counted for determining whether a family with minor children complies with the Housing Code.

In addition to meeting Housing Code requirements, the SFMTA adopts the following housing occupancy guidelines that will guide the agency in determining the replacement housing needs of residential families of 933-949 Stockton Street to be displaced for the Central Subway Project:

- Replacement dwelling units must have at least one bedroom or living/sleeping room for each two persons.
- One person may qualify for a separate bedroom if that person is disabled or incapacitated and requires additional space for medical equipment or maneuverability.
- Separate bedrooms and gender separation may be provided for children 12 years of age or older.
- Comparable Replacement Dwellings may include bathrooms within each individual unit.

All guidelines will be applied consistently for families of like size and composition. Replacement dwellings which differ from the displacement dwelling (e.g., in size) may be considered comparable if they include other features which make them equal to or better than the displacement dwelling.

## **Accessibility Needs**

If an occupant indicates that any special needs exist, a Relocation Advisor would provide any additional advisory assistance that is needed to identify and secure housing that is fully accessible to the occupant. In addition, the accessibility concerns would be mitigated with replacement dwellings situated on the first floor and with access to public transportation. SFMTA's Relocation Assistance Program can provide the funds needed to make those accommodations to available housing that is otherwise inaccessible.

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<sup>3</sup> "Superficial floor area" is the net floor area within the enclosing walls of the room in which the ceiling height is not less than seven feet six inches, excluding built-in equipment such as wardrobes, cabinets, kitchen units, or fixtures which are not readily removable.

## **Other Special Needs**

Persons with other special needs will be assessed for appropriate accommodation. Necessary assistance will be provided to ensure that persons displaced by the project are treated fairly, consistently, and equitably.

## **Language**

The 2000 Census reports that 47% of the occupants of San Francisco's Supervisorial District 3 (which includes North Beach, Chinatown, Telegraph Hill, Russian Hill, Polk Street, Nob Hill, Union Square, Financial District, Barbary Coast and Fisherman's Wharf) are persons of Asian descent. Respondents to the 2000 Census reported that 58% of the area occupants speak English "not well" or "not at all."

In providing effective assistance to the tenants, SFMTA has teamed with the Chinatown Community Development Center, who will act as interpreters and translators for all Program documents. If additional language assistance is necessary, SFMTA will make every attempt to communicate with those households and to provide the necessary additional advisory assistance to secure a replacement site.

## **Transportation**

Interviews with individual households will provide further information as to the occupants' preferred modes of transportation and accessibility of services. A Relocation Advisor will work closely with households to identify replacement housing with access to public transportation.

## **Employment**

Traditionally, recent immigrants to Chinatown work nearby or in surrounding neighborhoods. Many of these neighborhoods are within walking distance or accessible via public transportation. Every attempt will be made to identify housing that will provide similar access to places of employment.

## **Impact to Business Occupants**

There is one Absentee Landlord and ten businesses that would be required to relocate if SFMTA were successful in acquiring the two properties needed for this Project.

Property #1, consisting of 14,797 square feet, is occupied by a gas service station operated by the Convenience Retailers LLC, the property owner, and the independent contractor hired by the property owner to perform smog shop services at the site.

Property #2 is a 10,053-square-foot property improved with one building leased to commercial occupants on the first floor and residential occupants on the second floor. The property is owned by an Absentee Landlord (Norman P. Chan Inc.), which leases to eight businesses in

spaces ranging from 624 to 2,352 square feet. Most tenants of the retail and restaurant spaces occupy an average of 868 square feet on the first floor.

One of the restaurant tenants occupies 1,088 square feet. The largest tenant is the on-site property management company with 2,352 square feet of professional office space on the first floor and similar square footage in the basement area. Only one other business has access to the basement area that is utilized for inventory storage. Rents for these units range from \$1.91 to \$4.58 per square foot each month. These businesses primarily serve the local Chinatown community.

The Relocation Program recognizes property owners as persons eligible to claim assistance as displaced occupants. The “Absentee Landlord” may be eligible for relocation assistance if it has personal property on the site. The affected businesses are summarized below:

	Absentee Landlord	Businesses On Site
Property #1		1 service station / convenience store operated by property owner (Convenience Retailers LLC)
Property #1		1 smog shop operator
Property #2	Norman P. Chan Inc.	2 Hair and/or Nail Salons 4 Restaurants 1 Meat Market 1 Property Management Company

## Replacement Site Resources

### Residential Replacement Housing Resources

Each of the 19 households occupying the 18 units at Property #2 would be required to relocate to allow for the construction of the Project. The Relocation Consultant has interviewed all but one of the residential tenants and knows the type of units needed to accommodate these households in order to alleviate overcrowded conditions.

According to the Chinatown Area Plan, a section of the City's General Plan, there are approximately 6,500 housing units in Chinatown. A number of properties are below market rent (BMR) apartments that provide housing for low and very-low income households. These and other affordable housing developments meet a crucial housing need for the occupants of Chinatown.

The U.S. Census 2008 American Community Survey 1-year Estimates reports a rental vacancy rate of 5.4% for San Francisco. Anecdotally, we understand that the Chinatown vacancy rate may be much lower.

Research indicates that there are 40 dwelling units currently available in Chinatown and in the surrounding areas, including 9 studio units, 16 one-bedroom units, 12 two-bedroom units, and 3 three-bedroom units. Based on the availability of residential replacement housing resources, it is believed that there is sufficient housing available to provide DS&S replacement dwellings to the 19 Displaced Households. Federal regulations require DS&S inspections prior to submittal of replacement units to tenants.

Below is a survey of the 40 dwelling units currently available in Chinatown and in the surrounding areas. These units range from studio apartments to three-bedroom apartments and are equipped with private bathrooms and kitchens, among other features. All units are near the displacement property and Chinatown, and provide access to the local services of displaced tenants.<sup>4</sup> SFMTA plans on proposing three available comparable replacement units to each household. Prior to offering units to tenants, the SFMTA and the Relocation Consultant will inspect individual units to determine whether they meet DS&S standards, applicable local codes, and are otherwise appropriate for the tenants.

***Properties Listed for Rent in the Replacement Area***

<i>Property</i>	<i>District</i>	<i>Monthly Rent Rate</i>
<b>Studio Units</b>		
1206 Stockton St.	Chinatown	\$1,000
427 Stockton St.	Chinatown	\$1,075
770 California St.	Chinatown	\$1,125
Jackson St. at Mason St.	Chinatown	\$1,195
429 Bush St.	Chinatown	\$1,200
1225 Taylor St.	Nob Hill	\$1,225
707 Stockton St.	Chinatown	\$1,235
530 Stockton St.	Chinatown	\$1,250
1010-12 Grant Ave.	Chinatown	\$1,300
<b>One-Bedroom Apartments</b>		
823 Grant Ave.	Chinatown	\$1,150
826 Jackson St.	Chinatown	\$1,200
1321 Powell St.	Chinatown	\$1,350
852 Jackson St.	Chinatown	\$1,380
1010-12 Grant Ave.	Chinatown	\$1,500
1235 Clay St.	Nob Hill	\$1,575
1335 Pacific Ave.	Nob Hill	\$1,600
Bob Kaufman Alley	North Beach	\$1,600
645 Bush St.	Chinatown	\$1,750
Taylor St. at Clay St.	Nob Hill	\$1,795
1001 Pine St.	Downtown	\$1,800
645 Stockton St.	Chinatown	\$1,995

<sup>4</sup> Although these properties were available for rent at the time they were surveyed (in April 2010), they are subject to being rented at any time. Moreover, they have not been inspected by SFMTA or the Relocation Consultant, so the SFMTA does not know to what extent they are appropriate as replacement units for displaced tenants.

<i>Property</i>	<i>District</i>	<i>Monthly Rent Rate</i>
2420 Jones St.	North Beach	\$1,995
736 Washington	Chinatown	\$2,000
601 Stockton St.	Chinatown	\$2,195
1644 Taylor St.	North Beach	\$2,200
<b>Two-Bedroom Apartments</b>		
732 Commercial St.	Chinatown	\$1,300
842 Washington St.	Chinatown	\$1,450
1116 Powell St.	Chinatown	\$1,500
30 Bernard St.	North Beach	\$1,600
722 Taylor St.	Downtown	\$1,800
Jones St. at Pine St.	Downtown	\$1,950
Sacramento St.	Nob Hill	\$2,000
738 Washington St.	Chinatown	\$2,395
1656 Taylor St.	North Beach	\$2,400
1822 Taylor St.	North Beach	\$2,600
922 Greenwich St.	North Beach	\$2,700
736 Washington St.	Chinatown	\$2,800
<b>Three-Bedroom Apartments</b>		
1620 Mason St.	North Beach	\$2,450
1070 Clay St	Chinatown	\$2,300
738 Union St.	North Beach	\$2,800

Sources: Craigslist, Sing Tao Daily Newspaper, Hogan & Vest Inc.

The Mayor's Office of Housing (MOH), the San Francisco Redevelopment Agency, HUD, and private developers have worked to create affordable housing developments in San Francisco to meet the demand for affordable public housing. As new properties are developed and offered for occupancy, the properties are rented quickly from wait lists, which are currently closed. Openings are rare and are filled according to eligibility and wait list priority. Most BMR units are publicly funded and include minimum qualifying standards such as income levels.

The analysis of residential replacement housing resources included BMR units and subsidized housing, as provided by the San Francisco Housing Authority (SFHA) and MOH. MOH lists BMR units throughout the City and indicates the status of the waiting list for each property. MOH reports that BMR housing is unavailable at this time.

SFHA currently has 53 developments with 6,451 public housing units in San Francisco. Many of those units were developed for seniors and persons with disabilities. Approximately 400 of these units are in Chinatown. As units become available, they are rented at a rate not to exceed 30% of the household's adjusted income or flat rents.

Despite the presence of public housing units, SFHA reports that there is currently no funding available for either the public housing or Section 8 programs. While the Section 8 waiting list typically has a schedule which allows priority points for tenants displaced by public projects, the waiting list contains 13,524 households and has been closed since 2002. As of January 14, 2009, public housing had a waiting list of 24,609 households. The program closed on January 31, 2010.



SFHA reports that these lists are closed due to a lack of funding for the public housing or Section 8 programs. Thus, regardless of the merits of a family's situation, neither SFHA nor MOH is accepting new applications for such housing.

Research indicates that there are 40 dwelling units currently available in Chinatown and in the surrounding areas, including 9 studio units, 16 one-bedroom units, 12 two-bedroom units, and 3 three-bedroom units. Based on the availability of residential replacement housing resources, it is believed that there is sufficient housing available to provide Decent, Safe, and Sanitary replacement dwellings to the 19 Displaced Households. Federal regulations require Decent, Safe, and Sanitary inspections prior to submittal of replacement units to tenants. These standards are discussed on page 23.

The Relocation Consultants will work closely with affected occupants to secure comparable replacement housing which accommodates their needs, and provide units that are made affordable through the Program.

### **Rent-Up of Vacant Replacement Housing Units**

SFMTA may develop a plan to participate in the rent-up of vacant comparable DS&S units as they become available and hold them as potential replacement housing resources for the tenants of Property #2. The carrying cost of such rentals would be an eligible project expense.

### **Conservation of Existing Housing**

As set forth in Policy 3.1 of the Chinatown Area Plan, low cost housing should be stabilized and where possible, the supply of housing increased. Under this Policy, the demolition of apartment units should only be allowed if necessary to protect public safety or for a specific use in which there is a high degree of community need (such as the Central Subway Project). Although not required under City law, the Policy suggests that low cost housing removed by new development should be replaced on a unit-for-unit basis. Consistency with the Policy should be attained through SFMTA's proposed Long-Term Replacement Housing Plan as outlined in the next section, while providing long-term relocation assistance for persons displaced by the Project.

### **Long-Term Replacement Housing Plan**

SFMTA has explored various alternatives for providing long-term replacement housing for the displaced tenants at Property #2, while also preserving Chinatown's need for low-cost housing. SFMTA settled on a proposed affordable housing development (the Broadway/Sansome Project). SFMTA and MOH are negotiating a memorandum of understanding regarding the Broadway/Sansome Project, which will be a family affordable housing development to be located on the corner of Broadway and Sansome near Chinatown and the City's Financial District.

The proposed complex will feature approximately 61 affordable units, including: 10 studios, 8 one-bedroom units, 24 two-bedroom units, and 19 three-bedroom units. The complex will contain one or more elevators. The complex is planned to feature a large community room,

courtyard, rooftop open space, supportive services spaces, and two ground-floor retail spaces. Broadway Sansome will be designed to be extremely energy efficient and will be Green Point rated.

The project is currently in the schematic design phase. Construction documents are expected to be completed in the Spring of 2011 for a late 2012 construction start, with occupancy expected in late 2013 or early 2014. The SFMTA will work closely with its Relocation Consultant, CCDCC, and MOH to coordinate a smooth transition for tenants currently at 933-949 Stockton Street who wish to participate in this long-term housing plan. The SFMTA will provide additional moving assistance (a second move) for those residential tenants who elect to move from an initial replacement housing location to the Broadway Sansome Apartment complex. **The SFMTA requests that FTA fund the second move for such tenants.**

SFMTA will fund the cost of the long-term replacement housing plan and coordinate this funding with the 42-month tenant subsidy period for eligible tenants provided by the Uniform Relocation Act (URA). Since replacement housing criteria based on local housing occupancy codes will be applied at the onset of relocation, there should be a seamless transition to long-term housing for those who want to avail themselves of that opportunity. SFMTA is not requesting FTA project funding of the long-term housing plan beyond the 42-month subsidy period required by the URA.

## **Replacement Resources for Commercial Occupants**

As stated above, two businesses will be required to move from Property #1 so that the Property can be acquired by SFMTA. Eight retail businesses and one professional office space will need to relocate from Property #2 in order to allow for the construction of the Project. The Relocation Consultants will work with the businesses over a 15-month period to identify and secure replacement sites that would accommodate their businesses. The Relocation Consultants will conduct further interviews, as required and permitted, to explain to all businesses their eligibility for reimbursement of relocation expenses under 49 CFR Section 24.303.

Potential replacement sites for the business operators at Property #1 will be proposed upon clarification from the owner of Property #1 and the smog shop operator that they wish to relocate their businesses.

Ideally, the business occupants affected in Property #2 would be able to secure replacement sites along Stockton Street that would allow them to maintain the niche market of catering to the needs of local Chinatown occupants. However, no vacancies have been found on either Grant Avenue or Stockton Street, the busy thoroughfares running through Chinatown.

Field reviews, internet searches, and discussions with several local brokers indicated that the vacancy for retail space in the Chinatown area is very low, generally about 1 to 2%, if not less. Typically there is low turnover, particularly on the prime thoroughfares such as Stockton and Grant Streets. An exact vacancy rate was difficult to determine as there seems to be no particular entity that provides reliable comprehensive statistical information for Chinatown.

Citywide, retail vacancies are approximately 5 to 7% based on a consensus of several sources, including local and national brokerages. Brokers indicated that due to the tight knit community,

many transactions occur via word of mouth, and that property owners tend to be particular to whom they rent space. Larger, national brokers rarely do business in Chinatown.

The search was expanded to include all retail properties that were available in Chinatown during April 2010. These properties have been listed below, along with property characteristics and lease terms.

Additional retail space information was gathered from immediately adjacent communities in Financial District, North Beach, Russian Hill, Nob Hill, and Union Square. An additional 10 properties were located in this fringe area that might accommodate the affected businesses. Those properties are also noted on the chart below.

### Available Chinatown Area Retail Space

<i>Location</i>	<i>SF</i>	<i>Lease Rate</i>	<i>Terms</i>	<i>Description</i>
730 Sacramento Street Tel: 982-3000	1,500	\$2,500 \$1.67/sf	1 year lease, gross	Ground floor retail. Formerly a print shop. Flexible terms. Edge of Chinatown and Financial District.
704 Kearny Street Tel: 981-2844	1,560	\$4,000 \$2.56/sf	3 mos security deposit, 12.5% property tax	750 sf of ground floor retail, plus mezzanine and 810 sf of basement space. Restroom. Bordering Financial District and Chinatown.
708 Kearny Street Tel: 981-2844	1,784	\$5,000 \$2.80/sf	3 mos security deposit, 12.5% property tax	1,048 sf of ground floor retail space plus mezzanine and 736 sf of basement space with walk-in cooler. Restroom. Bordering Financial District and Chinatown.
710 Kearny Street Tel: 981-2844	1,824	\$6,000 \$3.29/sf	3 mos security deposit, 15% property tax	1,088 sf ground floor retail, mezzanine and 736 sf of basement space with walk-in cooler. Restroom. Bordering Financial District and Chinatown.
664 Clay Street Tel: 321-7485	1,200	\$2,500 \$2.08/sf	3 mos security deposit and property tax	1,200 sf of ground floor retail, mezzanine, bathroom. Bordering Financial District and Chinatown (east of Kearny).
963 Pacific Avenue	1,000	\$1,200 \$1.20/sf	Owner pays taxes	1,000 sf ground floor retail, restroom. Located just west of Powell Street.
963 Pacific Avenue	1,000	\$1,000 \$1/sf	Owner pays taxes	Office space available on second floor.
679 Clay Street Tel: 377-5377	1,000	\$2,500 \$2.50/sf	Owner pays taxes	Ground floor plus mezzanine. Located off Kearny Street.
335 Kearny Street	1,100	\$5,000 \$4.55	NNN @ \$700/mo	Ground floor retail space, mezzanine, full basement.
341 Kearny Street	1,100	\$5,000 \$4.55	NNN @ \$700/mo	Ground floor retail space, mezzanine, partial basement.

## Available Retail Space Surrounding Chinatown

<i>Location</i>	<i>SF</i>	<i>Lease Rate</i>	<i>Terms</i>	<i>Description</i>
786 – 789 Bush Street	1,242	\$4,500 \$3.62/sf	Modified Gross	1,242 sf ground floor retail. Large bay windows, two mezzanine spaces with restrooms, ADA entry, seismically upgraded, high ceilings, rear exit, cement floors.
1400 Grant Avenue Tel: 281-7700	800	\$2,500 \$3.13/sf	Negotiable, Gross	700 to 1,000 sf of prime retail storefront. North Beach district. Display windows, high ceilings, mezzanine, bathroom.
1519 Polk Street Tel: 440-4044	830	\$3,200 \$3.86/sf	Negotiable, Modified Gross	Retail in the heart of Polk-Van Ness corridor.
1528 Grant Street Tel: 981-2844	1,086	\$3,500 \$3.22/sf	Industrial Gross	Retail space in North Beach.
1360 Bush Street Tel: 351-1398	1,250	\$2,500 \$2.00/sf	Modified Gross	Office/retail space, ADA compliant, 14' ceilings, one block off Van Ness, Close to public transportation, street and garage parking.
1541 Grant Street Tel: 377-5377	440	\$1500	Not Available	Retail space in North Beach
524 Grant Street Tel: 781-7700	600	\$1600	Not Available	Retail space in North Beach with office space on 2 <sup>nd</sup> floor.
1339 Polk Street Tel: 518-0643	600	\$2200	Not Available	Retail in Polk-Van Ness corridor
1314 Polk Street Tel: 321-7044	1700	\$2700	Not Available	Retail in Polk-Van Ness Corridor

## SFMTA Relocation Assistance Program

### Residential Relocation

#### Definition of Terms

The Program incorporates certain language that may be unfamiliar to the reader. Therefore, the following terms have been defined.

**Comparable Replacement Dwelling.** This term means a dwelling that is:

- Decent, Safe, and Sanitary (see definition below).
- Functionally equivalent to the displacement dwelling. The term “functionally equivalent” means that it performs the same function and utility. A Comparable Replacement Dwelling need not possess every feature of the displacement dwelling, but must include the principal features.
- Adequate in size to accommodate the occupants being relocated.
- In an area not subject to unreasonable adverse environmental conditions.
- In a location generally not less desirable than the location of the displacement dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment.
- On a site that is typical in size for residential development with normal site

improvements, including customary landscaping.

- Currently available to the Displaced Person on the private market. However, a Comparable Replacement Dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance.
- Within the financial means of the Displaced Person.

**Decent, Safe, & Sanitary (DS&S).** A replacement site must meet local and federal housing and occupancy codes. These must include the following standards:

- Be structurally sound, clean, weather tight, in good repair, and adequately maintained.
- Contain a safe electrical wiring system adequate for lighting and other devices.
- Contain a safe heating system capable of sustaining a healthful temperature (approximately 70 degrees).
- Be adequate in size with respect to the number of rooms and area of living space to accommodate the Displaced Persons.
- Have a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system.
- Contain unobstructed egress to safe, open space at ground level. If the dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.<sup>5</sup>
- For Displaced Persons with disabilities, be free of any barriers which prevent reasonable ingress, egress, or use of the dwelling by such Displaced Person.

Replacement dwellings which differ from the displacement dwelling (e.g., in size) may be considered comparable if they include other features which make them equal to or better than the displacement dwelling.

**Displaced Person/Household.** Lawful occupants who are required to move from real property that the SFMTA is attempting to acquire or as the result of a written notice from the SFMTA to vacate the real property needed for a transportation project. Displaced Persons will be eligible to receive relocation advisory assistance, moving expense payments, and replacement housing payments (eligibility for replacement housing payments will be determined on a case-by-case basis with consideration given to length of occupancy and income).

## Relocation Advisory Assistance

The Relocation Consultant will assign a Relocation Advisor to work with each occupant eligible for assistance. The Relocation Advisor shall provide ongoing advisory assistance to the

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<sup>5</sup> The requirement for two means of access is not required by Federal regulations, but such stricter standard is acceptable, if the grantee or locality requires such a stricter standard.

occupant by assisting the occupant in identifying and locating a replacement site. In addition, the Relocation Advisor shall ensure the following:

1. All Eligible Occupants will receive written documentation informing them of their rights and the availability of relocation assistance and benefits.
2. The occupants will be interviewed in order to ascertain replacement site needs. For residential occupants, the Relocation Advisor shall request documentation concerning length of occupancy, occupant income and public assistance.
3. The development of this project shall be so scheduled that no person lawfully occupying a site that would be acquired by the SFMTA shall be required to move from their site without a written 90-day notice from the SFMTA of the date by which such a move is required. The 90-Day Notice to Vacate will also include a list of available replacement sites.
4. Each Eligible Occupant shall receive current and continuing information on the availability of replacement sites in the area.
5. Each Eligible Occupant's Relocation Advisor shall act as a liaison with prospective landlords, realtors, commercial brokers and the SFMTA. The Relocation Advisor shall provide documentation to prospective landlords concerning residential rent differential payments and security deposits. In addition, the Relocation Advisor shall help each occupant complete relocation claims that will be submitted to the SFMTA. The Relocation Advisor shall also deliver relocation payments to the occupants or to their assignee.
6. Should an occupant have a grievance against the SFMTA in regards to relocation policies and procedures, the Relocation Advisor will provide the occupant with information concerning the SFMTA's grievance procedures.
7. For residential occupants, the Relocation Advisor shall inspect each replacement site to ensure that the unit meets Decent, Safe and Sanitary standards.
8. The Relocation Advisor shall provide services required to ensure that the relocation process does not result in discrimination of occupants on account of race, color, creed, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, physical or disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).
9. For residential occupants, the Relocation Advisor shall provide referrals to other local assistance programs for eligible persons in order to minimize their hardships. When needed, referrals to housing, finance, employment, training, health and welfare, and other assistance programs will be provided.

## **The Appeal and Grievance Process**

In the event an occupant believes he or she has been denied an eligible benefit, or disputes the amount of any payment, or has been discriminated against in any manner, the occupant will be afforded an opportunity to file an appeal or grievance with the SFMTA. An occupant should first contact his Relocation Advisor to see if the situation can be mutually resolved. If that remedy

does not satisfy the occupant, the occupant can proceed in accordance with the City and County of San Francisco’s Relocation Appeal Process, a copy of which is included in the Appendix of this Study.

## Claim Processing and Distribution of Payments

Occupants shall file all claims through their Relocation Advisor in accordance with federal regulations. The Advisor will assist the occupants in completing the claim forms and will notify the occupant of the documentation needed. The Relocation Advisor will submit each claim, along with completed documentation, to the SFMTA for review and processing. Checks will be available for approved claims within four weeks of the date all documentation is submitted to the Relocation Advisor. Checks will be delivered to the occupant or the occupant’s designee. The SFMTA shall provide advance payments when necessary whenever a later payment would result in financial hardship.

## Moving Cost Assistance

Each Displaced Household is entitled to receive a moving payment to cover the cost to move the personal property of the household to their replacement home. The Relocation Program covers specific costs related to the move. Each household may elect one of the three options for cost reimbursement for each move, as outlined below:

### 1. Fixed Moving Expense and Dislocation Allowance

A household may choose to move their own personal property to the replacement site and to submit a claim based on the following Moving Expense and Dislocation Allowance Schedule for California published by the federal government on the following website: <http://www.fhwa.dot.gov/realestate/fixsch96.htm>.

**Occupant Owns Furniture (unless no furniture shown)  
Number of Rooms of Furniture**

	1 room	2 rooms	3 rooms	4 rooms	5 rooms	6 rooms	7 rooms	8 rooms	Add'l room	1 room/ no furn.	Additional room no furn.
Allowance	\$625	\$800	\$1,000	\$1,175	\$1,425	\$1,650	\$1,900	\$2,150	\$225	\$400	\$65

### 2. Actual Reasonable Moving Costs and Related Expenses

Payment is made to reimburse actual moving expenses based on an invoice from a professional commercial mover. Compensable costs include all reasonable costs to pack, move, and unpack all personal property. A direct payment can be made to the commercial mover under this option. Reimbursement is allowed to the Displaced Household for any one-time utility reconnection fees, such as phone, gas, electric, and cable.

### 3. Combination of Options

A Displaced Person can be reimbursed using a combination of the two moving options, depending upon specific circumstances.

### 4. Storage Costs

A Displaced Person may be reimbursed for certain costs to store personal property in a professional storage facility for a period not to exceed 12 months. The need for such storage must be determined to be reasonable and necessary. Only property that is currently located at the affected site would be eligible for storage cost reimbursement. This option is available to persons who do not choose to be reimbursed under the Fixed Moving Payment and Dislocation Allowance option referenced above.

### Replacement Housing Payments

**A Rent Differential payment up to \$5,250 is available to assist permanently Displaced Households in either renting or purchasing a replacement dwelling. To qualify for this payment, an eligible Displaced Person must have lived in the affected property as a legal resident for 90 days prior to the initial written offer to purchase the property. In addition, the person must be able to demonstrate that the property was their primary residence for that 90-day period. To claim the payment, the Displaced Person must occupy a Decent, Safe, and Sanitary replacement dwelling within 12 months after moving from the acquired property. A payment of up to \$22,500 is available for homeowner-occupants to have lived in the displacement dwelling for not less than 180 days.**

The purpose of Replacement Housing Payments is to provide assistance with actual and reasonable increased housing costs so that replacement housing is available within the financial means of the affected household. The assistance is calculated as shown below and is available to help with actual increased housing costs for 42 months. This amount will be paid directly to the tenant or to the tenant's designee. Assistance may be paid as a lump sum, in monthly installments, or through other periodic payments.

#### Computation for Monthly Replacement Housing Payments Rent Differential Payment

**Lesser of:**

Cost to Rent Comparable Replacement Dwelling + Estimated Utility Costs

or

The Actual Cost to Rent Actual Replacement Dwelling + Estimated Utility Costs

**Minus the Lesser of:**

Average Monthly Rent at Displacement Dwelling + Average Monthly Utilities

or

30% of the Household's Gross Monthly Income *(If average gross monthly income is within the parameters of the HUD Low Income Chart)*



A Replacement Housing Valuation (RHV) will be prepared for the type of housing unit needed to determine the cost of a Comparable Replacement Dwelling. Each household will receive a Conditional Entitlement Letter that describes all relocation benefits and the maximum Rent Differential payment to which the household is entitled. The Letter will also explain the requirement that benefit payments will be made only when the household demonstrates that entitlement amounts have been or will be spent for reasonable and necessary expenses related to replacement housing.

The actual replacement property does not have to be comparable to the property from which a resident has been displaced, nor does the probable replacement property have to be the one proposed in the RHV. However, the actual price or rent paid for the replacement property must be equal to or greater than the amount of the proposed replacement property (in the RHV) to receive the maximum Replacement Housing Payment.

A Relocation Advisor will be assigned to the Displaced Household to provide specific information about entitlement in writing. The Relocation Advisor will also contact property owners, landlords, lenders, and Realtors as needed and as directed by the household to help to secure replacement housing and to explain the assistance that is available under the Relocation Program. Any person with special needs should communicate these needs to a Relocation Advisor early in the search for housing so that those needs can be accommodated.

***Purchasing a Replacement Dwelling.*** If a Displaced Household chooses to buy (rather than rent) a replacement dwelling, the Replacement Housing Payment could be converted into a down payment to purchase a DS&S replacement home within one year of the date the household moves from the acquired property.

- A 90-day occupant whose Rent Differential is \$5,250 or less automatically qualifies for a \$5,250 down payment.
- If the Rent Differential is over \$5,250, the down payment is limited to the amount of the Rent Differential, as covered under the Last Resort Housing Program.

If the tenant elects to purchase a replacement dwelling, eligible non-recurring incidental expenses, such as certain closing costs, would be included as an eligible expense.

## **The Housing of Last Resort Program**

Housing of Last Resort (Last Resort Housing) is a program to ensure that an adequate supply of comparable replacement housing is available to the Displaced Person. Under the provisions of 49 CFR Section 24.404(a), whenever a program or project cannot proceed in a timely manner because Comparable Replacement Dwellings are not available within the monetary limits of tenants (\$5,250), and payments exceeding the limits are not cost-effective or the appropriate solution for the Displaced Person, alternate assistance may be justified as follows:

1. On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

- a. **The availability of comparable replacement housing in the project area; and**
  - b. **The resources available to provide comparable replacement housing; and**
  - c. **The individual circumstances of the Displaced Person, OR**
- 2. By a determination that:**
- a. **There is little, if any, comparable replacement housing available to Displaced Persons within the entire project area; and, therefore, last resort housing assistance is necessary for the area as a whole;**
  - b. **A project cannot be advanced to completion in a timely manner without last resort housing assistance; and**
  - c. **The method selected for providing last resort housing assistance is cost effective, considering all elements, which contribute to total project costs.**

**Several methods to provide Last Resort Housing to qualified Displaced Persons are available:**

1. Provide supplemental funds in excess of the \$5,250 limit to allow occupants to rent a Comparable Replacement Dwelling, which may also be used by the tenant displaced as a down payment for the purchase of a replacement dwelling.
2. Rehabilitate or create additions to make a replacement dwelling meet DS&S standards.
3. Construct new replacement housing, rehabilitate existing housing, or provide funds for private parties to rehabilitate existing units for occupancy by Displaced Households. Rents would be restricted to an amount per month not to exceed 30% of household's gross monthly income, for a period of 42 months.
4. Provide a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.
5. Relocate and rehabilitate a dwelling.
6. Purchase land and/or a replacement dwelling and subsequently sale, lease to, or exchange the land with the Displaced Person.
7. Remove barriers for persons with disabilities.

The actual amount of assistance will be determined once a Housing Valuation Study has been completed and each household has provided financial information. All households who are eligible to receive assistance under Last Resort Housing will be notified in writing.

The SFMTA and MOH are also exploring options on the City's requirements for long-term replacement housing (see page 18 above). Given that the relocation process can be difficult for property owners, Businesses and tenants, SFMTA will work closely with the Relocation Consultant and CCDC to coordinate a smooth transition.

## **Rent Differential Payment Procedures – Last Resort Housing**

Rent Differential payments in excess of \$5,250 must be paid in accordance with Last Resort Housing provisions. The SFMTA intends to set up an escrow account to make monthly installment payments directly to the landlords of the residential tenants after they have moved to their replacement housing.

Regardless of the amount, a Displaced Person's Rent Differential is fully "vested" immediately when they occupy DS&S housing, even if there is a later change in the person's income, occupancy, family characteristics, rental rate, or in the condition or location of the actual replacement property.

If the tenants who choose to move into long-term housing are able to do so prior to the end of the 42-month period, they would remain entitled to the rent differential for the remainder of the 42 months. The options in that scenario would be to pay the rent differential to the designated property manager of the owner of the long-term housing development or in a lump sum to the tenants.

### **Authority to Utilize Last Resort Housing is Requested from FTA**

Rent Differential payments in excess of \$5,250 are anticipated on this project as the result of several socio-economic factors relative to this project as follows:

- Rents at the displacement dwellings are below market rates due to rent control and overcrowded and other possible non-DS&S conditions
- Comparable DS&S replacement housing is scarce in the Chinatown neighborhood, and current market rates are high and not subject to rent control for new occupants of an existing unit.

### **Rental of Units Prior to Acquisition**

The SFMTA intends to establish a "protective rental plan" so that the Stockton Street property owner does not lease any residential unit at the property once it is vacated by a residential tenant. In turn, SFMTA would pay the property owner the rental payments the property owner would reasonably have received if it had leased such vacant units to new tenants. The agreement for this arrangement would terminate when the SFMTA gains possession of the property.

The SFMTA has considered and documented the existence of the following factors in its decision to enter into a protective rental agreement:

- Comparable vacant rental properties in the subject area are scarce.
- There is a good probability that the property would be re-rented prior to the SFMTA gaining control of the property.

- The SFMTA's possible cost of relocation benefits to any subsequent tenants will exceed the cost to rent back the property from the owner.
- Reoccupation of the parcel might delay delivery of the property for construction.

## Summary of the Commercial Relocation Assistance Program

### Definition of Terms

The Commercial Relocation Assistance Program incorporates certain terms that may be unfamiliar to the reader or may have a different definition under the Program. Therefore, the following terms have been defined.

**Business.** Any lawful activity, with the exception of a farm operation, that is conducted: (i) Primarily for the purchase, sale, lease, and rental of personal or real property and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; (ii) Primarily for the sale of services to the public; (iii) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the Project; or (iv) by a Nonprofit Organization.

**Nonprofit Organization.** A public or private entity that has established its nonprofit status under applicable Federal or State law.

**Small Business.** A Business having not more than 500 employees working at the site which will be acquired or is displaced by a program or project, which site is the location of economic activity. A site occupied solely by an outdoor advertising signs, displays, or devices does not qualify for purposes of the reestablishment expense benefit.

**Eligible Occupant.** The law provides that if a Displaced Person is an alien not lawfully present in the United States, such person is not eligible for relocation payments or assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act, unless ineligibility would result in exceptional and extremely unusual hardship to the alien's spouse, parent or child, and such spouse, parent or child is a citizen or an alien lawfully admitted for permanent residence.

### Moving Cost Payments

An eligible Business or non-profit organization may request reimbursement on the basis of actual, reasonable moving costs and related expenses or, under certain circumstances, a fixed payment. Actual, reasonable moving expenses may be paid when the move is performed by a professional mover or if by a self-move. Related expenses, such as personal property losses, expenses in finding a replacement site, and reestablishment expenses may also be reimbursable. A Business may elect one of two types of relocation moving benefits outlined below.

## **Actual, Reasonable and Necessary Moving Costs**

A Business may be paid the actual, reasonable and necessary cost of the move when the move is performed by a professional mover or when the Business owner elects to move themselves. All the moving costs must be supported by paid receipts or other evidence of expenses incurred. In addition to the transportation costs of personal property, certain other expenses may be reimbursable, such as packing, crating, unpacking and uncrating, and the disconnecting, dismantling, removing, reassembling, and reinstalling of relocated machinery, equipment and other personal property.

Other expenses such as professional services necessary for planning and carrying out the move, temporary storage costs, and the cost of licenses, permits and certifications may also be reimbursable. Such costs may include:

- Transportation of persons and property not to exceed a distance of 50 miles from the site from which the Business or non-profit organization was displaced, except where relocation beyond 50 miles is justified;
- Packing, crating, unpacking and uncrating personal property;
- Storage of personal property for a period generally not to exceed 12 months, as determined by the SFMTA to be necessary in connection with relocation. These expenses must be preapproved.
- Insurance of personal property while in storage or transit; and
- The reasonable replacement value of property lost, stolen or damaged (not through the fault or negligence of the Displaced Person, his agent or employee) in the process of moving, where insurance covering such loss theft or damage is not reasonable or available.
- The cost of disconnecting, dismantling, removing, reassembling, reconnecting and reinstalling machinery, equipment, substitute personal property, and other personal property (including goods and inventory kept for sale) and connection to utilities available within the building; it also includes modification to personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, replacement site or the utilities at the replacement site and modification necessary to adapt the utilities at the replacement site to the personal property.
- The cost of any license, permit, fee or certification that is required to the extent such cost is necessary to the reestablishment of the operation at a new location. However, payment shall be based on the remaining useful life of the existing license, permit or certification.
- The reasonable cost of professional services the SFMTA determines to be actual, reasonable and necessary for the planning of the move of personal property, moving the personal property, or installing relocated personal property at the replacement site. These expenses must be preapproved.
- Professional services in connection with the purchase or lease of a replacement site, including feasibility surveys, soil testing and marketing studies.

- Relettering any sign and replacing stationary on hand at the time of displacement that is made obsolete as a result of the move.
- Impact fees or one-time assessment for anticipated heavy utility usage.

All costs claimed under this section must be reasonable and necessary. The costs will only be considered if the costs could not have been avoided or substantially reduced at an alternate available site.

This is not an inclusive list of moving related expenses. The Relocation Advisor will provide the Business owner with a complete explanation of reimbursable expenses.

### **Self Moves**

If the Business owner decides to take full responsibility for all or part of the move of the personal property, SFMTA may approve a payment not to exceed the lower of two acceptable bids or estimates obtained from qualified moving firms, or moving consultants. A low cost or uncomplicated move may be based on a single bid or estimate at SFMTA's discretion.

### **Loss of Tangible Personal Property**

A Business may be eligible for a payment for the actual direct loss of tangible personal property which is incurred as a result of the move or discontinuance of the operation. This payment is based on the lesser of (1) the value of the item for continued use at the displacement site less the proceeds from its sale, or (2) the estimated reasonable cost of moving the item.

### **Substitute Personal Property**

Where an item of personal property which is used in connection with any Business is not moved but is replaced with a comparable item, the Business may request reimbursement in an amount not to exceed the lesser of (1) the replacement cost, minus any net proceeds from its sale, or (2) the estimated cost of moving the original item.

### **Searching Cost Expenses**

A displaced Business is entitled to reimbursement for actual, reasonable expenses incurred in searching for a replacement property, not to exceed \$2,500. Expenses may include transportation, meals, and lodging when away from home; the reasonable value of the time spent during the search. Fees paid to real estate agents or brokers to locate a replacement site may be reimbursed, related time obtaining permits and attending zoning hearing, and time spent negotiating of the rent/purchase of replacement site and other expenses determined to be reasonable and necessary by SFMTA.

Commission and fees related to the purchase of a replacement site are not eligible relocation expense and will not be reimbursed.

## **Reestablishment Expenses**

A small Business or non-profit organization may be eligible for a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing the enterprise at a replacement site. To qualify, the Business or non-profit organization must have not more than 500 employees working at the site who will be displaced by a program or project.

Reestablishment expenses may include, but are not limited to:

- Repairs or improvements to the replacement real property required by Federal, State, and local laws, codes or ordinances.
- Modifications to the replacement real property to accommodate the Business operation or to make the replacement structures suitable for the operation.
- Construction and installation costs of exterior signs to advertise the Business.
- Redecoration or replacement of soiled or worn surfaces at the replacement site such as painting, wallpapering, paneling, or carpeting.
- Advertising the replacement location.
- Estimated increased costs of operation at the replacement site during the first two years for items such as: lease or rental charges; personal or real property taxes; insurance premiums; utility charges (excluding impact fees).
- Other items that SFMTA considers essential for reestablishment.

The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable and necessary, or otherwise eligible:

- Purchase of capital assets, such as office furniture, filing cabinets, machinery, or trade fixtures.
- Purchase of manufacturing materials, production supplies, production inventory, or other items used in the normal course of the Business operation.
- Interior or exterior refurbishments at the replacement site which are for aesthetic purposes.
- Interest on money borrowed to make the move or purchase the replacement property.
- Payment to a part-time Business in the home which does not contribute materially to the household income.

## **Fixed Payment for Actual Moving Expenses (“In Lieu Payment”)**

Displaced Businesses and non-profit organizations may be eligible for a fixed payment in lieu of (in place of) actual moving expenses, personal property losses, searching expense, and reestablishment expenses. The fixed payment may not be less than \$1,000 or more than \$20,000.

For a Business to be eligible for a fixed payment, SFMTA must determine the following:

- The Business owns or rents personal property that must be moved due to the displacement.
- The Business cannot be relocated without a substantial loss of its existing patronage.
- The Business is not part of a commercial enterprise having more than three other Businesses engaged in the same or similar activity which are under the same ownership and are not being displaced by SFMTA.
- The Business contributed materially to the income of the displaced Business operator during the two taxable years prior to displacement.

The fixed payment for a displaced Business is based upon the average annual net earnings of the operation for the two taxable years immediately preceding the taxable year in which it was displaced, or a two-year period deemed more representative by SFMTA. The Business must provide SFMTA with proof of net earnings to support the claim. Proof of net earnings can be documented by income tax returns, certified financial statements, or other reasonable evidence acceptable to SFMTA.

Eligibility requirements for non-profit organizations are slightly different than Business requirements. The computation for non-profit organizations differs in that the payment is computed on the basis of average annual gross revenues less administrative expenses for the two-year period specified.

### **Related Nonresidential Eligible Expenses**

The following expenses shall be provided as moving expenses if the SFMTA determines that they are actual, reasonable and necessary:

1. Connection to available nearby utilities from the right-of-way to improvements at the replacement site.
2. Professional Services
3. Impact fees or one-time assessment for anticipated heavy utility usage as determined by the SFMTA.

### **SFMTA Rental Prior to Acquisition**

The SFMTA may also negotiate with the property owner a protective rental agreement, through which the property owner will not lease commercial units to new tenants as they become vacant. In return, the SFMTA will pay the property owner an amount equal to the rent the owner could have received if it had leased such vacant commercial units to new tenants. The SFMTA intends to ensure that the term of the protective rental agreement is not unnecessarily prolonged.

### **Personal Property Only**

As discussed in the Executive Summary, certain sub-sidewalk basement spaces owned by the City are occupied under revocable permits from the City. The revocable permits clearly state that upon revocation, the permittee shall be responsible for removing all improvements from the sub-sidewalk basement space. Therefore, revocation of the permits for these sub-sidewalk



basement spaces does not constitute Business displacement, nor are sub-sidewalk basement occupants eligible for payments for personal property moves given that revocation of the permits does not constitute a real property acquisition under 49 CFR 24.101(c).

We have not yet determined whether the Absentee Owner of Property #2 has any personal property that must be moved. If so, the SFMTA would provide the Absentee Owner with the Notice of Eligibility for Personal Property Only.

### **Loss of Business Goodwill**

Goodwill is defined as the benefits that accrue to a Business because of its location; reputation for dependability, skill or quality; and any other circumstances resulting in probable retention of old or acquisition of new patronage. Under State law, the affected Business owners may be entitled to receive compensation for Loss of Business Goodwill that is directly caused by the SFMTA's acquisition activities. However, the SFMTA will not compensate the business owner for any item for which payment has been made under the federal relocation program.

### **Waiver of Relocation Benefits**

Under 49 CFR section 24.207(f), agencies are prohibited from proposing or requesting a Displaced Person to waive relocation benefits. Since the Uniform Act imposes requirements on displacing agencies to provide relocation benefits, the Displaced Person cannot relieve SFMTA from the Uniform Act's requirements by agreeing to waive relocation benefits. The regulation further states that a Displaced Person may, after having been fully advised of all relocation benefits to which they are entitled, provide a written statement stating they choose not to accept some or all of such benefits. In the unlikely event that a Displaced Person refuses to accept some or all of the benefits, and refuses to provide a written statement to that effect, SFMTA will document such refusal in writing.

# Appendix

- I. **Relocation Assistance Handbook – Occupants of Rental Property**
- II. **Relocation Assistance Handbook – Business and Non-Profit Organizations**
- III. **Relocation Appeal Board**

# Relocation Assistance Brochure

Rights and Benefits  
Under the Federal Relocation Assistance Program for  
Affected Businesses and Non-Profit Organizations

Summarizing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, Including 49 Code of Federal Regulations (CFR) Part 24, issued January 4, 2005. Much of the content of this brochure was provided by The United States Department of Transportation, Federal Highway Administration, Office of Real Estate Services, Publication Number FHWA-HEP-05-031.

# ***Federal Relocation Assistance Program***

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# *Federal Relocation Assistance Program for Business and Non-profit Organizations*

## **Introduction**

The San Francisco Municipal Transportation Agency (“SFMTA”), an agency of the City and County of San Francisco (the “City”), operates the Municipal Railway (“Muni”), which serves approximately 700,000 riders per day. In the mid-1990s, SFMTA completed expansion of the Muni light rail vehicle (“LRV”) tracks from Market Street to Mission Bay. Between 2000 and 2006, SFMTA planned, funded and built 5.4 more miles of tracks, Right of Way (“ROW”) and public benefit infrastructure improvements through Mission Bay, Southeast Waterfront, India Basin, Bay View and Visitacion Valley, and into Daly City. Metro East, SFMTA’s new LRV rail maintenance and operations yard, opened September 2008.

SFMTA’s Central Subway Project is a critical transportation improvement linking neighborhoods in the southeastern part of San Francisco with the retail and employment centers in downtown and Chinatown. If approved, it will add 1.67 miles of light rail track north from the northern end of the new Third Street Light Rail at Fourth and King Streets to a terminal in Chinatown. The current alignment of the locally preferred alternative places the subway in the SOMA area under Fourth Street, with a total of three new underground subway stations located at Moscone Center, Market Street/Union Square and Chinatown (see map below).

Government programs designed to benefit the public as a whole can result in the acquisition of private property and the displacement of businesses and nonprofit organizations. When Congress passed the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and amended it in 1987 (the “Uniform Act”), it recognized the need to balance a government agency's right to acquire property for a public project with the rights of the occupants of the affected property. The Uniform Act provides for the rights of persons displaced by a public and publicly assisted project. The regulations implementing the Uniform Act are found at Title 49, Part 24 of the Code of Federal Regulations (the "Regulations"). The Regulations outline public agency rights and responsibilities in acquiring property and providing relocation assistance to persons displaced by the acquisition of property. As a public agency receiving federal funding for its Central Subway Project (the "Project"), the SFMTA, must comply with the policies and provisions set forth in the Uniform Act and the Regulations.



This brochure will provide you with a summary of the Regulations as they apply to the displacement of businesses and nonprofit organizations. The information provided in this brief brochure cannot provide you with answers to all of the specific questions and situations that might arise in the relocation of your business or nonprofit organization. However, we ask that you review this brochure carefully and present any questions to SFMTA's relocation advisor for the Project, Mr. Micole Alfaro, at Universal Field Services, Inc. ("Relocation Advisor").

Section 1 of this brochure provides information about relocation advisory assistance. Section 2 contains information concerning payments that are available to affected businesses and nonprofit organizations. Section 3 provides additional important information regarding the Relocation Assistance Program for the Project.

Your Relocation Advisor will answer your specific questions and will provide you with additional information you may need to help you to understand the Relocation Assistance Program. If you have any questions regarding this brochure, please contact your Relocation Advisor.

Universal Field Services, Inc

Attn: Micole Alfaro

821 Howard Street

San Francisco, CA 94103

Tel: 415-701-5293 Fax: 415-701-5222

## *Important Terms Used in This Brochure*

### **San Francisco Municipal Transportation Agency (“SFMTA”)**

The SFMTA will administer relocation advisory assistance and relocation payments and will be responsible for the acquisition of real property and/or relocation of persons displaced from property to be used for the Project. SFMTA has chosen to contract with Universal Field Services, Inc. to administer its Relocation Assistance Program.

### **Alien Not Lawfully Present**

The law provides that if a displaced person is an alien not lawfully present in the United States, such person is not eligible for relocation payments or assistance under the Uniform Act, unless ineligibility would result in exceptional and extremely unusual hardship to the alien's spouse, parent or child, and such spouse, parent or child is a citizen or an alien lawfully admitted for permanent residence.

### **Business**

A "Business" is defined in the Regulations as any lawful activity, with the exception of a farm operation, that is conducted: (i) Primarily for the purchase, sale, lease, and rental of personal or real property and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; (ii) Primarily for the sale of services to the public; (iii) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the Project; or (iv) by a nonprofit organization.

### **Displaced Person**

Any person (individual, family, partnership, association or corporation) who moves from real property, or moves personal property from real property, as a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of real property in whole or in part for a project. This also includes any person who moves as a direct result of rehabilitation or demolition efforts for a project.

### **Nonprofit Organization**

A public or private entity that has established its nonprofit status under applicable Federal or State law.

## Project

The SFMTA development of the Central Subway from 4<sup>th</sup> and King Street to Chinatown in San Francisco.

## Small Business

A business having not more than 500 employees working at the site which will be acquired or is displaced by a program or project, which site is the location of economic activity. A site occupied solely by outdoor advertising signs, displays, or devices does not qualify for purposes of the reestablishment expense benefit.

## Unlawful Occupancy

A person is considered to be in unlawful occupancy if the person occupies without property right, title or payment of rent or has been legally evicted, with no legal rights to occupy a property under California law.



## Section 1 – Relocation Advisory Assistance

A Relocation Advisor will work with each eligible displaced business and non-profit organization in order to guide them through the Relocation process and to help them to locate a suitable replacement property. Relocation services will be provided by Universal Field Services, Inc.. It is their goal to assist you in any way possible to help you to successfully relocate. Your Relocation Advisor is available to help and to advise you, so please make full use of their services. Do not hesitate to ask questions to ensure that you fully understand all your rights and benefits.

An individual with a disability will be provided the assistance needed to understand his or her rights under this program and to locate and move to a replacement site. Please notify your Relocation Advisor if you need any additional assistance to understand your rights or to secure a replacement site.

When your Relocation Advisor initially contacts you, he or she will interview you in order to explain the Relocation Program and to understand your current operation, facility and operating costs. Your Relocation Advisor will also ask you to describe the type of replacement site you are interested in finding and will explain the assistance and payments that you may claim in accordance with your eligibility. It is important that you explain any anticipated relocation problems to your Relocation Advisor. During the initial interview your Relocation Advisor will ask many questions to determine your specific relocation needs. After the initial interview, your Relocation Advisor will deliver written information regarding your rights as a displaced person and will forward information on available replacement sites as that information becomes available.

Your Relocation Advisor will continue to work with you to help you to plan your relocation to a replacement site. Your Relocation Advisor will help you to understand which costs are compensable under the Relocation Assistance Program and which costs are not. Your Relocation Advisor will also help to determine the need for outside specialists to plan for the move and the reinstallation of your personal property.

A representative of SFMTA will work with you and the owner of the real property (if you are a tenant) to help to identify and to resolve any issues regarding what is real estate and what is personal property that can be relocated. You will be asked to provide a copy of your lease agreement (if applicable) to help to determine the ownership of the furniture, fixtures and equipment.

SFMTA's goal is for you to achieve a successful relocation back into the community. Therefore, it is important that you do everything a prudent business owner would do to maintain your business. This includes working closely with your Relocation Advisor to evaluate and to prepare for the move and searching out leads to available replacement sites.

Your Relocation Advisor is also available to provide information to possible sources of funding and assistance from other local, State, and Federal agencies. If you have special problems, the Relocation Advisor will make every effort to secure the services of those agencies with trained personnel who have the expertise to help you. Please make your needs known so that your Relocation Advisor can provide you with the help you need.

**Be advised that no lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move. The 90-day notice may either state a specific date as the earliest date by which the occupant must move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move.**

## Section 2 – Available Relocation Payments

An eligible business or non-profit organization may request reimbursement on the basis of actual, reasonable moving costs and related expenses or, under certain circumstances, a fixed payment. Actual, reasonable moving expenses may be paid when the move is performed by a professional mover or if you move yourself. Related expenses, such as personal property losses, expenses in finding a replacement site, and reestablishment expenses may also be reimbursable.

You must provide your Relocation Advisor with an inventory of the personal property to be moved and advance notice of the approximate date of the move. Your Relocation Advisor will need to inspect the personal property at the displacement and replacement sites, and to monitor the move in order to assess your eligibility for certain moving payments.

### Actual, Reasonable and Necessary Moving Costs

You may be paid the actual, reasonable and necessary cost of your move when the move is performed by a professional mover or when you elect to move yourself; however, all your moving costs must be supported by paid receipts or other evidence of expenses incurred. In addition to the transportation costs of your personal property, certain other expenses may be reimbursable, such as packing, crating, unpacking and uncrating, and the disconnecting, dismantling, removing, reassembling, and reinstalling of relocated machinery, equipment and other personal property.

Other expenses, such as professional services necessary for planning and carrying out the move, temporary storage costs, and the cost of licenses, permits and certifications, may also be reimbursable. Such costs may include:

- Transportation of persons and property not to exceed a distance of 50 miles from the site from which the business or non-profit organization was displaced, except where relocation beyond 50 miles is justified;
- Packing, crating, unpacking and uncrating personal property;
- Storage of personal property for a period generally not to exceed 12 months, as determined by the public agency to be necessary in connection with relocation. These expenses must be preapproved.
- Insurance of personal property while in storage or transit; and
- The reasonable replacement value of property lost, stolen or damaged (not through the fault or negligence of the displaced person, his agent or employee) in the process of moving, where insurance covering such loss theft or damage is not reasonable available.
- The cost of disconnecting, dismantling, removing, reassembling, reconnecting and reinstalling machinery, equipment, substitute personal property, and other personal property (including goods and inventory kept for sale) and connection to utilities available within the building; it also includes modification to personal property, including those mandated by Federal, State or local law, code or ordinance, necessary to adapt it to the replacement structure, replacement site or the utilities at the replacement site and modification necessary to adapt the utilities at the replacement site to the personal property.
- The cost of any license, permit, fee or certification that is required to the extent such cost is necessary to the reestablishment of the operation at a new location. However, payment shall be based on the remaining useful life of the existing license, permit or certification.
- The reasonable cost of professional services the SFMTA determines to be actual, reasonable and necessary for the planning of the move of personal property, moving the personal property, or installing relocated personal property at the replacement site. These expenses must be preapproved.
- Professional services in connection with the purchase or lease of a replacement site, including feasibility surveys, soil testing and marketing studies.
- Relettering any sign and replacing stationary on hand at the time of displacement that is made obsolete as a result of the move.
- Impact fees or one-time assessment for anticipated heavy utility usage.

All costs claimed under this section must be reasonable and necessary. The costs will only be considered if the costs could not have been avoided or substantially reduced at an alternate available site.

This is not an inclusive list of moving related expenses. Your Relocation Advisor will provide you with a complete explanation of reimbursable expenses.

### **Estimated Cost of Move**

If you agree to take full responsibility for all or part of the move of your operation, SFMTA may approve a payment not to exceed the lower of two acceptable written bids or estimates you have obtained from commercial moving firms. A low cost or uncomplicated move may be based on a single bid or estimate at the SFMTA's discretion. The advantage of this moving option is that it relieves you from documenting all moving expenses because the payment is limited to the amount of the lowest acceptable bid or estimate. SFMTA may make the payment without additional documentation.

### **Direct Loss of Tangible Personal Property**

Displaced businesses may be eligible for a payment for the actual direct loss of tangible personal property incurred as a result of the move or discontinuance of the business operation. This payment is based on the lesser of (1) the value of the item for continued use at the displacement site less the proceeds from the sale of such item, or (2) the estimated reasonable cost of moving the item. Your Relocation Advisor will explain this procedure in detail if this is a consideration for you.

### **Substitute Personal Property**

Where an item of personal property which is used in connection with any business is not moved but is replaced with a comparable item, the business may request reimbursement in an amount not to exceed the lesser of (1) the replacement cost, minus any net proceeds from its sale, or (2) the estimated cost of moving the original item.

### **Low Value High Bulk Property**

If SFMTA considers a personal property item to be of low value and high bulk, and moving costs are disproportionate to its value (such as minerals, metals, rock, or topsoil), the allowable moving cost payment shall not exceed the lesser of the amount which would be received if the personal property were sold at the site, or, the replacement cost of a comparable quantity delivered to the new business location.

### **Searching Expenses for Replacement Property**

Displaced businesses are entitled to reimbursement for actual, reasonable expenses incurred in searching for a replacement property, not to exceed \$2,500. Expenses may include transportation, meals, and lodging when away from home; and the reasonable value of the time spent during the search. Fees paid to real estate agents or brokers to locate a replacement site may be reimbursed, as well as related time obtaining permits and attending any related zoning

hearings, time spent negotiating the rent/purchase of a replacement site, and other expenses determined to be reasonable and necessary by SFMTA.

Commission and fees related to the purchase of a replacement site are not eligible relocation expenses and will not be reimbursed.

## **Reestablishment Expenses**

A small business or non-profit organization may be eligible for a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing the enterprise at a replacement site. To qualify, the business or non-profit organization must have not more than 500 employees working at the site who will be displaced by a program or project.

Reestablishment expenses may include, but are not limited to:

- Repairs or improvements to the replacement real property required by Federal, State, and local laws, codes or ordinances.
- Modifications to the replacement real property to accommodate the business operation or to make the replacement structures suitable for the operation.
- Construction and installation costs of exterior signs to advertise the business.
- Redecoration or replacement of soiled or worn surfaces at the replacement site such as painting, wallpapering, paneling, or carpeting.
- Advertising the replacement location.
- Estimated increased costs of operation at the replacement site during the first two years for items such as: lease or rental charges; personal or real property taxes; insurance premiums; utility charges (excluding impact fees).
- Connection to available nearby utilities from the right-of-way to improvements at the replacement site.
- Professional services performed prior to the purchase or lease of a replacement site to determine its suitability for the displaced person's business operation, including, but not limited to, soil testing, feasibility and marketing studies.
- Impact fees or one-time assessments for anticipated heavy utility usage, as determined necessary by the SFMTA.
- Other items that SFMTA considers essential for reestablishment.

The following is a nonexclusive listing of reestablishment expenditures **not** considered to be reasonable and necessary, or otherwise eligible:

- Purchase of capital assets, such as office furniture, filing cabinets, machinery, or trade fixtures.
- Purchase of manufacturing materials, production supplies, production inventory, or other items used in the normal course of the business operation.
- Interior or exterior refurbishments at the replacement site which are for aesthetic purposes.
- Interest on money borrowed to make the move or purchase the replacement property.
- Payment to a part-time business in the home which does not contribute materially to the household income.
- Professional fees or commissions directly related to the purchase or lease of a replacement site.

### **Fixed Payment for Actual Moving Expenses (“In Lieu Payment”)**

Displaced businesses and non-profit organizations may be eligible for a fixed payment in lieu of (in place of) actual moving expenses, personal property losses, searching expense, and reestablishment expenses. The fixed payment may not be less than \$1,000 nor more than \$20,000.

For a business to be eligible for a fixed payment, SFMTA must determine the following:

- The business owns or rents personal property that must be moved due to the displacement.
- The business cannot be relocated without a substantial loss of its existing patronage.
- The business is not part of a commercial enterprise having more than three other businesses engaged in the same or similar activity which are under the same ownership and are not being displaced by SFMTA.
- The business contributed materially to the income of the displaced business operator during the two taxable years prior to displacement.

Eligibility requirements for non-profit organizations are slightly different than business requirements. The computation for non-profit organizations differs in that the payment is computed on the basis of average annual gross revenues less administrative expenses for the two year period specified. If you are interested in a fixed payment, please consult your Relocation Advisor for additional information.

### **Computation of the Fixed Payment**

The fixed payment for a displaced business is based upon the average annual net earnings of the operation for the two taxable years immediately preceding the taxable year in which it was displaced, or a two-year period deemed more representative by SFMTA. You must provide SFMTA with proof of net earnings to support your claim. Proof of net earnings can be

documented by income tax returns, certified financial statements, or other reasonable evidence acceptable to SFMTA.

**Example of a Fixed Moving Payment Computation**

2004 Annual Net Earnings \$16,500

2005 Annual Net Earnings \$18,500

2006 Year Displaced

Average annual net earnings =  $\$16,500 + \$18,500 = \$35,000 / 2 = \$17,500$

Fixed Payment = \$17,500

## **Section 3 – Important Information**

### **Filing of Claims for Payment**

All claims filed with SFMTA must be submitted within 18 months of the later of (1) the date on which the claimant receives final payment for the property or, (2) the date on which the claimant vacates the property. Most claims will be paid within six weeks of submission of a fully documented claim for payment.

If it is a hardship for your business to pay for relocation costs and to wait for reimbursement of those costs by SFMTA, you may petition for hardship assistance. If SFMTA approves your petition for a hardship payment, then it will attempt to advance certain funds for your relocation based on fully documented claims for payment. It is important that you work closely with your Relocation Advisor if you intend to file for hardship assistance. Such a petition should be made approximately six weeks before payment is required.

### **Relocation Payments are not Considered to be Income**

No relocation payment received will be considered as income for the purpose of the Internal Revenue Code, Personal Income Tax Law, Part 10 (commencing with Section 17001) of Division 2 of the Revenue and Taxation Code, or the Bank and Corporation Tax Law, Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

No relocation payment received will be considered income or resources to any recipient of public assistance and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under any other provisions of law.

Payments made by SFMTA to a third party can be considered to be a taxable event.

### **Right to Appeal**

As required under the relocation guidelines, displaced persons will have the right to ask for administrative review if they believe themselves aggrieved by a determination as to eligibility, payment amounts, or the failure to provide comparable replacement housing referrals or SFMTA's property management practices.

SFMTA will follow the Appeal and Grievance Process that has been adopted by the City and County of San Francisco. A copy of that process is attached to this brochure.



## General Information

This brochure is provided to assist you in understanding your rights and benefits. If you have questions regarding your relocation please contact your Relocation Advisor. Additional information on relocation and acquisition requirements, the law, and the regulation can be found at [www.fhwa.dot.gov/realestate](http://www.fhwa.dot.gov/realestate).

*This brochure has been provided to you as a courtesy by the San Francisco Municipal Transportation Agency. It is intended to provide general information concerning the Relocation Assistance Program. Further details regarding relocation assistance and benefits are set forth in 49 Code of Federal Regulations, Part 24, and the Federal Highway Administration website: <http://www.fhwa.dot.gov/realestate/relocat.htm>. Please contact your Relocation Advisor for additional information regarding the Relocation Assistance Program.*

Your Relocation Advisor will answer your specific questions and will provide you with additional information you may need to help you to understand the Relocation Assistance Program.

SFMTA Relocation Consultant:

Universal Field Services, Inc.  
Attn: Micole Alfaro  
821 Howard Street  
San Francisco, CA 94103  
Phone: 415-701-5293 Fax: 415-701-5222.

## Relocation Appeals Board

### Guide

## 1. Background

### 1.1 General Background

The Relocation Appeals Board of the City and County of San Francisco is the oldest of its kind in the nation. Founded in March 1967, the Relocation Appeals Board is a resource for individuals and families whose residence or business is displaced by public action.

The Relocation Appeals Board's purpose is to study, investigate and hold hearings on grievances and disputes between relocated persons who are dissatisfied with their relocation services and the displacing agencies that are responsible for providing those services.

The Relocation Appeals Board was formalized by the Board of Supervisors of the City and County of San Francisco in 1972 with the enactment of ordinances 333-72 and 334-72. The local governing provisions are codified at Chapter 24B of the San Francisco Administrative Code.

The Relocation Appeals Board has five members. They are appointed by the Mayor and confirmed by the Board of Supervisors.

The Relocation Appeals Board holds regular meeting on the first Wednesday of every month at 11:00 a.m. whenever there is pending business. Meetings are held at a conference room or meeting facility at the Office of the San Francisco Mayor's Office of Housing, 1 South Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, CA 94103.

All meetings of the San Francisco Appeals Board are public.

### 1.2 Jurisdiction of the Relocation Appeals Board

The Relocation Appeals Board hears disputes between displaced persons and the displacing agency after the displacing agency has responded to a claim. If the displaced person is not satisfied with the displacing agency's response, the displaced person may submit his or her dispute to the Relocation Appeals Board for review. The Relocation Appeals Board may affirm the decision of the displacing agency, reject the decision of the displacing agency and require that it provide further benefits or services, or remand the claim for further consideration by the agency in light of the findings or filings of the Relocation Appeals Board.

The Relocation Appeals Board only reviews disputes when the displacing agency is an agency of the City and County of San Francisco; the Relocation Appeals Board does not have authority to review disputes with State and Federal agencies.

The Relocation Appeals Board only reviews disputes regarding relocation benefits or services. Disputes regarding relocation claims are reviewed under California and federal law. The Relocation Appeals Board does not review disputes regarding compensation for real or personal property that has been damaged, destroyed, or subjected to the powers of eminent domain, and does not review claims for inverse condemnation.

### 1.3 Governing Laws

**1.3.1 Federal Law:** The federal Uniform Relocation Assistance and Real Property acquisition Policies Act of 1970 is codified at title 42, United States Code, section 4600 et seq. This law requires that the federal government provide relocation advice and payments when it acquires real property under its power of eminent domain. In July 1, 1972, the federal law became binding in the states. Federal laws pertaining specifically to relocation payments and services are codified at Title 42, United States Code, section 6080 et seq. Regulation regarding relocation payments and services are codified at Title 49 of the Code Of Federal Regulations, Part 24.

**1.3.2 State Law:** Following enactment of the federal relocation law, in 1971 California's legislature enacted the present Relocation Assistance Act with the intent to "implement the 1970 federal enactment and to extend the comparable benefits statewide and payable by the state and its political subdivisions, to persons displaced by the acquisition of land under the eminent domain law after July 1, 1972" City of Mountain View v Superior Court 54 Cal.App.3d 72, 77-78 (1975). The California Relocation Assistance Act is in the California Code; sections 7362 et seq. govern relocation payments and assistance.

The California Relocation Assistance Act provides relocation assistance to persons if they are "displaced" by public projects. Persons are "displaced" if agency action requires them to move from all or part of their property; they can be "displaced" by any agency action, it need not be a condemnation. 57 Ops. Atty. Gen. p. 72 (1974); Superior Strut & Hangar v Port of Oakland, 140 Cal. Rptr. 515, 518 (2977). State law allows a displaced person certain compensation for a forced relocation, including relocation assistance and reimbursement of moving costs.

California law requires that each city or county that has a redevelopments agency also have a relocation appeals board "to hear all complaints brought by residents of the various project areas relating to relocation. [The Relocation Appeals Board] shall determine if the redevelopment agency has complied with provisions of [state law] and, where applicable, federal regulations." Government Code 33417.5.

**1.3.3 Local Ordinance:** The San Francisco Relocation Appeals Board is governed by Chapter 24B of the San Francisco Administration Code.

## 2. Procedures for Appealing to the Relocation Appeals Board

The Relocation Appeals Board reviews disputes between a relocate and a displacing agency related claims for relocation benefits or services. The Relocation Appeals Board does not hear appeals until claims for relocation benefits or services have been denied in whole or in part by the displacing agency. The Relocation Appeals Board will hear claims where a displacing agency fails to respond to a claim after a reasonable time.

## **2.1 Complaint**

An appeal to the Relocation Appeals Board begins with a complaint. If you are preparing a complaint to the Relocation Appeals Board, you must include at least the following:

1. Name of the aggrieved person;
2. Location of the property from which the aggrieved person is being displaced;
3. The nature of the dislocation, i.e., a family residence, business, warehouse, etc.;
4. The displacing agency or the agency responsible for providing services and the name and address of the person at the agency who is responsible for handling the claim;
5. A brief description of the grievance and grounds for appeal to the Relocation Appeals Board;
6. Documents in support of your claim, or, if they are voluminous, a summary of the documents that support your claim. The complainant will be able to review and copy relevant documents of the displacing agency prior to filing the complaint;

The complaint must be signed. The signature of the complaining person verifies the accuracy and the truthfulness of the complaint. Unsigned complaints will not be accepted. (See generally San Francisco Admin. Code #24B.7.)

## **2.2 Delivery of the Complaint to Board Secretary, Displacing Agency**

The complaining party or its representative shall deliver the signed complaint to the Secretary of the Relocation Appeals Board at the following address:

Bruce Ito, Secretary  
Relocation Appeals Board of the City and County of San Francisco  
1 South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103

If there are questions about the handling of the complaint, please contact the Secretary of the Relocation Appeals Board at (415) 701-5558.

In addition to filing the complaint with the Board's Secretary, the complaining party must send a copy to the responsible agent at all displacing agencies that are subject to the dispute.

## **2.3 Authorization for Release of Information**

After your complaint is received, the staff of the Relocation Appeals Board will mail you a "Request for Authorization to Release Confidential Information." This authorization, when signed, allows the displacing agency to respond to your complaint with relevant information. Please sign the "Request" and return it to the Secretary of the Relocation Appeals Board at the above address.

## **2.4 Written Answer By Displacing Agency, Reply**

The displacing agency will answer your complaint in writing within 15 days (unless a longer time is allowed by the Board) and will provide you with a copy of its answer.

The Board or the Secretary of the Board may request that you file a written reply to the displacing agency's agency answer. Your reply should be filed with the Secretary and a copy mailed to the responsible person at the displacing agency, usually the person who filed the answer.

When the written complaint, answer, and reply (if any) are received, the review process begins.

## **3. Pre-Hearing Mediation**

The Secretary or a member of the Relocation Appeals Board will review your complaint, the answer, any reply and all other pertinent materials to your claim and the dispute. This person is the mediator. The mediator will attempt to resolve the dispute prior to a formal hearing and review by the Relocation Appeals Board.

The mediation may take any form deemed suitable by the mediator and the Relocation Appeals Board. This may include ex parte conferences with the claimant, the displacing agency, or others in order to reconcile the dispute; conferences, requests for further written submissions, interviews of witnesses, or brief presentations by the disputants to clarify their positions are routinely requested. If the efforts of the mediator cause the dispute to be resolved to the satisfaction of all parties, the appeal to the full Relocation Appeals Board is dismissed.

If the claimant is not satisfied with the results of the mediation, the matter will be presented to the Relocation Appeals Board in a formal hearing. Upon written request of the claimant or upon the mediator's determination that attempts to resolve the dispute have failed, the Secretary will set the appeal for hearing before the Relocation Appeals Board at a regularly scheduled meeting. The Secretary will give written notice of the time, place and the date of the appeal to all parties.

## **4. Hearings Before the Relocation Appeals Board**

### **4.1 parties; Representation by Lawyers; Notices**

No claimant who presents an appeal to the Relocation Appeals Board needs to be represented by a lawyer, though any party who presents an appeal to the Relocation Appeals Board may be so represented.

Whenever any document containing an attorney's name, address and telephone number is filed by an attorney on behalf of a party, or whenever a party advises in a complaint or other written notice to the Board that the party's is represented by counsel, all notices sent by the Board or other parties shall thereafter be sent to the party's attorney instead of to the party. Notices will not be sent to both the attorney and the party represented by the attorney.

#### **4.2 Discovery (exchange of information)**

There is no procedure for pre-appeal discovery or exchange of information between disputants. Parties may be requested to exchange information or to provide statements to the Relocation Appeals Board, the mediator, or the Secretary in an attempt to resolve the dispute. No party is obligated to provide information in response to such a request, though the failure to provide requested information may be considered by the Relocation Appeals Board on appeal.

#### **4.3 Appeals Heard At Regular Meetings; Emergency Sessions**

All appeals to the Relocation Appeals Board shall be heard at a regularly scheduled meeting of the Relocation Appeals Board. An appeal may be heard outside of a regularly scheduled meeting only under special circumstances.

A claimant may petition for an expedited appeal at a specially convened meeting by demonstrating special circumstances. Such a petition must be submitted to the Secretary of the Relocation Appeals Board at least five days prior to the date requested for an expedited appeal. The petition must set forth the basis of the request for the expedited appeal and must include the following information: the date that the claim that is subject to the appeal was submitted to the displacing agency; the date of final response by the displacing agency; the date of written complaint initiating the appeal; the hardship that would attend hearing the appeal at the regularly scheduled meeting; and an explanation of any prior delays in the presentation or prosecution of the claim or the appeal. The petition must be signed by the complainant.

The President of the Board will assess any petition for an expedited appeal. If the petition is granted, the Secretary will attempt to convene a quorum of the Board at the date and time requested in the petition. If a quorum cannot be convened at the date and time requested, the appeal will be heard at the earliest date and time at which such a quorum may be convened.

Any party or agency that opposes an expedited hearing may submit a letter to the Secretary explaining why an expedited hearing is unnecessary, inappropriate, or prejudicial to the other party.

#### **4.4 Postponements**

The President of the Board may grant a postponement of a scheduled appeal only for a good cause. Good cause may include, but is not limited to, showings of the following: (1) illness of a party, attorney, or other authorized representative of a party, or a material witness; (2) verified travel outside of San Francisco scheduled before the receipt of the notice of hearing; or (3) any other reason that makes it impracticable to appear on the scheduled date due to unforeseen circumstances or verified pre-arranged plans that are not reasonably susceptible to change. Inconvenience is not a good cause.

Requests for postponements shall be made in writing at the earliest possible date. Requests to postpone an appeal should include supporting documentation. Requests to postpone an appeal should be served upon all other parties and their counsel.

The parties to an appeal may agree to a postponement once without approval of the Board if they notify the Board at least five days prior to the date of the appeal. Stipulated postponements closer than five days to a scheduled appeal may be granted only with permission from the President of the Board either in writing or at the hearing for the appeal.

The parties to an appeal may agree to additional postponements only with the approval of the Board. A joint request for postponement shall be submitted in writing.

#### **4.5 Pre-Appeal Submissions**

Each party to an appeal shall submit the following to the Secretary to the Board and to each other party or its counsel at least five days prior to the scheduled appeal:

1. A brief explanation of the law that supports the party's position.
2. A summary of the facts that the party expects to show at the hearing on appeal.
3. A list of the witnesses to be called by the party and a summary of the witnesses' testimony.
4. All documents that the party intends to present at the hearing on appeal.
5. The name of the party intends to present at the hearing on appeal, including any physical objects, large maps, diagrams, enlarged photographs.
6. The name of the party or the attorney who will be primarily responsible for presenting the appeal to the Relocation Appeal Board.

The parties shall submit six copies of all submissions to the Secretary for distribution to the members of the Relocation Appeals Board and staff.

#### **4.6 Absent Parties**

If a party fails to appear at a properly noticed hearing the Board may, as it deems appropriate, continue the appeal, decide the case on the submitted documents, or

proceed with a hearing and render a decision. If the absent party is the complainant, the Board may dismiss the complaint. If the absent is the displacing agency, the Board may enter a decision affirming the complaint against the agency.

#### **4.7 Conduct of Appeal**

Appeals shall be conducted in conformity with these rules unless otherwise ordered at any hearing or by formal amendment to these rules by a majority of the members of the Relocation Appeals Board.

Each party will make a brief opening or introductory statement. Claimant will make the first statement; each displacing agency adverse to claimant will make the second statement(s); claimant may make a brief reply statement.

Claimant will present its case first, including the presentation of witnesses, documents, diagrams, photographs, summaries, charts, or other materials relevant to the claim.

Oral evidence shall be taken only on the oath or affirmation of the witness.

Each party shall have the right to call and examine witnesses, to introduce exhibits, and to cross-examine opposing witnesses on any matter relevant to the issues before the Board. The claimant may be called as a witness even if the claimant does not testify in its own behalf. The agent of the displacing agency may be called as a witness even if the agent does not testify on behalf of the displacing agency.

Third party witnesses (witnesses that are neither the claimant or the displacing agency) may be presented by either side. If presented, they may be cross-examined. Neither party may subpoena or compel the testimony of third party witnesses.

Adverse witnesses (persons who are employed by or under the control of the adverse party) may not be compelled to give testimony. However, any party may request that an adverse witness testify. To request the testimony of an adverse witness, a party shall request the presence of such witness by sending notice to the adverse party at least 10 days prior to the date of appeal. The request shall state the name of the witness, the relationship between the adverse witness and the adverse party, the subject matter of the adverse witnesses' testimony, and the anticipated testimony from the witness. If the adverse party does not make the witness available at the appeal, the Board may consider in its decision the absence of the witness against the adverse party and the anticipated testimony in favor of the party that requested the testimony.

The parties may present all the relevant evidence that furthers the decision-making process. The parties are not bound by civil rules of evidence except as stated in these rules. Parties and witnesses may introduce hearsay in support of their claims. Proffered hearsay evidence is admissible for all purposes and, if assessed as credible by the Relocation Appeals Board, may provide the sole basis for a finding or decision.



Evidentiary privileges protected by law are honored in an appeal before the Relocation Appeals Board but must be asserted promptly. Unasserted privileges and untimely objections are waived.

The Relocation Appeals Board may limit the presentation of evidence, the number of witnesses, or remarks of the parties or counsel in order to avoid the presentation of irrelevant, repetitious or unruly inflammatory testimony, evidence or other matters.

The Board or its counsel may, from time to time, interrogate witnesses, question counsel, or request further evidence in the course of the appeal process.

#### **4.8 Burden of Proof on Appeal**

In any appeal to the Relocation Appeals Board by a displaced person regarding the displacing agency's treatment of a claim, the displaced person has the initial burden of demonstrating that the claim for relocation payments or benefits was timely, proper, and reasonable.

In order to overcome a complaint by a displaced party who satisfies the burden of demonstrating that the claim was timely, proper and reasonable, if the burden of the displacing agency to demonstrate that the claim for relocation payments was not timely, proper, reasonable, or that it is defective under applicable law or regulations. The displacing agency may discharge its burden of proof by demonstrating that it has made an offer to settle the claim, that the offer to settle the claim was rejected, and that the offer to settle the claim was more reasonable than the original claim and in conformity with applicable law and regulations.

#### **4.9 Record or Proceedings**

The Relocation Appeals Board may record the proceedings on appeal by audiotape or by causing a transcript to be made. The Relocation Appeals Board may request that the parties to the appeal share the expense of recording or transcribing the proceedings for the benefit of the Board or the parties.

In the event that the Board does not elect to record or transcribe the proceedings, any party may retain a stenographer or tape record the proceedings in order to keep a record, provided that the party so recording the proceedings makes available to the board a copy of the transcript or recording of the proceedings if the Board so requests, and such copy or transcript shall be tendered without charge. The party transcribing or recording the proceedings must also make available to other parties a transcript or recording at a reasonable charge not to exceed that party's proportional share of the cost of obtaining such a record.

#### **4.10 Additional Submissions**

The Board may request that either or both parties present any additional briefing, documents, information, declarations or testimony to the Relocation Appeals Board following the hearing on appeal. All such submissions shall be filed with the Secretary

of the Board within the time requested by the Board and served to all other parties or their counsel. No party need respond to such submissions unless requested to do so by the Board, or unless such party requests in writing from the Board permission to respond and such permission is granted in writing.

## **5. Decisions on Appeal**

The Relocation Appeals Board will deliberate on the appeal following the close of presentation of evidence. The deliberations of the Relocation Appeals Board are public.

The decision of the Relocation Appeals Board to affirm the complaint in whole and to order the relief requested, to grant the complaint in part and to order part of the relief requested, or to grant the complaint in part and order relief other than requested, must be based on the agreement of a majority of the voting members. The agreement of a majority of the voting members of the Board on the nature and extent of relief to be awarded is sufficient to constitute a ruling of the Board, and such shall be the decision of the Board, notwithstanding any disagreement among the voting members as to the basis of such relief.

The President of the Board shall appoint a member of the Board or the Secretary to draft a resolution setting forth the Board's ruling. A resolution that satisfactorily sets forth the Board's ruling. A resolution that satisfactorily sets forth the Board's ruling shall be affirmed and signed by the President of the Board and served to the parties to the appeal by registered mail.

## **6. Appeal to the Superior Court**

If the Board issues a final decision other than to grant the relief requested in the complaint, the complaining person may seek further review by administrative mandamus in the San Francisco Superior Court. The Procedures for pursuing a claim of administrative Mandamus are set forth in section 1094.5 of the California Code of Civil Procedure.

Deadlines for filing a petition for review in the Superior Court are strict. The time to bring a petition is governed by Section 1094.6 of the California Code of Civil Procedure. Failure to file a timely petition for review may result in waiver of your right to further review.

## **7. Approval of the Rules**

These General Rules and Procedures are approved by the members of the Relocation Appeals Board this 6 day of Sept., 1995 and shall govern all proceedings before this Board until otherwise revoked, amended, or replaced by a majority vote of this Board.

These General Rules and Procedures shall be made available at the request of any person and the Secretary of the Relocation Appeals Board shall provide copies of these General Rules and Procedures to all parties to appeals before the Relocation Appeals Board.

# Relocation Assistance Handbook

Information for Persons Displaced by  
Publicly Funded Acquisition Projects

Occupants of Rental Property



This handbook is presented to you as a courtesy of the San Francisco Municipal Transportation Agency and is intended to summarize your rights under federal law (42 U.S.C. 4601 *et seq.*) and implementing regulations found in 49 CFR Part 24. A Relocation Advisor will also be available to help explain the assistance that is available through this program. This summary has been provided for general information purposes only and it is not meant to be interpreted as law.

## Relocation Assistance for Occupants of Rental Property

The San Francisco Municipal Transportation Agency (“SFMTA”), an agency of the City and County of San Francisco (the “City”), operates the Municipal Railway (“Muni”), which serves approximately 700,000 riders per day. In the mid-1990s, SFMTA completed expansion of the Muni light rail vehicle (“LRV”) tracks from Market Street to Mission Bay. Between 2000 and 2006, SFMTA planned, funded and built 5.4 more miles of tracks, Right of Way (“ROW”) and public benefit infrastructure improvements through Mission Bay, the Southeast Waterfront, India Basin, Bay View and Visitacion Valley, and into Daly City. Metro East, SFMTA’s new LRV rail maintenance and operations yard, opened in September 2008.

SFMTA’s Central Subway Project is a critical transportation improvement linking neighborhoods in the southeastern part of San Francisco with the retail and employment centers in downtown and Chinatown. If approved, it will add 1.67 miles of light rail track north from the northern end of the new Third Street Light Rail at Fourth and King Streets to a terminal in Chinatown. The current alignment of the locally preferred alternative places the subway in the SOMA area under Fourth Street, with a total of three new underground subway stations located at Moscone Center, Market Street/Union Square and Chinatown (see map below).

This handbook provides information to persons who are renting residential property that might be acquired by the SFMTA for construction of the Central Subway Project (the "Project"). All public property acquisition and relocation efforts for the Project are governed by federal law -- the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) (the "Uniform Act"), and the regulations implementing the Uniform Act, found in 49 CFR Part 24 (the "Regulations"). A Relocation Advisor will be available to work with occupants of each affected household to help them to understand the assistance that is available through this Relocation Assistance Program (the "Program").



It is important that each household meet with a Relocation Advisor to understand its rights and responsibilities under the Program. If a household is determined to be eligible to receive relocation assistance under the Program, then the household will be given a **Notice of Eligibility** and later a **Conditional Entitlement Letter**. Each household will also be given a copy of this **Relocation Assistance Handbook**. These documents will identify all of the benefits and conditions for

receipt of benefits by the household. These benefits and conditions are briefly described below.

If you need this document translated into another language, please contact Mr. Nicole Alfaro, Universal Field Services, at 415-701-5293. Chinese speaker please contact Cathie Lam at 415-984-1461.

## Relocation Advisory Assistance

**The SFMTA has adopted the following Relocation Assistance Program in order to provide displaced persons with the benefits to which they are entitled under the Uniform Act and the Regulations. Congress has determined that any person being displaced by a publicly funded project has the right to receive assistance in understanding the laws and regulations that protect them if they are required to move because of a project. A knowledgeable Relocation Advisor must be available to each household to help them through the process, to provide them with notices as required, and to provide them with verbal and written information. Micole Alfaro of Universal Field Services will be providing relocation advisory assistance for the households displaced by the Project and will be available to answer questions and to help such households throughout this process.**

Mr. Micole Alfaro, Relocation Consultant Universal Field Services 821 Howard Street San Francisco, CA 94103 415-701-5293
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A Relocation Advisor is available to find comparable, decent, safe, and sanitary replacement housing within the financial means of each affected household. The housing must be available to the displaced persons. A Relocation Advisor will provide advisory assistance in obtaining housing of their choice, including assistance in the referral of complaints of discrimination to the appropriate Federal, State or local fair housing enforcement agency. Each affected household should meet with its Relocation Advisor and provide them with information as requested so that assistance can be provided as needed. A Relocation Advisor will also prepare claim forms on behalf of each household and will help to file those claims for reimbursement under the Program.

All services will be provided in such a way as to ensure that the relocation process does not result in different or separate treatment on account of race, color, religion, national origin, sex, marital status, familial status, or any basis protected by state and federal anti-discrimination laws, or any other arbitrary circumstances.

**Definition of Terms.** This Program incorporates certain language that may be unfamiliar to the reader. The following terms are defined to make it easier to understand the requirements of the Program.

**Comparable Replacement Dwelling.** A comparable replacement dwelling is a dwelling that is:

- Decent, safe, and sanitary, as described below.
- Functionally equivalent to the displacement dwelling. The term “functionally equivalent” means that it performs the same function, and provides the same utility. A comparable replacement dwelling need not possess every feature of the displacement dwelling, but must include the principal features.
- Adequate in size to accommodate the occupants.
- In an area not subject to unreasonable adverse environmental conditions, generally not less desirable than the location of the displacement dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment.
- Available to all persons regardless of race, color, religion, sex, marital status, or national origin.
- Within the financial means of the displaced person (housing costs do not exceed 30% of the household's average monthly income, provided average monthly income is within the most recent HUD low income limits), either by their own means or through assistance from the Relocation Program.

**Decent, Safe, & Sanitary (DS&S).** In order to meet decent, safe, and sanitary requirements, a replacement site must meet the local housing and occupancy codes. These should include the following standards:

- Be structurally sound, clean, weather tight, in good repair, and adequately maintained.
- Contain a safe electrical wiring system adequate for lighting and other devices.
- Contain a heating system capable of sustaining a healthful temperature (approximately 70 degrees).
- Be adequate in size with respect to the number of rooms and area of living space to accommodate the displaced persons, in conformance with local codes.
- Have a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system.
- Contain unobstructed egress to safe, open space at ground level. If the dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

- For displaced persons with disabilities, be free of any barriers which would prevent reasonable ingress, egress, or use of the dwelling by such displaced persons.

**Displaced Person/Household.** Lawful occupants who are required to move from a property that the SFMTA is attempting to acquire. Displaced persons will be eligible to receive Relocation Advisory Assistance, Moving Expense Payments, and Replacement Housing Payments (eligibility for replacement housing payments will be determined on a case-by-case basis with consideration given to length of occupancy and income).

### Moving Cost Assistance

Each displaced household is entitled to receive a moving payment to cover the cost to move the personal property of the household to their replacement home. The Relocation Program covers specific costs related to the move. Each household may elect one of the three options for cost reimbursement for each move as outlined below:

**1. Fixed Moving Expense and Dislocation Allowance.** A household may choose to move their own personal property to the replacement site and to submit a claim based on the following Moving Expense and Dislocation Allowance Schedule for California published by the federal government on the following website: <http://www.fhwa.dot.gov/realestate/fixsch96.htm>.

#### **Occupant Owns Furniture (unless no furniture shown) Number of Rooms of Furniture**

	1 room	2 rooms	3 rooms	4 rooms	5 rooms	6 rooms	7 rooms	8 rooms	Add'l room	1 room/ no furn.	Additional room no furn.
Allowance	\$625	\$800	\$1,000	\$1,175	\$1,425	\$1,650	\$1,900	\$2,150	\$225	\$400	\$65

**2. Actual Reasonable Moving Costs and Related Expenses.** Payment is made to reimburse actual moving expenses based on the lower of at least two acceptable bids from professional commercial movers. Compensable costs include all reasonable costs to pack, move, and unpack all personal property. A direct payment can be made to the commercial mover under this option. Reimbursement is allowed to the displaced household for any one-time utility reconnection fees, such as phone, gas, electric, and cable.

**3. Combination of Options.** A displaced person can be reimbursed using a combination of the two moving options, depending upon specific circumstances.

**Storage Costs.** A displaced person may be reimbursed for certain costs to store personal property in a professional storage facility for a period not to exceed 12 months.



The need for such storage must be determined to be reasonable and necessary. Only property that is currently located at the affected site would be eligible for storage cost reimbursement. This option is available to persons who do not choose to be reimbursed under the Fixed Moving Payment and Dislocation Allowance option referenced above.

## Replacement Housing Payments

**A rent differential payment of up to \$5,250 is available to assist permanently displaced households in either renting or purchasing a replacement dwelling. To qualify for this payment, an eligible displaced person must have lived in the affected property as a legal resident for 90 days prior to the initial written offer to purchase the property. In addition, the person must be able to demonstrate that the property was his or her primary residence for that 90-day period. To claim the payment, the displaced person must occupy a decent, safe, and sanitary replacement dwelling within 12 months after moving to a replacement property. A payment of up to \$22,500 is available for homeowner-occupants who have lived in the displacement dwelling for not less than 180 days.**

The purpose of replacement housing payments is to provide assistance with actual and reasonable increased housing costs so that replacement housing is available within the financial means of the affected household. The assistance is calculated as shown below and is available to help with actual increased housing costs for 42 months. This amount will be paid directly to the tenant or to the tenant's designee. Assistance may be paid as a lump sum, in monthly installments, or through other periodic payments.

### **Computation for Monthly Replacement Housing Payments**

***Lesser of:***

Cost to Rent Comparable Replacement Dwelling + Estimated Utility Costs  
or

The Cost to Rent Actual Replacement Dwelling + Estimated Utility Costs

***Minus the Lesser of:***

Average Monthly Rent at Displacement Dwelling + Average Monthly Utilities  
or

30% of the Household's Adjusted Gross Monthly Income (*If average gross monthly income is within the parameters of the current HUD Low Income Chart*)

A Housing Valuation Study will be prepared for the type of housing unit needed to determine the cost of a comparable replacement dwelling. Each household will receive a Conditional Entitlement Letter that describes all relocation benefits and the maximum rent differential payment to which the household is entitled. The Letter will also explain

that benefit payments will be made only when the household demonstrates that entitlement amounts have been or will be spent for reasonable and necessary expenses related to obtaining replacement housing.

A Relocation Advisor is available to provide specific information about entitlement in writing to each eligible household. The Relocation Advisor will also contact property owners, landlords, lenders, and Realtors as needed and as directed by the household to help to secure replacement housing and to explain the assistance that is available under the Relocation Program. Transportation will be offered to displaced persons as part of the scope of relocation services provided. Any person with special needs should communicate these needs to a Relocation Advisor early in the search for housing so that those needs can be accommodated.

***Purchasing a Replacement Dwelling.*** If a displaced household chooses to buy (rather than rent) a replacement dwelling, the Replacement Housing Payment could be converted into a down payment to purchase a decent, safe, and sanitary replacement home within one year of the date the household moves from the affected property. The amount of the down payment shall not exceed the actual cost of the replacement dwelling, plus expenses incident to its purchase. For additional information regarding this payment option, please contact a Relocation Advisor.

## **The Housing of Last Resort Program**

**The Regulations offer the Housing of Last Resort Program whenever a project cannot proceed on a timely basis because comparable replacement dwellings are not available within the financial means of the displaced person. Under this program, the replacement housing payment may exceed the \$5,250 monetary limit under certain circumstances. Several methods to provide Last Resort Housing to qualified displaced persons are available:**

1. Provide supplemental funds in excess of the standard limit to allow occupants to replace their current home with an affordable dwelling. All payments are based on the most comparable replacement property as approved in the Housing Valuation Study. As with all other replacement housing payments, displaced occupants must meet certain requirements in order to claim payments.
2. New replacement housing could be constructed, existing housing could be rehabilitated, or funds could be provided for private parties to rehabilitate existing units for occupancy by displaced households.

SFMTA has determined that it will provide supplemental replacement housing funds to bring the most comparable replacement housing within the financial means of each eligible displaced household. The actual amount of assistance will be determined once a Housing Valuation Study has been completed and each household has provided financial

information. All households who are eligible to receive assistance under the Housing of Last Resort Program, will be notified in writing.

## Additional Program Information

**Appeal and Grievance Process.** As required under the relocation guidelines, displaced persons will have the right to ask for administrative review when they believe themselves aggrieved by a determination as to eligibility, payment amounts, or the failure to provide comparable replacement housing referrals or SFMTA's property management practices.

SFMTA will follow the Appeal and Grievance Process that has been adopted by the City and County of San Francisco. A copy of that process is attached to this handbook.

**Eviction Policy.** Should an occupant be evicted for failure to meet any tenant obligations or for violating the terms and conditions of his or her lease or rent agreement, then under the applicable relocation law, the evicted tenant(s) will not be considered a "displaced person" and, therefore, will not be eligible for relocation benefits. Eviction will not affect a tenant's eligibility for relocation benefits if a tenant is evicted by the SFMTA as a last resort to remove the tenant from the affected property.

**Claim Processing and Distribution of Payments.** All claims are to be filed through a Relocation Advisor. The Relocation Advisor will assist the displaced person in completing his or her claim forms, will notify each displaced person of the documentation needed in order to file the claim, and will inspect all replacement properties as needed. Each claim will be submitted along with documentation to SFMTA for review and processing. Checks will be available for approved claims within 30 days of the date all documentation is submitted to the Relocation Advisor. Checks will be delivered to the household or to the household's designee. Advance payments may be provided if a later payment would result in financial hardship.

**Relocation Payments are Not Considered Income.** 49 CFR Section 24.209 and California Government Code Section 7269 states that no payment required under the Relocation Assistance Program shall be considered as income for the purposes of Personal Income Tax Law, Part 10 (commencing with Section 17001). Nor are payments considered as income or resources to any recipient of public assistance and such payments shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under any other provisions of law. Please consult your tax advisor for additional information.

**This is not a notice to vacate.** No eligible household will be required to move until there is comparable replacement housing available within their financial means and they have received at least 90 days advance written notice of the date by which they must vacate.



## **Relocation Appeals Board**

### Guide

## **1. Background**

### **1.1 General Background**

The Relocation Appeals Board of the City and County of San Francisco is the oldest of its kind in the nation. Founded in March 1967, the Relocation Appeals Board is a resource for individuals and families whose residence or business is displaced by public action.

The Relocation Appeals Board's purpose is to study, investigate and hold hearings on grievances and disputes between relocated persons who are dissatisfied with their relocation services and the displacing agencies that are responsible for providing those services.

The Relocation Appeals Board was formalized by the Board of Supervisors of the City and County of San Francisco in 1972 with the enactment of ordinances 333-72 and 334-72. The local governing provisions are codified at Chapter 24B of the San Francisco Administrative Code.

The Relocation Appeals Board has five members. They are appointed by the Mayor and confirmed by the Board of Supervisors.

The Relocation Appeals Board holds regular meeting on the first Wednesday of every month at 11:00 a.m. whenever there is pending business. Meetings are held at a conference room or meeting facility at the Office of the San Francisco Mayor's Office of Housing, 1 South Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, CA 94103.

All meetings of the San Francisco Appeals Board are public.

### **1.2 Jurisdiction of the Relocation Appeals Board**

The Relocation Appeals Board hears disputes between displaced persons and the displacing agency after the displacing agency has responded to a claim. If the displaced person is not satisfied with the displacing agency's response, the displaced person may submit his or her dispute to the Relocation Appeals Board for review. The Relocation Appeals Board may affirm the decision of the displacing agency, reject the decision of the displacing agency and require that it provide further benefits or services, or remand the claim for further consideration by the agency in light of the findings or filings of the Relocation Appeals Board.

The Relocation Appeals Board only reviews disputes when the displacing agency is an agency of the City and County of San Francisco; the Relocation Appeals Board does not have authority to review disputes with State and Federal agencies.

The Relocation Appeals Board only reviews disputes regarding relocation benefits or services. Disputes regarding relocation claims are reviewed under California and federal law. The

Relocation Appeals Board does not review disputes regarding compensation for real or personal property that has been damaged, destroyed, or subjected to the powers of eminent domain, and does not review claims for inverse condemnation.

### **1.3 Governing Laws**

*1.3.1 Federal Law:* The federal Uniform Relocation Assistance and Real Property acquisition Policies Act of 1970 is codified at title 42, United States Code, section 4600 et seq. This law requires that the federal government provide relocation advice and payments when it acquires real property under its power of eminent domain. In July 1, 1972, the federal law became binding in the states. Federal laws pertaining specifically to relocation payments and services are codified at Title 42, United States Code, section 6080 et seq. Regulation regarding relocation payments and services are codified at Title 49 of the Code Of Federal Regulations, Part 24.

*1.3.2 State Law:* Following enactment of the federal relocation law, in 1971 California’s legislature enacted the present Relocation Assistance Act with the intent to “implement the 1970 federal enactment and to extend the comparable benefits statewide and payable by the state and its political subdivisions, to persons displaced by the acquisition of land under the eminent domain law after July 1, 1972” City of Mountain View v Superior Court 54 Cal.App.3d 72, 77-78 (1975). The California Relocation Assistance Act is in the California Code; sections 7362 et seq. govern relocation payments and assistance.

The California Relocation Assistance Act provides relocation assistance to persons if they are “displaced” by public projects. Persons are “displaced” if agency action requires them to move from all or part of their property; they can be “displaced” by any agency action, it need not be a condemnation. 57 Ops. Atty. Gen. p. 72 (1974); Superior Strut & Hangar v Port of Oakland, 140 Cal. Rptr. 515, 518 (2977). State law allows a displaced person certain compensation for a forced relocation, including relocation assistance and reimbursement of moving costs.

California law requires that each city or county that has a redevelopments agency also have a relocation appeals board “to hear all complaints brought by residents of the various project areas relating to relocation. [The Relocation Appeals Board] shall determine if the redevelopment agency has complied with provisions of [state law] and, where applicable, federal regulations.” Health & Safety Code 33417.5.

*1.3.3 Local Ordinance:* The San Francisco Relocation Appeals Board is governed by Chapter 24B of the San Francisco Administration Code.

## **2. Procedures for Appealing to the Relocation Appeals Board**

The Relocation Appeals Board reviews disputes between a relocate and a displacing agency related claims for relocation benefits or services. The Relocation Appeals Board does not hear appeals until claims for relocation benefits or services have been denied in whole or in part by the displacing agency. The Relocation Appeals Board will hear claims where a displacing agency fails to respond to a claim after a reasonable time.

### **2.1 Complaint**

An appeal to the Relocation Appeals Board begins with a complaint. If you are preparing a complaint to the Relocation Appeals Board, you must include at least the following:

7. Name of the aggrieved person;
8. Location of the property from which the aggrieved person is being displaced;
9. The nature of the dislocation, i.e., a family residence, business, warehouse, etc.;
10. The displacing agency or the agency responsible for providing services and the name and address of the person at the agency who is responsible for handling the claim;
11. A brief description of the grievance and grounds for appeal to the Relocation Appeals Board;
12. Documents in support of your claim, or, if they are voluminous, a summary of the documents that support your claim, The complainant will be able to review and copy relevant documents of the displacing agency prior to filing the complaint.;

The complaint must be signed. The signature of the complaining person verifies the accuracy and the truthfulness of the complaint. Unsigned complaints will not be accepted. (See generally San Francisco Admin. Code #24B.7.)

## **2.2 Delivery of the Complaint to Board Secretary, Displacing Agency**

The complaining party or its representative shall deliver the signed complaint to the Secretary of the Relocation Appeals Board at the following address:

Bruce Ito, Secretary  
Relocation Appeals Board of the City and County of San Francisco  
1 South Van Ness Avenue, 5<sup>th</sup> Floor  
San Francisco, CA 94103

If there are questions about the handling of the complaint, please contact the Secretary of the Relocation Appeals Board at (415) 701-5558.

In addition to filing the complaint with the Board's Secretary, the complaining party must send a copy to the responsible agent at all displacing agencies that are subject to the dispute.

## **2.3 Authorization for Release of Information**

After your complaint is received, the staff of the Relocation Appeals Board will mail you a "Request for Authorization to Release Confidential Information." This authorization, when signed, allows the displacing agency to respond to your complaint with relevant information. Please sign the "Request" and return it to the Secretary of the Relocation Appeals Board at the above address.

## **2.4 Written Answer By Displacing Agency, Reply**

The displacing agency will answer your complaint in writing within 15 days (unless a longer time is allowed by the Board) and will provide you with a copy of its answer.

The Board or the Secretary of the Board may request that you file a written reply to the displacing agency's agency answer. Your reply should be filed with the Secretary and a copy mailed to the responsible person at the displacing agency, usually the person who filed the answer.

When the written complaint, answer, and reply (if any) are received, the review process begins.

### **3. Pre-Hearing Mediation**

The Secretary or a member of the Relocation Appeals Board will review your complaint, the answer, any reply and all other pertinent materials to your claim and the dispute. This person is the mediator. The mediator will attempt to resolve the dispute prior to a formal hearing and review by the Relocation Appeals Board.

The mediation may take any form deemed suitable by the mediator and the Relocation Appeals Board. This may include ex parte conferences with the claimant, the displacing agency, or others in order to reconcile the dispute; conferences, requests for further written submissions, interviews of witnesses, or brief presentations by the disputants to clarify their positions are routinely requested. If the efforts of the mediator cause the dispute to be resolved to the satisfaction of all parties, the appeal to the full Relocation Appeals Board is dismissed.

If the claimant is not satisfied with the results of the mediation, the matter will be presented to the Relocation Appeals Board in a formal hearing. Upon written request of the claimant or upon the mediator's determination that attempts to resolve the dispute have failed, the Secretary will set the appeal for hearing before the Relocation Appeals Board at a regularly scheduled meeting. The Secretary will give written notice of the time, place and the date of the appeal to all parties.

### **4. Hearings Before the Relocation Appeals Board**

#### **4.1 parties; Representation by Lawyers; Notices**

No claimant who presents an appeal to the Relocation Appeals Board needs to be represented by a lawyer, though any party who presents an appeal to the Relocation Appeals Board may be so represented.

Whenever any document containing an attorney's name, address and telephone number is filed by an attorney on behalf of a party, or whenever a party advises in a complaint or other written notice to the Board that the party's is represented by counsel, all notices sent by the Board or other parties shall thereafter be sent to the party's attorney instead of to the party. Notices will not be sent to both the attorney and the party represented by the attorney.

#### **4.2 Discovery (exchange of information)**

There is no procedure for pre-appeal discovery or exchange of information between disputants. Parties may be requested to exchange information or to provide statements to the Relocation Appeals Board, the mediator, or the Secretary in an attempt to resolve the dispute. No party is obligated to provide information in response to such a request, though the failure to provide requested information may be considered by the Relocation Appeals Board on appeal.

#### **4.3 Appeals Heard At Regular Meetings; Emergency Sessions**

All appeals to the Relocation Appeals Board shall be heard at a regularly scheduled meeting of the Relocation Appeals Board. An appeal may be heard outside of a regularly scheduled meeting only under special circumstances.



A claimant may petition for an expedited appeal at a specially convened meeting by demonstrating special circumstances. Such a petition must be submitted to the Secretary of the Relocation Appeals Board at least five days prior to the date requested for an expedited appeal. The petition must set forth the basis of the request for the expedited appeal and must include the following information: the date that the claim that is subject to the appeal was submitted to the displacing agency; the date of final response by the displacing agency; the date of written complaint initiating the appeal; the hardship that would attend hearing the appeal at the regularly scheduled meeting; and an explanation of any prior delays in the presentation or prosecution of the claim or the appeal. The petition must be signed by the complainant.

The President of the Board will assess any petition for an expedited appeal. If the petition is granted, the Secretary will attempt to convene a quorum of the Board at the date and time requested in the petition. If a quorum cannot be convened at the date and time requested, the appeal will be heard at the earliest date and time at which such a quorum may be convened.

Any party or agency that opposes an expedited hearing may submit a letter to the Secretary explaining why an expedited hearing is unnecessary, inappropriate, or prejudicial to the other party.

#### **4.4 Postponements**

The President of the Board may grant a postponement of a scheduled appeal only for a good cause. Good cause may include, but is not limited to, showings of the following: (1) illness of a party, attorney, or other authorized representative of a party, or a material witness; (2) verified travel outside of San Francisco scheduled before the receipt of the notice of hearing; or (3) any other reason that makes it impracticable to appear on the scheduled date due to unforeseen circumstances or verified pre-arranged plans that are not reasonably susceptible to change. Inconvenience is not a good cause.

Requests for postponements shall be made in writing at the earliest possible date. Requests to postpone an appeal should include supporting documentation. Requests to postpone an appeal should be served upon all other parties and their counsel.

The parties to an appeal may agree to a postponement once without approval of the Board if they notify the Board at least five days prior to the date of the appeal. Stipulated postponements closer than five days to a scheduled appeal may be granted only with permission from the President of the Board either in writing or at the hearing for the appeal.

The parties to an appeal may agree to additional postponements only with the approval of the Board. A joint request for postponement shall be submitted in writing.

#### **4.5 Pre-Appeal Submissions**

Each party to an appeal shall submit the following to the Secretary to the Board and to each other party or its counsel at least five day prior to the scheduled appeal:

7. A brief explanation of the law that supports the party's position.
8. A summary of the facts that the party expects to show at the hearing on appeal.
9. A list of the witnesses to be called by the party and a summary of the witnesses' testimony.
10. All documents that the party intends to present at the hearing on appeal.

11. The name of the party intends to present at the hearing on appeal, including any physical objects, large maps, diagrams, enlarged photographs.
12. The name of the party or the attorney who will be primarily responsible for presenting the appeal to the Relocation Appeal Board.

The parties shall submit six copies of all submissions to the Secretary for distribution to the members of the Relocation Appeals Board and staff.

#### **4.6 Absent Parties**

If a party fails to appear at a properly noticed hearing the Board may, as it deems appropriate, continue the appeal, decide the case on the submitted documents, or proceed with a hearing and render a decision. If the absent party is the complainant, the Board may dismiss the complaint. If the absent is the displacing agency, the Board may enter a decision affirming the complaint against the agency.

#### **4.7 Conduct of Appeal**

Appeals shall be conducted in conformity with these rules unless otherwise ordered at any hearing or by formal amendment to these rules by a majority of the members of the Relocation Appeals Board.

Each party will make a brief opening or introductory statement. Claimant will make the first statement; each displacing agency adverse to claimant will make the second statement(s); claimant may make a brief reply statement.

Claimant will present its case first, including the presentation of witnesses, documents, diagrams, photographs, summaries, charts, or other materials relevant to the claim.

Oral evidence shall be taken only on the oath or affirmation of the witness.

Each party shall have the right to call and examine witnesses, to introduce exhibits, and to cross-examine opposing witnesses on any matter relevant to the issues before the Board. The claimant may be called as a witness even if the claimant does not testify in its own behalf. The agent of the displacing agency may be called as a witness even if the agent does not testify on behalf of the displacing agency.

Third party witnesses (witnesses that are neither the claimant or the displacing agency) may be presented by either side. If presented, they may be cross-examined. Neither party may subpoena or compel the testimony of third party witnesses.

Adverse witnesses (persons who are employed by or under the control of the adverse party) may not be compelled to give testimony. However, any party may request that an adverse witness testify. To request the testimony of an adverse witness, a party shall request the presence of such witness by sending notice to the adverse party at least 10 days prior to the date of appeal. The request shall state the name of the witness, the relationship between the adverse witness and the adverse party, the subject matter of the adverse witnesses' testimony, and the anticipated testimony from the witness. If the adverse party does not make the witness available at the appeal, the Board may consider in its decision the absence of the witness against the adverse party and the anticipated testimony in favor of the party that requested the testimony.

The parties may present all the relevant evidence that furthers the decision-making process. The parties are not bound by civil rules of evidence except as stated in these rules. Parties and witnesses may introduce hearsay in support of their claims. Proffered hearsay evidence is admissible for all purposes and, if assessed as credible by the Relocation Appeals Board, may provide the sole basis for a finding or decision.

Evidentiary privileges protected by law are honored in an appeal before the Relocation Appeals Board but must be asserted promptly. Unasserted privileges and untimely objections are waived.

The Relocation Appeals Board may limit the presentation of evidence, the number of witnesses, or remarks of the parties or counsel in order to avoid the presentation of irrelevant, repetitious or unruly inflammatory testimony, evidence or other matters.

The Board or its counsel may, from time to time, interrogate witnesses, question counsel, or request further evidence in the course of the appeal process.

#### **4.8 Burden of Proof on Appeal**

In any appeal to the Relocation Appeals Board by a displaced person regarding the displacing agency's treatment of a claim, the displaced person has the initial burden of demonstrating that the claim for relocation payments or benefits was timely, proper, and reasonable.

In order to overcome a complaint by a displaced party who satisfies the burden of demonstrating that the claim was timely, proper and reasonable, if the burden of the displacing agency to demonstrate that the claim for relocation payments was not timely, proper, reasonable, or that it is defective under applicable law or regulations. The displacing agency may discharge its burden of proof by demonstrating that it has made an offer to settle the claim, that the offer to settle the claim was rejected, and that the offer to settle the claim was more reasonable than the original claim and in conformity with applicable law and regulations.

#### **4.9 Record or Proceedings**

The Relocation Appeals Board may record the proceedings on appeal by audiotape or by causing a transcript to be made. The Relocation Appeals Board may request that the parties to the appeal share the expense of recording or transcribing the proceedings for the benefit of the Board or the parties.

In the event that the Board does not elect to record or transcribe the proceedings, any party may retain a stenographer or tape record the proceedings in order to keep a record, provided that the party so recording the proceedings makes available to the board a copy of the transcript or recording of the proceedings if the Board so requests, and such copy or transcript shall be tendered without charge. The party transcribing or recording the proceedings must also make available to other parties a transcript or recording at a reasonable charge not to exceed that party's proportional share of the cost of obtaining such a record.

#### **4.10 Additional Submissions**

The Board may request that either or both parties present any additional briefing, documents, information, declarations or testimony to the Relocation Appeals Board following the hearing on

appeal. All such submissions shall be filed with the Secretary of the Board within the time requested by the Board and served to all other parties or their counsel. No party need respond to such submissions unless requested to do so by the Board, or unless such party requests in writing from the Board permission to respond and such permission is granted in writing.

## **5. Decisions on Appeal**

The Relocation Appeals Board will deliberate on the appeal following the close of presentation of evidence. The deliberations of the Relocation Appeals Board are public.

The decision of the Relocation Appeals Board to affirm the complaint in whole and to order the relief requested, to grant the complaint in part and to order part of the relief requested, or to grant the complaint in part and order relief other than requested, must be based on the agreement of a majority of the voting members. The agreement of a majority of the voting members of the Board on the nature and extent of relief to be awarded is sufficient to constitute a ruling of the Board, and such shall be the decision of the Board, notwithstanding any disagreement among the voting members as to the basis of such relief.

The President of the Board shall appoint a member of the Board or the Secretary to draft a resolution setting forth the Board's ruling. A resolution that satisfactorily sets forth the Board's ruling shall be affirmed and signed by the President of the Board and served to the parties to the appeal by registered mail.

## **6. Appeal to the Superior Court**

If the Board issues a final decision other than to grant the relief requested in the complaint, the complaining person may seek further review by administrative mandamus in the San Francisco Superior Court. The Procedures for pursuing a claim of administrative Mandamus are set forth in section 1094.5 of the California Code of Civil Procedure.

Deadlines for filing a petition for review in the Superior Court are strict. The time to bring a petition is governed by Section 1094.6 of the California Code of Civil Procedure. Failure to file a timely petition for review may result in waiver of your right to further review.

## **7. Approval of the Rules**

These General Rules and Procedures are approved by the members of the Relocation Appeals Board this 6 day of Sept., 1995 and shall govern all proceedings before this Board until otherwise revoked, amended, or replaced by a majority vote of this Board.

These General Rules and Procedures shall be made available at the request of any person and the Secretary of the Relocation Appeals Board shall provide copies of these General Rules and Procedures to all parties to appeals before the Relocation Appeals Board.

**THIS PRINT COVERS CALENDAR ITEM NO. 14**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Administration, Taxis and Accessible Services

**BRIEF DESCRIPTION:**

Charter Section A8.404(h) requires the wage schedule for Transit Operators in classification 9163 to be fixed by August 25 of each year. Section A8.404(b) of the Charter mandates that, normally, the wages for operators employed with the SFMTA be not less than the average of the two highest wage schedules for transit operators in comparable jurisdictions.

**SUMMARY:**

- Charter Section A8.404(a) and 8A.104 require the SFMTA to certify the average of the two highest wage schedules in effect on July 1 for bus operators in the two highest paid transit systems meeting a minimum size threshold.
- The two highest paid jurisdictions are Massachusetts Bay Transportation Authority (MBTA) and Santa Clara Valley Transportation Authority (VTA).
- Charter Section A8.404(h) sets a deadline of August 25, 2010 or fixing a wage schedule retroactive to July 1, 2010.
- Charter Section A8.404(b) mandates that wages shall not be less than the average of the two highest wage schedules for transit operators in comparable jurisdictions.

**ENCLOSURES:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

\_\_\_\_\_

FINANCE \_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR \_\_\_\_\_

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO Rumi Ueno

\_\_\_\_\_

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

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**EXPLANATION:**

Charter Section A8.404(h) requires the wage schedule for Transit Operators in classification 9163 to be fixed by August 25 of each year. Section A8.404(b) of the Charter mandates that, normally, the wages for operators employed with the SFMTA be not less than the average of the two highest wage schedules for transit operators in comparable jurisdictions.

The two jurisdictions with the highest wage schedules are Massachusetts Bay Transportation Authority (MBTA) and Santa Clara Valley Transportation Authority (VTA).

As of July 1, 2010, VTA published hourly wage rate is twenty eight dollars and eight-six cents (\$28.86) and MBTA's published rate is thirty dollars and eighteen cents (\$30.18). The following chart reflects the actual wage certification rates:

<b>Transit Authority</b>	<b>Hourly Wage Rate Effective 7/01/2010</b>
Massachusetts Bay Transit Authority Boston, Massachusetts	\$30.18
Santa Clara Valley Transit Authority San Jose, California	28.86
<b>Charter Section A8.404(a)</b>	
Average of the two highest wage rates	\$29.52

The hourly wage rate currently in effect for transit operators is \$27.91. The required increase to \$29.52 reflects a 5.75 percent increase. The Operator Trainee hourly rate effective July 1, 2010 is \$18.5976, which is based on 63 percent of the full rate.

**GOAL:**

The proposal meets the following strategic goals:

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

Goal 5 – SFMTA Workforce: To provide a flexible, supportive work environment and develop a workforce that takes pride and ownership of the agency's mission and leads the agency into an evolving, technology-driven future.

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**DESCRIPTION:**

Charter Section A8.404(h) requires the wage schedule for Transit Operators in classification 9163 to be fixed by August 25 of each year. Section A8.404(b) of the Charter mandates that the wages for operators employed with the SFMTA be not less than the average of the two highest wage schedules for transit operators in comparable jurisdictions.

The City Attorney has reviewed this calendar item.

**FUNDING IMPACT:**

The 5.75 percent wage increase has been included in the Revised SFMTA FY 2010-2011 Operating Budget.

**RECOMMENDATION:**

Staff recommends that the SFMTA Board approve the wage rates for TWU Local 250A (9163) Transit Operators.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, Under Section 8A.104 of the Charter, the San Francisco Municipal Transportation Agency Board of Directors succeeded to the powers of the Board of Supervisors with respect to collective bargaining for employees in service critical classifications, and setting wages for transit operators; and

WHEREAS, Charter Section A8.404(h) requires the San Francisco Municipal Transportation Agency Board to fix a wage schedule for Transit Operators, Classification 9163 by August 25, 2010, retroactive to July 1, 2010; and,

WHEREAS, Charter Section A8.404(a) mandates that wages for platform employees employed in the San Francisco Municipal Transportation Agency be in an amount not less than the average of the two highest wage schedules for bus operators in comparable jurisdictions; and,

WHEREAS, The two jurisdictions with the highest wage schedules are the Massachusetts Bay Transportation Authority (MBTA) with the rate of \$30.18 and the Santa Clara Valley Transportation Authority (VTA) with the rate of \$28.86; and

WHEREAS, The average of the two highest wage rates is \$29.52; now therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors hereby fixes the wage schedule for Transit Operators, classification 9163 as \$29.52 per hour as of July 1, 2010, the level in place of June 30, 2010.

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

\_\_\_\_\_  
Secretary, San Francisco Municipal Transportation Agency Board